UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

EXECUTIVE ORDER
2022-04

Declaring a State of Emergency Due to Drought

WHEREAS, nearly 100% of Utah is in severe drought or worse; and

WHEREAS, the State of Utah continues to experience unprecedented drought conditions, with a drought executive order initiated in March of 2021, a State of Emergency due to drought declared in May of 2021 and extended through House Joint Resolution 101; and

WHEREAS, of the State's 29 counties, the United States Department of Agriculture currently has listed all 29 counties under the Secretarial Disaster Designation for drought; and

WHEREAS, extreme drought has significantly impacted the state eight of the last 10 years;

WHEREAS, the statewide snowpack peaked approximately two weeks early at 25% below normal, leading to a deficit in spring water supply; and

WHEREAS, Utah lakes and reservoirs are at low levels, with Lake Powell – the nation's second-largest reservoir – at 24% capacity, and the Great Salt Lake reaching its lowest ever recorded level; and

WHEREAS, the federal government recently declared a water shortage on the Colorado River for the first time in its history, triggering reductions in downstream releases from Glen Canyon Dam and mandatory water consumption cuts for states across the Southwest; and

WHEREAS, the State of Utah experienced an exceptionally dry growing season in 2021, with soil moisture reaching exceptionally low levels not previously seen since monitoring began in 2006; and

WHEREAS, record-setting high temperatures throughout the state have exacerbated and accelerated historic dry conditions; and

WHEREAS, these extended dry hot conditions have adversely and significantly impacted agribusiness and livestock production, as well as wildlife and natural habitats; and

WHEREAS, record low water levels, soil moisture, and prolonged dry conditions have contributed to a formidable wildfire season, and continue to increase the threat of wildfires across the state; and

WHEREAS, these conditions have also contributed to and exacerbated flash flooding throughout the state;

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

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

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

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

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

IT IS FURTHER ORDERED that the State Emergency Operations Plan will continue to be executed as needed and coordinated by the Department of Public Safety, Department of Natural Resources, and Department of Agriculture and Food;

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 21st day of April, 2022

(State Seal)

Spencer J. Cox
Governor, State of Utah

ATTEST:

Deidre M. Henderson
Lieutenant Governor, State of Utah

End of the Executive Documents Section

NOTICES OF
PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 02, 2022, 12:00 a.m., and April 15, 2022, 11:59 p.m. are included in this, the May 01, 2022, 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 May 31, 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 August 29, 2022, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R37-4**	**Filing ID 54473**

Agency Information

1. Department:	Government Operations	
Agency:	Risk Management	
Building:	Taylorsville State Office Building	
Street address:	2315 South 2700 West, 3rd Floor	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 141321	
City, state and zip:	Salt Lake City, UT 84114-1321	
Contact person(s):		
Name:	**Phone:**	**Email:**
Brian Nelson	801-702-7445	benelson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments

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

These amendments adjust the limitations on judgments against governmental entities, as required by statute in even-numbered years.

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

These amendments increase personal injury award damage limitations against a governmental entity from $779,600 to $827,000 per person, per occurrence, and from $3,138,300 to $3,329,100 in the aggregate per occurrence. Also increased from $307,700 to $326,200 are the per-occurrence limits for property damage awards against a governmental entity.

Fiscal Information

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

A) State budget:

These amendments will increase exposure to state agencies, institutions of higher education, and the State Risk Management Fund for severe personal injury and property damage claims caused by state agencies, institutions of higher education, and their employees. The Division of Risk Management (Division) is currently unable to quantify the anticipated costs of future serious losses or the impact of those losses on future premiums.

B) Local governments:

These amendments will increase exposure to school districts and charter schools that participate in the State Risk Management Fund for severe personal injury and property damage claims caused by their employees. The Division is currently unable to quantify the anticipated costs of future serious losses or the impact of those losses on premiums. These amendments also increase exposure to all local governments in the state of Utah, but the Division cannot quantify the anticipated costs of their future serious losses or the impact of those losses on their future coverage/insurance premiums.

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

The only impact these amendments will have on small businesses will be their increased costs of insurance to do business with governmental entities in the state of Utah. It is impossible to estimate those increased costs. Small businesses may benefit from higher damage awards if they are harmed or damaged by the negligence of governmental entity employees, but that benefit is dependent upon the number and nature of unknown future losses.

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

The only impact these amendments will have on non-small businesses will be their increased costs of insurance to do business with governmental entities in the state of Utah. It is impossible to estimate those increased costs. Non-small businesses may benefit from higher damage awards if they are harmed or damaged by the negligence of governmental entity employees, but that benefit is dependent upon the number and nature of unknown future losses and cannot be estimated.

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 may result in increased costs of insurance to do business with governmental entities in the state of Utah. It is impossible to estimate those increased costs. Persons may benefit from higher damage awards if they are harmed or damaged by the negligence of governmental entity employees, but that benefit is dependent upon the number and nature of unknown future losses and cannot be estimate.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**
Governmental entities may experience higher liability premiums from their insurance carriers, but it is impossible to estimate those costs.
G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
The executive director concurs with the fiscal impact statements above. Jenney Rees, Executive Director
6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

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

B) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 63G-7-605(4)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	05/31/2022

10. This rule change MAY become effective on:	07/01/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Brian Nelson, Director	**Date:**	04/01/2022

R37. Government Operations, Risk Management.
R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments.
R37-4-1. Authority and Calculation Process.

Pursuant to Subsection 63G-7-605(4) the Risk Manager [~~hereby~~]establishes new limitations of judgments, based upon the adjustments communicated by the Legislative Fiscal Analyst.

R37-4-2. New Limitation of Judgment Amounts.

The new limitation of judgment amounts currently required by Subsection 63G-7-604(3) are increased as follows, pursuant to Section 63G-7-605, and are effective July 1, [~~2020~~]2022 for claims occurring on or after that date:

(1) The limit for damages for personal injury against a governmental entity, or against an employee whom a governmental entity has a duty to indemnify, is [~~$779,600~~]$827,000 for one person in any one occurrence, and [~~$3,138,300~~]$3,329,100 is the aggregate amount of individual awards that be may awarded in relation to a single occurrence; and

(2) The limit for property damages, [~~(~~]excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation,[~~)~~] against a governmental entity, or against an employee whom a governmental entity has a duty to indemnify, is [~~$307,700~~]$326,200 in any one occurrence.

R37-4-3. Limitations of Judgments by Calendar Date.

The limitations on judgments are established by the date of the occurrence. The dates and dollar amounts are as follows:

(1) Incident(s) occurring before July 1, 2001 - $250,000 for one person in an occurrence, $500,000 aggregate for two or more persons in an occurrence; and $100,000 for property damage for any one occurrence.

(2) Incidents[~~(s)~~] occurring on or after July 1, 2001 - $500,000 for one person in an occurrence, $1,000,000 aggregate for two or more persons in an occurrence; and $200,000 for property damage for any one occurrence.

(3) Incidents[~~(s)~~] occurring on or after July 1, 2002 - $532,500 for one person in an occurrence, $1,065,000 aggregate for two or more persons in an occurrence; and $213,000 for property damage for any one occurrence.

(4) Incidents[~~(s)~~] occurring on or after July 1, 2004 - $553,500 for one person in an occurrence, $1,107,000 aggregate for two or more persons in an occurrence, and $221,400 for property damage for any one occurrence.

(5) Incidents[~~(s)~~] occurring on or after July 1, 2006 - $583,900 for one person in an occurrence, $1,167,900 aggregate for two or more persons in an occurrence, and $233,600 for property damage for any one occurrence.

(6) Incidents[~~(s)~~] occurring on or after July 1, 2007 - $583,900 for one person in an occurrence, $2,000,000 aggregate for two or more persons in an occurrence, and $233,600 for property damage for any one occurrence.

(7) Incidents[~~(s)~~] occurring on or after July 1, 2008 - $620,700 for one person in an occurrence, $2,126,000 aggregate for two or more persons in an occurrence, and $248,300 for property damage for any one occurrence.

(8) Incidents[~~(s)~~] occurring on or after July 1, 2010 - $648,700 for one person in an occurrence, $2,221,700 aggregate for two or more persons in an occurrence, and $259,500 for property damage for any one occurrence.

(9) Incidents[~~(s)~~] occurring on or after July 1, 2012 - $674,000 for one person in an occurrence, $2,308,400 aggregate for two or more persons in an occurrence, and $269,700 for property damage for any one occurrence.

(10) Incidents[~~(s)~~] occurring on or after July 1, 2014 - $703,000 for one person in an occurrence, $2,407,700 aggregate for two or more persons in an occurrence, and $281,300 for property damage for any one occurrence.

(11) Incidents[~~(s)~~] occurring on or after July 1, 2016 - $717,100 for one person in an occurrence, $2,455,900 aggregate for two or more persons in an occurrence, and $286,900 for property damage for any one occurrence.

(12) Incidents[~~(s)~~] occurring on or after July 1, 2018 - $745,200 for one person in an occurrence, $2,552,000 aggregate for two or more persons in an occurrence, and $295,000 for property damage for any one occurrence as explained in R37-4-2(2).

(13) Incidents[~~(s)~~] occurring on or after July 1, 2020 - $779,600 for one person in an occurrence, $3,138,300 aggregate for two or more persons in an occurrence, and $307,700 for property damage for any one occurrence as explained in R37-4-2(2).

(14) Incidents occurring on or after July 1, 2022 - $827,000 for one person in an occurrence, $3,329,100 aggregate for two or more persons in an occurrence, and $326,200 for property damage for any one occurrence as explained in R37-4-2(2).

KEY: limitation on judgments, risk management, Governmental Immunity Act caps
Date of Last Change: 2022[~~September 9, 2021~~]
Notice of Continuation: May 5, 2017
Authorizing, and Implemented or Interpreted Law: 63G-7-605(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-3**	**Filing ID 54519**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-3. Utah Fertilizer Rule
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
Changes are needed to reflect reference change in Section 4-13-110, and to make the text consistent with the Utah 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)**:**
Language has been updated from the reference to Section 4-13-104 to Section 4-13-110. Additional changes have been made to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

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

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

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

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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-2-103(1)(i)	Section 4-13-110	

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Official Publication AAPFCO Investigational Allowance Tables
Publisher	Association of American Plant Food Control Officials, Inc.
Date Issued	2021
Issue, or version	No. 74 2021 pages 49, 53, and 54

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:	06/14/2022

10. This rule change MAY become effective on:	06/21/2022
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

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-3. Utah Fertilizer Rule.
R68-3-1. Purpose and Authority.

[~~Promulgated under authority of Subsection 4-2-103(1)(i) and Section 4-13-104.~~](1) Subsection 4-2-103(1)(i) and Section 4-13-110 authorize the department to adopt rules to enforce Title 4, Chapter 13, the Utah Fertilizer Act and to adopt the official terms, tables, definitions, and statements adopted by the Association of American Plant Food Control officials (AAPFCO) and published in the official publications of that organization.

(2) This rule establishes the process of registration and labeling of products, defines ingredient deficiencies, and defines unlawful acts that violate Title 4, Chapter 13, the Utah Fertilizer Act.

R68-3-2. Definitions.

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

R68-3-[~~2~~]3. [~~Registration of Products.~~]Product Registration.

[~~A.~~](1) Fertilizer or soil amendment distributed in Utah shall be registered with the [~~Utah Department of Agriculture and Food~~]department, unless labeling shows that the product does not claim to contain any plant nutrients or beneficial plant growth properties.

[~~1.~~](a) The following are exempt from registration in Utah:

[~~a.~~](i) biochar;

[~~b.~~](ii) compost;

[~~c.~~](iii) landscape soil;

[~~d.~~](iv) mulch;

[~~e.~~](v) nitrogen stabilizers;

[~~f.~~](vi) peat;

[~~g.~~](vii) perlite;

[~~h.~~](viii) plant inoculant;

[~~i.~~](ix) planting mix;

[~~j.~~](x) potting soil;

[~~k.~~](xi) seed inoculant;

[~~l.~~](xii) vermicompost; [~~or~~]and

[~~m.~~](xiii) vermiculite.

[~~2.~~](b) Application for registration shall be made to the department upon a form prescribed and provided by the department. Each application shall include the registrant's name, address, and other contact information prescribed on the form, as well as the following information for each product:

[~~a.~~](i) the brand and grade;

[~~b.~~](ii) the guaranteed analysis; and

[~~c.~~](iii) the label for each product registered.

[~~3.~~](c) The registrant of a waste-derived fertilizer shall state in the application for registration the levels of non-nutritive metals, including arsenic, cadmium, mercury, lead and selenium. Upon request, the registrant [~~will~~]shall provide a laboratory report or other documentation verifying the levels of the non-nutritive metals in the waste-derived fertilizer.

[~~4.~~](d) The department may require submission of the complete formula of any fertilizer or soil amendment if it shall be [~~deemed~~]considered necessary for administration of Title 4, Chapter 13, the Utah Fertilizer Act. If it appears to the department that the composition of the product [~~is such as to~~]warrants the proposed claims for it, and if the product and its labeling and any other information [~~which~~]that may be required to be submitted compl[~~y~~]ies with the requirements of the Act, the product shall be registered.

[~~5.~~](e) Before registering any soil amendment, the department may require evidence to substantiate the claims made for the soil amendment and proof of the value and usefulness of the soil amendment. For evidence of proof, the department may rely on experimental data, evaluation, or advice from a source that understands the conditions for which the product is intended. Cost for research shall be the responsibility of the applicant. Final decision concerning registration of a soil amendment shall be made by the department following evaluation of evidence presented.

[~~6.~~](f) The registrant is responsible for the accuracy and completeness of information submitted concerning application for registration of a fertilizer or soil amendment.

[~~7.~~](g) A registration fee, determined by the department pursuant to Subsection 4-2-103(2), per product, shall be paid by the applicant annually.

[~~8.~~](h) Each registration is renewable for a period of one year upon payment of the annual renewal fee, which shall be paid by December 31 of each year. If the renewal of a fertilizer or soil amendment registration is not received by December 31[~~ of any year~~], an additional fee, determined by the department pursuant to Subsection 4-2-103(2), shall be assessed per product and added to the original registration fee and shall be paid by the applicant before the registration renewal for that fertilizer or soil amendment [~~will~~]shall be issued.

[~~9.~~](i) [~~Whenever~~]When the name of the fertilizer or soil amendment product is changed or there are changes in the product ingredients or guaranteed analysis, a new registration is required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of changes to the department as soon as they are effective. A reasonable time may be permitted to dispose of properly labeled stocks of the old product.

[~~10.~~](j) A blender [~~is not required~~]shall not [~~to~~]register each grade of fertilizer or soil amendment formulated by a consumer before mixing, but [~~is required to~~]shall license the name under which the business of blending or mixing is conducted and [~~to~~]pay an annual blender's license fee determined by the department pursuant to Subsection 4-2-103(2). A blender's license shall expire after December 31 of the year it is issued. A blender's license is renewable for a period of one year upon the payment of an annual license

renewal fee. If the renewal of a fertilizer or soil amendment blender license is not received by December 31[~~ of any year~~], an additional fee determined by the department pursuant to Subsection 4-2-103(2), shall be assessed to and paid by the applicant before the blender license [~~will~~]shall be issued.

R68-3-[~~3~~]4. Product Labeling.

[~~A.~~](1) When any reference is made [~~up~~]on the label, labeling, or graphic material of a fertilizer or soil amendment to "trace elements," "minor elements," "secondary elements," "plant foods," or similar generalized terms, each individual plant food to which [~~such~~]the term refers shall be listed [~~up~~]on the label.

[~~B.~~](2) Other plant nutrients, when mentioned in any form or manner, shall be registered and shall be guaranteed.

(a) Each guarantee shall be made on the elemental basis.

(b) Sources of the elements guaranteed and proof of availability shall be provided to the department upon request.

(c) [~~An exception is made for guarantees for those water-soluble nutrients labeled for ready to use foliar fertilizer, ready to use specialty liquid fertilizer, hydroponic or continuous liquid feed programs, and guarantees for potting, garden, and lawn soils. The minimum percentages that will be accepted for registration are as follows~~]Except guarantees for those water soluble nutrients labeled for ready to use foliar fertilizers, ready to use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for potting, garden and lawn soils, the minimum percentages which will be accepted for registration are:

[

~~TABLE 1~~

~~Element~~	~~Minimum Concentration %~~
~~Calcium (Ca)~~	~~1.0000~~
~~Magnesium (Mg)~~	~~0.5000~~
~~Sulfur (S)~~	~~1.0000~~
~~Boron (B)~~	~~0.0200~~
~~Chlorine (Cl)~~	~~0.1000~~
~~Cobalt (Co)~~	~~0.0005~~
~~Copper (Cu)~~	~~0.0500~~
~~Iron (Fe)~~	~~0.1000~~
~~Manganese (Mn)~~	~~0.0500~~
~~Molybdenum (Mo)~~	~~0.0005~~
~~Nickel (Ni)~~	~~0.0010~~
~~Sodium (Na)~~	~~0.1000~~
~~Zinc (Zn)~~	~~0.0500~~

~~Guarantees or claims for the plant nutrients listed in Table 1 are the only ones that will be accepted. Each proposed label and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the elements listed in Table 1 that are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients of nitrogen, phosphate, and potash.~~]

TABLE	
Element	Minimum Concentration %
Calcium (Ca)	1.0000
Magnesium (Mg)	0.5000
Sulfur (S)	1.0000
Boron (B)	0.0200
Chlorine (Cl)	0.1000
Cobalt (Co)	0.0005
Copper (Cu)	0.0500
Iron (Fe)	0.1000
Manganese (Mn)	0.0500
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.1000
Zince (Zn)	0.0500
Guarantees or claims for the plant nutrients listed in the Table are the only ones that will be accepted. Each proposed label and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the elements listed in the Table that are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients of nitrogen, phosphate, and potash.	

[~~C.~~](3) Slowly released plant nutrients.

[~~1.~~](a) No fertilizer label shall bear a statement that implies that certain plant nutrients contained in a fertilizer are released slowly over a period[~~ of time~~], unless each slow release component is identified and guaranteed at a level of at least 15% of the total guarantee for that nutrient.

[~~2.~~](b) Types of products with slow release properties recognized are:

[~~a.~~](i) water insoluble, [~~such as~~]including natural organics, ureaform materials, urea-formaledhyde products, isobutylidene diurea oxamine;

[~~b.~~](ii) coated slow release, [~~such as~~]including sulfur coated urea and other encapsulated soluble fertilizers;

[~~c.~~](iii) occluded slow release where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and

[~~d.~~](iv) products containing water soluble nitrogen, [~~such as~~]including ureaform materials, urea-formaldehyde products, methylene urea (MDU), dimethylentriurea (DMTU), and dicyanodiamide (DCD).

[~~3.~~](c) The terms,[~~ such as~~] "water insoluble," "coated slow release," "slow release," "controlled release," "slowly available water soluble," and "occluded slow release" are accepted as descriptive of these products.

[~~4.~~](d) The department may require evidence and an acceptable testing procedure to substantiate each claim.

[~~D.~~](4) Pesticide may be added to registered fertilizer or soil amendment, provided:

[~~1.~~](a) the fertilizer, soil amendment, and pesticide is registered; and

[~~2.~~](b) each fertilizer or soil amendment pesticide mixture [~~shall have~~]has a label showing the information required in this rule and in Section 4-14-104.

[~~E.~~](5) Format exemptions. The department may exempt a fertilizer from any guaranteed analysis format requirement under Section 4-13-104 if the person requesting the exemption demonstrates the following to the department's satisfaction:

[~~1.~~](a) another state that has authorized sale of the fertilizer has a conflicting statute or regulation;

[~~2.~~](b) the format exemption will reconcile the conflict [~~under~~]pursuant to Section 4-13-104;

[~~3.~~](c) the format exemption will not affect, to the detriment of purchasers in this state, any claim or disclosure related to product performance, use, purpose, efficacy, or active ingredients;

[~~4.~~](d) the format exemption will not cause the product label to be false, deceptive, or misleading in any respect;

[~~5.~~](e) the format required by the other state satisfies the objectives of Section 4-13-104; or

[~~6.~~](f) the format required by the other state does not violate applicable labeling requirements, if any, [~~under~~]pursuant to Section 4-13-104.

R68-3-[4]5. Deficiencies of Ingredients.

A fertilizer [~~shall be deemed~~]is considered deficient if the analysis of any nutrient is below the guarantee by an amount exceeding the values in the [~~Association of American Plant Food Control Officials (AAPFCO)~~]AAPFCO Investigational Allowance Tables, [~~2019~~]2021 version, which are [~~hereby~~]incorporated by reference, or if the overall index value of the fertilizer is below 98%.

R68-3-[5]6. Unlawful Acts.

[~~A.~~](1) Any person who has committed any act in violation of Title 4, Chapter 13, the Utah Fertilizer Act or rules promulgated thereunder, is subject to penalties provided for in Subsection 4-2-304(1)(a).

(2) Unlawful acts include that the person:

[~~1.~~](a) made a false or fraudulent claim through any media misrepresenting the effect of fertilizer or soil amendment offered for sale in Utah;

[~~2.~~](b) neglected or, after notice, refused to comply with [~~the provisions of the Act~~]Title 4, Chapter 13, the Utah Fertilizer Act, these rules, or any lawful order of the department;

[~~3.~~](c) made false or fraudulent records, invoices, or reports;

[~~4.~~](d) used fraud or misrepresentation in making application for, or renewal of, a registration or license;

[~~5.~~](e) distributed fertilizer or soil amendment that contains seeds or other viable plant parts or noxious weeds;

[~~6.~~](f) distributed any waste-derived fertilizer that was not identified in the registration application; or

[~~7.~~](g) did not store fertilizer and soil amendment in a manner that minimizes the release of fertilizer and soil amendment and protects the environment.

[~~B.~~](3) Biosolids, and compost products, separately or in any combination, [~~shall be~~]are considered adulterated when they exceed the levels of metals permitted by [~~the United States Environmental Protection Agency (EPA) regulations under~~]40 CFR [~~Part~~]503.

[~~C.~~](4) Dried biosolids and manure, as well as manipulated manure products, either separately or in combination, [~~shall also be deemed~~]are considered adulterated when they exceed the levels of metals permitted [~~under~~]by 40 CFR [~~Part~~]503.

[~~D.~~](5) Hazardous waste[-]-derived fertilizer, as defined by the [~~EPA~~]United States Environmental Protection Agency, [~~shall be~~]is considered adulterated when it exceeds the level of metals permitted by [~~EPA regulations under~~]40 CFR [~~Parts~~]261, 266, and 268.

KEY: fertilizers
Date of Last Change: [~~November 16, 2020~~]2022
Notice of Continuation: October 15, 2019
Authorizing, and Implemented or Interpreted Law: [~~4-2-103(1)(i); 4-13-104~~]4-2-103(1)(i); 4-13-110

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-5**	**Filing ID 54517**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-5. Grain Inspection
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
The reason for the change is to make the text consistent with the Utah 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)**:**
Language has been changed to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.
B) Local governments:
Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

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

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

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

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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-2-103(1)(g)		

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-5. Grain Inspection.
R68-5-1. Purpose and Authority.

(1) Promulgated under authority of Subsection 4-2-103(1)(g).

(2) This rule establishes a fee system for grain inspection and grading standards for safflower.

R68-5-2. Definitions.

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

(2) "Inspection certificate" means the Utah Department of Agriculture-Grain Inspection Certificate.

(4) "Safflower" means the carthamus tinctorius plant and includes each type and variety of safflower.

(5) "Moisture" means water content.

(6) "Heat damaged" means kernels, pieces of kernels, seeds, and pieces of seeds that have been materially discolored and damaged by heat.

R68-5-[~~2~~]3. Grain Inspection Fees.

(1) The department shall charge [~~F~~]fees [~~shall be charged~~]for [~~the~~]inspection and grading services as determined [~~by the department~~]pursuant to Subsection 4-2-103(g). A current list of approved fees may be obtained, upon request from the department:

[~~A.~~](a) Location:
Utah Department of Agriculture and Food
Grain Inspection
P.O. Box 1519 - 128 17th Street
Ogden, UT 84402
Phone (801) 392-2292

[~~B.~~](b) Hours. Regular working hours are [~~8:00~~]7 a.m. to [~~5:00~~]4 p.m., Monday through Friday.

[~~C.~~](c) Days Not Worked[~~.~~]: Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. Holidays are considered overtime hours.

R68-5-[~~3~~]4. Utah Standards [~~F~~]for Safflower.

[~~A. Safflower (carthamus tinctorius), for purposes of this rule, shall be construed to include all types and varieties of Safflower.~~]

[~~B.~~](1) Moisture Testing.[~~The moisture, or water content in Safflower shall be tested in the following manner:~~]

[~~1.~~](a) Basis of determination.

(i) A moisture determination shall be made on a representative portion from the representative sample, before the removal of foreign material or dockage, by testing exactly [~~the amount of~~]225 grams of safflower seed product.

[~~2.~~](b) Certification.

(i) The percentages of moisture content shall be reported on the pan[~~-~~] ticket and the [~~Utah Department of Agriculture and Food Grain I~~]inspection [~~C~~]certificate, and shall be expressed in whole and tenths of a percent, rounded to the nearest tenth percent.

[~~C.~~](2) Dockage.

(a) [~~All~~]Any matter other than whole [~~S~~]safflower [~~S~~]seed [~~which~~]that can be removed from a test portion of the original sample, shall be removed by the use of an approved device, and also by handpicking a portion of the machine[~~-~~] cleaned sample to remove [~~all~~]any remaining material other than [~~S~~]safflower and other grains.

[~~1.~~](b) Basis of determination.

(i) A dockage determination test shall be made using [~~approximately~~]about 750-850 grams or 1 1/8 to 1 1/2 quarts cut from the original sample.

[~~a.~~](ii) The person making the test shall first determine the mechanically separated dockage. This involves a separation procedure using a Carter Dockage Tester.

[~~b.~~](iii) An arbitrarily handpicked portion of [~~approximately~~]about 75 grams shall be cut from the mechanically cleaned [~~S~~]safflower [~~S~~]seed.

[~~2.~~](c) The following process shall be used to determine dockage with the Carter Dockage Tester[~~.~~]:

[~~a.~~](i) [~~T~~]the air control shall be set at number 9, [~~(~~]wide open[~~).~~];

[~~b.~~](ii) [~~T~~]the feed control shall be set at number 6[~~.~~];

[~~c.~~](iii) [~~I~~]in the Riddle Carriage, the plastic seed riddle, part number 35898, shall be used[~~.~~];

[~~d.~~](iv) [~~A~~]a number 2 sieve shall be used in the top sieve carriage[~~.~~]; and

[~~e.~~](v) [~~I~~]if there is a sieve in the middle or the bottom sieve carriage, it shall NOT be used.

[~~3.~~](d) Dockage will consist of:

[~~a.~~](i) [~~A~~]any material removed by the aspirator, [~~(~~]air collecting pan[~~).~~];

[~~b.~~](ii) [~~C~~]coarse material, except whole [~~S~~]safflower [~~S~~]seed that passed over the riddle, [~~(~~]riddle collecting pan[~~)~~]. Whole kernels of [~~S~~]safflower [~~S~~]seed that passed over the riddle shall be returned to the cleaned sample[~~.~~];

[~~c.~~](iii) [~~A~~]any material that passed through the number 2 sieve, [~~(~~]bottom collecting pan[~~).~~]; and

[~~d.~~](iv) [~~A~~]any material other than [~~S~~]safflower seed and other grains removed by handpicking a machine cleaned portion of [~~approximately~~]about 75 grams.

[~~4.~~](e) Certification.

(i) The percentage of dockage shall be reported on the pan ticket and the [~~Utah Department of Agriculture and Food Grain I~~]inspection [~~C~~]certificate. The percent of dockage shall be stated in terms of whole or half percentages.

[~~D.~~](3) Test weight per bushel.

[~~1.~~](a) Basis of determination.

(i) A test weight per bushel shall be performed on a representative portion ranging in size from 1 to 1 1/2 quarts or 750-850 grams after the removal of the mechanically separated dockage.

[~~2.~~](b) Certification.

(i) The test weight per bushel shall be reported on the sample pan ticket and the [~~Utah Department of Agriculture Grain I~~]inspection [~~C~~]certificate in whole and half pounds.

[~~E.~~](4) Hulls.

(a) Hulls shall have less than [~~1 third (1/3)~~]1/3 of the kernels attached.

[~~1.~~](b) Basis of determination.[~~]~~ A determination for testing the percentage of kernels attached to hulls shall be performed using [~~approximately~~]about 30 grams cut from the work portion after the removal of dockage.

[~~2.~~](c) Certification.[~~]~~ The percentage of kernels attached to hulls shall be reported on the pan ticket and the [~~Utah Department of Agriculture-Grain I~~]inspection [~~C~~]certificate, and shall be expressed to the nearest tenth percent.

[~~F.~~](5) Dehulled kernels and broken seed.

(a) Dehulled kernels and broken seed shall consist of [~~S~~]safflower or pieces of seed in which the hull has been [~~completely~~]removed from [~~S~~]safflower [~~S~~]seeds that have [~~1 third (1/3) or~~

~~more~~]at least 1/3 of the kernels attached, and also [~~in cases of~~]when [~~S~~]safflower seeds that have been so broken that the kernel has been exposed.

[~~1.~~](b) Basis of determination.[ ]A determination of dehulled and broken seed will be reported on the pan ticket and the [~~Utah Department of Agriculture Grain I~~]inspection [~~C~~]certificate to the nearest tenth percent.

[~~2.~~](c) Certification.[ ]The percentage of dehulled and broken seed will be reported on the pan ticket and the [~~Utah Department of Agriculture Grain I~~]inspection [~~C~~]certificate to the nearest tenth percent.

[~~G.~~](6) Other grains.

(a) Other grains shall consist of any other grain or domestic kernels which are not removed in the dockage.

[~~1.~~](b) Basis of determination.[ ]A test to determine the percentage of other grains present in the product, will be performed on [~~approximately~~]about 30 grams cut from the work sample after the removal of dockage.

[~~2.~~](c) Certification.[ ]The percentage of other grains will be reported on the pan ticket and the [~~Utah Department of Agriculture Grain I~~]inspection [~~C~~]certificate to the nearest tenth percent.

[~~H.~~](7) Damaged and heat[~~-~~]damaged [~~S~~]safflower [~~S~~]seed.

(a) Amounts of damaged [~~S~~]safflower total kernels and pieces of kernels that are heat damaged, sprout damaged, frost damaged, green or otherwise materially damaged shall be assessed.[~~Heat damaged means Safflower kernels and pieces of kernels that have been materially discolored and damaged by heat.~~]

[~~1.~~](b) Basis of determination.[ ]A test to determine the percentage of damaged and heat damaged [~~S~~]safflower kernels will be performed using [~~approximately~~]about 30 grams cut from the work portion after the removal of dockage.

[~~2.~~](c) Certification.[ ]The total percentage of heat damaged [~~S~~]safflower [~~S~~]seed and damaged [~~S~~]safflower [~~S~~]seed [~~(total)~~]shall be reported on the pan ticket and the [~~Utah Department of Agriculture Grain I~~]inspection [~~C~~]certificate, and shown to the nearest tenth percent.

[~~I.~~](8) Split damage.

(a) A check for split damage in [~~S~~]safflower [~~S~~]seed shall be conducted noting any break, fissure, crack, or tear in the seed kernels, husk or cover.

[~~1.~~](b) Basis of determination.[ ]A test to determine the percent of split, damaged [~~S~~]safflower kernels will be performed on [~~approximately~~]about 30 grams cut from the work portion after the removal of dockage.

[~~2.~~](c) Certification.[ ]The percentage of split damaged [~~S~~]safflower seeds shall be reported in the split section and included in the damaged [~~S~~]safflower section on the [~~Utah Department of Agriculture Grain I~~]inspection [~~C~~]certificate, and shown to the nearest tenth percent.

[~~J.~~](9) Safflower [~~S~~]seed claiming a UTAH grade shall meet the requirements in the following table:

[~~TABLE~~

~~Utah Safflower Seed Grade Requirements~~

~~Grade~~	~~Utah 1~~	~~Utah 2~~	~~Utah 3~~	~~Sample Grade~~
~~Minimum Limit~~				
~~Test wt. Per bushel~~	~~40.0 lbs~~	~~38.0 lbs~~	~~35.0 lbs~~	~~*~~
~~Maximum Limit~~				
~~Stones (per 100 grams)~~	~~2~~	~~6~~	~~6~~	~~*~~
~~Hulls~~	~~1~~	~~2~~	~~5~~	~~*~~
~~Dehulled Kernels and Broken Seed~~	~~2~~	~~4~~	~~8~~	~~*~~
~~Splits~~	~~2~~	~~5~~	~~8~~	~~*~~
~~Other Grains~~	~~0.5~~	~~2~~	~~3~~	~~*~~
~~Damaged Safflower Seeds~~				
~~Sprout~~	~~1~~	~~2~~	~~4~~	~~*~~
~~Heat~~	~~0.0~~	~~0.2~~	~~1~~	~~*~~
~~Total~~	~~3~~	~~5~~	~~5~~	~~*~~

~~*Sample grade Safflower shall consist of a Safflower seed group which:~~

~~i. Does not meet the requirements for grade Utah 1 through Utah 3, or~~

~~ii. In approximately a 750-850 gram sample, contains 7 or more stones, or~~

~~iii. Has a musty, sour or commercially objectionable foreign odor, or~~

~~iv. Contains more than 2.5% of earth pellets after the mechanical separation of dockage.~~

~~NOTE: 1. Slightly or badly weather stained Safflower Seed may not be rated higher than grade Utah 2 or Utah 3 for purposes of inspection under this rule.~~]

TABLE
Utah Safflower Seed Grade Requirements

Grade	Utah 1	Utah 2	Utah 3	Sample Grade
Minimum Limit				
Test wt. per bushel	40 lbs.	38 lbs.	35 lbs.	*
Maximum Limit				
Stones per 100 grams	2	6	6	*
Hulls	1	2	5	*
Dehulled Kernels and Broken Seed	2	4	8	*
Splits	2	5	8	*
Other Grains	0.5	2	3	*
Damaged Safflower Seeds				
Sprout	1	2	4	*
Heat	0	0.2	1	*
Total	3	5	5	*

*Sample grade safflower shall consist of a safflower seed group which:
(a) does not meet the requirements of grade Utah 1 through Utah 3;
(b) in about a 750-850 gram sample, contains seven or more stones;
(c) has a musty, sour, or commercially objectionable foreign odor; or
(d) contains more than 2.5% of earth pellets after the mechanical separation of dockage.

NOTE: Slightly or badly weather stained safflower seed may not be rated higher than grade Utah 2 or Utah 3 under this rule.

KEY: inspections
Date of Last Change: [~~December 16, 1997~~]2022
Notice of Continuation: January 30, 2018
Authorizing, and Implemented or Interpreted Law: 4-2-103(g)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-6**	**Filing ID 54518**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R68-6. Utah Nursery Rule

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

Changes are needed to make the text consistent with the Utah 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)**:**

Language has been changed to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

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

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

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

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

B) Department head approval of regulatory impact analysis:

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

Citation Information

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

Section 4-15-104

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	American Standard for Nursery Stock
Publisher	AmericanHort
Date Issued	April 14, 2014
Issue, or version	ANSI Z60.1-2014

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: 06/14/2022

10. This rule change MAY become effective on: 06/21/2022

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

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-6. Utah Nursery Rule.
R68-6-1. Purpose and Authority.

(1) Promulgated under authority of Section 4-15-104.

(2) This rule establishes standards for nurseries to ensure that nurseries produce healthy plants and that nursery stock shipped to other nurseries, brokers, and out-of-state customers meets national nursery stock cleanliness standards.

R68-6-2. [~~Terms Defined~~]Definitions.

(1) [~~Each term used in these rules shall have the meaning set forth for each item in the Act.~~]Terms used in this rule are defined in Section 4-15-103.

R68-6-3. Labeling.

[~~A.~~](1) [~~In order t~~]To identify nursery stock properly, [~~whenever~~]when it is shipped, delivered, or transported to any purchaser, at least one label bearing the name, origin state grown or propagated, size, variety, and grade where applicable shall be attached to each separate species or variety.

[~~B.~~](2) [~~Whenever~~]When a grade or size designation is used or implied in labeling or in an advertisement referring to a kind of nursery stock for which grades or sizes have been established in [~~these rules~~]this rule, the nursery stock [~~so labeled or so advertised~~]shall conform to the specifications of the particular grade or size. Advertisements of stock offered for sale in containers shall state plant grade or size, irrespective of the size of the container.

[~~C.~~](3) Non-established container stock shall be identified by a water-resistant tag on which the words "non-established container stock" are printed.

(a) The tags shall be not less than 2 x 4 inches in size with lettering of 24-point Gothic type.

(b) The minimum length of time the stock has been planted in the container or the date the stock was planted in the container shall also be stated on the tag.

(c) The tag shall bear only the required labeling. It shall be the responsibility of the supplier of non-established container stock to adequately label stock as provided [~~herein~~]in this rule.

[~~D.~~](4) Each rose shall be labeled by grade for individual plants, bundles, or single lots.

R68-6-4. Condition of Nursery Stock.

[~~A.~~](1) Any nursery stock [~~which~~]that, in the judgment of the [~~C~~]commissioner or an authorized agent, does not meet the [~~following~~]minimum indices of vitality in this rule shall be removed from sale.

[~~1.~~](a) Woody-stemmed deciduous stock, [~~such as~~]including fruit and shade trees, rose bushes, and shrubs shall have moist tissue in the stem or stems and branches and shall have viable buds or unwilted growth sufficient to permit the nursery stock to live and grow in a form characteristic of the species when planted and given reasonable care.

(b) [~~, except that in the case of rose bushes e~~]Each rose bush stem [~~must~~]shall show moist, green undamaged cambium in at least the first eight inches above the graft. Any single stem on a rose bush not meeting this specification may not disqualify the entire plant provided that a bush may be pruned to comply with the specification if at least two stems meeting the specification remain and the grade designation is changed accordingly.

[~~2.~~](c) Hardy herbaceous biennials or perennials when in a wilted, rotted, or any other condition indicative of poor vitality may not be sold or offered for sale in Utah.

[~~3.~~](d) Any bare-rooted or prepackaged woody-stemmed nursery stock having [~~in excess of~~]more than two inches of etiolated or otherwise abnormal growth from individual buds may not be sold or offered for sale.

[~~4.~~](e) Balled and burlapped stock in a weakened condition as [~~evidenced~~]shown by dieback or dryness of earthball or foliage, or stock having broken or loose earthballs may not be sold or offered for sale.

[~~5.~~](f) Stock offered for sale in containers.

(i) The container shall be sufficiently rigid to hold the ball shape, protecting the root mass during shipment.

[~~a.~~](ii) Container Stock.

(A) Container stock offered for sale shall be healthy, vigorous, well rooted, and established in the container in which it is sold.

(B) The tops of the plants shall be of good quality and in a healthy growing condition.

(C) Sufficient new fibrous roots shall have developed so that the root mass will [~~retain~~]keep its shape and hold together when removed from the container. This shall be [~~evidenced~~]shown in each case by the earthball of [~~such~~]the stock remaining reasonably intact upon removing it from the container.

[~~b.~~](iii) Non-established container stock.

(A) Non-established container stock offered for sale shall be deciduous [~~stick which~~]stock that shows good top quality and a vigorous healthy growing condition.

(B) The potting media shall be capable of sustaining satisfactory plant growth.

(C) Evergreen stock may not be offered for sale in containers unless it is well established in the container.

R68-6-5. Standards for Nursery Stock.

(1) Nursery stock offered for sale in Utah shall meet the grade and size standards [~~as~~]published by the American Association of Nurseryman[~~ (AAN)~~], in the publication entitled: American Standard[~~s~~] for Nursery Stock, ANSI Z60.1-2014[~~ 1996 approved November 6, 1996~~] which is [~~herein~~]incorporated in this rule by reference.

(2) Buyers and sellers of nursery stock shall refer to and use common terminology that is contained in and defined by this incorporated document, [~~in order~~]to facilitate transactions involving nursery stock in this state.

R68-6-6. Organizational Provisional Permit.

[~~A.~~](1) Special projects held by nonprofit educational, charitable, or service organizations may be exempt from payment of fees for nursery license provided the applicant provides an application.

[~~B.~~](2) Funds received from sales of [~~such~~]plants shall be used for the benefit of the organization or for improvement or beautification projects within the local community.

[~~C.~~](3) Plant materials distributed at these special projects shall meet the standards as described in Sections R68-6-4 and R68-6-5.

[~~D.~~](4) No special project [~~will~~]may be in direct competition with any licensed nursery.

[~~E.~~](5) A permit [~~will~~]shall be issued for annual activity only. No fee is required, but the application [~~must~~]shall be [~~completed~~]finished and approved by the department before the project begins.

KEY: nurseries (agricultural)
Date of Last Change: [~~February 8, 2021~~]2022
Notice of Continuation: April 6, 2020
Authorizing, and Implemented or Interpreted Law: 4-15-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-10**	**Filing ID 54513**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov

Robert Hougaard	801-982-2305	rhougaard@utah.gov

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

General Information

2. Rule or section catchline:

R68-10. Quarantine Pertaining to the European Corn Borer

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

Changes are needed to make the text consistent with the Utah 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)**:**

Language has been changed to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

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

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

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

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

B) Department head approval of regulatory impact analysis:
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-2-103(1)(k)		

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-10. Quarantine Pertaining to the European Corn Borer.
R68-10-1. Purpose and Authority.

[~~A.~~](1) Promulgated under authority of Subsection 4-2-[~~2~~]103(1)(k).

[~~B.~~](2) [~~The fact has been determined by the Utah Commissioner of Agriculture and Food that a serious insect pest known as the European Corn Borer (Pyrausta nubilalis), not known to exist in the State of Utah, exists in the described infested areas, and the restricted products described are hosts or possible carriers of pests.~~

~~C. The Commissioner, by virtue of the authority in him vested by 4-2-2, does~~]This rule establishes a quarantine pertaining to the European Corn Borer (Ostrinia nubilalis), a pest not known to exist in Utah, but exists in the described infested areas. This rule set[~~ting~~]s forth the name of the pest against which the quarantine is established, the infested area, the products regulated, and specifying conditions governing shipments and issuance of certificates under which products may be shipped.

R68-10-2. Definitions.

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

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

(3) "Portions of plants or fragments capable of harboring larvae of European Corn Borer" means any portion of a host plant of any shape or size that cannot be passed through a 1/2 inch square aperture, and any completely whole, round uncrushed section, portion, or piece of cob, stalk, or stem of one-inch or more in length and 3/16-inch or more in diameter.

(4) "Official Certificate" means a document, issued by an authorized official of the state where the document is produced, evidencing compliance with this rule and setting forth any information and facts needed.

(5) "Restricted Product" means a product that is a host or possible carrier of European Corn Borer pursuant to Section R68-10-6.

R68-10-[~~2~~]3. Pest.

(1) European Corn Borer ([~~Pyrausta~~]Ostrinia nubilalis)

R68-10-[~~3~~]4. Areas Under Quarantine.

(1) [~~All~~]Each State[~~s~~] and District[~~s~~] of the United States except the States of:

(a) Alaska[~~,~~];
(b) Arizona[~~,~~];
(c) California[~~,~~];
(d) Hawaii[~~,~~];
(e) Idaho[~~,~~];
(f) Nevada[~~,~~];
(g) New Mexico[~~,~~];
(h) Oregon[~~,~~]; and
(i) Washington.

R68-10-[~~4~~]5. Infested Areas.

(1) Entire States of:

(a) Alabama[~~,~~];
(b) Arkansas[~~,~~];
(c) Colorado[~~,~~];
(d) Connecticut[~~,~~];
(e) Delaware[~~,~~];
(f) Georgia[~~,~~];
(g) Illinois[~~,~~];
(h) Iowa[~~,~~];
(i) Indiana[~~,~~];
(j) Kansas[~~,~~];
(k) Kentucky[~~,~~];
(l) Louisiana[~~,~~];
(m) Maine[~~,~~];
(n) Maryland[~~,~~];
(o) Massachusetts[~~,~~];
(p) Michigan[~~,~~];
(q) Minnesota[~~,~~];
(r) Mississippi[~~,~~];
(s) Missouri[~~,~~];
(t) Montana[~~,~~];
(u) Nebraska[~~,~~];
(v) New Hampshire[~~,~~];
(w) New Jersey[~~,~~];
(x) New York[~~,~~];
(y) North Carolina[~~,~~];

(z) North Dakota[~~,~~];
(aa) Ohio[~~,~~];
(ab) Oklahoma[~~,~~];
(ac) Pennsylvania[~~,~~];
(ad) Rhode Island[~~,~~];
(ae) South Carolina[~~,~~];
(af) South Dakota[~~,~~];
(ag) Tennessee[~~,~~];
(ah) Vermont[~~,~~];
(ai) Virginia[~~,~~];
(aj) West Virginia[~~,~~];
(ak) Wisconsin[~~,~~];
(al) Wyoming[~~,~~]; and
(am) the District of Columbia.

R68-10-[~~5~~]6. Commodities Covered.

(1) Restricted Products:

(a) The plant and any plant part, including seed, shelled grain, stalks, ears, and sweet corn on the cob, of:

(i) [~~C~~]corn[~~,~~];
(ii) broomcorn[~~,~~];
(iii) sorghums[~~,~~]; and
(iv) sudangrass[~~ plants and all parts thereof, including seed and shelled grain, and stalks, ears, sweet corn on the cob, and all other parts (except seed for planting purposes and popcorn for human consumption when free from portions of plants or fragments capable of harboring larvae of European Corn Borer);~~].
(b) beans in the pod[~~,~~];
(c) beets[~~,~~];
(d) celery[~~,~~];
(e) peppers - [~~(~~]fruits[~~),~~];
(f) endive[~~,~~];
(g) Swiss chard[~~,~~];[~~ and~~]
(h) rhubarb, including [~~(~~]cut rhubarb or rhubarb plants with roots[~~)~~]; and
(i) cut flowers and entire plants of:
(i) aster[~~,~~];
(ii) chrysanthemum[~~,~~];
(iii) calendula[~~,~~];
(iv) cosmos[~~,~~];
(v) hollyhock[~~,~~];
(vi) marigold[~~,~~];
(vii) zinnia[~~,~~];
(viii) Japanese hop[~~,~~];
(ix) dahlia[~~ (except tubers without stems),~~]; and
(x) gladiolus[~~ (except corms without stems), are hereby declared to be hosts or possible carriers of the pest herein quarantined against~~].

(2) Dahlia tubers without stems shall not be considered restricted products.

(3) Gladiolus corms without stems shall not be considered restricted products.

(4) Seed for planting purposes and popcorn for human consumption shall not be considered restricted products when free from portions of plants or fragments capable of harboring larvae of European Corn Borer

R68-10-[~~6~~]7. Restrictions.

[~~A. Definitions. As used in this section, the following words and terms shall be construed respectively to mean:~~

~~1. "Portions of plants or fragments capable of harboring larvae of European Corn Borer" - Any portion of a host plant of any shape or size which cannot be passed through a 1/2 inch square aperture, and any completely whole, round uncrushed section, portion, or piece of cob, stalk, or stem of one inch or more in length and 3/16 inch or more in diameter.~~

~~2. "Official Certificate" - a document, issued by a duly authorized representative of the designated State Department of Agriculture and Food evidencing compliance with the provisions of this rule and setting forth all information and facts hereinafter required.~~]

[~~B.~~](1) Certification is [~~required~~]needed on [~~all~~]any shelled grain from areas under quarantine.

(2) Except as provided in Subsection R68-10-7(4)[~~paragraph E. below~~], each lot or shipment of shelled corn, broomcorn, sorghum[~~s~~], and sudangrass grown in or shipped from the area under quarantine described in [~~section 2.~~]Section R68-10-4, or imported or brought into this state shall be accompanied by an official certificate [~~evidencing~~]showing that[~~ compliance with~~]:[~~ one of the following conditions:~~]

[~~1.~~](a) [~~Certificates on~~]with respect to shelled grain grown in or shipped from the infested area:[~~, must either affirm that said~~]

(i) the grain has been passed through a 1/2-inch mesh screen or less and is believed to be free from stalks, cobs, stems, or portions of plants or fragments capable of harboring larvae of the European Corn Borer[~~, and further,~~], and that the car or truck that transported the grain was free from stalks, cobs, stems, or [~~such~~]portions of plants or fragments [~~at the time of~~]when loading; or[~~, affirm that said~~]

(ii) the grain has been fumigated by a method and in a manner prescribed by the [~~Utah Department of Agriculture and Food~~]department, and setting forth the date of fumigation, dosage schedule, and kind of fumigant used[~~.~~]; or

[~~2.~~](b) [~~Certificates for~~]with respect to shelled grain grown in and shipped from non-infested states under quarantine[~~ must be issued~~], a certificate issued by the proper official of the state where[~~in~~] [~~such~~]the grain was produced, affirming that [~~all such~~]any grain covered by [~~said~~]the certificate is a product of [~~said~~]the state where[~~in~~] no European Corn Borer is known to exist and that its continued identity has been maintained to assure no blending or mixing with grain, plants, or portions [~~thereof~~]produced in or shipped from an infested area.

[~~C.~~](2) Any lot or shipment of shelled grain arriving in this state [~~which~~]that is not accompanied by an official certificate[~~ as hereinbefore required~~], or [~~which~~]that is certified on the basis of freedom from contamination with portions of plants or fragments capable of harboring larvae of European Corn Borer[~~ as defined above~~] and [~~which~~]that is found to be [~~so~~]contaminated, shall be [~~deemed to be~~]considered in violation of this quarantine.

[~~D.~~](3) [~~All~~]Any certificates issued in compliance with this quarantine shall also set forth the kind and quantity of the commodity constituting the lot or shipment[~~ covered thereby~~], the initials and number of the railway car or license number [~~in the case~~]of a truck, and the names and addresses of the shipper and consignee.

[~~E.~~](4) Small lots and packages of seed may be admitted without a certificate.

(a) Individual shipments or lots of one hundred pounds or less of clean shelled grain and seed covered by this quarantine, or comprised of packages of less than ten pounds, are [~~hereby~~]exempted from the certification requirements and will be admitted into this state subject to inspection and freedom from portions of plants or fragments capable of harboring European Corn Borer.

[~~F.~~](5) Stalks, ears, cobs, or other parts, fragments, or debris of corn, broomcorn, sorghums, and sudangrass may be admitted under a fumigation treatment certificate.

(a) Stalks, ears, cobs, or other parts, fragments, or debris of corn, broomcorn, sorghums, and sudangrass grown in or shipped from the area under quarantine imported as [~~such~~]stalks, ears, cobs, or other part, fragments, or debris of corn, broomcorn, sorghums, and sudangrass or as packing or otherwise, [~~will~~]shall be admitted into [~~the State of Utah~~]this state only [~~provided~~]if each lot or shipment is accompanied by an official certificate of the state of origin, affirming that [~~all~~]any stalks, ears, cobs, or other parts, fragments, or debris of [~~such~~]the plants [~~accompanied thereby~~]have been fumigated by a method and in a manner prescribed by the [~~Commissioner~~]department, and setting forth the date and full particulars of the treatment applied[~~;~~].

(b) [~~except, that s~~]Stalks, ears, cobs, or other parts, fragments, or debris of [~~said~~]plants grown in and shipped from states under quarantine not listed in the infested area [~~will~~]shall be admitted into [~~the State of Utah~~]this state, provided each shipment or lot is accompanied by an official certificate of the state where produced, affirming that [~~such~~]the product is a product of [~~said~~]the state where[~~in~~] no European Corn Borer is known to exist and that continued identity of the product has been maintained to assure no handling or storage in association with stalks, ears, cobs, or other parts, fragments, or debris of [~~such~~]the plants grown in or shipped from infested areas[~~ herein described~~].

(c) [~~All~~]Each certificate[~~s~~] issued in compliance with [~~this paragraph~~]Subsection R68-10-7(5) [~~must~~]shall also set forth the kind and quantity of the commodity constituting the lot or shipment covered[~~ thereby~~], the initials and number of the railway car or license number in the case of a truck, and the names and addresses of the shipper and consignee.

[~~G.~~](6) Certification is [~~required~~]needed on certain vegetable and ornamental plants and plant products produced in or shipped from an infested area.

(a) Except as provided in [~~paragraph h. below~~]Subsection R68-10-7(7), [~~beans in the pod, beets, celery, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots); cut flowers and entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia (except tubers without stems), and gladiolus (except corms without stems)~~]each restricted product, produced in or shipped from the infested area [~~will~~]shall be admitted into [~~the State of Utah~~]this state, provided each lot or shipment is officially certified by an [~~duly~~]authorized official of the state where produced, [~~evidencing~~]showing that [~~such~~]the plants, products, or cut flowers have been inspected or that the greenhouse or growing grounds where [~~same~~]the restricted products were produced were inspected and no European Corn Borer was found, or that [~~such~~]the plants, products, or cut flowers have been fumigated by a method and in a manner prescribed by the [~~Utah Department of Agriculture and Food~~]department, and setting forth the date of fumigation, dosage schedule, and kind of fumigant used.

(b) No restrictions are placed by this quarantine on the entry into Utah of [~~such~~]vegetable and ornamental plants and plant products produced in and shipped from any non-infested state.

[~~H. Certain restricted products are conditionally exempt from certification.~~] (7) Certification requirements of [~~paragraph G. above~~]Subsection R68-10-7(6) are [~~hereby~~]waived on individual shipments or lots of certain restricted vegetable, ornamental plants, and plant products described[~~ therein~~], under and subject to the following conditions[~~:~~].

[~~1.~~](a) In lots of shipments of ten [~~(10)~~]pounds or less[~~—~~] of beans in the pod, beets, peppers [~~(~~]fruits[~~)~~], endive, Swiss chard, and rhubarb[~~ (~~], including cut rhubarb or rhubarb plants with roots[~~)~~].

[~~2.~~](b) During period of November 30th to May 1st - divisions without stems of the previous year's growth, rooted cuttings, seedling plants and cut flowers of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, and Japanese Hop.

[~~I. Manufactured or processed products are exempt from restriction.~~] (8) No restrictions are placed by this quarantine upon the movement of [~~the~~]restricted products [~~herein defined which~~]that are processed or manufactured in [~~such~~]a manner as to eliminate [~~all~~]any danger of carrying the pest [~~herein~~]quarantined against.

R68-10-[~~7~~]8. Enforcing Powers.

[~~A.~~](1) Authorized agents of the [~~Utah Department of Agriculture and Food~~]department shall refuse admittance into [~~the State of Utah~~]this state any quarantined products that do not meet the provisions of this quarantine.

[~~B.~~](2) Any shipment found within Utah in violation of this quarantine shall be treated to comply with this quarantine or be returned to the shipper at once. In either case, the shipper shall [~~stand~~]pay the expense incurred.

R68-10-[~~8~~]9. Approved Fumigation Treatment for European Corn Borer Bulk Shelled Grain - [~~(c~~]Corn, [~~b~~]Broomcorn, [~~s~~]Sorghum, and [~~s~~]Sudangrass in [~~r~~]Railway [~~c~~]Cars or [~~t~~]Trucks[~~)~~].

Atmospheric fumigation is required for a period of 16 hours using methyl bromide at the following rates to be determined by the temperature of the product and interior of the car during the period of exposure.

TABLE		
Temperature	LBS. Per 1,000 CU. FT.	
60 degrees F and above	4	
55-59 degrees F	4.5	
50-54 degrees F	5	
45-49 degrees F	5.5	
40-44 degrees F	6	
35-39 degrees F	6.5	Hot gas method of application must be use at temperatures below 40 degrees F
30-34 degrees F	7	
25-29 degrees F	7.5	
20-24 degrees F (minimum)	8	

[~~TABLE~~

~~TEMPERATURE~~	~~LBS. PER 1,000 CU. FT.~~	
~~60 degrees F. and above~~	~~4~~	
~~55-59 degrees F.~~	~~4.5~~	
~~50-54 degrees F.~~	~~5~~	
~~45-49 degrees F.~~	~~5.5~~	
~~40-44 degrees F.~~	~~6~~	
~~35-39 degrees F.~~	~~6.5~~	~~(Hot gas method of~~
~~30-34 degrees F.~~	~~7~~	~~application must be~~
~~25-29 degrees F.~~	~~7.5~~	~~used at temperatures~~
~~20-24 degrees F. (minimum)~~	~~8~~	~~below 40 degrees F.)~~]

R68-10-[~~9~~]10. Requirements During Fumigation.

[~~A.~~](1) Truck and railway cars being used as fumigating chambers [~~must~~]shall be sealed in a manner to make them gas-tight.

[~~B.~~](2) Blowers shall be provided to circulate the gas throughout the space being fumigated.

[~~C.~~](3) When fumigation takes place below 40 degrees F., a hot gas method of fumigation [~~must~~]shall be used.

(4) CAUTION: Methyl bromide (CH_3Br) is a colorless, odorless, volatile liquid which when released at ordinary temperatures is a gas injurious to [~~all~~]any form[~~s~~] of animal life. Proper precautions [~~should~~]shall be observed by [~~all~~]any persons when handling it. Contact the [~~Utah Department of Agriculture and Food~~]department for further information.

KEY: plant diseases
Date of Last Change: [~~1987~~]2022
Notice of Continuation: March 16, 2020
Authorizing, and Implemented or Interpreted Law: [~~4-2-2~~]4-2-103(1)(k)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-11**	**Filing ID 54512**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-11. Quarantine Pertaining to the Emerald Ash Borer
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
Changes are needed to make the text consistent with the Utah 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)**:**
Language has been changed to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.
B) Local governments:
Local governments do not administer the program and are not regulated under the program and will not be impacted.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.
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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**
There should be no change in compliance costs for affected persons because compliance requirements are not changing.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
This rule change will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-2-103(1)(k)	Section 4-35-109	

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-11. Quarantine Pertaining to the Emerald Ash Borer.
R68-11-1. Purpose and Authority.

(1) Promulgated under authority of Subsection 4-2-103(1)(k)[~~(ii)~~] and Section 4-35-109.

(2) This rule establishes a quarantine pertaining to the Emerald Ash Borer, agrilus planipennis. It sets the infested area, the articles regulated, and conditions governing shipments and issuance of certificates under which products may be shipped.

R68-11-2. Definitions.

(1) "Area Under Quarantine" means the United States and Canada.

(2) "Ash" means any species of the genus Fraxinus.

(3) "Commissioner" means the commissioner of the Utah Department of Agriculture and Food or their designee.

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

(5) "Emerald Ash Borer,"[~~,~~] Agrilus planipennis, a beetle, family Buprestidae, which in the larval stage attacks and often kills [~~A~~]ash trees, genus Fraxinus.

(5) "Person" means any individual, firm, association, partnership, corporation, government entity, or other legal entity.

(6) "Regulated Article" means any article on which the Emerald Ash Borer, *Agrilus planipennis*, in any stage of development, may be present, including:

(a) any ash trees, genus Fraxinus;

(b) any green waste of ash trees;

(c) ash firewood; or

(d) any other plant, plant part, article, or means of conveyance when it is determined by the Commissioner to present a hazard of spreading Emerald Ash Borer due to infestation or exposure to infestation by Emerald Ash Borer.

(7) "Business days" means days the [~~Utah Department of Agriculture and Food~~]department is open to the public.

R68-11-3. Restrictions.

(1) Under this rule, a person may not transport, offer, expose, or hold for sale a regulated article in Utah from an area under quarantine [-]unless each requirement [~~under~~]of Section R68-11-4, Importation and Treatment, has been met.

(2) Any person that transports or supplies a regulated article in Utah from an area under quarantine[-] shall maintain records, certificates, receipts, and any other related documents for two years from the date of issuance.

R68-11-4. Importation and Treatment.

Under this rule, each regulated article from an area under quarantine is prohibited entry into Utah unless:

(1) an exemption has been granted by the department that satisfies the requirements of Section R68-11-6; and

(2) the required certification is provided to the department.

(a) Certification shall be issued by an authorized state agricultural official of the state of origin.

(b) The certificate shall include the:

(i) the name and address of the exporter;

(ii) the name and address of the importer;

(iii) the inspection and certificate date; and

(iv) the signature of the authorized state agricultural officer.

(c) Each certificate issued by the authorized state agricultural official of the state of origin shall certify that the regulated article has exclusively been grown, produced, stored, held, or handled in a state or county that has been granted an exemption under Section R68-11-9.

(d) The certifying official shall mail or e[-]mail a copy of the certificate to Plant Industry Division, Utah Department of Agriculture and Food, email: UDAF-Nursery@utah.gov.

(e) The exporter shall give ten business days advance notice of regulated article shipment to the department by email sent to UDAF-Nursery@utah.gov.

(f) The importer shall notify the department upon arrival of the regulated article imported under [~~the provisions of~~]this rule and shall hold the regulated article for inspection for two business days.

(g) The department may inspect and reject or release the regulated article within two business days of delivery. If the department does not inspect the shipment within two business days the regulated article[~~s~~] no longer needs to be held by the importer.

R68-11-5. Records.

(1) Each record, certificate, or other document related to a regulated article that a person who transports or supplies the regulated article provides to the department shall include information regarding the source of the regulated article and the disposition of the regulated article.

(2) Each record, certificate, or other document [~~of~~]that a person [~~that~~]who sells a regulated article provides to the department shall include information regarding the source and supplier of the regulated article.

(3) The department may inspect each record, certificate, document, inventory, and facility of a person that transports, supplies, or sells a regulated article from an area under quarantine [-]at any time during reasonable business hours and may take samples of the regulated article [~~for the purpose of enforcing~~]to enforce this rule.

R68-11-6. Exemptions.

(1) The Emerald Ash Borer, *Agilus planipennis*, in any stage of development is not exempt from this rule under any circumstances.

(2) The Commissioner may declare particular regulated articles from individual states, counties, or provinces exempt from this rule if they request an exemption.

(3) Requests for exemption shall be made to the department in writing and shall:

(a) certify that Emerald Ash Borer is not known to be present in their jurisdiction;

(b) provide documents outlining their Emerald Ash Borer monitoring program;

(c) agree to provide their Emerald Ash Borer trapping data to the department, including:

(i) how the trapping survey was carried out;

(ii) the number and location of traps;

(iii) results of the trapping survey; and

(iv) history of the Emerald Ash Borer trapping survey;

(c) certify that they will notify the department of any Emerald Ash Borer detections within their jurisdiction within 48 hours; and

(d) provide written justification explaining why regulated articles from their state, county, or province present a low risk for Emerald Ash Borer introduction into Utah.

(4) The department shall maintain a current and publicly available list of exempt states, counties, and provinces.

(5) The department shall respond in writing within ten business days of the request for exemption.

(6) Exemptions are valid for a 12-month period.

(7) The department may at any time revoke an exemption due to a change in the risk assessment.

(8) The department shall notify the jurisdiction, in writing, identifying the reason for the revocation.

R68-11-7. Enforcing Powers.

(1) Authorized agents of the department shall refuse admittance into Utah any regulated article from an area under quarantine that does not meet the provisions of this rule.

(2) Any shipment found within Utah in violation of this rule shall be destroyed or be returned to the exporter at once.

R68-11-8. Violations and Penalties.

(1) Any fraudulent use of incorrect information to circumvent the enforcement of this rule is a violation.

(2) Failure to comply with [~~any provision of~~]this rule is a violation.

(3) Violators of this rule shall be subject to Section 4-2-304.

(4) The department shall be subject to the notice requirements of Section 4-2-302 with respect to any penalty assessed.

[4](5) Each ash tree or bulk sale shall be a separate violation of this rule.

KEY: plant diseases
Date of Last Change: [~~February 10, 2022~~]2022
Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(k)[~~(ii)~~]; 4-35-109

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-14**	**Filing ID 54514**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R68-14. Quarantine Pertaining to Gypsy Moth - Lymantria Dispar

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

Changes are needed to make the text consistent with the Utah 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)**:**

Language has been changed to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

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

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

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

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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-2-103(1)(k)	Section 4-35-109	

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-14. Quarantine Pertaining to [~~Gypsy~~]Spongy Moth - Lymantria Dispar.
R68-14-1. Purpose and Authority.

(1) Promulgated under authority of Subsection 4-2-[~~2~~]103(1)(k) and Section 4-35-109.

(2) This rule establishes a quarantine pertaining to the spongy moth, lymantria dispar. The spongy moth has been found in Utah, is a danger to forests, residences, parks, and agricultural tree plantings, and is capable of destroying watershed areas, orchards, ornamental trees, and being a general nuisance to the public.

[~~**R68-14-2. Purpose.**~~
~~For the following reasons this rule is enacted:~~
~~1. Gypsy Moth (Lymantria dispar) has recently been found in the state of Utah, and~~
~~2. it will survive and multiply rapidly in the state of Utah, and~~
~~3. it is a serious pest to forest, residence, park, and agricultural tree plantings, and~~
~~4. it is capable of destroying watershed areas, orchards, or ornamentals, and~~
~~5. it is also a nuisance to the general public.~~]

R68-14-[~~3~~]2. Definitions.

[~~The definitions set forth in this section shall apply throughout this chapter.~~]

[~~A.~~](1) "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food[~~ of this state, or a duly authorized representative~~] or the commissioner's designee.

[~~B.~~](2) "Department" means the Utah [~~State~~]Department of Agriculture and Food.

[~~C.~~](3) "Interior quarantine" means a quarantine within [~~the state of~~]Utah established against the movement of designated plant pests, life stages, their hosts, and possible carriers from areas identified as being infested by the [~~Utah State Department of Agriculture and Food~~]department.

[~~D.~~](4) "Exterior quarantine" means a quarantine established against the movement into [~~Utah State~~]this state of designated plant pests, life stages, their hosts, and possible carriers from areas identified as being infested by the [~~Utah State Department of Agriculture and Food~~]department.

[~~E.~~](5) "[~~Gypsy~~]Spongy m[~~M~~]oth [~~(~~]Lymantria dispar[~~)~~]" means a lepidopterous insect of the family Lymantriidae [~~which~~]that in the larval stage defoliates many species of trees and shrubs.

[~~F.~~](6) "Qualified certified applicator (QCA)" means any individual who:[~~ is~~]

[~~(1)~~](a) is certified pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act[~~ (FIFRA) (86 Stat. 983; 7 U.S.C. 136b)~~], 7 U.S.C. 136i as a certified commercial applicator in a category allowing use of the Restricted Use Pesticides recommended

for use in the treatment of outdoor household articles for [~~gypsy~~]the spongy moth; and

[~~(2)~~](b) [~~who~~]has attended and [~~completed~~]finished a workshop segment approved by the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) on the identification and treatment of [~~gypsy~~]spongy moth life stages on regulated articles.

[~~G.~~](7) "Regulated [~~A~~]articles[~~:~~]" [~~are~~]means [~~those~~]articles and commodities that are placed under quarantine when located within or originating from an area listed in Section R68-14-3. Regulated articles are listed in Section R68-14-[~~5 A. E~~]4.

R68-14-[~~4~~]3. Quarantine - [~~Gypsy~~]Spongy Moth - Area Under Order.

[~~A.~~](1) Interior Quarantine.

(a) Real and personal properties within the [~~S~~]state where the department identified multiple [~~gypsy~~]spongy moth life stages and where occupants or[~~and/or~~] owners of those properties have been notified by the department of the [~~gypsy~~]spongy moth infestation and [~~to the effect~~]that the subject property is under quarantine[~~ pursuant to Title 4, Chapter 2, Section 2~~].

(b) The department shall post quarantined areas both at entrance points and exit points with signs no smaller than 22 inches by 34 inches[~~22" x 34"~~].

[~~B.~~](2) Exterior Quarantine.

(a) [~~All~~]Any areas of the United States and Canada that are declared high risk by the [~~United States Department of Agriculture~~]USDA[~~, Animal and Plant Health Inspection Service~~] APHIS, plant protection and quarantine or [~~Utah Commissioner of Agriculture and Food~~]by the commissioner.

R68-14-[~~5~~]4. Quarantine[~~/Gypsy~~] - Spongy Moth Hosts and Carriers-Regulated Articles.

[~~The following regulated articles and commodities are placed under quarantine when located within or originating from an area as described in R68-14-4~~](1) Regulated articles.

[~~A.~~](1) Trees, shrubs with persistent woody stems, Christmas trees, and parts of [~~such~~]trees and shrubs. [~~(except s~~]Seeds, fruits and cones[~~)~~] are not considered as parts of trees and shrubs.

[~~B.~~](2) Timber and building materials[~~,~~] including [~~but not limited to such items as~~]lumber, planks, poles, logs, firewood, pulpwood, fencing, and building blocks.

[~~C.~~](3) Mobile homes, recreational vehicles, trailers, boats, camping gear, and associated equipment.

[~~D.~~](4) Outdoor household articles (OHA) including [~~but not limited to such items as~~]furniture, toys, garden tools, garden machinery, animal houses, and storage sheds.

[~~E.~~](5) Any other items or means of conveyance not covered [~~above~~]in Section R68-14-4 when that item or conveyance is determined by the [~~C~~]commissioner to present a hazard of the spread of any life stage of [~~gypsy~~]spongy moth.

R68-14-[~~6~~]5. [~~Gypsy~~]Spongy Moth Quarantine Restrictions - Interior.

(1) [~~Items under quarantine~~]Regulated articles [~~are prohibited of movement~~]shall not be moved from the area under quarantine except[~~ as follows~~]:

[~~A.~~](a) [~~A~~]any item under quarantine may be inspected and certified for movement by [~~a D~~]the department or [~~Federal Inspector~~]by USDA APHIS[~~.~~]; and

(b) [~~In addition,~~]OHA's can be certified if inspected and found free of [~~all stages~~]each stage of [~~gypsy~~]spongy moth by QCA or the homeowner.

[~~B.~~](2) Garden prunings from trees and shrubs may be removed from quarantine areas only when they are moved in tarped vehicles to the city or county dumps where [~~such~~]material is to be burned, incinerated, buried, composted, or otherwise treated or handled in a manner that is approved by the [~~Commissioner~~]department and does not pose a hazard to the spread of [~~gypsy~~]spongy moth life stages.

[~~C.~~](a) [~~Such i~~]Items cleaned or treated shall be certified by [~~a D~~]the department or [~~Federal Inspector~~]by USDA APHIS, before movement from the quarantine area.

(b) [~~In addition,~~]OHA's can also be cleaned or treated by a QCA or homeowner before movement from the quarantine area.

[~~D.~~](c) Expense of cleaning or treatment of articles or commodities for [~~gypsy~~]spongy moth shall be the responsibility of the person in possession of the articles or commodities, or the consignee [~~in case of~~]if the articles or commodities are part of a commercial shipment by common carriers of household goods.

R68-14-[~~7~~]6. [~~Gypsy~~]Spongy Moth Quarantine Restrictions - Exterior.

(1) Quarantined articles and commodities are prohibited from entry into [~~the state of~~]Utah from areas described by Section R68-14-[~~5 B.~~]3 except under the [~~following~~]conditions listed in Subsections R68-14-6(1)(a) through R68-14-6(1)(d).[~~:~~]

[~~A.~~](a) [~~All~~]Any person moving into [~~move-ins to~~]the [~~State of Utah~~]state from an area known to be infested with [~~Gypsy~~]spongy [~~M~~]oth [~~will be required to~~]shall register their Utah residence with the [~~State Department of Agriculture and Food~~]department within [~~thirty~~]30 days of entering the [~~State of Utah~~]state. The [~~Department of Agriculture and Food~~]department shall provide self-addressed postage paid notice forms at points of entry, [~~D~~]driver [~~L~~]license [~~O~~]offices, and [~~C~~]county [~~C~~]courthouses[~~ self-addressed, postage paid notice forms;~~].[~~ or~~]

[~~B.~~](b) Alternatively, the person may submit to the department a [~~Submission to the Commissioner of a completed~~]finished "[~~Gypsy~~]Spongy Moth Outdoor Household Articles Transit Inspection Follow-up Worksheet" or other official [~~S~~]state or APHIS [~~I~~]inspection [~~F~~]form stating:

[~~1.~~](i) origin of regulated articles [~~prior to~~]before movement to Utah;

[~~2.~~](ii) Utah address stating where regulated articles are destined; and

[~~3.~~](iii) address of owner if different from[~~ (2) above~~] the address given in Subsection R68-14-6(1)(b)(ii).

[~~C.~~](c) The [~~Department of Agriculture and Food~~]department may inspect [~~all~~]each regulated article[~~s~~] of [~~move-ins~~]any person moving into the state from quarantined areas. The [~~D~~]department [~~will~~]shall maintain a [~~Gypsy~~]spongy [~~M~~]oth trap for two entire seasons at residences of [~~all~~]each new [~~move-ins~~]person who has moved into the state from quarantined areas.

[~~D.~~](d) [~~A person's failure~~]Any person who fails to provide the [~~Department of Agriculture and Food~~]department with the official [~~N~~]notice [~~F~~]form or form described in Subsection R68-14-[~~7(B) above~~]6(1)(b) within [~~the prescribed time~~]30 days of entering the state shall be in violation of this quarantine and may be liable for costs associated with any eradication program caused by failure to notify the [~~D~~]department.

R68-14-[~~8~~]7. Certification of QCA's.

[~~A.~~](1) To facilitate the issuance of certification for property movement out of quarantined areas the [~~Commissioner~~] department shall provide training certification workshops to certify licensed pesticide applicators to become a QCA['~~s~~] as defined in the definitions.

(2) A QCA may charge for inspections.

R68-14-[~~9~~]8. [~~Forms~~]Inspection Certificate.

[~~A. Inspection certificate: The following form~~]An inspection certificate shall be issued by the [~~Commissioner~~] department or a QCA after a thorough inspection.

R68-14-[~~10~~]9. Violations and Penalties.

[~~A.~~](1) Any fraudulent use of or use of incorrect information on any forms used in the enforcement of this quarantine is a violation[~~ of this quarantine~~].

[~~B.~~](2) Any intentional movement of [~~Gypsy~~]spongy [~~M~~]oth life stages from any infested area is a violation.

(3) Failure to perform or have inspection shall[~~will constitute~~] be considered intentional movement as well as willfully moving property after notification.

[~~C.~~](4) Failure to register with the [~~Department of Agriculture and Food~~]department within 30 days of moving to Utah from an area defined in Section R68-14-[~~4 B~~]3, is a violation[~~ of this quarantine~~].

[~~D.~~](5) Failure to comply with any [~~provisions~~]section of this [~~quarantine~~]rule shall be a violation[~~ of this quarantine~~].

[~~E.~~](6) Violators of this quarantine shall be subject to civil penalties of not more than $5,000 per violation as defined in Section 4-2-[~~15~~]304.

KEY: quarantine
Date of Last Change: [~~1989~~]2022
Notice of Continuation: March 26, 2018
Authorizing, and Implemented or Interpreted Law: [~~4-2-2; 4-35-9~~]4-2-103(1)(k); 4-35-109

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-15**	**Filing ID 54515**

Agency Information

1. Department:	Agriculture and Food
Agency:	Plant Industry
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor
City, state and zip:	Taylorsville, UT 84129-2128
Mailing address:	PO Box 146500
City, state and zip:	Salt Lake City, UT 84114-6500

Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R68-15. Quarantine Pertaining to Japanese Beetle, (Popillia Japonica)

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

Changes are needed to make the text consistent with the Utah 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)**:**

Language has been changed to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

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

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

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

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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-2-103(1)(k)	Section 4-35-109	

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-15. Quarantine Pertaining to Japanese Beetle, [~~(~~]Popillia [~~J~~]japonica[~~)~~].
R68-15-1. Purpose and Authority.

[~~A.~~](1) Promulgated under authority of Subsection 4-2-103(1)(k)[~~(ii)~~] and Section 4-35-109.

[~~B.~~](2) Refer to the Notice of Quarantine, Japanese [~~B~~]beetle, [~~(~~]Popillia [~~J~~]japonica[~~)~~], [~~E~~]effective January 4, 1993, issued by the Utah Department of Agriculture and Food.

(3) This rule establishes a quarantine pertaining to the Japanese beetle, Popillia japonica, lists areas, articles, and commodities under quarantine, and lists restrictions applied under this rule.

R68-15-2. Definitions.

(1) "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food, or the commissioner's designee.

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

(3) "Free From Soil" means soil in amounts that could not contain hidden Japanese beetle larvae or pupae.

(4) "Restricted Article" means those named in Section R68-15-5.

R68-15-[~~2~~]3. Pest.

The Japanese beetle, Popillia japonica, a beetle, family Scarabaeidae, which in the larval state attacks the roots of many plants and as an adult attacks the leaves and fruits of many plants.

R68-15-[~~3~~]4. Areas Under Quarantine.

[~~A.~~](1) [~~The following states have been placed under a general quarantine t~~]To prohibit the entry of Japanese [~~B~~]beetle into Utah through the sale of plants and plant products a general quarantine is placed upon:

(a) the entire states of:

(i) Alabama[~~,~~];

(ii) Arkansas[~~,~~];

(iii) Colorado[~~,~~];

(iv) Connecticut[~~,~~];

(v) Delaware[~~,~~];

(vi) Georgia[~~,~~];

(vii) Illinois[~~,~~];

(viii) Indiana[~~,~~];

(ix) Iowa[~~,~~];

(x) Kansas[~~,~~];

(xi) Kentucky[~~,~~];

(xii) Maine[~~,~~];

(xiii) Maryland[~~,~~];

(xiv) Massachusetts[~~,~~];

(xv) Michigan[~~,~~];

(xvi) Minnesota[~~,~~];

(xvii) Missouri[~~,~~];

(xviii) Nebraska[~~,~~];

(xix) New Hampshire[~~,~~];

(xx) New Jersey[~~,~~];

(xxi) New Mexico[~~,~~];

(xxii) New York[~~,~~];

(xxiii) North Carolina[~~,~~];

(xxiv) Ohio[~~,~~];

(xxv) Oklahoma[~~,~~];

(xxvi) Pennsylvania[~~,~~];

(xxvii) Rhode Island[~~,~~];

(xxviii) South Carolina[~~,~~];

(xxix) Tennessee[~~,~~];

(xxx) Texas[~~,~~];

(xxxi) Vermont[~~,~~];

(xxxii) Virginia[~~,~~];

(xxxiii) West Virginia[~~,~~];

(xxxiv) Wisconsin[~~,~~]; and

(xxxv) the District of Columbia.

(2) [~~B.~~]The same general quarantine shall apply to[~~ the following states in provinces of Canada~~] the entire Canadian provinces of:

[~~1. In the Province of Ontario: Lincoln, Welland, and Wentworth.~~](a) New Brunswick;

[~~2. In the Province of Quebec: Missiquoi and St. Jean.~~](b) Nova Scotia;

(c) Ontario;

(d) Prince Edward Island; and

(e) Quebec.

[~~C.~~](3) Any areas not mentioned [~~above~~]in Subsections R68-15-4(1) and (2) where Japanese [~~B~~]beetle has been found or known to occur, shall also be placed under [~~this same~~]general quarantine.

R68-15-[~~4~~]5. Articles and Commodities Under Quarantine.

[~~A.~~](1) The following are [~~hereby declared~~]considered to be hosts and possible carriers of [~~all~~]each stage[~~s~~] of the Japanese beetle:

[~~1.~~](a) [~~S~~]soil, humus, compost and manure, [~~(~~]except when commercially packaged and treated[~~)~~];

[~~2.~~](b) [~~A~~]any[~~1l~~] plants with roots, [~~(~~]except bareroot plants free from soil[~~).~~];

[~~3.~~](c) [~~G~~]grass [~~S~~]sod;

[~~4.~~](d) [~~P~~]plant, crowns, or roots for propagation, [~~(~~]except when free from soil[~~)~~];

[~~5.~~](e) [~~B~~]bulbs, corms, tubers, and rhizomes of ornamental plants, [~~(~~]except when free from soil[~~)~~]; and

[~~6.~~](f) [~~A~~]any other plant, plant part, article, or means of conveyance when it is determined by a Utah State Plant Quarantine Officer to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle.

[~~B.~~](i) Packing material added to bareroot plants after harvesting [~~would~~]may not normally pose a pest risk. However, at the inspector's discretion, [~~P~~]packing material [~~would~~]may be covered under [~~(6) above~~]Subsection R68-15-4(1)(f)[~~, at the inspector's discretion~~].

[~~C. Free From Soil - For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae.~~]

R68-15-[~~5~~]6. Restrictions.

(1) [~~All commodities covered~~]Restricted articles are prohibited entry into Utah from [~~the~~]areas under quarantine unless they have the required certification.

(2) Plants may be shipped from the area under quarantine into Utah [~~provided such~~]if shipments conform to [~~one of the options below~~]this rule and are accompanied by a certificate issued by [~~an authorized state agricultural official at~~]the origin state.

(3) [~~Note that n~~]Not [~~all~~]each protocol[~~s~~] approved in the U.S. Domestic Japanese [~~B~~]beetle Harmonization Plan [~~are~~]is acceptable for Utah.

(4) Advance notification of [~~regulated commodity~~]restricted article shipment is required.

(5) The certificate shall bear the name and address of the shipper and receiver as well as the inspection[~~/~~] certificate date and the signature of the state agricultural officer.

(6) The certifying official shall mail, FAX, or e[-]mail a copy of the certificate to:

(a) Director, Plant Industry Division, Utah Department of Agriculture and Food, [~~350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500~~]4315 South 2700 West TSOB South Bldg, Floor 2 Taylorsville, UT 84129-2128[~~,~~];

(b) FAX: (801) 538-7189[~~,~~]; or

(c) e[-]mail: UDAF-Nursery@utah.gov.

(7) The shipper shall notify the receiver to hold [~~such commodities~~]the restricted articles for inspection by the [~~Utah Department of Agriculture and Food~~]department.

(8) The receiver [~~must~~]shall notify the [~~Utah Department of Agriculture and Food~~]department of the arrival of [~~commodities~~]restricted articles imported under [~~the provisions of~~]this quarantine and [~~must~~]shall hold [~~such commodities~~]the restricted articles for inspection.

(9) [~~Such~~]Inspection certificates shall be issued only if the shipment conforms fully with [~~(a), (b), (c), (d) or (e) below:~~]Section R68-15-7.

R68-15-7. Certification Requirements.

[~~(a)~~](1) Certification requires [~~P~~]production in an [~~A~~]approved Japanese [~~B~~]beetle [~~F~~]free [~~G~~]greenhouse[~~/~~] or [~~S~~]screenhouse, and that:[~~. All the following criteria apply: ~~]

(a) [~~All~~]any media [~~must~~]shall be sterilized and free of soil;

(b) [~~All~~]any stock [~~must~~]shall be free of soil, [~~(~~]bareroot[~~)~~] before planting into the approved medium;

(c) [~~The~~]potted plants [~~must~~]shall be maintained within the greenhouse[~~/~~] or screenhouse during the entire adult flight period;

(d) [~~D~~]during the adult flight period the greenhouse[~~/~~] or screenhouse [~~must~~]shall be made secure so that adult Japanese beetles cannot gain entry[~~.~~];

(e) [~~S~~]security [~~will~~]shall be documented by the appropriate phytosanitary officials of the origin state [~~department of agriculture~~]and each area shall [~~must~~]be specifically approved as a secure area[~~.~~];

(f) [~~They~~]the greenhouse, or screenhouse shall be inspected by the [~~same~~]appropriate phytosanitary officials for the presence of [~~all~~]any life stages of the Japanese beetle;

(g) [~~T~~]the plants and their growing medium [~~must~~]shall be appropriately protected from subsequent infestation while being stored, packed and shipped;

(h) [~~C~~]certified greenhouse[~~/~~], or screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation; and

(i) [~~E~~]each greenhouse[~~/~~], or screenhouse operation [~~must~~]shall be approved by [~~the~~]department phytosanitary officials as having met and maintained the [~~above~~]criteria in Subsection R68-15-7(1), and shall be issued an appropriate certificate[~~ bearing~~] that includes the following declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse."[~~ The certificate accompanying the shipment must have the same statement as an additional declaration.~~]

[~~(b)~~](2) Production During a Pest Free Window.

(a) The entire rooted plant production cycle [~~will~~]shall be completed within a pest free window, in clean containers with sterilized and soilless growing medium[~~, i.e.,~~] such as that planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, June through October.

(b) The accompanying phytosanitary certificate shall bear the following [~~additional~~]declaration: "These plants were produced outside the Japanese beetle flight season."

[~~(c)~~](3) Applications of Approved Regulatory Treatments.

(a) [~~All~~]Any treatments [~~will~~]shall be performed under direct supervision of a phytosanitary official of the origin state [~~department of agriculture~~]or under a compliance agreement[~~thereof~~].

(b) Treatments and procedures performed under a compliance agreement [~~will~~]shall be monitored closely throughout the season.

(c) State phytosanitary certificates listing and verifying the treatment used [~~must~~]shall be forwarded to the receiving state via fax or electronic mail, as well as accompanying the shipment.

(i) [~~Note that n~~]Not [~~all~~]each treatment[~~s~~] approved in the U.S. Domestic Japanese [~~B~~]beetle Harmonization Plan are acceptable for Utah.

(d) The phytosanitary certificate shall bear the following [~~additional~~]declaration: "The rooted plants were treated to control "Popillia japonica" according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese [~~B~~]beetle Harmonization Plan and Utah Japanese [~~B~~]beetle Quarantine."

(e) Treatment Protocols.

[~~(A)~~](i) Dip Treatment - [~~B~~]balled and [~~B~~]burlapped and [~~C~~]container [P]plants.[~~ Not approved~~] Dip treatment is not an approved treatment protocol.

[~~(B)~~](ii) Drench Treatment[~~s~~] - Container Plants Only.

(A) Drench treatment is a prophylactic treatment protocol targeting eggs and early first-instar larvae.

(B) If the containers are exposed to a second flight season they shall be retreated.

(C) Drench treatment is [~~N~~]not approved for ornamental grasses or sedges.

(D) Potting media used [~~must~~]shall be sterile and soilless, and containers [~~must~~]shall be clean.

(E) Field potted plants are not eligible for certification using [~~this~~]the drench treatment protocol.[~~ This is a prophylactic treatment protocol targeting eggs and early first-instar larvae. If the containers are exposed to a second flight season they must be retreated.~~]

[~~(1)~~](F) Imidacloprid (Marathon 60WP) is an accepted drench treatment.

(I) [~~Apply one-half (0.5)~~]0.5 grams of active ingredient shall be applied per gallon as a prophylactic treatment just [~~prior to~~]before Japanese beetle adult flight season, which is [~~(~~]June 1, or as otherwise determined by the phytosanitary official[~~)~~].

(II) [~~Apply t~~]Tank mix shall be applied as a drench to wet the entire surface of the potting media.

(III) A [~~twenty-four (24)~~]24 gallon tank mix sh[~~ould~~]all be enough to treat 120-140 one-gallon containers.

(IV) [~~Avoid o~~]Over drenching shall be avoided [~~so as not~~]to not waste active ingredients through leaching.

(V) During the adult flight season, plants [~~must~~]shall be retreated after [~~sixteen (16)~~]16 weeks if not shipped to assure adequate protection.

[~~(2)~~](G) Bifenthrin[~~ (~~], Talstar Nursery Flowable 7.9%[~~)~~] is an accepted drench treatment.

(I) Bifenthrin shall be [~~M~~]mixed at the rate of [~~twenty (20)~~]20 ounces per 100 gallons of water.

(II) Bifenthrin shall be [~~Apply~~]applied, as a drench, [~~approximately~~]about eight [~~(8)~~]ounces of tank mix per six [~~(6)~~]inches of container diameter.

[~~(C)~~](iii) Media, [~~(~~]Granule[~~)~~], Incorporation - Container Plants Only.

(A) Media, granule, incorporation treatment protocol targets eggs and early first-instar larvae and allows for certification of plants that have been exposed to only one flight season after application.

(B) [~~All~~]Any pesticides used for media incorporation [~~must~~]shall be mixed [~~prior to~~]before potting and plants potted [~~a minimum of thirty (30)~~]at least 30 days [~~prior to~~]before shipment.

(C) Potting media used [~~must~~]shall be sterile and soilless[~~;~~], and containers [~~must~~]shall be clean.

(D) The granules [~~must~~]shall be incorporated into the media [~~prior to~~]before potting.

(E) Field potted plants are not eligible for treatment.[~~ This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application.~~]

(F) If the containers are to be exposed to a second flight season they [~~must~~]shall be repotted with a granule incorporated mix or retreated using one of the approved drench treatments under Subsection R68-15-7(2)(e)(ii).

(G) Pesticides approved for media incorporation are:

[~~(1)~~](I) Imidacloprid (Marathon 1G)[~~, Mix~~] mixed at the rate of five [~~(5)~~]pounds per cubic yard[~~.~~];

[~~(2)~~](II) Bifenthrin, [~~(~~]Talstar Nursery Granular or Talstar T and O Granular (0.2)[~~). Mix~~] mixed at the rate of 25 parts per million (ppm) or [~~one-third (0.33)~~]0.33 of a pound per cubic yard based on a potting media bulk density of 200[~~.~~]; and

[~~(3)~~](III) Tefluthrin, [~~(~~]Fireban 1.5 G[~~). Mix~~] mixed at the rate of 25 ppm based on a potting media bulk density of 400.

[~~(D)~~](iv) [~~Methyl Bromide Fumigation. ~~]Nursery stock: methyl bromide fumigation at [~~NAP~~]normal atmospheric pressure, chamber or tarpaulin. [~~See the California Commodity Treatment Manual for authorized schedules~~]The authorized treatment schedules shall be those stated in the California Commodity Treatment Manual.

[~~(E)~~](v) Other treatment or protocol not described [~~herein~~]in this rule may be submitted for review and approv[~~al to~~]ed by the [~~C~~]commissioner[~~ of Utah Department of Agriculture and Food~~].

[~~(d)~~](4) Detection Survey for Origin Certification.

(a) U.S. Domestic Japanese [~~B~~]beetle Harmonization Plan protocol not approved.

(b) Alternative approved protocol[~~:~~].

(i) States listed in the area under quarantine may have counties that are not infested with Japanese beetle.

(ii) Shipments of [~~commodities covered~~]restricted articles may be accepted from [~~these~~]noninfested counties if annual surveys are made in [~~such~~]these counties and adjacent counties and the results of [~~such~~]the surveys are negative for Japanese beetle.

(iii) [~~In addition, t~~]The plants [~~must~~]shall be greenhouse grown or contained in media that is sterilized and free of soil and the shipping nursery [~~must~~]shall grow [~~all~~]their own stock from seed, unrooted cuttings, or bareroot material.

(iv) A list of approved counties[~~ so approved will~~] shall be maintained by the [~~Utah Department of Agriculture and Food~~]department.

(v) Agricultural officials from a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for [~~such~~]approval and stating how surveys were conducted [~~giving the following information~~]including:

(A) [~~A~~]areas surveyed;

(B) [~~H~~]how survey was carried out;

(C) [~~N~~]number of traps;

(D) [~~R~~]results of survey;

(E) [~~H~~]history of survey; and

(F) [~~I~~]if a county was previously infested, give the date of last infestation.

(vi) If infestations occur in neighboring counties, approval may be denied.

(vii) To be maintained on the approved list, each county [~~must~~]shall be reapproved [~~every~~]each [~~twelve (12)~~]12 months.

(viii) Shipments of [~~commodities covered~~]restricted articles from noninfested counties [~~will~~]shall only be allowed entry into Utah if the uninfested county has been placed on the approved list [~~prior to~~]before the arrival of the shipment in Utah.

(ix) The certificate [~~must~~]shall have the following [~~additional~~]declaration: "The plants in this consignment were produced in (name of county), state of (name of state of origin) that is known to be free of Japanese beetle."

[~~(e)~~](5) Privately owned house plants obviously grown, or certified at the [~~place of~~]origin state as having been grown indoors without exposure to Japanese beetle may be allowed entry into this state without meeting the requirements of [~~section (4)~~]Section R68-15-5.

(a) Contact the [~~Utah Department of Agriculture and Food~~]department by mail, FAX, or email for requirements:

(i) Director, Plant Industry Division, Utah Department of Agriculture and Food, [~~350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500~~]4315 South 2700 West TSOB South Bldg, Floor 2 Taylorsville, UT 84129-2128[~~,~~];

(ii) FAX: (801) 538-7189[~~,~~]; or

(iii) e[~~-~~]mail: UDAF-Nursery@utah.gov.

R68-15-[~~6~~]8. Disposition of Violations.

(1) Any[~~ or all~~] shipments or lots of [~~quarantined articles or commodities listed in R68-15-4 above~~]restricted articles arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the [~~Commissioner~~]department[~~ of the Utah Department of Agriculture and Food~~] or[~~ his agent~~].

(2) Treatment shall be performed at the expense of the owner[~~, or owners,~~] or their [~~duly~~]authorized agent.

KEY: quarantine
Date of Last Change: [~~December 14, 2007~~]2022
Notice of Continuation: August 3, 2017
Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(k); 4-35-109

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-18**	**Filing ID 54516**

Agency Information

1. Department:	Agriculture and Food
Agency:	Plant Industry
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor
City, state and zip:	Taylorsville, UT 84129-2128
Mailing address:	PO Box 146500

City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R68-18. Quarantine Pertaining to Karnal Bunt

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

Changes are needed to make the text consistent with the Utah 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)**:**

Language has been changed to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

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

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

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

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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0

Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-2-103(1)(k)		

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-18. Quarantine Pertaining to Karnal Bunt.
R68-18-1. Purpose and Authority.

[~~(A)~~](1) Promulgated under authority of Subsection 4-2-[~~2~~]103(1)(k)[~~(ii)~~].

[~~(B)~~](2) [~~The fact has been determined by the Utah Commissioner of Agriculture and Food that a~~]Karnal bunt (Tilletia indica Mitra) is a serious fungal disease of wheat, durum wheat, and Triticale [~~known as Karnal bunt (Tilletia indica Mitra),~~]It is not known to exist in [~~the State of~~]Utah, exists in the described infested areas, and the restricted articles and commodities described are hosts or possible carriers of the disease.

[~~(C)~~](3) [~~The Commissioner, by virtue of the authority vested in him by Section 4-2-2, does~~]This rule establishes a quarantine[~~ setting forth the name of~~], names the fungal disease against which the quarantine is established, names the infested area[~~,~~] and the articles and commodities regulated, and [~~specifying~~]specifies conditions governing disposition of violations.

R68-18-2. Definitions.

(1) "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food or the commissioner's designee.

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

R68-18-[~~2~~]3. Disease.

(1) Karnal bunt (Tilletia indica Mitra) in any living state of development.

R68-18-[~~3~~]4. Areas Under Quarantine.

[~~(A)~~](1) The following areas are under quarantine:
(a) the [~~E~~]entire state of Arizona;
(b) the following c[~~C~~]ounties in New Mexico:
(i) Dona Ana county[~~,~~];
(ii) Hidalgo county[~~,~~];
(iii) Luna county; and
(iv) Sierra county;
(c) the following c[~~C~~]ounties in Texas:
(i) El Paso county[~~,~~]; and
(ii) Hudspeth county.

[~~(B)~~](2) Any areas not mentioned [~~above~~]in Subsection R68-18-4(1) and subsequently found to be infested are also under quarantine.

R68-18-[4]5. Articles and Commodities Under Quarantine.

[~~(A)~~](1) The disease Karnal bunt (Tilletia indica Mitra) in any living state of development.

[~~(B)~~](2) Plants of the genus Triticum or any plant part hereof.

[~~(C)~~](3) Any mechanized farming equipment from the areas under quarantine used in the planting or harvesting of small grains.

[~~(D)~~](4) Any other plant, plant part, article, or means of conveyance when it is determined by the [~~Commissioner~~]department[~~, Utah Department of Agriculture and Food or the commissioners duly authorized representative~~] to present a hazard spreading of Karnal bunt organisms.

R68-18-[~~5~~]6. Restrictions.

[~~(A)~~](1) [~~All~~]Any articles and commodities under quarantine are prohibited entry into [~~the state of~~]Utah from any area under quarantine [~~with the following exception:~~
~~(1) From~~] unless the article or commodity is from an uninfested areas of the states listed in Section R68-18-[~~3~~]4, when accompanied by a certificate of origin stating the origin of the material and that the plant material originated from an area not known to be infested with Karnal bunt.

R68-18-[~~6~~]7. Disposition of Violations.

(1) Any [~~or all~~]shipments or lots of quarantined articles or commodities listed in Section R68-18-[~~4~~]5 arriving in [~~the state of~~

]Utah in violation of this order shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the [~~C~~]commissioner or the department[~~, Utah Department of Agriculture and Food or his agent~~].

(2) Treatment shall be performed at the expense of the owner, or owners, or their [~~duly~~]authorized agent.

KEY: plant disease
Date of Last Change: [~~March 18, 1997~~]2022
Notice of Continuation: January 11, 2021
Authorizing, and Implemented or Interpreted Law: 4-2-2(1)(k)[~~(ii)~~]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-19**	**Filing ID 54511**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R68-19. Compliance Procedures

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

Changes are needed to make the text consistent with the Utah 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)**:**

Language has been changed to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

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

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

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be

included in this table. Inestimable impacts will be included in narratives above.)			
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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-2-103(1)(j)		

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:	05/31/2022
10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-19. Compliance Procedures.
R68-19-1. Purpose and Authority.

(1) This rule is promulgated [~~by the Division of Plant Industry (Division), within the Department of Agriculture and Food (Department)~~]under authority of Sub[~~S~~]section 4-2-[~~2~~]103(1)(j).

(2) This rule establishes the division's use of emergency orders, the issuing of citations, and requests for a hearing.

R68-19-2. Definition of Terms.

(1) "Citation" means a lawful notice, issued by the division, that is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, or operator. Pursuant to Section 4-2-304, a citation may include a penalty assessment, or provide for a fine to take effect within a stated time period.

(2) "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food or the commissioner's designee.

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

(4) "Division" means the Division of Plant Industry in the Utah Department of Agriculture and Food.

[~~(A)~~](5) [~~An~~]"Emergency Order" means a written action by the division, [~~which~~]that is issued to a person, as a result of information that is known by the division, [~~which~~]that identifies an immediate and significant danger to the public's health, safety or welfare, and warrants prompt action pursuant to Section 63G-4-502.

(a) Emergency orders include:

(i) "stop sale;"[~~,~~]

(ii) "stop use;"[~~,~~]

(iii) "removal-order;"[~~,~~]

(iv) "quarantine~~-~~;"[~~,~~] and

(v) "regulate-control order."[~~, and~~]

(b) Emergency orders may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-11-112, 4-12-107[~~(2)~~], 4-13-108[~~(1)~~], 4-14-108[~~(2)~~], 4-15-112[~~(1)~~], 4-16-[~~8(1)~~]301, and Subsection 4-17-103(8).

[~~(B) A Citation means a lawful notice, issued by the division, which is intended to immediately remedy a violation of agricultural statutes or rules by a person, business, operator, etc. Pursuant to Section 4-2-15, a citation may include a penalty~~

~~assessment, or provide for a fine to take effect within a stated time period.~~]

R68-19-3. Emergency Order.

(1) The division may issue an emergency order when it determines that there is an immediate and significant danger to public health, safety, or welfare , and may be issued to secure the well-being, safety, or removal of danger to state citizens.

(2) Emergency [~~O~~]orders are intended to protect the public from unlawful agricultural and food products and services.

(3) When an emergency order is justified, and conditions warrant immediate action by the division, [~~it~~]the division shall[~~: P~~]promptly issue a written order[~~,~~] that includes:[~~ the following information:~~]

[~~(1)~~](a) the name, street address, city, state, zip-code, phone-number, and title or position of the person, business, organization, corporation, firm, or limited liability company being given the order[~~, or name, street address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.~~];

[~~(2)~~](b) a brief statement of findings of fact as determined by the division[~~,~~];

[~~(3)~~](c) references to statutes or administrative rules violated[~~,~~];

[~~(4)~~](d) the reasons for issuance of the emergency order[~~,~~];

[~~(5)~~](e) the signature of the agency representative[~~,~~]; and

[~~(6)~~](f) a space[~~/~~] or line for the signature of the person, although [~~(~~]a signature is not [~~required~~]needed if the person refuses[~~)~~].

(4) [~~The order shall be written and no~~]No product, condition, or service subject to the order shall be released, except upon [~~the subsequent~~]written release by the department.

(5) Pursuant to Section 4-11-111[~~(3)~~], and Subsections 4-12-107(2), 4-13-108(2), 4-14-108(2), 4-15-8(2) and 4-17-8(2) the person subject to the written order may be required to pay the expense incurred by the department in connection with the withdrawal of the product, condition, or service from the market.

R68-19-4. Citation.

(1) The commissioner [~~or persons designated by the commissioner,~~]may enforce this rule by the issuance of a citation for violation, [~~in order to~~]to secure[~~ subsequent~~] payments of fines or the imposition of penalties[~~:~~].

(2) The citation [~~will~~]shall include[~~ the following information~~]:

[~~(1)~~](a) the name, street address, city, state, zip-code, phone-number, and title or position of the person, business, organization, corporation, firm, or limited liability company being given the order[~~, or name, street address, city, state, zip-code, phone-number of the business, organization, corporation, firm, limited liability company, etc., and the name and title or position of the person in the business or organization to whom the order is given.~~];

[~~(2)~~](b) references to the statutes or rules violated[~~,~~];

[~~(3)~~](c) a brief statement of findings of fact as determined by the division[~~,~~];

[~~(4)~~](d) a penalty or fine amount;

[~~(5)~~](e) the signature of the [~~agency~~]division representative[~~,~~];

[~~(6)~~](f) a space[~~/~~] or line for the signature of the person, although [~~(~~]a signature is not [~~required~~]needed if the person refuses[~~)~~]; and

[~~(7)~~](g) a statement [~~to the effect~~]that a person is allowed to request an administrative hearing if the person feels that a citation was not warranted.

(3) Fine or penalty amounts [~~will~~]shall be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor.

(4) In accordance with Section 4-2-[~~15~~]304, fine or penalty amounts per violation shall be: [~~determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed~~]at most $500[~~;~~].

(5) [~~i~~]If the citation is not paid within 15 days, it shall be [~~2~~]two times the citation amount[~~;~~].

(6) [~~i~~]If the citation is not paid within 30 days, it shall be [4]four times the citation amount.

R68-19-5. Request for Hearing.

When any order or citation, as defined [~~above~~]in Section R68-19-4, is issued, the person being charged with the violation may elect to file, within allowable time limits, a request for the department to schedule an informal [~~A~~]administrative [~~H~~]hearing in accordance with [~~the provisions of Section 4-1-3.5~~]Title 63G, Chapter 4, Administrative Procedures Act.

KEY: agricultural law
Date of Last Change: [~~April 15, 1998~~]2022
Notice of Continuation: December 20, 2021
Authorizing, and Implemented or Interpreted Law: 4-2-[~~2~~]103(1)(j)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-20**	**Filing ID 54504**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov

Robert Hougaard	801-982-2305	rhougaard@utah.gov

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

General Information

2. Rule or section catchline:

R68-20. Utah Organic Standards

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

Changes are needed to make the text consistent with the Utah 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)**:**

Language has been changed to make the text consistent with the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

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

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

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

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

B) Department head approval of regulatory impact analysis:
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-2-103(1)(i)	Section 4-5-104	Section 4-12-103
Section 4-3-201	Section 4-9-103	Section 4-14-106
Section 4-4-102	Section 4-11-103	Section 4-16-103
Section 4-32-109	Section 4-37-109	

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	03/18/2022

R68. Agriculture and Food, Plant Industry.
R68-20. Utah Organic Standards.
R68-20-1. Purpose and Authority.

(1) Promulgated under authority of Subsection[~~s~~] 4-2-103(1)(i), and Sections 4-3-201, 4-4-102, 4-5-104, 4-9-103, 4-11-103, 4-12-103, 4-14-106, 4-16-103, 4-32-109, and 4-37-109[~~(2)~~].

[~~A.~~](2) The [~~Utah Department of Agriculture and Food (UDAF)~~]department adopts and incorporates by reference [~~CFR, October 1, 2017 edition, Title 7 Part 205, National Organic Program Final Rule~~]7 CFR 205.

[~~1.~~](3) [~~UDAF~~]The department will make available to [~~all its~~]each applicant[~~s~~] for certification and producers of organic products, copies of [~~the National Organic Program Final Rule~~]7 CFR 205.

R68-20-2. Definitions and Terms.

[~~A. For the purpose of this rule, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.~~]

[~~1.~~](1) "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food, or the commissioner's representative.

(2) "Department" or "UDAF" means the Utah Department of Agriculture and Food.

[~~2.~~](3) "Distributor" means a handler that purchases products under its own name, usually from a shipper, processor, or another distributor. Distributors may or may not take physical possession of the merchandise. A distributor [~~is required to~~]shall be certified if that person both takes title to the organic products and substantially transforms, processes, repackages, or re-labels these products.

[~~3.~~](4) "Food[~~ (and food products)~~]" and "food products" means material, usually of plant or animal origin, containing or consisting of essential body nutrients, such as carbohydrates, fats, proteins, vitamins, and minerals, that is taken in and assimilated by an organism to maintain life and growth. Food products include [~~all~~]any agricultural and horticultural products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, dairy products and aquaculture products.

[~~4.~~](5) "Registration" means an agreement or contract that grants a certified operator the right to use a certificate or certification mark in accordance with organic standards and certification requirements.

[~~5.~~](6) "Utah Department of Agriculture and Food Organic Seal" means the seal to be displayed on packaging of certified organic foods and food products intended for retail sale, indicating compliance with [~~provisions of~~]this rule[~~s~~].

R68-20-3. Compliance.

[~~A.~~]Violations of the State Organic Program will be handled [~~in compliance to~~]under Section 4-2-302.

R68-20-4. Fees for Organic Certification.

[~~Fees for Organic Certification Services.~~]

[~~A.~~](1) Fees for organic certification shall be charged in accordance with the fee schedule [~~in the annual appropriations act passed by the Legislature and signed by the Governor~~]adopted by the legislature. The person, firm, corporation, or other organization requesting registration as a producer, handler, processor, or certification agency, or requesting inspection or laboratory services shall pay [~~such~~]the fees. [~~All~~]Each fee[~~s are~~] is payable to the [~~Utah Department of Agriculture and Food~~]department.

[~~B. Registration of producers, handlers, processors or combinations thereof.~~] (2) An [~~A~~]application[~~s~~] for organic registration may be obtained from the [~~Utah Department of Agriculture and Food~~]department and submitted with the annual fees.

(3) Annual registration is required for [~~all~~]any producers, handlers, processors, or combinations [~~thereof~~]of producers, handlers, and processors who seek organic certification, and shall have applications submitted and [~~be~~]fees paid by February 1 of each year.

(4) New applicants shall have 120 days to [~~complete~~]finish their initial application and have it accepted by the [~~D~~]department or the applicant shall reapply.

[~~C.~~](5) Registration of Certifying Agencies.

(a) Applications for registration may be obtained from the [~~Utah Department of Agriculture and Food~~]department and submitted with the annual fees.

(b) Annual registration is required for [~~all~~]each certifying agenc[~~ies~~]y and shall be paid by February 1 each year. Failure to pay by this date will result in late fees and a prohibition from conducting business in the [~~S~~]state[~~ of Utah~~].

[~~D.~~](6) Gross sales fees. Payment of annual gross sales fees shall accompany the annual registration application and fees and shall be based on the previous year's gross sales of state certified producers and processors.

[~~E.~~](7) Any producers, handlers, processors or combinations [~~thereof~~]of producers, handlers, and processors that conduct business under exemption listed in [~~CFR, October 1, 2017 edition, Title 7 Part 205.101~~]7 CFR 205.101 within the [~~S~~]state[~~ of Utah~~] shall register annually with the Utah Department of Agriculture Organic Program before conducting business.

R68-20-5. UDAF Organic Seal.

[~~Use of the UDAF Organic Seal~~]

[~~A.~~](1) The UDAF organic seal may be used only for raw or processed agricultural products named in paragraphs (a), (b), (e)(1), and (e)(2) of 7 CFR 205.301.

(2) Color UDAF organic seal.

[~~B.~~](a) The UDAF organic seal used by producers, handlers, or processors [~~must~~]shall replicate the form and design of the organic seal available at the department office and [~~must~~]shall be printed legibly and conspicuously[~~.~~]:

[~~1.~~](i) [~~O~~]on a white background with a double black circle with the words[~~,~~] "Utah Department of Agriculture and Food[~~,~~]" within the borders of the circles. At the bottom of the circle there shall be a teal green horizontal line[~~.~~]; and

[~~2.~~](ii) [~~W~~]within the inner circle a black outline of [~~the State of~~]Utah, and inscribed in italics in a teal green color, slanting upward from left to right, the word "Certified Organic".

(b) A copy of the color UDAF organic seal is available at the Department of Agriculture and Food, 4315 South 2700 West, TSOB South Bldg, Floor 2, Taylorsville, UT 84129-2128.

(3) Black and white UDAF organic seal.

(a) The UDAF organic seal used by producers, handlers, or processors shall replicate the form and design of the organic seal available at the department office and shall be printed legibly and conspicuously:

(i) on a white or transparent background with a double black circle with the words "Utah Department of Agriculture and Food" within the borders of the circles. At the bottom of the circle there shall be a black horizontal line; and

(ii) within the inner circle a black outline of Utah, and inscribed in italics in black, slanting upward from left to right, the word "Certified Organic".

[~~3.~~](b) A copy of the black and white UDAF organic seal is available at the Department of Agriculture and Food, [~~350 North Redwood Road, PO Box 146500, Salt Lake City, Utah 84114-6500~~]4315 South 2700 West, TSOB South Bldg, Floor 2, Taylorsville, UT 84129-2128.

KEY: inspections
Date of Last Change: [~~July 9, 2018~~]2022
Notice of Continuation: December 3, 2019

Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(i); 4-3-201; 4-4-102; 4-5-104; 4-9-103; 4-11-103; 4-12-103; 4-14-106; 4-16-103; 4-32-109; 4-37-109[~~(2)~~]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-27**	**Filing ID 54534**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@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:
R68-27. Cannabis Cultivation
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
Changes are needed to implement changes to the statute that passed during the 2022 General Session under S.B. 190.
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 R68-27-3 has been amended to add language referencing statutory requirements for changes of the ownership of a cannabis production establishment greater than 50%. The statutory requirements are replacing requirements in previous Section R68-27-16 which is

removed. A clarification is added to the violation section requiring that records be kept for two years.

Fiscal Information

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

A) State budget:

There should be no fiscal impact on the state budget because the changes are clarifying existing practices related to changes of ownership and recordkeeping.

B) Local governments:

There should be no impact on local governments because they do not participate in the medical cannabis program.

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

There should be no impact on small businesses because the changes are only clarifying the Department of Agriculture and Food's (Department) current practices.

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

There should be no impact on non-small businesses because the changes are only clarifying the Department's current practices.

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 should be no impact to others because they do not participate in the medical cannabis program.

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

Compliance costs for affected persons will not be impacted because the management of the program will not change.

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

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

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

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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-41a-701(3)		

Public Notice Information

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

A) Comments will be accepted until:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	04/15/2022

R68. Agriculture and Food, Plant Industry.
R68-27. Cannabis Cultivation.
R68-27-1. Authority and Purpose.

1) Pursuant to Subsections 4-41a-103(5), 4-41a-204(2)(e), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications, and requirements to obtain and maintain a cannabis cultivation facility license.

R68-27-2. Definitions.

As used in this rule:

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

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

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

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

a) possesses cannabis;

b) grows or intends to grow cannabis; and

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

4) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

a) authorizes an individual to act as a cannabis production establishment agent; and

b) designates the type of cannabis production establishment for which an individual may act as an agent.

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

6) "Indoor cannabis cultivation" means cultivation of cannabis within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.

7) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

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

8) "Outdoor cannabis cultivation" means an open or cleared ground fully enclosed at the perimeter by a securable, sight obscure wall or fence at least eight feet high.

R68-27-3. Cannabis Cultivation Facility License.

1) A cannabis cultivation facility license allows the licensee to propagate, cultivate, harvest, trim, dry, cure, and package cannabis into lots for sale or transfer to a cannabis production facility.

2) A cannabis cultivation facility may produce and sell cannabis plants, seed, and plant tissue culture to other licensed cannabis cultivation facilities.

3) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

4) Before approving an application, the department may contact any applicant and request additional supporting documentation or information.

5) Before issuing a cannabis cultivation facility license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

6) The department may conduct face-to-face interviews with an applicant if needed to determine the best qualified applicant for the number of cannabis cultivation facility licenses that will be issued.

7) The cannabis cultivation facility license shall expire on December 31st.

8) A cannabis production establishment license is not transferable or assignable. If the ownership of a cannabis production establishment changes by 50% or more, the requirements of Subsection 4-41a-201(15) shall be followed[~~A cannabis cultivation facility license may not be sold or transferred except as set forth in Section R68-27-16~~].

R68-27-4. Cannabis Cultivation Facility Requirements.

1) A cannabis cultivation facility operating plan shall contain a blueprint or diagram of the facility containing the following information:

a) for indoor cannabis cultivation, the square footage of the area where cannabis is to be propagated;

b) for indoor cannabis cultivation, the square footage of the area where cannabis is to be grown;

c) the square footage of the area where cannabis is to be harvested;

d) the area where cannabis is to be dried, trimmed, and cured;

e) the square footage of the area where cannabis is to be packaged for wholesale;

f) the total square footage of the cultivation facility;

g) the square footage and location of areas to be used as a storeroom;

h) the location of the toilet facilities and hand washing facilities;

i) the location of a break room and location of personal belonging lockers; and

j) the location of the area to be used for loading and unloading of cannabis product for transportation.

2) For outdoor cannabis cultivation, the operating plan shall contain a detailed aerial photograph of the area on which the following information is shown:

a) the area where cannabis to be propagated; and

b) the area where cannabis is to be grown.

3) A cannabis cultivation facility operating plan shall detail the drying and curing methods to be used by the cannabis cultivation facility.

4) An outdoor cannabis cultivation facility shall outline the measures to be taken to ensure that product is kept from deterioration and contamination.

5) A cannabis cultivation facility shall have written emergency procedures to be followed [~~in case of~~]if:

a) fire;
b) chemical spill; or
c) another emergency at the facility.
6) A cannabis cultivation facility operating plan shall include:
a) a pest management plan;
b) a description of when and how fertilizers are to be applied during the production process;
c) procedures for water usage and waste water disposal; and
d) a waste disposal plan.
7) A cannabis cultivation facility shall have a written plan to handle potential recall and destruction of cannabis because of contamination.
8) A cannabis cultivation facility shall use a standardized scale that is registered with the department when cannabis is:
a) packaged for sale by weight;
b) bought and sold by weight; or
c) weighed for entry into the inventory control system.
9) A cannabis cultivation facility shall ensure that sanitary conditions are maintained on the premises, including ensuring proper and timely removal of litter and waste.
10) A cannabis cultivation facility shall compartmentalize each area in the facility based on function.
11) A cannabis cultivation facility shall limit access to the compartments to appropriate cannabis cultivation facility agents.

R68-27-5 Indoor and Outdoor Cannabis Cultivation Limitations.
1) A cannabis cultivation facility that cultivates cannabis only indoors may use no more than 100,000 square feet for cultivation.
2) A cannabis cultivation facility that cultivates cannabis only outdoors may use no more than four acres for cultivation.
3) Pursuant to Subsection 4-41a-204(2)(e), a cannabis cultivation facility that uses a combination of indoor and outdoor cultivation shall be subject to the following formula:
a) the cannabis cultivation facility may use no more than a total of two acres outdoors and 50,000 square feet indoors for cultivation; or
b) the cannabis cultivation facility may use less than two acres outdoors or 50,000 square feet indoors for cultivation, but may not exceed the indoor or outdoor limit.

R68-27-6. Security Requirements.
1) At a minimum, each cannabis cultivation facility shall have a security alarm system on each perimeter entry point and perimeter window.
2) At a minimum, a licensed cannabis cultivation facility shall have a complete video surveillance system:
a) with a minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog; and
b) that retains footage for at least 45 days.
3) Cameras at a cannabis cultivation facility shall be fixed, record continuously, and placement shall allow for the clear and certain identification of any person or activities in a controlled area.
4) Controlled areas include:
a) each entrance and exit, or ingress and egress vantage point;
b) each area within an indoor or outdoor room or area where cannabis is propagated, grown, harvested, dried, or trimmed;
c) each area where cannabis is stored; and
d) each area where cannabis waste is being moved, processed, stored, or destroyed.
5) If a cannabis cultivation facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.
6) If a cannabis cultivation facility stores footage on a remote server, access shall be restricted to protect from employee tampering.
7) Any gate or entry point must be lighted in low-light conditions.
8) Visitors to a cannabis cultivation facility shall be required to have a properly displayed identification badge issued by the facility while on the premises of the facility.
9) Cannabis cultivation facility visitors shall be escorted by a cannabis cultivation facility agent while in the facility.
10) A cannabis cultivation facility shall keep and maintain a log showing:
a) the full name of each visitor entering the facility;
b) the badge number issued;
c) the time of arrival;
d) the time of departure, and
e) the purpose of the visit.
11) The visitor log shall be maintained by the cannabis cultivation facility for a minimum of one year.
12) The cannabis cultivation facility shall make visitor log available to the department upon request.

R68-27-7. Inventory Control.
1) Each cannabis plant that reaches eight inches in height with a root ball shall be issued a unique identification number in the inventory control system, which follows the plant through the phases of production.
2) Each cannabis plant, lot of usable cannabis trim, leaves, and other plant matter, test lot, and harvest lot shall be issued a unique identification number in the inventory control system.
3) Unique identification numbers cannot be reused.
4) Each cannabis plant, lot of usable cannabis trim, leaves, and other plant matter, cannabis product, test lot, harvest lot, and process lot that has been issued a unique identification number shall have a physical tag with the unique identification number.
5) The tag shall be legible and placed in a position that can be clearly read and kept free from dirt and debris.
6) The following shall be reconciled in the inventory control system at the close of business each day:
a) movement of seedling or clone to the vegetation production area;
b) when plants are partially or fully harvested or destroyed;
c) when cannabis is being transported to other facilities;
d) samples used for testing and the testing results;
e) a complete inventory of cannabis[~~, cannabis seeds, plant tissue, seedlings,~~] clones, plants, trim, or other plant material;
f) the weight of harvested cannabis plants immediately after harvest;
g) the weight and disposal of post-harvest waste materials;
h) the identity of the individual who disposed of the waste and the location of waste receptacle; and
i) theft or loss, or suspected theft or loss, of cannabis.
7) A receiving cannabis cultivation facility shall document in the inventory tracking system any cannabis received, and any differences between the quantity specified in the transport manifest and the quantities received.

8) For plants under eight inches, the cultivation facility shall keep record of:

a) the number of cannabis seeds or cuttings planted;

b) the date they were planted;

c) the date the plants were moved into the vegetation area and tagged;

d) the strain of the seeds or cuttings;

e) the number of plants grown to maturity;

f) the number of plants disposed of; and

g) the date of disposal.

R68-27-8. Cannabis Cultivation Facility Agents.

1) A cannabis cultivation facility shall apply to the department for a cannabis cultivation facility agent registration card on a form provided by the department.

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

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

a) the agent's full name;

b) the name of the cannabis cultivation facility;

c) the job title or position of the agent; and

d) a photograph of the agent.

4) A cannabis cultivation facility is responsible to ensure that each cannabis cultivation facility agent has received department approved training pursuant to Section 4-41a-301.

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

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

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

R68-27-9. Pesticide and Fertilizer Use.

1) A cannabis cultivation facility shall maintain:

a) the material safety data sheet for any pesticide, fertilizer, or other agricultural chemical used in the production of cannabis which shall be accessible to any cannabis cultivation facility agent;

b) the original label or a copy for each pesticide, fertilizer, or other agricultural chemical used in the production of cannabis; and

c) a log of each pesticide, fertilizer, or other agricultural chemical used in the production of cannabis.

2) Pesticides approved by the department may be used in the production, processing, and handling of cannabis.

3) Each pesticide, fertilizer, and other agricultural chemical is to be stored in a separate location apart from cannabis.

4) Pesticides shall be used consistent with the label requirements.

5) Fertilizer registered with the department under Title 4, Chapter 13, the Utah Fertilizer Act, may be used in the production and handling of cannabis.

6) Cannabis exposed to unauthorized pesticide, soil amendment, or fertilizer is subject to destruction at the cost of the cannabis cultivation facility.

R68-27-10. Transportation.

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

2) The manifest shall contain the following information:

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

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

c) the strain name, quantity by weight, and unique identification number of each cannabis material to be transported;

d) the date and time of departure;

e) the estimated date and time of arrival; and

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

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

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

5) The receiving cannabis establishment shall ensure that the cannabis material received is as described in the transport manifest and shall record the amount received for each strain into the inventory control system.

6) The receiving cannabis establishment shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

7) During transport a cannabis cultivation facility shall ensure the cannabis is:

a) shielded from the public view;

b) secured; and

c) temperature controlled if perishable.

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

9) Only the registered agents of the cannabis cultivation facility may occupy a transporting vehicle.

R68-27-11. Recall Protocol.

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

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

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

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

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

2) A cannabis cultivation facility's recall plan shall include, at a minimum:

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

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

c) procedures to retrieve and destroy product; and

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

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

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

5) The department shall periodically check on the progress of the recall until the department declares an end to the recall.

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

R68-27-12. Minimum Requirements for the Storage and Handling of Cannabis.

1) Storage areas shall provide adequate lighting, sanitation, temperature, humidity, space, equipment, and security conditions for the storage of cannabis.

2) Stored cannabis shall be at least six inches off the ground.

3) Cannabis shall be stored away from other chemicals, lubricants, pesticides, fertilizers, or other potential contaminants.

4) Cannabis that is outdated, damaged, deteriorated, misbranded, adulterated shall be stored separately until it is destroyed.

R68-27-13. Cannabis Waste Disposal.

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

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

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

4) Cannabis waste shall be rendered unusable before leaving the cannabis cultivation facility.

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

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

a) compostable; or

b) non-compostable.

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

a) food waste;

b) yard waste; or

c) vegetable-based grease or oils.

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

a) paper waste;

b) cardboard waste;

c) plastic waste; or

d) soil.

9) Cannabis waste includes:

a) cannabis plant waste including roots, stalks, leaves, and stems;

b) excess cannabis or cannabis products from any quality assurance testing;

c) cannabis or cannabis products that fail to meet testing requirements; and

d) cannabis or cannabis products subject to a recall.

R68-27-14. Change in Operation Plans.

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

a) ownership or financial backing of the facility;

b) the facility's name;

c) a change in location;

d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or

e) change in square footage or acreage of cannabis intended to be cultivated.

2) A cannabis cultivation facility may not implement changes to the approved operation plan without department approval.

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

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

R68-27-15. Renewals.

1) A cannabis cultivation facility shall submit a notice of intent to renew the cannabis cultivation facility license and the licensing fee to the department by December 1st.

2) If the cannabis cultivation facility licensing fee and intent to renew the cannabis cultivation facility license are not submitted by December 31st the cannabis cultivation facility licensee may not continue to operate.

3) Pursuant to Section 4-41a-03, the board shall renew a cannabis cultivation facility license unless they identify a significant violation of the applicable laws and rules of the state.

[~~**R68-27-16. Cannabis Cultivation Facility License Transfer.**~~

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

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

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

~~4) Approval of the department shall be received by the existing cannabis cultivation facility licensee before any cannabis cultivation facility license transfer.~~

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

~~a) the business entity fails to meet the qualifications for a cannabis cultivation facility license; or~~

~~b) the transfer of the cannabis cultivation facility license would lead to disruption in the supply of cannabis to the market.~~

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

R68-27-1[~~7~~]6. Violations Categories.

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

a) use of unapproved pesticide or unapproved agricultural soil amendment;

b) cannabis sold to an unlicensed source;

c) cannabis purchased from an unlicensed source;

d) refusal to allow inspection;

e) failure to comply with testing requirements;

f) a test result for high pesticide residue in the cannabis produced or cannabis product;

g) unauthorized personnel on the premises;

h) permitting criminal conduct on the premises; or

i) engaging in or permitting a violation of the Title 4, Chapter 41a, Cannabis Production Establishments.

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

a) failure to maintain alarm and security systems;

b) failure to keep and maintain records for at least two years;

c) failure to maintain traceability;

d) failure to follow transportation requirements;

e) failure to follow the waste and disposal requirements;

f) engaging in or permitting a violation of Title 4, Chapter 41a, Cannabis Production Establishments or this rule; or

g) failure to maintain standardized scales.

3) Licensing Violations: $500- $5,000 per violation. This category is for violations involving licensing requirements including:

a) an unauthorized change to the operating plan;

b) failure to notify the department of changes to the operating plan;

c) failure to notify the department of changes to financial or voting interests of greater than 2%;

d) failure to follow the operating plan as approved by the department;

e) engaging in or permitting a violation of this rule or Title 4, Chapter 41a, Cannabis Production Establishments; or

f) failure to respond to violations.

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

5) The department may consider enhancing or reducing the penalty based on the seriousness of the violation.

KEY: marijuana, cannabis cultivation facility
Date of Last Change: [~~February 23, 2022~~]2022
Authorizing, and Implemented or Interpreted Law: 4-41a-404(3); 4-41a-103(5); 4-41a-204(2)(e); 4-41a-302(3)(b)(ii); 4-41a-701(2); 4-41a-405(2)(b)(iv); 4-2-103(1)(i); 4-41a-801(1)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-30**	**Filing ID 54535**

Agency Information

1. Department:	Agriculture and Food
Agency:	Plant Industry
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor
City, state and zip:	Taylorsville, UT 84129-2128
Mailing address:	PO Box 146500
City, state and zip:	Salt Lake City, UT 84114-6500

Contact person(s):

Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@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:

R68-30. Independent Cannabis Testing Laboratory

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

Changes are needed to implement changes passed under S.B. 190 during the 2022 General Session that added specific procedures that needed to be followed if a licensed laboratory changes ownership by 50% or more. A limit in testing turnaround times has been added based on changes passed in S.B. 190 as well.

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

Language is added to Section R68-30-3 citing statutory requirements related to lab ownership changes of 50% or more. Language is also added to Section R68-30-4 requiring that licensed laboratories maintain an average turnaround time of ten business days within any three-month period. Language is added to the violation section that requires records be kept for at least two years.

Fiscal Information

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

A) State budget:

These changes should not impact the state budget because they are clarifications that will not change how the

department is currently managing the medical cannabis program.

B) Local governments:

These changes should not impact local governments because they do not regulate or operate as medical cannabis licensees.

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

These changes should not impact small businesses because they clarify existing operational requirement for licensed medical cannabis laboratories.

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

These changes should not impact non-small businesses because they clarify existing operational requirement for licensed medical cannabis laboratories.

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

These changes should not impact other persons because they clarify existing operational requirement for licensed medical cannabis laboratories.

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

Compliance costs will not change because the fees charged and program requirements will not change.

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

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

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

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, 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 4-41a-701(3)		

Public Notice Information

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

A) Comments will be accepted until:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	04/06/2022

R68. Agriculture and Food, Plant Industry.
R68-30. Independent Cannabis Testing Laboratory.
R68-30-1. Authority and Purpose.

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

R68-30-2. Definitions.

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

2) "Batch" means a quantity of:

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

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

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

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

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

a) possesses cannabis;

b) grows or intends to grow cannabis; and

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

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

a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under Title 4 Chapter 41, Hemp and Cannabinoid Act;

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

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

d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

6) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

a) authorizes an individual to act as a cannabis production establishment agent; and

b) designates the type of cannabis production establishment for which an individual may act as an agent.

7) "Department" means the Utah Department of Agriculture and Food.

8) "Independent cannabis testing laboratory" means a person who:

a) conducts a chemical or other analysis of cannabis or a cannabis product; or

b) acquires, possesses, and transports cannabis or a cannabis product with the intent to conduct a chemical or other analysis of the cannabis or cannabis product.

9) "Independent cannabis testing laboratory agent" means an individual who:

a) is an employee of an independent cannabis testing laboratory; and

b) holds a valid cannabis production establishment agent registration card.

10) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

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

R68-30-3. Independent Testing Laboratory License.

1) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility to conduct testing as required by Subsection 4-41a-701(2) and Rule R68-29.

2) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis processing facility to conduct testing as required by Subsection 4-41a-701(2) and Rule R68-29.

3) An independent testing laboratory license allows the licensee to receive cannabis from a licensed cannabis cultivation facility and a cannabis processing facility to conduct the additional test as requested.

4) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

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

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

7) The department may conduct face-to-face interviews with an applicant if needed to determine the best-qualified applicant for the number of licenses needed.

8) The license shall expire 12 months from the date on which the license is issued.

9) An application for renewals shall be submitted to the department no later than 30 days before the license expiration date.

10) If the renewal application is not submitted 30 days before the expiration date the licensee may not continue to operate.

11) [~~A license may not be sold or transferred~~]An independent cannabis testing laboratory license is not transferable or assignable. If the ownership of an independent cannabis testing laboratory changes by 50% or more, the requirements of Subsection 4-41a-201(15) shall be followed.

R68-30-4. Independent Cannabis Testing Laboratory Requirements.

1) An independent testing laboratory shall employ a scientific director responsible for:

a) ensuring that the laboratory achievement and maintenance of quality standards of practice; and

b) supervising laboratory staff.

2) The scientific director for an independent laboratory shall have:

a) a doctorate in chemical or biological sciences from an accredited college or university and have at least 2 years of post-degree laboratory experience;

b) a master's degree in chemical or biological sciences from an accredited college or university and have at least 4 years of post-degree laboratory experience; or

c) a bachelor's degree in chemical or biological sciences from an accredited college or university and have a least 6 years of post-degree laboratory experience.

3) An independent cannabis testing laboratory shall follow validated analytical methods, such as those published by the Association of Official Agricultural Chemists (AOAC), American Herbal Pharmacopoeia, EPA, FDA, or other reputable scientific organizations or notify the department of alternative scientifically valid testing methodology the lab is following for each required test.

4) An independent cannabis testing laboratory may not use an alternative testing method without earlier review from the department.

5) The department shall review any monograph or analytical method followed by an independent cannabis testing laboratory to ensure the methodology produces scientifically accurate results before the use of alternative testing methods to conduct the required tests.

6) An independent cannabis testing laboratory shall establish written standard operating procedures for each test being conducted.

7) An independent cannabis testing laboratory shall maintain an average testing turnaround time below ten business days within any three- month period.

[~~7~~]8) An independent cannabis testing laboratory shall obtain and keep the International Organization for Standardization (ISO) 17025:2017 accreditation.

[~~8~~]9) An independent cannabis testing laboratory may be licensed before ISO 17025:2017 accreditation provided the independent cannabis testing laboratory:

a) adopt and follow minimum good laboratory practices which satisfy the OECD Principles of Good Laboratory Practice and Compliance Monitoring published by the Organization for Economic Co-operation and Development; and

b) becomes ISO 17025:2017 accredited within 24 months.

[~~9~~]10) The department incorporates the following materials by reference:

a) Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control (2014 Revisions) published by the American Herbal Pharmacopoeia; and

b) OECD Principles of Good Laboratory Practice and Compliance Monitoring (1997) published by the Organization for Economic Co-operation and Development.

1[~~0~~]1) An independent cannabis testing laboratory shall have written emergency procedures to be followed in case of:

a) fire;

b) chemical spill; or

c) other emergencies at the laboratory.

1[~~1~~]2) An independent cannabis testing laboratory shall compartmentalize each area in the facility based on function and shall limit access to the compartments to the appropriate authorized agents.

R68-30-5. Security Requirements.

1) At a minimum, a licensed independent cannabis testing laboratory shall have a security alarm system on each perimeter entry point and perimeter window.

2) At a minimum, a licensed independent cannabis testing laboratory shall have complete video surveillance system:

a) with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog, and

b) that retains footage for at least 45 days;

3) Cameras shall:

a) be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas; and

b) record continuously.

4) Controlled areas included:

a) entrances and exits;

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

c) any areas where cannabis or cannabis products are being tested; and

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

5) If an independent cannabis testing facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

6) If an independent cannabis testing laboratory stores footage on a remote server, access shall be restricted to protect from employee tampering.

7) Any entry point must be lighted in low-light conditions sufficient to record activity occurring.

8) Any visitors to an independent cannabis testing laboratory shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.

9) Any visitors shall be escorted by an independent cannabis facility agent at all times while in the facility.

10) An independent cannabis testing laboratory shall keep and maintain a visitor's log showing:

a) the full name of each visitor entering the facility;

b) the badge number issued;

c) the time of arrival;

d) the time of departure, and

e) the purpose of the visit.

11) The independent cannabis testing laboratory shall keep the visitors log for a minimum of a year.

12) The independent cannabis testing laboratory shall make the visitor log available to the department upon request.

R68-30-6. Inventory Control.

1) Each test sample shall have a unique identification number in the inventory control system.

2) Each test sample shall be traceable to the lot or batch used as the base material from the cannabis production establishment.

3) Unique identification numbers may not be reused.

4) Each test sample that has been issued a unique identification number shall have a physical tag placed on it with:

a) the unique identification number;

b) the license number and name of the lab receiving the test sample;

c) the license number and name of the cannabis production establishment name;

d) the date the test sample was collected; and

e) the weight of the sample.

5) The tag shall be legible and placed in a position that can be clearly read and shall be kept free from dirt and debris.

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

a) the date and time the test sample was received;

b) each sample used for testing and the test results;

c) the identity of the agent conducting the test;

[~~e~~]d) a complete inventory of cannabis test samples;

[~~d~~]e) the weight and disposal of cannabis waste materials;

[~~e~~]f) the identity of who disposed of the cannabis waste; and

[~~f~~]g) the theft or loss or suspected theft or loss of test sample.

7) An independent cannabis testing laboratory shall document in the inventory tracking system any test samples received, and any difference between the quantity specified in the transport and quantities received.

R68-30-7. Independent Cannabis Testing Laboratory Agents.

1) An independent cannabis testing laboratory shall apply to the department for a cannabis establishment agent on a form provided by the department.

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

3) The cannabis establishment agent registration card shall contain:

a) the agent's full name;

b) the name of the cannabis processing establishment; and

c) a photograph of the agent.

4) An independent cannabis testing laboratory is responsible to ensure that each agent has received:

a) the department approved training as specified in Section 4-41a-301; and

b) any task-specific training as outlined in the operating plan submitted to the department.

5) An independent cannabis testing agent shall have a properly displayed identification badge which has been issued by the department while on the facility premises or while engaged in the transportation of cannabis.

6) Cannabis production establishment agents shall have their state-issued identification card in their possession to certify the information on their badge is correct.

7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the independent cannabis testing laboratory.

R68-30-8. Transportation.

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

2) The manifest shall contain the following information:

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

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

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

d) date and time of departure;

e) estimated date and time of arrival; and

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

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

4) A copy of the transport manifest shall be given to the independent laboratory.

5) The receiving independent laboratory shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.

6) The receiving independent laboratory shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

7) During transport an independent cannabis testing laboratory agent shall ensure the cannabis is:

a) shielded from the public view;

b) secured; and

c) temperature controlled if perishable.

8) An independent cannabis testing laboratory shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.

9) Only the registered agents of the independent cannabis testing laboratory may occupy a transporting vehicle.

R68-30-9. Cannabis Waste Disposal.

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

2) Waste water generated during cannabis testing shall be disposed of in compliance with applicable state laws and regulations.

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

4) Cannabis waste shall be rendered unusable before leaving the independent cannabis testing laboratory.

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

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

a) compostable; or

b) non-compostable.

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

a) food waste;

b) yard waste; or

c) vegetable-based grease or oils.

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

a) paper waste;

b) cardboard waste;

c) plastic waste; or

d) soil.

9) Cannabis waste includes:

a) cannabis plant waste including roots, stalks, leaves, and stems;

b) excess cannabis or cannabis products from any quality assurance testing;

c) cannabis or cannabis products that fail to meet testing requirements; and

d) cannabis or cannabis products subject to a recall.

R68-30-10. Change in Operation Plans.

1) An independent cannabis testing laboratory shall submit a notice, on a form provided by the department, before making any changes to:

a) ownership or financial backing of the facility;
b) the facility's name;
c) a change in location;
d) change in testing methods, equipment, remodeling, expansion, reduction or physical, non-cosmetic alteration of the lab; or
e) change in written operating procedures.
2) An independent cannabis testing laboratory may not implement changes to the approved operation plan without department approval.
3) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.
4) The department shall specify the reason for the denial of approval for a change to the operation plan.

R68-30-11. Renewals.
1) An independent cannabis testing laboratory shall submit a notice of intent to renew and the licensing fee to the department by their license expiration date.
2) If the licensing fee and intent to renew are not submitted on or before the expiration date, the licensee may not continue to operate.
3) The department shall renew a license unless renewal would lead to a violation of the applicable laws and rules of the state.

R68-30-12. Proficiency Testing.
1) The department shall establish a proficiency testing program for independent cannabis testing laboratories.
2) Each independent cannabis testing laboratory shall participate in the designated proficiency testing program with satisfactory performance as determined by the Department.

R68-30-13. Violation Categories.
1) Public Safety Violations: $3,000- $5,000 per violation. This category is for violations which present a direct threat to public health or safety including:
a) cannabis sold to an unlicensed source;
b) cannabis purchased from an unlicensed source;
c) refusal to allow inspection;
d) refusal to participate in proficiency testing;
e) failure to comply with testing requirements;
f) failure to report testing results;
g) unauthorized personnel on the premises;
h) permitting criminal conduct on the premises;
i) engaging in or permitting a violation of the Title 4, Chapter 41a, Cannabis Production Establishments, that amounts to a public safety violation as described in this subsection.
2) Regulatory Violations: $1,000-$5,000 per violation. This category is for violations involving this rule and other applicable state rules including:
a) failure to maintain alarm and security systems;
b) failure to keep and maintain records for at least two years;
c) failure to maintain traceability;
d) failure to follow transportation requirements;
e) failure to follow the waste and disposal requirements; or
f) engaging in or permitting a violation of Title 4, Chapter 41a, Cannabis Production Establishments or this rule that amounts to a regulatory violation as described in this subsection.
3) Licensing Violations: $500- $5,000 per violation. This category is for violations involving licensing requirements including:
a) an unauthorized change to the operating plan;
b) failure to notify the department of changes to the operating plan;
c) failure to notify the department of changes to financial or voting interests of greater than 2%;
d) failure to follow the operating plan as approved by the department;
e) engaging in or permitting a violation of this rule or Title 4, Chapter 41, Cannabis Production Establishments, that amounts to a licensing violation as described in this subsection; or
f) failure to respond to violations.
4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

KEY: cannabis laboratory, cannabis testing
Date of Last Change: [~~February 23, 2022~~]2022
Authorizing, and Implemented or Interpreted Law: 4-41a-701(3); 4-41a-404(3); 4-41a-405(2)(b)(iv); 4-41a-103(5)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R68-32**	**Filing ID 54536**

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Amber Brown	385-245-5222	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@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:
R68-32. Sale and Transfer of Industrial Hemp Waste to Medical Cannabis Cultivators

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

These changes are needed to implement changes made with the passage of S.B. 190 during the 2022 General Session.

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

Clarifying changes are made to definitions in Section R68-32-2. Changes are made throughout this rule to remove references to industrial hemp cultivation because S.B. 190 removed it from the Department of Agriculture and Food's (Department) authority. Changes are made throughout this rule to restrict the transfer of industrial hemp waste to a medical cannabis cultivator except under limited circumstances, consistent with legislative intent. A limit on the amount of waste that may be received by a medical cannabis cultivator each year is set.

Fiscal Information

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

A) State budget:

These changes will not impact the state budget. The decreased industrial hemp waste transfers will not change the cost of the Department managing the industrial hemp or medical cannabis programs.

B) Local governments:

These changes will not impact local governments because they do not participate in the medical cannabis or industrial hemp programs.

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

These changes could have a limited impact on small businesses in Utah that are industrial hemp licensees that are no longer able to transfer product into the medical cannabis program. The Department estimates that one licensee may lose $80,000 in revenue from transfers due to this change during 2022. Future years should not be impacted because the licensee should not grow industrial hemp just to sell it to medical cannabis cultivators.

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

These changes should not impact non-small businesses because they do not operate as industrial hemp licensees.

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

Other persons should not be impacted by this change because they do not operate as industrial hemp licensees or manage the industrial hemp or medical cannabis programs.

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

Compliance costs for affected persons will not change because the fees charged and management of the industrial hemp and medical cannabis programs will not change.

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 may have a limited impact on businesses in Utah who are no longer able to transfer industrial hemp waste into the medical cannabis program. Craig W. Buttars, Commissioner

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

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$80,000	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$80,000**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0

Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$(80,000)**	**$0**	**$0**
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 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 4-41a-501(5)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	**Date:**	04/15/2022

R68. Agriculture and Food, Plant Industry.
R68-32. Sale and Transfer of Industrial Hemp Waste to Medical Cannabis Cultivators.
R68-32-1. Authority and Purpose.

[~~1)~~]Pursuant to Subsection [~~4-41a, 4-41a-102, and Subsections 4-2-103(1)(i) and 4-41a-603(3)~~]4-41a-501(5), this rule establishes the procedures governing the sale of [~~industrial hemp waste~~]a cannabinoid concentrate by an industrial hemp [~~cultivator or~~]processing facility to a cannabis cultivation facility, including procedures for sale approval[~~, extraction~~], transportation, recordkeeping, testing, and inspection and recall.

R68-32-2. Definitions.

1) "Batch" means a quantity of:

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

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

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

2) "Cannabinoid" means any:

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

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

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

4) "Cannabinoid concentrate" means the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass.

5) "Cannabis cultivation facility" means a person licensed by the department that:

a) possesses cannabis;

b)i) grows or intends to grow cannabis; or

ii) acquires or intends to acquire industrial hemp waste from [~~a holder of an industrial hemp cultivator license under Title 4, Chapter 41, Hemp and Cannabinoid Act, or~~]an industrial hemp processor; and

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

6) "Cannabis product" means a product that:

a) is intended for human use; and

b) contains cannabis or tetrahydrocannabinol.

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

8) "Department" means the Utah Department of Agriculture and Food.

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

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

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

1[~~2~~]1) "Industrial hemp waste" means;

(a) a cannabinoid [~~extract~~]concentrate[~~ above 0.3% total THC derived from verified industrial hemp biomass~~]; or

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

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

[~~14) "Lot" means the quantity of:~~

~~a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or~~

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

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

1) [~~Industrial hemp, industrial hemp product, or i~~]Industrial hemp waste [~~may~~]shall only be sold by an [~~industrial hemp cultivator or~~]industrial hemp processing facility to a cannabis cultivation facility if:

a) the industrial hemp waste is derived from industrial hemp biomass that has been certified as industrial hemp by a state department of agriculture or the U.S. Department of Agriculture; and

b) the [~~industrial hemp cultivator or~~]industrial hemp processing facility has records to substantiate the certification[~~; and~~

~~c) the records are available for inspection by the department~~].

[~~2) If an industrial hemp cultivator or industrial hemp processing facility intends to sell industrial hemp, industrial hemp waste, or industrial hemp product that is derived from industrial hemp biomass that was purchased out of state:~~

~~a) the out of state seller shall provide proof that the biomass was certified as industrial hemp by a state department of agriculture or the U.S. Department of Agriculture to the industrial hemp cultivator or industrial hemp processing facility; and~~

~~b) the industrial hemp cultivator or industrial hemp processing facility shall keep record of the certification.~~]

2) A cannabis cultivation facility may not receive more than 120 kilograms of industrial hemp waste in a single license year.

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

1) Within ten days of the sale of [~~industrial hemp, industrial hemp product, or~~]industrial hemp waste by an [~~industrial hemp cultivator or~~]industrial hemp processing facility to a cannabis cultivation facility, the industrial hemp [~~cultivator or~~]processing facility shall:

a) notify the department of the potential sale in writing;

b) provide the department with a [~~certificate of analysis~~]COA showing that the biomass from which the [~~industrial hemp, industrial hemp product, or~~]industrial hemp waste was derived was certified industrial hemp by a state department of agriculture or the U.S. Department of Agriculture; and

c) provide the department with a [~~certificate of analysis~~]COA or other documentation of test results showing that a representative sample of the [~~industrial hemp, industrial hemp product, or~~]industrial hemp waste has been tested by a licensed cannabis testing laboratory as required by Subsection 4-41a-501(5)(a)(i).

2) The department will approve the sale following review of the records of the[~~ industrial hemp cultivator or~~] industrial hemp processing facility to ensure compliance with this rule.

3) Upon approval of the sale, the department will issue a certificate to the[~~ industrial hemp cultivator or~~] industrial hemp processing facility allowing the sale to proceed.

4) No industrial hemp waste[~~, industrial hemp product, or industrial hemp~~] may be sold by an [~~industrial hemp cultivator or~~]industrial hemp processing facility unless the[~~y~~] industrial hemp processing facility has[~~ have~~] a license in good standing with the department.

5) The department [~~will~~]may not approve the sale of [~~industrial hemp extract~~]cannabinoid concentrate with a THC concentration above 0.3%[~~ if the extract was purchased outside of the state~~].

R68-32-5. Transportation.

1) [~~Prior to~~]Before transportation, industrial hemp waste shall meet the testing requirements of Subsection 4-41a-501(5)(a)(i) and Rule R68-29.

2) A printed certificate of sale shall accompany every transport of industrial hemp waste.

[~~3) Each transport of industrial hemp waste shall be recorded in the Industrial Hemp Transportation Permit Log.~~]

[~~4~~]3) The certificate of sale may not be voided or changed after departing from the original [~~industrial hemp cultivator or~~]industrial hemp processing facility.

[~~5~~]4) The receiving cannabis cultivation facility shall ensure they are given a copy of the certificate of sale.

[~~6~~]5) The receiving cannabis cultivation facility shall ensure that the industrial hemp waste received is as described in the certificate of sale and shall record the amounts received into the inventory control system.

[~~7~~]6) The receiving cannabis cultivation facility shall document [~~at the time of receipt~~]any differences between the quantity specified in the certificate of sale and the quantities received in the inventory control system.

[~~8~~]7) During transport, the industrial hemp waste shall be:

a) shielded from the public view;

b) in a secure container; and

c) temperature[-]-controlled if perishable.

[~~9~~]8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting industrial hemp waste is involved in an accident that involves product loss.

R68-32-6. Recordkeeping Requirements.

1) Following the purchase of industrial hemp waste from an [~~industrial hemp cultivator or~~]industrial hemp processing facility, a cannabis cultivation facility shall ensure that each [~~lot or~~]batch of industrial hemp waste has a unique identification number in the inventory control system.

2) A cannabis cultivation facility shall maintain a record of each purchase of industrial hemp waste, including:

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

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

3) Each record shall be made available for inspection by the department.

R68-32-7. Testing Requirements.

1) [~~Each lot or batch of industrial hemp, industrial hemp product, or i~~]Industrial hemp waste purchased by a cannabis cultivation facility shall be tested by [~~l~~]a licensed cannabis testing laboratory pursuant to the requirements of Section R68-29-3 [~~prior to~~]before transfer of the [~~industrial hemp, cannabinoid concentrate, or~~]industrial hemp waste.

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

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

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

R68-32-8. Inspection and Recall.

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

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

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

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

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

3) [~~A product~~]Industrial hemp waste that is identified as out of compliance may be subject to recall and destruction by the department.

R68-32-9. Violations.

1) Violations of this rule include:

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

b) sale of [~~industrial hemp~~]cannabinoid [~~biomass~~]concentrate with a THC level greater than 0.3%[~~ by dry weight~~];

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

d) a medical cannabis facility allowing industrial hemp waste into the facility without testing;

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

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

g) a facility denying the department access to the records; and

h) [~~transporting industrial hemp, industrial hemp product, or~~]transporting industrial hemp waste to a cannabis cultivation facility without a certificate of sale.

2) The department shall assess fines of:

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

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

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

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

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

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

Date of Last Change: [~~August 9, 2021~~]2022

Authorizing, and Implemented or Interpreted Law: [~~4-2-103(1)(i); 4-41a; 4-41a-102; 4-41a-603(3)~~]4-41a-501(5)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-110**	**Filing ID 54526**

Agency Information

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

General Information

2. Rule or section catchline:

R277-110. Educator Salary Adjustment

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

The reason for this rule change is to make necessary changes and additions to terminology as referenced in this rule.

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

The amendments update definitions and terminology, and replace obsolete statutory reference in this rule.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. It does not change budgets, it simply references new systems coming into place (Utah Schools Information Management System (USIMS) is replacing CACTUS).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The educator salary adjustment funds will still be distributed the same way to local education agencies (LEAs). The amendment references updated data exchange systems (USIMS is replacing CACTUS).

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This does not have any impact on small businesses, it only applies to the Utah State Board of Education (USBE) and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

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. This rule change simply makes technical changes to update references to data systems.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses.
Sydnee Dickson, Superintendent

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

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

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53F-2-405(5)

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	04/15/2022

R277. Education, Administration.
R277-110. Educator Salary Adjustment.
R277-110-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

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

(c) Subsection 53F-2-405(5), which authorizes the Board to make rules to administer the educator salary adjustment program.

(2) The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53F-2-405.

R277-110-2. Definitions.

[~~(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" has the same meaning as defined in Subsection R277-512-2(1).~~]

([~~2~~]1) "Educator" has the same meaning as defined in Subsection 53F-2-405(1).

([~~3~~]2) "Educator Salary Adjustment" or "Adjustment" means funds allocated by the Board to an LEA in accordance with Subsection 53F-2-405(3).

([4]3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "USIMS" has the same meaning as defined in Subsection R277-312-2(6).

R277-110-3. Procedures.

(1) An LEA shall:

(a)(i) have employee evaluation procedures consistent with Title [~~53A, Chapter 8a, Public Education Human Resource Management Act~~]53G, Chapter 11, Part 5, School District and Utah Schools for the Deaf and the Blind Employee Requirements; or

(ii) if an LEA is exempt from the requirements of Subsection (1)(a)(i), have employee evaluation procedures in place to receive funds under Section 53F-2-405;

(b) put the adjustment appropriation into the LEA's salary schedule each year that funds are appropriated by the Legislature;

(c) ensure the amount of the adjustment is the same for each eligible full-time-equivalent educator position in the LEA;

(d) ensure that each eligible employee who is not a full-time educator receives a proportional salary adjustment based on the number of hours the employee works in the employee's current assignment as an educator; and

(e) ensure that each educator who receives an adjustment has received a satisfactory or above job performance rating in the educator's most recent evaluation concluded in the school year prior to the year for which the adjustment is made.

(2) Notwithstanding Subsection (1)(e), an LEA may grant an adjustment to a new hire who has successfully completed the position hiring process and been selected for an educator position.

(3) Once an educator qualifies for an adjustment in a designated school year, the adjustment becomes an ongoing part of the educator's salary.

(4) An educator shall receive an annual adjustment of $4200 based upon legislative funding allocations.

(5) A school building level administrator shall receive an annual adjustment of $2500 and benefits as provided in Subsection 53F-2-405(7).

(6) Each LEA shall annually note on the appropriate salary schedule:

(a) the amount of the educator salary adjustment;

(b) the positions qualifying for the adjustment; and

(c) performance rating requirements in accordance with Subsection 53F-2-405(4)(c).

(7) Each LEA shall annually maintain record of performance ratings for an educator receiving an adjustment in accordance with this rule.

(8)(a) The Superintendent shall remit to LEAs an estimated educator salary adjustment allotment through monthly bank transfers and allotment memos beginning in July of each year.

(b) The Superintendent shall adjust the allotment amount in November of each year to match the number of qualified educators in CACTUS or USIMS.

(9) An adjustment to CACTUS or USIMS made after November 15 may not count towards an LEA's amount for educator salary adjustments until the following year.

(10) An LEA may not include educator salary adjustments when calculating the weighted average compensation adjustment for non-administrative licensed staff.

KEY: educators, salary adjustments
Date of Last Change: 2022[~~September 21, 2017~~]
Notice of Continuation: July 19, 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-[~~1~~]3-401(4); 53F-2-405(5)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R277-124**	**Filing ID 54525**

Agency Information

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

General Information

2. Rule or section catchline:

R277-124. Teacher Bonuses for Extra Assignments

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

Rule R277-124 is being enacted due to the passage of S.B. 2 in the 2022 General Session, which appropriated $10,000,000 to be distributed to local education agencies (LEAs) to award as bonuses to teachers for extra assignments.

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 describes the distribution formula, application process, guidelines on LEA bonuses to teachers, and requirements related to undistributed funds for the program.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This rule simply clarifies how newly appropriated funding will be distributed to LEAs by the Utah State Board of Education (USBE).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures outside of the allocation to each LEA. LEAs are able to waive the funds and not provide teacher bonuses at their discretion.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. Small businesses will not be impacted by teacher bonuses.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, 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?)**:**

There are no 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):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, Superintendent

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

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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-2-524

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	04/15/2022

R277. Education, Administration.
R277-124. Teacher Bonuses for Extra Assignments.
R277-124-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

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

(c) Subsection 53F-2-524, which requires the Board to make rules to establish the grant program to compensate teachers who accepted an additional work assignment to substitute for another teacher between December 2021, and May 2022.

(2) The purpose of this rule is to establish the grant program described in Section 53F-2-524 to provide funding to LEAs to compensate teachers who accepted an additional work assignment to substitute for another teacher between December 2021, and May 2022, including:

(a) eligibility criteria for a teacher to qualify for a grant;

(b) an application process; and

(c) a distribution formula.

R277-124-2. Definitions.

(1) "Eligible LEA" means:

(a) an LEA that elects to participate in the grant program by applying to the Superintendent as described in Section R277-124-3; and

(b) includes the Utah Schools for the Deaf and the Blind.

(2) "Program" means the teacher bonuses for extra assignments grant program created in Section 53F-2-524 and further described in this Rule R277-124.

(3) "Teacher" means the same as the term educator is defined in 53F-2-405.

R277-124-3. Procedures.

(1) An LEA may provide a teacher a bonus of up to $100 per additional work assignment if the teacher accepted an additional work assignment to substitute for another teacher between December 1, 2021 and May 31, 2022.

(2) By May 1, 2022, the Superintendent shall provide the following to LEAs:

(a) an estimate of the amount of grant funds available to the LEA; and

(b) an application for the LEA to indicate:

(i) whether the LEA will participate in the grant program;

(ii) the amount of the LEA's available allocation described in Subsection (2)(a) that the LEA would like to receive; and

(iii) whether the LEA would accept additional funds if there are remaining LEAs not electing to receive funding under this program.

(3)(a) By June 30, 2022 and in accordance with the distribution formula described in Subsection (3)(b), the Superintendent shall distribute funds to eligible LEAs to provide grants to teachers as described in this Section.

(b) The Superintendent shall use full time equivalent counts with a max of 1.0 for qualifying teachers for FY22 to determine the percentage of the allocation initially available to each LEA.

(c) If additional funds are available due to LEA election not to participate in the program, the Superintendent shall distribute remaining funds evenly among eligible LEAs that indicate willingness to accept funds as described in Subsection (2)(b)(iii).

(4) An eligible LEA may use the eligible LEA's existing policy on compensation for extra assignments to determine how the eligible LEA will distribute grants to teachers.

(5) An eligible LEA receiving funds that does not fully expend the eligible LEA's program funds shall return excess program funds to the Superintendent by September 1, 2022.

KEY: educator, teacher, bonus
Date of Last Change: 2022
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-524

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-301**	**Filing ID 54527**

Agency Information

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

General Information

2. Rule or section catchline:

R277-301. Educator Licensing

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

This rule is being amended to update licensing requirements.

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

The amendments clarify content knowledge requirements for various license areas of concentration, update the requirements for renewal of local education agency (LEA)-specific licenses, and update procedures for licensee enrollment in the FBI Rapback system for background checks.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This makes technical changes and adds language address FBI rapback subscriptions. There are no costs to state budgets associated with these changes.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. LEAs have no new requirements or reports and no costs associated with these changes.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. Educator licensing does not materially affect small businesses.

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

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

E) Persons other than small businesses, non-small businesses, state, or local government entities

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

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. This amendment makes technical changes to educator licensing and adds FBI rapback language. It does not add reports for LEAs.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, Superintendent

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

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

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Section 53E-3-401	Section 53E-6-102

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	04/15/2022

R277. Education, Administration.
R277-301. Educator Licensing.
R277-301-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

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

(c) Section 53E-6-201, which gives the Board power to issue licenses.

(2) This rule specifies the types of licenses and license areas of concentration available and the requirements and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah.

R277-301-2. Definitions.

(1) "Accredited school" means a public or private school that:

(a) meets standards essential for the operation of a quality school program; and

(b) has received formal approval through a regional accrediting association.

(2) "Currently enrolled" means:

(a) that an individual has been formally accepted into a Board-approved educator preparation program; and

(b) that the program considers the individual to be an active participant.

(3) "Educator preparation program" means the same as that term is defined in Section R277-303-2.

(4) "Eminence" means the same as that terms is defined in Section R277-303-9.

(5) "Endorsement" means a designation on a license area of concentration earned through demonstrating required competencies established by the Superintendent that qualifies the individual to:

(a) provide instruction in a specific content area; or

(b) apply a specific set of skills in an education setting.

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

(7)(a) "License areas of concentration" or "license area" means a designation on a license of the specific educational setting or role for which the individual is qualified, to include the following:

(i) Early Childhood;

(ii) Elementary;

(iii) Secondary;

(iv) School Leadership

(v) Career and Technical Education or "CTE";

(vi) School Counselor;

(vii) School Psychologist;

(viii) Special Education;

(ix) Preschool Special Education;

(x) Deaf Education;

(xi) Speech-Language Pathologist;

(xii) Speech-Language Technician;

(xiii) School Social Worker; and

(xiv) Audiologist.

(8) "Licensing Jurisdiction" means the designated educator licensing authority in any foreign country or state of the United States of America and the Department of Defense Education Activity (DoDEA).

(9) "NASDTEC" means the National Association of State Directors of Teacher Education and Certification.

(10) "NASDTEC Stage 2 Educator License" means a license issued to an individual who holds a bachelor's degree and has completed an approved program but has not met the jurisdiction-specific requirement for a Stage 3 license of a member jurisdiction.

(11) "Renewal" means reissuing or extending the length of a license consistent with Rule R277-302.

R277-301-3. License Structure.

(1) Utah educator licenses include the following licenses:

(a) Associate educator license;

(b) Professional educator license; and

(c) LEA-specific educator license.

(2) The Superintendent may only issue one single active Utah educator license to an individual.

(3) An educator license shall include at least one license area of concentration.

(4) License areas of concentration and endorsements shall have a designation of:

(a) associate;

(b) professional; or

(c) LEA-specific.

(5) An associate educator license may only include associate or LEA-specific license areas of concentration and endorsements.

(6) An LEA-specific educator license may only include LEA-specific license areas of concentration and endorsements.

(7) An educator may add a license area or endorsement to an existing license or license area of concentration by meeting the requirements for an associate, professional, or LEA-specific endorsement as established in this rule.

(8) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of licensing.

(9)(a) All licenses expire on June 30 of the year of expiration and a licensee may renew any time after January 1 of the same year.

(b) Responsibility for license renewal rests solely with the licensee.

R277-301-4. Associate Educator License Requirements.

(1) The Superintendent shall issue an associate educator license to an individual that applies for the license and that meets all requirements in this Section R277-301-4.

(2) An associate educator license, license area, or endorsement is valid for three years.

(3) The Superintendent may only renew an associate educator license if:

(a) the individual has less than three years of experience in a Utah public or accredited private school; or

(b) the individual is employed by a Utah public or accredited private school and the employer has requested a one year extension of the license.

(4) Notwithstanding Subsection (3), the Superintendent may not renew an associate license with a license area in special education or related services, if the educator has three years of experience with the associate license.

(5) The general requirements for an associate educator license shall include:

(a) completion of a criminal background check, including:

(i) review of any criminal offenses and clearance in accordance with Rule R277-214; and

(ii) continued monitoring in accordance with Subsection 53G-11-403(1);

(b) completion of the educator ethics review within one calendar year prior to the application; and

(c) one of the following:

(i) a bachelor's degree or higher from a regionally accredited institution;

(ii) current enrollment in a university-based Board-approved educator preparation program that will result in a bachelor's degree or higher from a regionally accredited institution; or

(iii) skill certification in a specific CTE area as established by the Superintendent.

(6) The content knowledge requirements for an associate educator license shall include:

(a) for an elementary license area, [~~passage of an elementary content knowledge test, approved by the Superintendent, that distinctly measures content in:~~

~~(i) mathematics;~~

~~(ii) reading/language arts;~~

~~(iii) social studies; and~~

~~(iv) science;~~]demonstration of the content competency criteria established by the Superintendent;

(b) for a secondary or CTE license area with a content endorsement, or for an endorsement being added to a professional license area, one of the following:

(i)(A) passage of a content knowledge test approved by the Superintendent, where required; or

(B) demonstration of the competency criteria established by the Superintendent if no content knowledge test is required;

(ii) a bachelor's degree or higher with a major in the content area from a regionally accredited university; or

(iii) enrollment in a program that will result in a degree described in Subsection (7)(b)(ii);

(c) for an early childhood license area, [~~passage of a content knowledge test approved~~]demonstration of the content competency criteria established by the Superintendent; and

(d) for a school leadership license area, enrollment in:

(i) a university-based Board-approved educator preparation program; or

(ii) an educator preparation program administered by the Superintendent.

(7) Notwithstanding, Subsection (5)(c)(ii),

(a) an applicant for an associate educator license with the following license areas:

(i) special education (K-12);

(ii) pre-school special education;

(iii) deaf education;

(iv) audiologist;

(v) speech language technician; or

(vi) speech language pathologist;

(b) shall meet the following requirements for an associate educator license:

(i) demonstrate content knowledge competencies approved by the Superintendent; and

(ii) complete a special education law and instruction training approved by the Superintendent;

(iii) earn a bachelor's degree in a field approved by the Superintendent; and

(iv) enroll in a preparation program as provided in Subsection (9).

(8)(a) For a special education or pre-school special education license area, an applicant for an associate educator license shall enroll in a:

(i) Board-approved non-university based special education preparation program; or

(ii) a special education program at a regionally accredited institution that will yield a NASDTEC Stage 2 educator license.

(b) For a deaf education license area, an applicant shall enroll in a deaf education program at a regionally accredited institution that will yield a NASDTEC Stage 2 educator license.

(c) For a speech language pathologist license area, an applicant shall enroll in a speech language pathologist program at a regionally accredited institution of higher education that:

(i) results in a masters degree or higher in speech language pathology; and

(ii) will yield a NASDTEC Stage 2 educator license.

(d) For a school counselor license area, an applicant shall enroll in a school counselor program at a regionally accredited institution of higher education that:

(i) results in a masters degree or higher in school counseling; and

(ii) will yield a NASDTEC Stage 2 educator license.

(e) For a speech language technician license area, an applicant shall:

(i) enroll in a speech language technician program that is:

([~~i~~]A) approved by the Board; or

([~~ii~~]B) administered by the Superintendent[~~.~~]; or

(ii) complete the requirements of certified speech-language pathology assistant through the American Speech-Language Hearing Association.

(f) For an audiologist license area, an applicant shall enroll in an audiology program at a regionally accredited institution of higher education that will yield a NASDTEC Stage 2 educator license.

(9) Notwithstanding Subsection (5)(c)(ii), an applicant for an associate educator license with a license area in school psychologist or school social worker shall meet the following requirements:

(a) demonstrate content knowledge competencies approved by the Superintendent;

(b) earn a Bachelor's degree; and

(c) complete all requirements for a regionally accredited master's level preparation program, except completion of capstone school-based clinical experience and any co-requisite coursework.

(10) Additional requirements for an associate educator license shall include:

(a) successful completion of professional learning modules created or approved by the Superintendent in:

(i) educator ethics;

(ii) classroom management and instruction;

(iii) basic special education law and instruction;

(iv) the Utah Effective Teaching Standards described in R277-530; or

(b) enrollment in a university-based Board-approved educator preparation program.

(c) Notwithstanding Subsection (11)(a), the Superintendent may waive an individual module, if the module is not necessary given the preparation of an applicant.

(11) An educator that holds a professional license area of concentration and has met the competency criteria established by the Superintendent need not complete the requirements detailed in Subsection (6).

(12) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval by the Superintendent to satisfy the associate educator license requirements.

(13) The Superintendent shall designate a panel of at least three Board staff members to review an appeal made under Subsection (12).

(14) An LEA that employs an individual that holds an associate educator license shall develop a personalized professional learning plan designed to support the educator in meeting the requirements for a professional educator license no later than 60 days after beginning work in the classroom, which shall:

(a) be provided to the Superintendent upon request;

(b) include a formal discussion and observation process no later than 30 days after beginning work in the classroom; and

(c) consider:

(i) previous education related experience; and

(ii) previous educational preparation activities.

(15) An educator with an associate educator license may upgrade to a professional educator license at any time prior to expiration of the associate educator license if the educator meets all requirements of Section R277-301-5.

R277-301-5. Professional Educator License Requirements.

(1) The Superintendent shall issue a professional educator license to an individual that applies for the license and meets all requirements in this Section R277-301-5.

(2) A professional educator license, license area, or endorsement is valid for five years.

(3) The general requirements for a professional educator license shall include:

(a) all general requirements for an associate educator license under Subsection R277-301-5(4);

(b) completion of:

(i) a bachelor's degree or higher from a regionally accredited institution; or

(ii) skill certification in a specific CTE area as established by the Superintendent;

(c) for an individual with an early childhood, elementary, special education, or pre-school special education license area of concentration, completion of a literacy preparation assessment; and

(d) one of the following:

(i) a recommendation from a Board-approved educator preparation program; or

(ii) a standard educator license in the area issued by a licensing jurisdiction outside of Utah that is currently valid or is renewable consistent with Section 53E-6-307.

(e) Notwithstanding, Subsection (c), a license applicant in an APPEL program who has an established professional learning plan prior to August 31, 2022, need not complete a literacy preparation assessment.

(4) The content knowledge requirements for a professional educator license, license area, and endorsement shall include:

(a) all content knowledge requirements for an associate educator license under Subsection R277-301-4(5);

(b) demonstration of all content knowledge competencies as established by the Superintendent; and

(c) passage of a content knowledge test provided by the Superintendent, where required by the Superintendent.

(5) An applicant for a secondary or CTE content area endorsement that holds a bachelor's degree or higher with a major in the content area from a regionally accredited university need not complete the requirement described in Subsection (4)(c).

(6) The pedagogical requirements for professional educator license shall include:

(a) demonstration of all pedagogical competencies as established by the Superintendent; and

(b) when applicable to the license area, passage of a pedagogical performance assessment meeting standards:

(i) established by the Superintendent; and

(ii) approved by the Board.

(7) An individual holding a Utah level 1, level 2, or level 3 educator license on January 1, 2020 meets the pedagogical requirements described in Subsection (6).

(8) An individual holding a Utah level - APT educator license that is employed by a Utah LEA and an individual enrolled in ARL or a university-based Board-approved educator preparation program on January 1, 2020 may meet the content knowledge and pedagogical requirements described in this Section R277-301-6 by completing all requirements of the applicable program.

(9) An individual holding a Utah professional educator license and license area in early childhood education, elementary, secondary, CTE, special education, or deaf education is considered to have met the pedagogical performance assessment requirement of Subsection (5)(b) if applying to add any of the license areas in the subsection.

(10) An individual with an associate license with a speech language technician license area who completes a school-based clinical experience meeting requirements established by the Superintendent meets the requirements for a professional license.

([~~10~~]11) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval or denial by the Superintendent to satisfy the professional educator license requirements.

([~~11~~]12) The Superintendent shall designate a panel of at least three individuals, including at least two Board licensed educators not employed by the Board, to review an appeal and make a recommendation to the Superintendent for the Superintendent's review and decision described in Subsection ([~~10~~]11).

R277-301-6. Educator Licenses Issued by Licensing Jurisdictions Outside of Utah.

(1) The Superintendent shall review applications for a Utah educator license for individuals holding educator licenses issued by licensing jurisdictions outside of Utah to determine if the applicant has met the requirements for a Utah license under this rule.

(2) The Superintendent shall accept scores from an applicant that meet the Utah standard for passing on assessments from licensing jurisdictions outside of Utah that utilize the same assessment as Utah as meeting the requirements of this rule.

(3) The Superintendent shall accept scores from an applicant on reasonably equivalent content knowledge or pedagogical performance assessments utilized by licensing jurisdictions outside of Utah that meet the passing standard of that jurisdiction as meeting the requirements of this rule.

(4) The Superintendent shall accept demonstrations of content knowledge and pedagogical competencies from an applicant utilized by licensing jurisdictions outside of Utah that are reasonably equivalent to Utah competencies.

(5) An individual with one year of successful experience in a public or accredited private school under a standard license issued by another jurisdiction need not complete the content knowledge and pedagogical assessment requirements in the areas and subjects taught.

(6) An individual holding a standard license from another jurisdiction that was enrolled in a preparation program prior to January 1, 2020 and received the standard license prior to August 1, 2021 need not complete the requirements of Subsection R277-301-5(6)(b).

R277-301-7. LEA-specific Educator License Requirements.

(1) The Superintendent may issue an LEA-specific educator license to a candidate if:

(a) the LEA requesting the LEA-specific educator license has an adopted policy, posted on the LEA's website, which includes:

(i) educator preparation and support:

(A) as established by the LEA; and

(B) aligned with the Utah Effective Teaching Standards described in R277-530;

(ii) criteria for employing educators with an LEA-specific license; and

(iii) compliance with all requirements of this rule;

(b) an LEA governing board applies on behalf of the candidate;

(c) the candidate meets all the requirements in this Section R277-301-7; and

(d) within the first year of employment, the LEA trains the candidate on:

(i) educator ethics;

(ii) classroom management and instruction;

(iii) basic special education law and instruction; and

(iv) the Utah Effective Teaching Standards described in R277-530.

(2) An LEA-specific license, license area, or endorsement is valid only within the requesting LEA.

(3) An LEA-specific license, license area, or endorsement is valid for [~~one, two, or~~]three years[~~ in accordance with the LEA governing board's application and this Section R277-301-7~~].

[~~(4) The first renewal of an LEA-specific educator license, license area, or endorsement shall be approved or denied by the Board.~~

~~(5) The Board may require that subsequent renewals be approved by the Board on a case by case basis.~~]

([~~6~~]4) An LEA may not issue an LEA-specific license area of concentration to an educator for the following license areas:

(a) special education;

(b) pre-school special education;

(c) deaf education;

(d) school psychologist;

(e) school social worker;

(f) audiologist;

(g) speech language [~~therapist~~]technician; or

(h) speech language pathologist.

(5) An LEA may not issue an LEA-specific endorsement in drivers education.

([~~7~~]6) An LEA-specific license expires immediately if the educator's employment with the LEA that requested the license ends.

(7) An LEA may request renewal of an LEA-specific license if an educator meets professional learning requirements established by the Superintendent.

(8) The general requirements for an LEA-specific educator license shall include:

(a) completion of a criminal background check, including:

(i) review of any criminal offenses and clearance in accordance with Rule R277-214; and

(ii) continued monitoring in accordance with Subsection 53G-11-403(1);

(b) completion of the educator ethics review within one calendar year prior to the application; and

(c) approval of the request by the LEA governing board in a public meeting no more than 60 days prior to the application, which includes the LEA's rationale for the request.

(9) The content knowledge and pedagogical requirements for an LEA-specific educator license shall be established by the LEA governing board.

(10) An LEA school that requests an LEA-specific license, license area, or endorsement shall prominently post the following information on each school's website:

(a) disclosure of the fact that the school employs individuals holding LEA-specific educator licenses, license areas, or endorsements;

(b) an explanation of the types of licenses issued by the board;

(c) the percentage of the types of licenses, license areas, and endorsements held by educators employed in the school-based on the employees' FTE as reported to the Superintendent; and

(d) a link to the Utah Educator Look-up tool provided by the Superintendent in accordance with Subsection R277-312-7(6).

R277-301-8. Eminence.

(1) The purpose of an eminence designation is to allow an individual with exceptional training or expertise, consistent with Section R277-301-2, to teach or work in the public schools on a limited basis.

(2) An LEA may request an eminence designation for an LEA-specific license, license area, or endorsement for a teacher whose employment with the LEA is no more than 37% of a teacher's regular instructional load.

(3)(a) The Superintendent may approve or deny a request under Subsection (2).

(b) The Superintendent may require documentation of the exceptional training, skills, or expertise of a candidate for an eminence designation.

(4)(a) The Superintendent may approve or deny the renewal of an LEA-specific license, license area, or endorsement with an eminence designation at the request of the LEA that requested the designation.

(b) Subsection (4)(a) supersedes Subsection R277-301-7(5) for a licensee with an eminence designation.

(c) If a request for an eminence designation or renewal of an eminence designation is denied by the Superintendent, the LEA may appeal the denial to the Board.

R277-301-9. Superintendent Annual Report to the Board.

(1) The Superintendent shall annually report to the Board on licensing, including:

(a) educator licensing;

(b) educator preparation; and

(c) equitable distribution of teachers.

(2) The Superintendent shall use a process approved by the Board to:

(a) establish the content knowledge competency requirements required for associate and professional endorsements; and

(b) review, adopt, and establish passing standards for all assessments required for educator licensing.

(3) The Superintendent shall create an ethics review for all licensed educators based upon Rule R277-217, Educator Standards and Local Education Agency (LEA) Reporting.

(4) The Superintendent may correct identified errors in licensing information with notice to the license holder.

R277-301-10. Licensee Enrollment in FBI Rapback.

(1) An individual with an assignment in CACTUS or USIMS shall have a cleared background check an current enrollment in FBI Rapback in accordance with Section 53G-11-403.

(2) Notwithstanding Subsection (1), if an individual cannot enroll in FBI Rapback due to physiological limitations, the educator shall submit fingerprints and complete a new background check every two years.

(3) An LEA may not receive funding for an educator who is not in compliance with this section.

KEY: professional competency, educator licensing
Date of Last Change: [~~January 11,~~] 2022
Notice of Continuation: November 5, 2021
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-6-102; 53E-3-401

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-312**	**Filing ID 54528**

Agency Information

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

General Information

2. Rule or section catchline:
R277-312. Online Educator License
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
This rule is being amended to update requirements surrounding the Utah State Board of Education's (USBE) online licensure system.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**
These rule amendments update definitions, clarify when licensee change in employment status should be recorded, and adds voluntary surrenders to the list of actions included in USBE's online educator look-up system.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The technical changes and requirement for local education agencies (LEAs) will not change USBE revenue or expenditures or add measurable costs.
B) Local governments:
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This amendment adds references to the Utah Schools Information Management System (USIMS). It requires LEAs to update license records for employment status changes within two weeks. The timeline should not add measurable costs for LEAs.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. Educator licensing does not materially affect small businesses.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

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. This amendment adds references to USIMS. It requires LEAs to update license records for employment status changes within two weeks. The timeline should not add measurable costs for LEAs.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, Superintendent

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

Regulatory Impact Table

Fiscal Cost	**FY2022**	**FY2023**	**FY2024**
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Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(a)

Public Notice Information

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

A) Comments will be accepted until:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	04/15/2022

R277. Education, Administration.
R277-312. Online Educator Licensure.
R277-312-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-501(1)(a), which directs the Board to make rules regarding the certification of educators; and

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

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

R277-312-2. Definitions.

[~~(1)(a) "EdUcate" means a part of USIMS, and successor to the database known as CACTUS, which is the electronic database maintained on educator licenses and license applications, which may include:~~

~~(i) personal directory information;~~

~~(ii) educational background;~~

~~(iii) endorsements;~~

~~(iv) employment history;~~

~~(v) professional development information;~~

~~(vi) evidence of criminal background checks; and~~

~~(vii) a record of disciplinary action taken by the Board against the educator.~~

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

([~~2~~]1) "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and Blind.

([~~3~~]2) "License," for purposes of this rule, has the same meaning as described in 29 Subsection 53E-6-102(3).

([4]3) "License record" means the electronic record of license holder and license applicant personal information and credentials maintained by the Superintendent in [~~EdUcate~~]CACTUS or USIMS.

([~~5~~]4) "License transaction" means the interactions between a license holder or applicant and the Superintendent that may result in issuance of :

(a) a license;

(b) a renewal of a license; or

(c) a modification of a license or license record.

([~~6~~]5) "Online license transaction" means those license transactions that take place through EdUcate.

([~~7~~]6)(a) "USIMS" or "Utah Schools Information Management System" means a comprehensive tool maintained by the Superintendent for collecting, processing, providing oversight, and reporting on education data for the state.

(b) USIMS is the successor to the CACTUS database, which maintains data on educator licenses and license applications, which may include:

(i) personal directory information;

(ii) educational background;

(iii) endorsements;

(iv) employment history;

(v) professional development information;

(vi) evidence of criminal background checks; and

(vii) a record of disciplinary action taken by the Board against the educator.

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

([~~8~~]7) "Utah Professional Practices Advisory Commission" or "UPPAC" means a Commission established to assist and advise the Board in matters relating to the professional practices of educators, consistent with Title 53E, Chapter 6, Part 5, Utah Professional Practices Advisory Commission.

R277-312-3. Procedures.

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

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

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

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

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

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

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

(7)(a) An LEA shall maintain accurate records in CACTUS and USIMS.

(b) An LEA shall update the license record of a licensee with a change in employment status within two weeks of the change of status.

(8) The Superintendent may suspend access to CACTUS or USIMS for any user found negligent in maintaining accurate records until the user completes additional training.

R277-312-4. Monitoring by the Superintendent.

(1) The Superintendent shall establish a monitoring program that provides for review of online licensure transactions for:

(a) accuracy;

(b) reliability; and

(c) completeness.

(2) The Superintendent may subject any licensure transaction to monitoring:

(a) within one year without cause; or

(b) at any time with cause.

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

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

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

(i) transcripts;

(ii) records of participation in professional development activities;

(iii) supervisor letters or endorsements; and

(iv) other documentation requested by the Superintendent.

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

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

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

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

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

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

R277-312-6. Licensing Costs.

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

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

(3) The Superintendent shall maintain accurate records and documentation of:

(a) the costs of online licensing; and

(b) the costs of any Superintendent review responsibilities.

R277-312-7. Licensing Records.

(1) The Superintendent shall record documentation of online licensure transactions in [~~EdUcate~~]CACTUS or USIMS.

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

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

(3) A license applicant or license holder shall update personal information in [~~EdUcate~~]the educator's licensing record in a timely manner.

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

(5) The following records shall be classified as public pursuant to Title 63G, Chapter 2, Government Records Access and Management Act:

(a) licenses issued by the Board;

(b) endorsements on an educator's license;

(c) an educator's current assignment;

(d) an educator's assignment history in Utah public schools;

(e) an educator's education background;[~~ and~~]

(f) Board disciplinary action against an educator's license, which resulted in:

(i) a reprimand;

(ii) a suspension;

(iii) a revocation; or

(iv) license reinstatement[~~.~~]; and

(g) an educator's voluntary surrender under Rule R277-216.

(6) The Superintendent shall provide an online licensing database where the general public may access the information classified as public in Subsection (5).

KEY: online, licensure
Date of Last Change: 2022[~~November 8, 2021~~]
Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-501(1)(a); 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-433**	**Filing ID 54529**

Agency Information

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

General Information

2. Rule or section catchline:
R277-433. Disposal of Textbooks in Public Schools
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
The purpose of the amendments to this rule are to make necessary technical updates to the requirements in order to conform to current practices.
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 update several definitions and adds a statutory reference related to the textbook disposal process.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This change simply clarifies the definition of textbook and LEA policies for disposing of textbooks. There is no impact to state budgets.

B) Local governments:

This rule change is not expected to have fiscal impacts on local government revenues or expenditures. It clarifies the definition of textbook and LEA responsibilities for policies on textbook disposal. These policies are already required and there should be no additional costs.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. Small businesses are not affected by the textbook disposal policies of LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

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. LEAs are already required.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impact on small businesses.
Sydnee Dickson, Superintendent

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

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

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-7-606

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	04/15/2022

R277. Education, Administration.
R277-433. Disposal of Textbooks in the Public Schools.
R277-433-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board;

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

(c) Section 53G-7-606, which requires the Board to make rules providing for the disposal or reuse of useable textbooks in the public schools.

(2) The purpose of this rule is to provide procedures for LEA policies for the reuse or disposal of textbooks in the public schools.

R277-433-2. Definitions.

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

(2)(a) "Textbook" [~~means:~~]has the same meaning as described in Subsection 53G-7-601(5).

(b) Textbook includes[~~(a)~~] any printed book that is required for participation in a course of instruction[~~;~~].

[~~(b) printed texts approved for pilot or trial use by the State Instructional Materials Commission; or~~

~~(c) books used in classes for which textbooks are generally not adopted at the state level.~~

~~(3) "Useable textbooks" means a set of at least 25 textbooks that are not badly damaged, worn out, or outdated.~~]

R277-433-3. LEA Policies on Disposal of Textbooks.

(1) Each LEA shall develop policies regarding the reuse or disposal of textbooks consistent with Section 53G-7-606.

(2) An LEA's policies shall provide procedures for notification to other LEAs of available textbooks and timelines for disposal of textbooks.

(3) An LEA's policies shall provide procedures for negotiating the exchange of the textbooks.

KEY: textbooks
Date of Last Change: 2022[~~September 21, 2017~~]
Notice of Continuation: July 19, 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-7-606

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-489**	**Filing ID 54530**

Agency Information

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

General Information

2. Rule or section catchline:
R277-489. Kindergarten Entry and Exit Assessment - Enhanced Kindergarten Program
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
This rule is being amended to implement changes required by the passage of H.B. 193 from the 2022 General Session, which allocated additional funding for Full-Day Kindergarten programs.

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

The amendments define terms used in funding calculations, clarifies when the local education agencies (LEAs) are not required to administer the KEEP assessment, and establishes procedures for administration of Full-Day Kindergarten program funds.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures outside the new appropriation for full day kindergarten of $12,200,000. It clarifies how it will be distributed to LEAs but does not impact the Utah State Board of Education (USBE) or other state budgets.

B) Local governments:

This amendment clarifies how full-day kindergarten funds will be distributed. Funds will be prioritized for LEAs ready to expand new full-day kindergarten classrooms. This will only impact LEAs wishing to expand full-day kindergarten programs. There is no independent fiscal impact on LEAs.

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

This rule change is not expected to have fiscal impacts on small business revenues or expenditures. Full day kindergarten funding does not materially impact small businesses.

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

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

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

This rule change is not expected to have fiscal impacts on revenues or expenditures for persons other than small businesses, 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?)**:**

There are no compliance costs for affected persons. This rule has no independent reporting impacts for LEAs and does not add any new reports.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule change is not expected to have direct fiscal impacts on small businesses. Sydnee Dickson, Superintendent.

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

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

Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-2-507

Public Notice Information

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

A) Comments will be accepted until:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	04/15/2022

R277. Education, Administration.
R277-489. Kindergarten [~~Entry and Exit~~]Programs and Assessment[~~ Enhanced Kindergarten Program~~].
R277-489-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which permits the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; and

(c) Section 53F-2-507, which directs the Board to distribute funds appropriated for [~~the enhanced kindergarten program~~]OEK and FDK to LEAs that apply for the funds.

(2) The purpose of this rule is to:

(a) require LEAs to administer a kindergarten entry and exit assessment; and

(b) establish criteria and procedures to administer the optional enhanced kindergarten program and full-day kindergarten.

R277-489-2. Definitions.

[~~(1) "Enhanced Kindergarten program" means a program that provides additional instruction to kindergarten age students:~~

~~(a) as additional hours before or after school;~~

~~(b) full day; or~~

~~(c) through other means.~~

~~(2) "Enrollment" means class enrollment of not more than the student enrollment of other kindergarten classes within the school.~~

~~(3) "LEA plan" means the enhanced kindergarten program plan submitted by an LEA and approved and accepted for funding by the Superintendent.~~]

(1) "Efforts to expand FDK statewide" means an LEA's readiness to expand to additional FDK classrooms.

(2) "FDK" or "full-day kindergarten" means a kindergarten day where the schedule is equivalent in length to grades 1 through 3.

(3) "Geography" means the classification of the county in which the LEA is located, with priority to counties in this order:

(a) sixth class county;

(b) fifth class county;

(c) fourth class county;

(d) third class county;

(e) second class county; and

(f) first class county.

(4) "LEA's receipt of ongoing federal funding" means the amount of ongoing Title I funding used by an LEA to fund FDK.

(5) "Optional enhanced kindergarten program" or "OEK" means a program that provides additional instruction to kindergarten age students.

(6) "Socioeconomic need" means an LEA's percentage of students eligible for free and reduced lunch, with priority to an LEA with a greater percentage of eligible students.

(7) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the Board, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

R277-489-3. Administration of Kindergarten Entry and Exit Assessments.

(1) Except as provided in Subsection (2), an LEA shall administer:

(a) a kindergarten entry assessment, approved by the Superintendent, to each kindergarten student sometime [~~within:~~

~~(i)~~]during the three weeks before through the three weeks after the first day of kindergarten; and

[~~(ii) three weeks after the first day of kindergarten; and~~]

(b) a kindergarten exit assessment, approved by the Superintendent, to each kindergarten student sometime during the four weeks before the last day of school.

(2) An LEA [~~charter school that does not participate in the enhanced kindergarten program or the K-3 Reading Software Program described in R277-496~~]is not required to administer the kindergarten entry and exit assessments[~~.~~] if the LEA does not participate in:

(a) the optional enhanced kindergarten program;

(b) full-day kindergarten; or

(c) the Early Interactive Reading Software Program described in Rule R277-496.

(3) The days used for the assessment shall be consistent with Subsection R277-419-[~~11(3)(c)~~]5(6)(d).

(4) An LEA shall submit to the Data Gateway:

(a) kindergarten entry assessment data by September 30; and

(b) kindergarten exit assessment data by June 15.

(5) In accordance with Section R277-114, the Superintendent may recommend action to the Board, including withholding of funds, if an LEA fails to provide complete, accurate, and timely reporting under Subsection (4).

R277-489-4. Use of Kindergarten Entry and Exit Assessment Data.

(1) The Superintendent or an LEA may use entry and exit assessment data obtained in accordance with Section R277-489-3 to:

(a) provide insights into current levels of academic performance upon entry and exit of kindergarten;

(b) identify students in need of early intervention instruction and promote differentiated instruction for all students;

(c) understand the effectiveness of programs, such as extended-day kindergarten and pre-school;

(d) provide opportunities for data data-informed decision making and cost-benefit analysis of early learning initiatives;

(e) identify effective instructional practices or strategies for improving student achievement outcomes in a targeted manner; and

(f) understand the influence and impact of full-day kindergarten on at-risk students in both the short- and long-term.

(2) An LEA may not use entry and exit assessment data obtained in accordance with Section R277-489-3 to:

(a) justify early enrollment of a student who is not currently eligible to enroll in kindergarten, such as a student with a birthday falling after September 1;

(b) evaluate an educator's teaching performance; or

(c) determine whether a student should be retained or promoted between grades.

R277-489-5. Optional Enhanced Kindergarten Program.

(1) The Superintendent shall accept applications from LEAs for [~~enhanced kindergarten~~]OEK programs that satisfy the requirements of Section 53F-2-507 and the provisions of this rule.

(2) The Superintendent shall establish timelines for submission of applications.

(3) An LEA application for enhanced kindergarten program funds shall include:

(a) the names of schools for which program funds must be used;

(b) a description of the delivery methods that may be used to serve eligible students, such as:

(i) full-day kindergarten;

(ii) extra hours; or

(iii) other means.

(c) a description of the evidence-based early intervention model used by the LEA;

(d) a description of how the program focuses on age-appropriate literacy and numeracy skills;[~~ and~~]

(e) a description of how the program targets at-risk students; and

(g) other information as requested by the Superintendent[~~ and approved by the Board~~].

(4) An LEA shall submit the appropriate kindergarten UTREx code to the Superintendent through UTREx by June 15 annually.

([~~4~~]5) The Superintendent shall distribute funds to eligible charter schools based on a formula identifying the percentage of students in public schools and the percentage of students with the greatest need for an enhanced kindergarten program consistent with Subsection 53F-2-507(4)(a).

([~~5~~]6) The Superintendent shall distribute funds to eligible school districts by determining the number of students eligible to receive free lunch in the prior school year for each school district and prorating the remaining funds based on the number of students eligible to receive free lunch in each school district.

([~~6~~]7) The Superintendent shall establish timelines for distribution of the optional enhanced kindergarten program funds.

[~~(7) The Superintendent shall require all funded programs to submit an annual report.~~]

(8) An LEA [~~may not require a student to participate in an enhanced kindergarten program.~~]governing board shall use OEK program money for optional enhanced kindergarten programs and supports that have proven to significantly increase the percentage of students who are proficient in literacy and mathematics, including:

(a) salary and benefits for individuals teaching and supporting enhanced kindergarten programs; and

(b) evidence-based intervention curriculum.

[~~**R277-489-6. Eligibility for Enhanced Kindergarten Programs Grant Funds. Use of Funds.**~~

~~(1) The Superintendent shall review data gathered from previous year kindergarten entry and exit assessments to determine the following performance measures:~~

~~(a) average percentage of students state-wide with increases in literacy scores;~~

~~(b) average percentage of students state-wide with increases in numeracy scores;~~

~~(c) average percentage of students state-wide with decreases in literacy scores;~~

~~(d) average percentage of students state-wide with decreases in numeracy scores;~~

~~(2)(a) An eligible LEA that received program funds for the current school year may reapply to receive program funds for the next school year if 50% of the participating LEA's schools performed better than the state average in at least three of the four performance measures outlined in Subsection (1);~~

~~(b) If an LEA does not meet performance measures, as defined in Subsection (2)(a), the LEA shall be in the enhanced kindergarten system of support and required to participate in interventions to improve outcomes.~~

~~(c) An eligible LEA that does not meet the performance standards outlined in Subsection (2)(a) for three consecutive years will have funding reduced to exclude failing programs.~~

~~(3) The Superintendent shall establish the strategies, interventions, and techniques for LEAs that are in the enhanced kindergarten system of support to help schools achieve performance outcomes on the KEEP assessment.~~

~~(4) An LEA governing board shall use program money for enhanced kindergarten programs and supports that have proven to significantly increase the percentage of students who are proficient in literacy and mathematics, including:~~

~~(a) salary and benefits for individuals teaching and supporting enhanced kindergarten programs; and~~
~~(b) evidence-based intervention curriculum.~~]

R277-489-6. Full-Day Kindergarten.

(1) The Superintendent shall establish deadlines for an LEA to submit an application for FDK funds.
(2) An LEA application shall include:
(a) the amount of Title I funds currently dedicated to fund FDK;
(b) the number of new FDK classrooms the LEA proposes to fund; and
(c) other information requested by the Superintendent.
(3) An LEA shall submit the appropriate kindergarten UTREx code to the Superintendent through UTREx by June 15 annually.
(4) The Superintendent shall distribute funds appropriated for FDK consistent with Subsection 53G-7-203(5), giving priority to LEAs with greatest need in the following order:
(a) socioeconomic need;
(b) geography;
(c) efforts to expand full-day kindergarten; and
(d) receipt of on-going federal funding.
(5) If an LEA's current annual combined allocation for kindergarten students exceeds an amount equal to what the LEA would receive if the LEA were funded from the kindergarten basic school program at a full WPU based on the LEA's number of kindergarten students, the LEA may not receive additional FDK funds.
(6) The Superintendent shall establish timelines for distribution of FDK funds;
(7) An LEA governing board shall use FDK money to fund salary and benefits of full-day kindergarten teachers.

KEY: enhanced kindergarten
Date of Last Change: 2022[~~July 9, 2020~~]
Notice of Continuation: January 13, 2022
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-507

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R277-520**	**Filing ID 54531**

Agency Information

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

Contact person(s):		
Name:	**Phone:**	**Email:**
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R277-520. Appropriate Licensing and Assignment of Teachers

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

The reason that this rule is being repealed is because it has become obsolete due to changes in the Utah State Board of Education's (USBE) licensing system.

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)**:**

By repealing this rule, obsolete requirements will no longer be effective. This rule is repealed in its entirety.

Fiscal Information

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

A) State budget:

This rule repeal is not expected to have fiscal impact on state government revenues or expenditures. USBE has already updated its licensing system and this rule simply removes obsolete language. Therefore, there is no fiscal impact on state budgets.

B) Local governments:

This rule repeal is not expected to have fiscal impact on local governments' revenues or expenditures. Local education agencies (LEAs) have already adjusted to the new licensing system and this repeal removes obsolete language that no longer applies to the current licensing system.

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

This rule repeal is not expected to have fiscal impact on small businesses' revenues or expenditures. Small businesses are not impacted by teacher licensing systems materially.

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

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

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

This rule repeal is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This repeal only impacts teachers, LEAs, and USBE and removes obsolete language.

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. LEAs and USBE have already adjusted to the new licensing system and this repeal removes obsolete language.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. In addition, this rule repeal is not expected to have direct fiscal impact on small businesses. Sydnee Dickson, Superintendent

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

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

B) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 053E-6-201(2)(a)

Public Notice Information

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

A) Comments will be accepted until:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of

Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	04/15/32022

R277. Education, Administration.

[~~R277-520. Appropriate Licensing and Assignment of Teachers.~~

~~R277-520-1. Authority and Purpose.~~

~~(1) This rule is authorized by:~~

~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~

~~(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~

~~(c) Subsection 53E-6-201(2)(a), which authorizes the Board to rank, endorse, or classify licenses.~~

~~(2) The purpose of this rule is to provide criteria for:~~

~~(a) local school boards to employ educators in appropriate assignments;~~

~~(b) the Board to provide state funding to local school boards for appropriately qualified and assigned staff; and~~

~~(c) the Board and local school boards to satisfy the requirements of ESEA in order for local school boards to receive federal funds.~~

~~R277-520-2. Definitions.~~

~~(1) "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.~~

~~(2) "Core academic subjects or areas" under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11) means:~~

~~(a) English;~~

~~(b) reading or language arts;~~

~~(c) mathematics;~~

~~(d) science;~~

~~(e) foreign languages;~~

~~(f) civics and government;~~

~~(g) economics;~~

~~(h) arts;~~

~~(i) history; and~~

~~(j) geography.~~

~~(3) "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include:~~

~~(a) completed Board approved course work;~~

~~(b) content tests; or~~

~~(c) years of successful experience including evidence of student performance.~~

~~(4) "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-5.~~

~~(5) "Letter of authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.~~

~~(6) "Level 1 license" means:~~

~~(a) a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program; or~~

~~(b) pursuant to an agreement under the NASDTEC Interstate Agreement, to candidates who have also met all ancillary requirements established by law or rule.~~

~~(7) "Level 2 license" means a Utah professional educator license issued to an applicant after the Level 2 applicant:~~

~~(a) completes all requirements for a Level 1 license;~~

~~(b) completes the requirements under R277-522 for a teacher whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school;~~

~~(c) completes:~~

~~(i) at least three years of successful education experience in a Utah public LEA or accredited private school; or~~

~~(ii)(A) one year of successful education experience in a Utah public LEA or accredited private school; and~~

~~(B) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and~~

~~(d) completes additional requirements established by law or rule.~~

~~(8) "Level 3 license" means a Utah professional educator license issued to an educator who:~~

~~(a) holds a current Utah Level 2 license; and~~

~~(b) receives:~~

~~(i) National Board Certification;~~

~~(ii) a doctorate in:~~

~~(A) education; or~~

~~(B) a field related to a content area in a unit of the public education system or an accredited private school; or~~

~~(iii)(A) a Speech-Language Pathology area of concentration; and~~

~~(B) currently holds American Speech-Language-Hearing Association (ASHA) certification.~~

~~(9)(a) "License areas of concentration" means a designation to a license obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies that may include:~~

~~(i) Early Childhood (k-3);~~

~~(ii) Elementary (k-6);~~

~~(iii) Elementary 1-8;~~

~~(iv) Middle (still valid, but not issued after 1988, 5-9);~~

~~(v) Secondary (6-12);~~

~~(vi) Administrative/Supervisory (k-12);~~

~~(vii) Career and Technical Education;~~

~~(viii) School Counselor;~~

~~(ix) School Psychologist;~~

~~(x) School Social Worker;~~

~~(xi) Special Education (k-12);~~

~~(xii) Preschool Special Education (birth-age 5);~~

~~(xiii) Communication Disorders;~~

~~(xiv) Speech-Language Pathologist; and~~

~~(xv) Speech-Language Technician.~~

~~(b) License areas of concentration may also bear endorsements relating to subjects or specific assignments.~~

~~(10)(a) "License endorsement" or "endorsement" means a specialty field or area earned through completing required course work established by the Board or through demonstrated competency approved by the Board;~~

~~(b) The endorsement shall be listed on the Professional Educator License indicating the specific qualification of the holder.~~

~~(11) "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.~~

~~(12) "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.~~

~~R277-520-3. Required Licensing.~~

~~(1) All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.~~

~~(2) An LEA shall receive assistance from the Superintendent to the extent of resources available to have all teachers fully licensed.~~

~~(3) An LEA is expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed.~~

~~(4) Failure to ensure that an educator has appropriate licensure may result in the Board withholding all LEA funds related to salary supplements under Section 53F-2-405 and R277-110 and educator quality under Subsection 53F-2-305(2) and R277-486 until teachers are appropriately licensed pursuant to the Board's authority under Section 53E-3-401.~~

~~R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.~~

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

~~(a) an early childhood (k-3) license area of concentration;~~

~~(b) an elementary (k-6) license area of concentration;~~

~~(c) for an educator assigned to teach a class in grade 1 through grade 3, an elementary (1-8) license area of concentration; or~~

~~(d) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration.~~

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

~~(a) an elementary (k-6) or an elementary (1-8) license area of concentration; or~~

~~(b) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration.~~

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

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

~~(5) An educator assigned to teach a class in grade 6 through grade 8, including middle-level, intermediate, and junior high schools, shall hold a current Utah Educator License with:~~

~~(a) an elementary (1-8) or a secondary (6-12) license area of concentration with the appropriate subject/content endorsement for all assigned courses; or~~

~~(b) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration with the appropriate subject or content endorsement for all assigned courses.~~

~~(6) An educator assigned to teach a class in grade 9 through grade 12 shall hold a current Utah Educator License with:~~

~~(a) a secondary (6-12) or a career and technical education license area of concentration with the appropriate subject/content endorsement for all assigned courses; or~~

~~(b) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration with the appropriate subject or content endorsement for all assigned courses.~~

~~(7) An educator assigned to serve or teach a class of students with disabilities shall hold a current Utah Educator License with a special education (k-12) license area of concentration and, if the educator is the teacher of record of secondary mathematics for students with disabilities, shall also hold the appropriate subject/content endorsement.~~

~~(8) An educator assigned to serve preschool-aged students with disabilities shall hold a current Utah Educator License with a preschool special education (birth-age 5) license area of concentration.~~

~~(9) An educator assigned to serve deaf and hard of hearing students shall hold:~~

~~(a) a current Utah Educator License with a special education (k-12) license area of concentration and deaf and hard of hearing endorsement; or~~

~~(b) a deaf education (birth-age 22) license area of concentration.~~

~~(10) An educator assigned to provide student support services as defined in Rule R277-506 shall hold a current Utah Educator License with the appropriate support service license area of concentration.~~

~~(11) An educator assigned as a school-based or LEA-based specialist shall hold a current Utah Educator License with the appropriate license area of concentration and endorsement as defined by the LEA.~~

~~(12) An educator assigned in an administrative position requiring an educator license, as defined by the district, shall hold a current Utah Educator License and an administrative/supervisory (k-12) license area of concentration.~~

~~(a) A superintendent of a school district may be licensed with a letter of authorization granted by the Board consistent with Section 53G-4-301.~~

~~(b) An educator assigned in an administrative position in a charter schools is exempt from this requirement consistent with Section 53G-5-405.~~

~~R277-520-5. Eminence.~~

~~(1) The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with Subsection R277-520-2(4), to teach or work in the public schools on a limited basis.~~

~~(2) Documentation of the exceptional training, skills or expertise may be required by the Superintendent prior to the approval of the eminence authorization.~~

~~(3) Teachers with an eminence authorization may teach no more than 37% of the regular instructional load except as provided in Subsection (4).~~

~~(4) In identified circumstances, teachers with an eminence authorization may teach more than 37% of the regular instructional load.~~

~~(5) The Board may approve an eminence authorization if the LEA can find no other qualified individual to fill the position, then:~~

~~(a) the LEA shall submit the following documented information to the Superintendent annually:~~

~~(i) description;~~

~~(ii) recruitment efforts;~~

~~(iii) the qualifications of all applicants; and~~

~~(iv) the LEA's rationale for hiring the individual;~~

~~(b) the Superintendent shall review the information within 15 days of receipt;~~

~~(c) the Superintendent shall notify the individual and the LEA if the Superintendent approves the documented information;~~

~~(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures; or~~

~~(6) An individual has exceptional skills, expertise, and experience that make the individual the primary candidate for the position, then:~~

~~(a) the LEA shall submit the following documented information to the Superintendent annually:~~

~~(i) information about the position;~~

~~(ii) the individual's expertise, and experience; and~~

~~(iii) the LEA's rationale for hiring the individual.~~

~~(b) the Superintendent shall review the information within 15 days of receipt.~~

~~(c) the Superintendent shall notify the individual and the LEA if the Superintendent approves the documented information.~~

~~(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures.~~

~~(7) An LEA shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53E-6-401 prior to employment by the LEA.~~

~~(8) An LEA that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.~~

~~(9) An LEA that employs a teacher with an eminence authorization shall apply for renewal of the authorization annually.~~

~~(10) An eminence authorization may apply to:~~

~~(a) an individual without a teaching license; or~~

~~(b) an unusual and infrequent teacher situation where a license-holder is needed to teach in a subject area for which the license-holder is not endorsed, but in which the license-holder may be eminently qualified.~~

~~R277-520-6. Routes to Appropriate Endorsements for Teachers.~~

~~(1) An educator may add an endorsement to an existing license area of concentration by completing the endorsement requirements established by the Board.~~

~~(2) An endorsement requirement in a core academic subject area shall include passage of a Board-approved content knowledge assessment.~~

~~(3) A teacher may demonstrate competency in subject areas of the teacher's teaching assignment as approved by the Superintendent to meet specific endorsement requirements except the Board approved content knowledge assessment.~~

~~(4) An educator shall be properly endorsed consistent with Section R277-520-3 or have a Board approved SAEP. Otherwise, the Board may withhold professional staff cost program funds pursuant to the Board's authority under Subsection 53E-3-401(4).~~

~~R277-520-7. Board-Approved Endorsement Program (SAEP).~~

~~(1) An educator assigned to teach in a subject for which the educator does not hold the appropriate endorsement and who has successfully completed at least 9 semester credit hours of the endorsement requirements shall be placed on an SAEP as determined by the Superintendent.~~

~~(2) An individuals participating in an SAEP shall demonstrate progress toward completion of the required endorsements annually, as determined jointly by the LEA and the Superintendent.~~

~~(3) An SAEP may be granted for one two-year period and may be extended by the Superintendent for up to 2 additional years if the individual has made progress towards completing the SAEP.~~

~~(4) An individual currently participating in an SAEP is considered to hold the endorsement for the purposes of meeting the requirements of Section R277-520-4.~~

~~R277-520-8. Background Check Requirement and Withholding of State Funds for Non-Compliance.~~

~~(1) An educators qualified under any provision of this R277-520 shall also satisfy the criminal background requirement of Section 53E-6-401 prior to unsupervised access to students.~~

~~(2) If an LEA does not appropriately employ and assign teachers consistent with this R277-520, the LEA may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula, pursuant to the Board's authority under Section 53E-3-401.~~

~~KEY: educators, licenses, assignments~~
~~Date of Last Change: August 7, 2017~~
~~Notice of Continuation: June 6, 2017~~
~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-6-201(2)(a)~~]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R307-110**	**Filing ID 54498**

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
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Bo Wood	385-499-3416	rwood@utah.gov

Chelsea Cancino	801-536-4015	ccancino@utah.gov
Glade Sowards	801-536-4020	gladesowards@utah.gov

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

General Information

2. Rule or section catchline:

R307-110. General Requirements: State Implementation Plan

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

EPA's Regional Haze Rule (RHR) requires states to submit a Utah State Implementation Plan (SIP) demonstrating reasonable progress towards achieving natural visibility by 2064 in Utah's five Class I Areas (CIAs), which include all five of the national parks in the state. As part of this SIP, the state must conduct an emissions controls determination to identify its long-term strategy (LTS) to achieving the 2064 natural conditions goal. This rule is being amended incorporate by reference Section XX.A: Regional Haze Second Implementation Period and amendments to Amend SIP Section IX Control Measures for Area and Point Sources, Part H, Emission Limits into the SIP.

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 changes the "most recently amended" date in Sections R307-110-17 and R307-110-28 to July 6, 2022, incorporating by reference the requirements of Section XX.A: Regional Haze Second Implementation Period and Section IX: Control Measures for Area and Point Sources, Part H, Emissions Limits of the Utah State Implementation Plan.

The reasonable progress determination of these Sections requires the following measures to meet the state's LTS:
(1) Establishing mass-based annual NOx and SO2 emissions limits for Hunter Power Plant based upon recent actual emissions and plant utilization levels,

(2) Establishing mass-based annual NOx and SO2 emissions limits for the Huntington Power Plant based upon recent actual emissions and plant utilization levels,

(3) Establishing a federally enforceable closure date for the coal-fired boilers at the Intermountain Generation Station (IGS) based on the Intermountain Power Agency's (IPA's) 2021 notice of intent (NOI) to replace the coal-fired boilers with combined cycle natural gas turbines, and

(4) Requiring the retrofit of U.S. Magnesium's Rowley Plant's Riley boiler with flue gas recirculation (FGR).

Fiscal Information

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

A) State budget:

Because the Hunter and Huntington Power Plants are already operating at approximately at the emissions and utilization levels required by the proposed SIP limits, the Division of Air Quality (DAQ) anticipates no fiscal impact to the state budget associated with these facilities. Because IPA has submitted an NOI to replace the coal-fired boilers at the IGS, the proposed closure date for the IGS coal-fired boilers does not, in itself, result in the closure of the facility, but rather establishes federal enforceability of the already planned boiler closures as required by the RHR and the Clean Air Act. As a result, DAQ anticipates no fiscal impacts to the state budget associated with the IGS. The requirement to install FGR at the Riley Boiler of U.S. Magnesium's Rowley Plant may result in small fiscal impact to the state budget resulting from economic activity associated with FGR installation. The direction of such impacts could be positive or negative depending on the extent to which installation of FGR could increase economic activity within the state, with a potential increase in state revenue, and/or decrease economic activity while the unit is down for installation. While it is difficult to estimate the net effect of such impacts, DAQ anticipates that it is likely small due to the relative cost of FGR installation relative to overall economic activity in Utah.

B) Local governments:

Because the Hunter and Huntington Power Plants are already operating at approximately at the emissions and utilization levels required by the proposed SIP limits, DAQ anticipates no fiscal impact to local governments associated with these facilities. Because IPA has submitted an NOI to replace the coal-fired boilers at the IGS, the proposed closure date for the IGS coal-fired boilers does not, in itself, result in the closure of the facility, but rather establishes federal enforceability of the already planned boiler closures as required by the RHR and the Clean Air Act. As a result, DAQ anticipates no fiscal impact to local governments associated with the IGS (e.g., City of Delta, Millard County, etc.). The requirement to install FGR at the Riley Boiler of U.S. Magnesium's Rowley Plant may result in small fiscal impacts to local governments resulting from economic activity associated with FGR installation. The direction of such impacts could be positive or negative depending on the extent to which installation of FGR could increase economic activity in local government jurisdictions, with a potential increase local government revenue, and/or decrease economic activity while the unit is down for installation. While it is difficult to estimate the net effect of such impacts, DAQ anticipates that it is likely small.

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

Some small businesses may see small increases or decreases in economic activity associated with the installation of FGR on the Riley Boiler at the U.S. Magnesium Rowley Plant. For example, the service industry near the Rowley plant may see increased patronage during the period of FGR installation, or may see small decreases in patronage if the installation process leads to traffic impacts or short-term changes to labor patterns while the boiler is being retrofitted. It is difficult to estimate the net impact to small businesses, but DAQ anticipates that it is likely small unless those businesses are directly involved with the FGR installation.

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

The installation of FGR on the Riley Boiler at the U.S. Magnesium Rowley Plant is anticipated to require a one-time cost of $615,300 and approximately $3,100 per year thereafter. However, since the installation of these controls is not mandatory until January 2028, the fiscal impact in FY22, FY23, and FY24 is unknown. Companies that provide the equipment and installation of FGR at the facility will likely see an increase in revenue.

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***)**:**

Some individuals working for U.S. Magnesium or for firms providing FGR installation equipment and services could see positive or negative impacts associated with the retrofit of the Riley Boiler. Such impacts are likely to affect a relatively small number of individuals and are likely to be short in duration.

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

The installation of FGR on the Riley Boiler at the U.S. Magnesium Rowley Plant is anticipated to cost the company $615,300 for initial installation and an additional $3,100 per year in ongoing maintenance over the life of the boiler.

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

After a thorough analysis and engagement with impacted parties, DAQ has determined that the amendments to Regional Haze Second Implementation Period and Emission Limits of the Utah SIP will have fiscal impacts on businesses. The analysis shows that some small businesses and at least one non-small businesses will be impacted by the proposed changes. However, the proposed amendments are appropriate and necessary to comply with the requirements of EPA's Regional Haze Rule. 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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-2-104	40 CFR 51.308(f)	

Incorporations by Reference Information

8. A) This rule adds, updates, or removes the following title of materials incorporated by references:	
	First Incorporation
Official Title of Materials Incorporated (from title page)	Utah Regional Haze State Implementation Plan
Publisher	Division of Air Quality, Utah Department of Environmental Quality
Date Issued	April 2022
Issue, or version	Second Implementation Period

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:	5/31/2022	
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
05/26/2022	10:30AM	https://meet.google.com/thd-ffia-etr?hs=122&authuser=0

10. This rule change MAY become effective on:	07/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	**Date:**	04/06/2022

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on [~~December 2, 2020~~]July 6, 2022, pursuant to Section 19-2-104, is [~~hereby~~]incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on [~~June 24, 2019~~]July 6, 2022, pursuant to Section 19-2-104, is [~~hereby~~]incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
Date of Last Change: 2022[~~December 3, 2020~~]
Notice of Continuation: December 1, 2021
Authorizing, and Implemented or Interpreted Law: 19-2-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R307-506**	**Filing ID 54499**

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	**Phone:**	**Email:**
Bo Wood	385-499-3416	rwood@utah.gov
Sheila Vance	801-518-3132	svance@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R307-506. Oil and Gas Industry: Storage Vessel
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
These amendments are necessary to align current oil and gas rules with new data from studies and compliance inspections. These changes reflect more accurate emission calculations that indicate a previous underestimation of Volatile Organic Compound (VOC) emissions from tanks and other components. The proposed changes will ensure the protection of air quality standards and improve compliance with required emission controls.

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 modifies the definition of "emergency storage relief vessel", removes an applicability exemption previously granted to producing wells with an approval order issued under Rule R307-401, modifies storage vessel requirements for emission controls and adds a requirement to submit site specific data to the Utah Division of Air Quality (DAQ) when it is used.

Fiscal Information

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

A) State budget:

The fiscal impact from these amendments on the state budget for FY22, FY23, and FY24 is estimated to be between a benefit of $9,400 and a cost of $21,620. There are 94 facilities that have an exemption through their approval order and it's their choice to either keep the approval order or switch to permit-by-rule. Cancelling an existing approval order requires producers to enroll in the permit-by-rule system. The one-time fee to cancel an approval order ranges from $220 to $550. This could increase state revenue by between $20,680 and $51,700, but is offset by the elimination of the $150 approval order annual fee per facility - $14,400 total. The number of facilities that will choose to move to the permit-by-rule system is unknown, but the incentive structure makes switching cost effective in less than four years. The exact cost for each facility to switch is also unknown, but DAQ anticipates that the fiscal impact on the state budget will fall within the range outlined above.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments because this rule is not applicable to them.

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

This rule change may impact up to eight small businesses that own and operate oil and gas wells in Utah. The one-time cost to implement the control measures required by this rule is approximately $106,000 per well. This estimate comes from a regulatory analysis performed by the federal Environmental Protection Agency (EPA) on the Ouray and Uintah Reservation Federal Implementation Plan (FIP) for controls on similar tanks. Emission inventory data indicate that as many as 160 wells may be impacted by this action. The proportion of these wells operated by small businesses is unknown but is expected to be small. The fiscal impact of this change is unknown because the number of operating wells and production levels varies greatly in response to global market fluctuation. Facilities with an existing approval order that choose to cancel their permit will also incur a one-time fee between $220 and $550 but will no longer be required to pay an annual fee of $150. The number of facilities that will choose this option is unknown, therefore, the fiscal impact on this group is unknown. Existing wells producing more than 8,000 barrels per year are currently required to implement these controls and will experience no fiscal impact from this change. Wells producing less than 3,200 barrels of crude oil or 2,000 barrels of condensate per year are exempt and will see no fiscal impact from this change. Manufacturers, distributors, and installers of emissions control equipment may also receive a benefit from this rulemaking.

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

This rule change may impact up to 12 non-small businesses that own and operate oil and gas wells in Utah. Emission inventory data indicate that as many as 160 wells may be impacted by this action. The proportion of these wells operated by non-small businesses is unknown. The fiscal impact of this change is unknown because the number of operating wells and production levels varies greatly in response to global market fluctuation. Facilities with an existing approval order who choose to cancel their permit will also incur a one-time fee between $220 and $550, but will no longer be required to pay an annual fee of $150. The number of facilities that will choose this option is unknown, therefore, the fiscal impact on this group is unknown. Existing wells producing more than 8,000 barrels per year are currently required to implement these controls and will experience no fiscal impact from this change. Wells producing less than 3,200 barrels of crude oil or 2,000 barrels of condensate per year are exempt and will see no fiscal impact from this change. Manufacturers, distributors, and installers of emissions control equipment may also receive a benefit from this rulemaking.

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

This rule change is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because the proposed changes apply only to business operating in the gas and oil industry.

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

The compliance costs for affected persons is expected to be approximately $106,000 per well. This estimate comes from a regulatory analysis performed by EPA on the Ouray and Uintah Reservation FIP for putting controls on similar tanks.

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

After a thorough analysis and engagement with impacted parties, the DAQ has determined that the amendments to Rule R307-506 will have fiscal impacts on businesses. The analysis shows that up to 8 small businesses and 12 non-small businesses will be impacted by the proposed changes. However, the proposed amendments are appropriate and necessary to comply with the requirements of the Clean Air Act relating to reducing Ozone in the Uintah Basin. 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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-2-104

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:	05/31/2022

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

On:	**At:**	**At:**
05/24/2022	1:00PM	https://meet.google.com/ozt-syme-rum?hs=122&authuser=0

10. This rule change MAY become effective on:	07/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	**Date:**	04/06/2022

R307. Environmental Quality, Air Quality.
R307-506. Oil and Gas Industry: Storage Vessel.
R307-506-1. Purpose.

Rule R307-506 establishes requirements to control emissions of volatile organic compounds (VOCs) from storage vessels associated with a well site.

R307-506-2. Definitions.

"Centralized Tank Battery" means a separate tank battery surface site collecting crude oil, condensate, intermediate hydrocarbon liquids, or produced water from wells not located at the well site.

"Emergency Relief Storage Vessel" means a storage vessel receiving oil, condensate, or produced water as a result of emergency situations, process upsets, or other equipment malfunctions.

"Emergency Situations" means temporary, infrequent and unavoidable situation in which is uncontrollable or necessary to avoid risk of an immediate and substantial adverse impact on safety, public health, or the environment and is an unanticipated event or failure that is out of the operator's control and is not due to operator negligence.

"Modification to a well site" means;

(1) a new well is drilled at an existing well site,

(2) a well at an existing well site is hydraulically fractured, or

(3) a well at an existing well site is hydraulically refractured.

"Storage Vessel" means storage vessel as defined in 40 CFR 60.5430a, Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution, which is incorporated by reference in Rule R307-210.

"Uncontrolled emissions" means actual emissions or the potential to emit without consideration of controls.

R307-506-3. Applicability.

(1) Rule R307-506 applies to each storage vessel located at a well site as defined in 40 CFR 60.5430a, Subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(2) Rule R307-506 [~~shall apply to~~]applies to each storage vessel located at centralized tank batteries.

[~~(3) R307-506 does not apply to storage vessels that are subject to an approval order issued under R307-401-8.~~]

R307-506-4. Storage Vessel Requirements.

(1) Thief hatches on storage vessels shall be kept closed and latched except during vessel unloading or other maintenance activities.

(2) All storage vessels [~~located at a well site that are in operation as of January 1, 2018,~~]subject to Rule R307-506 with a site-wide throughput of 8,000 barrels or greater of crude oil or 2,000 barrels or greater of condensate per year on a rolling 12-month basis shall comply with Subsection R307-506-4(2)(a) [~~unless the exemption in R307-506-4(2)(b) applies.~~]Effective January 1, 2023, all storage vessels subject to Rule R307-506 with a site-wide throughput of 3,200 barrels or greater of crude oil or 2,000 barrels or greater of condensate per year on a rolling 12-month basis shall comply with Subsection R307-506-4(2)(a).

(a) VOC emissions from storage vessels in service shall either be routed to a process unit where the emissions are recycled, incorporated into a product and[~~/or~~] recovered, or be routed to a VOC control device that is in compliance with Rule R307-508.

(b) All storage vessels located at a well site shall be exempt from Subsection R307-506-4(2)(a) if combined VOC emissions from the storage vessels are demonstrated to be less than four tons per year of uncontrolled emissions on a rolling 12-month basis.

(i) VOC working and breathing losses, and flash emissions from storage vessels shall be calculated using direct site-specific sampling data and any software program or calculation methodology in use by industry that is based on AP-42 Chapter 7.

(3) Upon startup of operation of a well site or centralized tank battery[~~All storage vessels that begin operations on or after January 1, 2018, are required to control~~] VOC emissions from all storage vessels shall be controlled in accordance with Subsection R307-506-4(2)(a) [~~upon startup of operation~~]for a minimum of one year.

(4) An emergency relief storage vessel located at a well site shall be exempt from Subsection R307-506-4(2)(a), if it meets the following requirements:

(i) The emergency relief storage vessel shall not be used as an active storage [~~tank~~]vessel.

(ii) The owner or operator shall empty the emergency storage relief vessel no later than [~~15 days~~]48 hours after receiving fluids.

(iii) The emergency relief storage vessel shall be equipped with a liquid level gauge or equivalent device.

(5) An owner or operator that is required to control emissions in accordance with Subsections R307-506-4(2) and R307-506-4(3) shall inspect at least once a month each closed vent system, including vessel openings, thief hatches, pressure relief devices and bypass devices, for defects that can result in air emissions according to 40 CFR 60.5416a(c).

(a) If defects are discovered, the defects shall be corrected or repaired within 15 days of identification.

(6) Modification to a well site shall require a re-evaluation of site-wide throughput and[~~/or~~] emissions in accordance with Subsection R307-506-4(2).

(7) After a minimum of one year of [~~operation,~~]startup of a well site or centralized tank battery, storage vessel controls may be removed if site-wide throughput is less than [~~8,000~~]3,200 barrels of crude oil or 2,000 barrels of condensate on a rolling 12-month basis or uncontrolled actual emissions are demonstrated to be less than four tons per year.

R307-506-5. Recordkeeping and Reporting.

(1) Records of each closed vent system inspection, including vessel openings, thief hatches, pressure relief devices and bypass device shall be kept for three years.

(a) Records of each closed vent system inspection, including vessel openings, thief hatches, pressure relief devices and bypass device shall include the date of the inspection, the status of each closed vent system, including vessel openings, thief hatches, pressure relief devices and bypass device, and the date of corrective action taken if required.

(2) Records of crude oil throughput shall be kept for three years and shall be determined on a monthly basis using the production data reported to the Utah Division of Oil, Gas, and Mining.

(3) Records of emission calculations, actual emissions, and site-specific sampling data used to determine compliance with Subsection R307-506-4(2)(b) shall be provided to the Utah Division of Air Quality before removal of control equipment and kept for a period of three years, post registration.

(4) Records of emergency relief storage vessel usage shall be kept for a period of three years.

(a) Records of emergency relief storage vessel usage shall include the date the vessel received fluids or was discovered to have received fluids, the date the overflow tank was emptied, and the volume of fluids emptied in barrels.

KEY: air pollution, oil, gas
Date of Last Change: 2022[~~March 5, 2018~~]
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R307-508**	**Filing ID 54500**

Agency Information

1. Department:	Environmental Quality
Agency:	Air Quality

Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	**Phone:**	**Email:**
Bo Wood	385-499-3416	rwood@utah.gov
Sheila Vance	801-518-3132	svance@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R307-508. Oil and Gas Industry: VOC Control Devices

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

These amendments are necessary to align current oil and gas rules with new data from studies and compliance inspections. These changes reflect more accurate emission calculations that indicate a previous underestimation of Volatile Organic Compound (VOC) emissions from tanks and other components. The proposed changes will ensure the protection of air quality standards and improve compliance with required emission controls.

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 removes an applicability exemption previously granted to producing wells with an approval order issued under Rule R307-401.

Fiscal Information

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

A) State budget:

The fiscal impact from these amendments on the state budget for FY22, FY23, and FY24 is estimated to be between a benefit of $9,400 and a cost of $21,620. There are 94 facilities that have an exemption through their approval order and it's their choice to either keep the approval order or switch to permit-by-rule. Cancelling an existing approval order requires producers to enroll in the permit-by-rule system. The one-time fee to cancel an approval order ranges from $220 to $550. This could increase state revenue by between $20,680 and $51,700, but is offset by the elimination of the $150 approval order annual fee per facility - $14,400 total. The number of facilities that will choose to move to the permit-by-rule system is unknown, but the incentive structure makes switching cost effective in less than four years. The exact cost for each facility to switch is also unknown, but the Division of Air Quality (DAQ) anticipates that the fiscal impact on the state budget will fall within the range outlined above.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments because it does not apply to them.

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

This rule change is not expected to have a fiscal impact on small businesses because it defines requirements of the VOC control devices that are already required by Rule R307-506.

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

This rule change is not expected to have a fiscal impact on non-small businesses because it defines requirements of the VOC control devices that are already required by Rule R307-506.

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

This rule change is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because the rule only applies to businesses in the oil and gas industry.

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

This rule change will not have a compliance cost for affected persons.

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

After a thorough analysis and engagement with impacted parties, DAQ has determined that the amendments to Rule R307-508 will not result in a fiscal impact on businesses because the amendments define requirements of the VOC control devices that are already required by Rule R307-506. 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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-2-104

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:	05/31/2022	
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
05/24/2022	1:00PM	https://meet.google.com/ozt-syme-rum?hs=122&authuser=0

10. This rule change MAY become effective on: 07/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	**Date:**	04/06/2022

R307. Environmental Quality, Air Quality.
R307-508. Oil and Gas Industry: VOC Control Devices.
R307-508-1. Purpose.

Rule R307-508 establishes requirements for VOC control devices associated with well sites used to control emissions of VOCs.

R307-508-2. Applicability.

(1) Rule R307-508 applies to each VOC control device located at a well site as defined in 40 CFR 60.5430a Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(2) Rule R307-508 shall apply to centralized tank batteries, as defined in Rule R307-506-2.

[~~(3) R307-508 does not apply to VOC control devices that are subject to an approval order issued under R307-401-8.~~]

R307-508-3. VOC Control Device Requirements.

(1) A VOC control device required by Rule R307-506 or R307-507 must have a control efficiency of 95% or greater.

(a) The VOC control device shall operate with no visible emissions.

(b) The VOC control device must comply with Rule R307-503.

(2) A well site shall demonstrate compliance by meeting the performance test methods and procedures specified in 40 CFR 60.5413a.

(3) VOC control devices and all associated equipment shall be inspected monthly by audio, visual, or olfactory (AVO) means to ensure the integrity of the equipment is maintained and is operational. If equipment is not operational, corrective action shall be taken within 15 days of discovery.

R307-508-4. Recordkeeping.

(1) The owner or operator shall keep and maintain records of the VOC control device's control efficiency guaranteed by the

manufacturer. These records shall be retained for the life of the control equipment on site.

(2) The owner or operator shall keep and maintain records of the manufacturer's written operating and maintenance instructions. These records shall be retained for the life of the control equipment.

(3) The owner or operator shall keep and maintain records of the VOC control device AVO inspections. These shall be retained for a minimum of three years. These records shall include:

(a) the date of the inspection;

(b) the status of the control device and associated equipment; and

(c) date of corrective action taken, if applicable.

KEY: air pollution, oil, gas
Date of Last Change: 2022[~~March 5, 2018~~]
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R307-509**	**Filing ID 54501**

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	**Phone:**	**Email:**
Bo Wood	385-499-3416	rwood@utah.gov
Sheila Vance	801-518-3132	svance@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R307-509. Oil and Gas Industry: Leak Detection and Repair Requirements

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

These amendments are necessary to align current oil and gas rules with new data from studies and compliance inspections. These changes reflect more accurate emission calculations that indicate a previous underestimation of Volatile Organic Compound (VOC) emissions from tanks and other components. The proposed changes will ensure the protection of air quality standards and improve compliance with required emission controls.

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

The amended rule defines "shut-in or temporarily abandoned" wells, eliminates a previously granted exemption for those with an approval order issued under Rule R307-401, modifies requirements for leak testing to require one test during the months of September, October, November, or December, that tests occur no more than seven months apart, and that testing occurs within seven days of a previously "shut-in" well becoming operational.

Fiscal Information

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

A) State budget:

The fiscal impact from these amendments on the state budget for FY22, FY23, and FY24 is estimated to be between a benefit of $9,400 and a cost of $21,620. There are 94 facilities that have an exemption through their approval order and it's their choice to either keep the approval order or switch to permit-by-rule. Cancelling an existing approval order requires producers to enroll in the permit-by-rule system. The one-time fee to cancel an approval order ranges from $220 to $550. This could increase state revenue by between $20,680 and $51,700, but is offset by the elimination of the $150 approval order annual fee per facility - $14,400 total. The number of facilities that will choose to move to the permit-by-rule system is unknown, but the incentive structure makes switching cost effective in less than four years. The exact cost for each facility to switch is also unknown, but the Division of Air Quality (DAQ) anticipates that the fiscal impact on the state budget will fall within the range outlined above.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments because it does not apply to them.

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

This rule change is not expected to have a fiscal impact on small businesses because it adjusts the timing of leak detection and repair requirements, but does not increase the frequency of required inspections.

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

This rule change is not expected to have a fiscal impact on non-small businesses because it adjusts the timing of leak detection and repair requirements, but does not increase the frequency of required inspections.

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

This rule change is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because it only applies to businesses in the oil and gas industry.

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

This rule change will not have a compliance cost for affected persons.

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

After a thorough analysis and engagement with impacted parties, DAQ has determined that this proposed rule amendment will not result in a fiscal impact to businesses, because the amendments adjust the timing of leak detection and repair, but do not change the frequency of the required inspections. 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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-2-104

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:	05/31/2022

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

On:	**At:**	**At:**
05/24/2022	1:00PM	https://meet.google.com/ozt-syme-rum?hs=122&authuser=0

10. This rule change MAY become effective on:	07/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	**Date:**	04/06/2022

R307. Environmental Quality, Air Quality.
R307-509. Oil and Gas Industry: Leak Detection and Repair Requirements.
R307-509-1. Purpose.

Rule R307-509 establishes requirements for conducting leak detection and repairs at well sites to control emissions of volatile organic compounds.

R307-509-2. Definitions.

"Difficult-to-Monitor" means difficult-to-monitor as defined 40 CFR 60.5397a, which is incorporated by reference in Rule R307-210.

"Fugitive emissions" are considered any visible emissions observed using optical gas imaging or a Method 21 instrument reading of 500 ppm or greater.

"Fugitive emissions component" means any component that has the potential to emit fugitive emissions of VOC, including [~~but not limited to~~]valves, connectors, pressure relief devices, open-ended lines, flanges, covers and closed vent systems, thief hatches or other openings, compressors, instruments, and meters.

"Shut-in or temporarily abandoned" means a well that is closed off such that it stops producing for longer than seven calendar days.

"Unsafe-to-Monitor" means unsafe-to-monitor as defined 40 CFR 60.5397a, which is incorporated by reference in Rule R307-210.

R307-509-3. Applicability.

(1) Rule R307-509 applies to each fugitive emissions component at a well site as defined in 40 CFR 60.5430a, Subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution and [~~is required to~~]shall control emissions in accordance with Rules R307-506 and R307-507.

(a) A source meeting the requirements of 40 CFR 60.5397a is meeting the requirements of this rule.

([~~b~~]2) Rule R307-509 does not apply to a fugitive emissions component at a well that is shut-in or temporarily abandoned.[~~Sources subject to R307-509, are subject until the well is shut in.~~

~~(c) R307-509 does not apply to a fugitive emissions component that is subject to an approval order issued under R307-401-8.~~]

R307-509-4. Leak Detection and Repair Requirements.

(1) Applicable sources shall comply with the following:

(a) The owner or operator shall develop an emissions monitoring plan that shall be available upon request to review for each individual well site. At a minimum, the plan shall include:

(i) monitoring frequency;

(ii) monitoring technique and equipment;

(iii) procedures and timeframes for identifying and repairing leaks;

(iv) recordkeeping practices; and

(v) calibration and maintenance procedures for monitoring equipment.

(b) The plan shall address monitoring for difficult-to-monitor and unsafe-to-monitor components.

(c) The owner or operator shall conduct monitoring surveys on site to observe each fugitive emissions component for fugitive emissions.

(d) Monitoring surveys shall be conducted according to the following schedule:

(i) [~~No later than 365 days after January 1, 2018, or n~~]No later than 60 days after startup of production, as defined in 40 CFR 60 Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution[~~, whichever is later~~].

(ii) Semiannually after the initial monitoring survey. Consecutive semiannual monitoring surveys shall be conducted at least four months apart and no more than seven months apart. A fugitive emission component subject to Rule R307-509 in Duchesne and Uintah counties must perform one monitoring survey during the months of September, October, November or December.

(iii) Annually after the initial monitoring survey for "difficult-to-monitor" components.

(iv) As required by the owner or operator's monitoring plan for "unsafe-to-monitor" components.

(v) Within seven days of a well site becoming operational after being shut-in or temporarily abandoned.

(e) Monitoring surveys shall be conducted using one or both of the following to detect fugitive emissions:

(i) Optical gas imaging (OGI) equipment. OGI equipment shall be capable of imaging gases in the spectral range for the compound of highest concentration in the potential fugitive emissions source.

(ii) Monitoring equipment that meets U.S. EPA Method 21, 40 CFR Part 60, Appendix A.

(f) If fugitive emissions are detected at any time, the owner or operator shall repair the fugitive emissions component as soon as possible but no later than 15 calendar days after detection. If the repair or replacement is technically infeasible, would require a vent blowdown, a well shutdown or well shut-in, or would be unsafe to repair during operation of the unit, the repair or replacement shall be completed during the next well shutdown, well shut-in, after an unscheduled, planned or emergency vent blowdown or within 24 months, whichever is earlier.

(g) The owner or operator shall resurvey the repaired or replaced fugitive emission component no later than 30 calendar days after the fugitive emission component was repaired.

R307-509-5. Recordkeeping.

(1) The owner or operator shall maintain records of the emissions monitoring plan. These records shall be retained for the life of the well site.

(2) The owner or operator shall maintain records of the monitoring surveys, repairs, and resurveys. These records shall be retained for a minimum of three years.

KEY: air pollution, oil, gas
Date of Last Change: 2022[~~March 5, 2018~~]
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R307-511**	**Filing ID 54502**

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	**Phone:**	**Email:**
Bo Wood	385-499-3416	rwood@utah.gov
Sheila Vance	801-518-3132	svance@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R307-511. Oil and Gas Industry: Associated Gas Flaring

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

These amendments are necessary to align current oil and gas rules with new data from studies and compliance inspections. These changes reflect more accurate emission calculations that indicate a previous underestimation of Volatile Organic Compound (VOC) emissions from tanks and other components. The proposed changes will ensure the protection of air quality standards and improve compliance with required emission controls.

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 removes an applicability exemption previously granted to producing wells with an approval order issued under Rule R307-401.

Fiscal Information

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

A) State budget:

The fiscal impact from these amendments on the state budget for FY22, FY23, and FY24 is estimated to be between a benefit of $9,400 and a cost of $21,620. There are 94 facilities that have an exemption through their approval order and it's their choice to either keep the approval order or switch to permit-by-rule. Cancelling an existing approval order requires producers to enroll in the permit-by-rule system. The one-time fee to cancel an approval order ranges from $220 to $550. This could increase state revenue by between $20,680 and $51,700, but is offset by the elimination of the $150 approval order annual fee per facility - $14,400 total. The number of facilities that will choose to move to the permit-by-rule system is unknown, but the incentive structure makes switching cost effective in less than four years. The exact cost for each facility to switch is also unknown, but the Division of Air Quality (DAQ) anticipates that the fiscal impact on the state budget will fall within the range outlined above.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments because this rule does not apply to them.

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

This rule change is not expected to have a fiscal impact on small businesses because it clarifies the conditions and requirements for flaring gases captured as part of the emissions controls already required by Rule R307-506.

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

This rule change is not expected to have a fiscal impact on non-small businesses because it clarifies the conditions and requirements for flaring gases captured as part of the emissions controls already required by Rule R307-506.

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

This rule change is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because it applies only to businesses in the oil and gas industry.

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

This rule change will not have a compliance cost for affected persons.

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

After a thorough analysis and engagement with impacted parties, DAQ has determined that the proposed amendments to Rule R307-511 will not result in a fiscal

impact on businesses because the amendments clarify the conditions and the requirements for flaring gases captured as part of the emissions controls already required by rule. 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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-2-104

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:	05/31/2022

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

On:	**At:**	**At:**
05/24/2022	1:00PM	https://meet.google.com/ozt-syme-rum?hs=122&authuser=0

10. This rule change MAY become effective on:	07/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	**Date:**	04/06/2022

R307. Environmental Quality, Air Quality.
R307-511. Oil and Gas Industry: Associated Gas Flaring.
R307-511-1. Purpose.

Rule R307-511 establishes control requirements for the flaring of produced gas associated with well sites.

R307-511-2. Definitions.

"Emergency release" means a temporary, infrequent and unavoidable situation in which the loss of gas is uncontrollable or necessary to avoid risk of an immediate and substantial adverse impact on safety, public health, or the environment. An "emergency" is limited to a short-term situation of 24 hours or less caused by an unanticipated event or failure that is out of the operator's control and is not due to operator negligence.

"Flaring" means use of a thermal oxidation system designed to combust hydrocarbons in the presence of a flame.

"Associated Gas" means the natural gas that is produced from an oil well during production operations and is either sold, re-injected, used for production purposes, [~~vented (rarely)~~]or flared. Low pressure gas associated with the working, breathing, and flashing of oil is not considered associated gas under this definition and shall be controlled in accordance with Rules R307-506 and R307-507.

R307-511-3. Applicability.

(1) Rule R307-511 applies to each producing well located at a well site as defined in 40 CFR 60.5430a Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(2) VOC control devices used for controlling associated gas are subject to Rule R307-508.
[~~(3) R307-511 does not apply to producing wells that are subject to an approval order issued under R307-401-8.~~]

R307-511-4. Associated Gas Flaring Requirements.
(1) Associated gas from a completed well shall either be routed to a process unit for combustion, routed to a sales pipeline, or routed to an operating VOC control device except for emergency release situations as defined in Section R307-511-2.

R307-511-5. Recordkeeping.
(1) The owner or operator shall maintain records for emergency releases under Subsection R307-511-4(1)[~~(a)~~].
(a) The time and date of event, volume of emissions and any corrective action taken shall be recorded.
(b) These records shall be kept for a minimum of three years.

KEY: air quality, nonattainment, offset
Date of Last Change: 2022[~~March 5, 2019~~]
Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-2-108

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R434-20**	**Filing ID 54496**

Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Primary Care and Rural Health	
Room no.:	4163	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 142005	
City, state and zip:	Salt Lake City, UT 84114-2005	
Contact person(s):		
Name:	**Phone:**	**Email:**
Ashley Moretz	801-350-1546	amoretz@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R434-20. Behavioral Health Workforce Reinvestment Initiative

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

This rule is being repealed to comply with Governor Cox's "One Utah Roadmap" workplan, which calls for consolidation of the Behavioral Health Workforce Reinvestment Initiative and the Health Care Workforce Financial Assistance Program in order to streamline program administration.

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

The rule is being repealed in its entirety, and program elements for behavioral health specialists will now be covered through amendments to the existing Rule R434-40, Health Care Workforce Financial Assistance Program. (EDITOR'S NOTE: The proposed amendment to Rule R434-40 is under ID 54497 in this issue, May 1, 2022, of the Bulletin.)

Fiscal Information

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

A) State budget:

None--State government will not receive or be required to expend any funds as a result of the repeal.

B) Local governments:

None--Local governments will not receive or expend any additional funding as a result of the repeal because they are not eligible to participate in the program.

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

None--Small businesses will not receive or be required to expend any funds as a result of the repeal because participation in the program is voluntary.

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

None--Non-small businesses will not receive or be required to expend any funds as a result of the repeal because participation in the program is voluntary.

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

None--Participation in the program is voluntary for persons other than small businesses, non-small businesses, state, or local government entities.

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

None--Participation in the program is voluntary for potentially 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 proposed amendment will have no fiscal impact on businesses. 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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.

Citation Information

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

Title 26, Chapter 10b		

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	**Date:**	04/05/2022

R434. Health, Family Health and Preparedness, Primary Care and Rural Health.

[~~R434-20. Behavioral Health Workforce Reinvestment Initiative.~~

~~R434-20-1. Purpose.~~

~~This rule implements the Utah Behavioral Health Workforce Reinvestment Initiative, which awards grant funds to behavioral health professionals to repay loans taken for educational expenses, in exchange for serving for a specified period of time in a publicly funded facility in the state.~~

~~R434-20-2. Authority.~~

~~This rule is required by Sections 26-9-1 and 26-9-2, and is promulgated under the authority of Section 26-1-30.~~

~~R434-20-3. Definitions.~~

~~The definitions in Section 26-46-101 apply in this rule. In addition, the following definitions apply in this rule:~~

~~(1) "Applicant" means an individual who submits a completed application.~~

~~(2) "Approved site" means a site approved by the Department that meets the eligibility criteria established in this rule.~~

~~(3) "Committee" means the Utah Health Care Workforce Advisory Committee created by Section 26-1-7.~~

~~(4) "Department" means the Utah Department of Health.~~

~~(5) "Educational expenses" means the cost of education in a health care profession, including books, education equipment, fees, materials, reasonable living expenses, supplies, and tuition.~~

~~(6) "Educational loan" means a commercial, government, or government-guaranteed loan for educational expenses.~~

~~(7) "Full-time equivalency" means a 40 hour work week.~~

~~(8) "Grant" means a grant of funds under a grant agreement.~~

~~(9) "Loan repayment" means a grant of funds under a grant to defray educational loans in exchange for service for a specified period of time at an approved site.~~

~~(10) "Mental health therapist" means an individual licensed under:~~

~~(a) Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act; or~~

~~(b) Title 58, Chapter 67, Utah Medical Practice Act, as a physician and surgeon, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as an osteopathic physician and surgeon who is engaged in the practice of mental health therapy.~~

~~(11) "Nurse" means an individual licensed to practice nursing under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act.~~

~~(12) "Physician" means an individual licensed to practice under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.~~

~~(13) "Physician assistant" means an individual licensed to practice under Title 58, Chapter 70a, Physician Assistant Practice Act.~~

~~(14) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for health care professionals' licensure.~~

~~(15) "Publicly funded" means any behavioral health facility that is either administered or run by a state, local or municipal government agency, contracted with a government agency to provide services on behalf of the government agency, or receives a substantial amount of state or federal funding, either state or federal.~~

~~(16) "Recipient" means an applicant selected to receive a loan repayment or scholarship grant under the act.~~

~~(17) "Service obligation" means professional service rendered at an approved site for a minimum of three years in exchange for a loan repayment grant.~~

~~R434-20-4. Behavioral Health Professionals Loan Repayment Grants -- Terms and Service.~~

~~(1) The Department may provide loan repayment grants to behavioral health professionals to repay loans for educational expenses in exchange for their agreement to serve for a specified period of time at an approved site in the state.~~

~~(2) Loan repayment grants may only repay bona fide loans taken by a behavioral health professional for educational expenses incurred while pursuing an education at an institution that awards a degree that qualifies a behavioral health professional to practice in their chosen field.~~

~~(3) Loan repayment grants under this section may not:~~

~~(a) be used to satisfy other obligations owed by the behavioral health professional under any similar program and may not be used to repay a loan that is in default at the time of application; or~~

~~(b) be in an amount greater than the total outstanding balance on the loans taken for educational expenses, including accrued interest.~~

~~(4) The Department shall disburse a grant when the recipient has performed at least six months of service at the approved site.~~

~~R434-20-5. Loan Repayment Grant Administration.~~

~~(1) The Department may consider committee recommendations in awarding loan repayment grants.~~

~~(2) A loan repayment grant recipient shall provide information reasonably necessary for administration of the program upon request by the Department.~~

~~(3) The Department shall determine the total amount of the loan repayment grant.~~

~~(4) The loan repayment grant recipient may not enter into any other similar agreement until the recipient satisfies the service obligation described in the grant agreement.~~

~~(5) Before receiving a loan repayment grant, the applicant must enter into a grant agreement with the Department that binds the applicant to the terms of the program.~~

~~(6) A recipient shall have a permanent, unrestricted license to practice a health care specialty in Utah before the first day of service under the grant agreement and maintain it for the duration of the service obligation.~~

~~(7) Prior to beginning to fulfill the service obligation, the site must obtain approval from the Department where the recipient will complete the service obligation.~~

~~(8) A loan repayment grant recipient shall obtain approval from the Department prior to changing the site where the recipient will fulfill the service obligation.~~

~~R434-20-6. Eligible Bona Fide Loans.~~

~~(1) An eligible bona fide loan is a loan used to pay for educational expenses leading to a qualifying behavioral health professional degree approved by the Department.~~

~~(2) A bona fide loan includes the following:~~

~~(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;~~

~~(b) a loan made by a federal, state, county, or city agency; or~~

~~(c) a loan made by another person that is documented by a contract notarized at the time of the making of the loan, indicative of an arm's length transaction, and with competitive term and rate as other loans available to students.~~

~~R434-20-7. Full-Time Equivalency Provisions for Recipients.~~

~~(1) The grant award amount shall be based on a full-time equivalency of 40 hours per week.~~

~~(2) A loan repayment grant recipient who provides services for less than 40 hours per week may receive a proportionately lower loan repayment grant.~~

~~(3) The Department may approve an award for a work schedule of less than 40 hours per week if the applicant's employer can demonstrate that performing less than 40 hours per week at the work site combined with other activities, such as on-call service, is greater than or equal to a full time equivalency.~~

~~R434-20-8. Approved Site Determination.~~

~~(1) Applications to host award recipients shall be submitted for approval to the Department.~~

~~(2) The Department shall use the following criteria to approve a site:~~

~~(a) the percentage of the population in the service area with incomes under 200% of the federal poverty level;~~

~~(b) the percentage of the population 65 years of age and over;~~

~~(c) the percentage of the population under 18 years of age;~~

~~(d) the distance to the nearest behavioral health care professional;~~

~~(e) the barriers to reaching the health care professionals;~~

~~(f) the ability of the site to provide support facilities and services for the requested health care professional;~~

~~(g) the financial stability of the site;~~

~~(h) the percent of patients in the service area who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP, federal, state or county funds;~~

~~(i) the applicant's policy and practice to provide care regardless of a patient's ability to pay; and~~

~~(j) whether a site is publicly funded.~~

~~(3) The Department may give preference to sites that provide letters of support from other individuals in the area served by the prospective employer, including:~~

~~(a) county and civic leaders;~~

~~(b) hospital administrators;~~

~~(c) business leaders, local chamber of commerce, citizens;~~

~~(d) local health departments;~~

~~(e) local substance abuse or mental health authorities, or their contracted providers; or~~

~~(f) other municipal funded programs.~~

~~(5) The Department may give preference to sites located in a service area designated by the Secretary of Health and Human Services as having a shortage of behavioral health care professionals and that are requesting a behavioral health specialist.~~

~~(6) A site must offer a salary and benefit package competitive with salaries and benefits of other behavioral health care professionals in the service area.~~

~~(7) A site shall provide educational loan repayment assistance to the eligible professional in an amount equal to 10% of the total award amount.~~

~~R434-20-9. Loan Repayment Grant Eligibility and Selection.~~

~~(1) In selecting a grant recipient for a loan repayment grant award, the Department may evaluate the applicant based on the following selection criteria:~~

~~(a) the extent to which an applicant's training in a health care specialty is needed at an approved site;~~

~~(b) the applicant's commitment to serve in an underserved area, demonstrated by any of the following:~~

~~(i) prior work or volunteer experience at a community or migrant health center, homeless shelter, public health department clinic, county substance use or mental health agency;~~

~~(ii) prior work or educational experience with the medically underserved through the Peace Corps, VISTA, or a similar volunteer program;~~

~~(iii) has cultural or language skills that are essential for provision of health care services to the medically underserved; or~~

~~(iv) other facts or experience that the applicant can demonstrate to the Department that establishes a commitment to serve in an underserved area.~~

~~(c) the applicant's:~~

~~(i) academic standing;~~

~~(ii) board certification or eligibility for board certification;~~

~~(iii) postgraduate training;~~

~~(iv) peer recommendations;~~

~~(v) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates; or~~

~~(vi) other facts that the applicant can demonstrate to the Department that establishes the applicant's professional competence;~~

~~(d) the applicant's financial need;~~

~~(e) the applicant's intention to serve patients during the service obligation who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP, federal, state or county funds;~~

~~(f) the applicant's willingness to provide care regardless of a patient's ability to pay; and~~

~~(g) the applicant's ability and willingness to provide care.~~

~~(3) An applicant must be a United States citizen or permanent resident.~~

~~R434-20-10. Loan Repayment Grant Service Obligation.~~

~~(1) The recipient shall enter into a grant agreement that includes the conditions of the award.~~

~~(2) In exchange for financial assistance under the act, the recipient shall serve for a period established at the time of the award in an underserved area at a site approved by the Department. The service period may not be for less than 36 months.~~

~~(3) Financial assistance for the recipient's service in an underserved area at a site approved by the Department will be disbursed according to the schedule established by the Department at the time of the award.~~

~~(4) Periods of internship, preceptorship, or other clinical training shall not satisfy the service obligation.~~

~~R434-20-11. Loan Repayment Grant Breach, Repayment, and Penalties.~~

~~Penalties for a recipient who fails to complete the service obligation shall be made in accordance with the grant agreement.~~

~~R434-20-12. Extension of Loan Repayment Grants.~~

~~(1) The Department may extend the period within which the loan repayment grant recipient must complete the service obligation:~~

~~(a) if the loan repayment grant recipient has signed a grant agreement for three years the loan repayment grant recipient may apply on or after the first day of service under a loan repayment grant to extend the grant agreement by one year;~~

~~(b) a loan repayment grant may be extended only at an approved site; and~~

~~(c) a loan repayment grant recipient that wishes to extend a loan repayment grant must inform the Department in writing at least six months prior to the end of the current service obligation.~~

~~(2) The service obligation may be extended only at an approved site.~~

~~R434-20-13. Release of Recipient from Service Obligation.~~

~~(1) The Department may release, in full or in part, a recipient from the service obligation under the grant agreement without penalty:~~

~~(a) if the recipient fails to meet the conditions of the award or if it reasonably appears the recipient will not meet the loan repayment grant conditions due to circumstances beyond their control;~~

~~(b) if the recipient is unable to fulfill the service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;~~

~~(c) if the recipient dies; or~~

~~(d) for other good cause shown, as determined by the Department.~~

~~(2) Extreme hardship sufficient to release the recipient without penalty includes:~~

~~(a) inability to complete the required schooling or fulfill service obligation due to permanent disability that prevents the recipient from completing school or performing any work for remuneration or profit; or~~

~~(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.~~

~~(3) The Department may develop alternative service obligation criteria that a loan repayment grant recipient may use to fulfill the service obligation if the loan repayment grant recipient is unable to fulfill the service obligation at an approved site due to reasons beyond the recipient's control.~~

~~**R434-20-14. Reporting Requirements of Award Recipients.**~~

~~The Department may require an award recipient to provide information regarding the academic performance, commitment to underserved areas, continuing financial need, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the recipient is in school, postgraduate training, and during the period the award recipient is completing the service obligation.~~

~~**R434-20-15. Reporting Requirements of Approved Sites.**~~

~~The Department may require the approved site to provide information regarding the award recipients' performance, commitment to underserved areas, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the award recipient is completing the service obligation.~~

~~**KEY: medically underserved, grants, scholarships**~~
~~**Date of Last Change: September 22, 2020**~~
~~**Authorizing, and Implemented or Interpreted Law: 26-1-30**~~**]**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R434-40**	**Filing ID 54497**

Agency Information

1. Department:	Health
Agency:	Family Health and Preparedness, Primary Care and Rural Health
Room no.:	4163
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 142005
City, state and zip:	Salt Lake City, UT 84114-2005

Contact person(s):		
Name:	**Phone:**	**Email:**
Ashley Moretz	801-350-1546	amoretz@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R434-40. Utah Health Care Workforce Financial Assistance Program Rules

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

This rule is being amended to comply with Governor Cox's "One Utah Roadmap" workplan, which calls for consolidation of the Behavioral Health Workforce Reinvestment Initiative and the Health Care Workforce Financial Assistance Program in order to streamline program administration.

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

The rule is being amended to incorporate program elements for behavioral health specialists that were formerly reflected in Rule R434-20, Behavioral Health Workforce Reinvestment Initiative, which is being repealed. Clarifications have been made to definitions for mental health professionals. The different criteria for site match, service obligations, and provider eligibility have been reconciled. Additionally, the Full-Time Equivalency Provisions for Recipients have been amended to include separate criteria for providers of primary medical care and mental health services. (EDITOR'S NOTE: The proposed repeal of Rule R434-20 is under ID 54496 in this issue, May 1, 2022, of the Bulletin.)

Fiscal Information

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

A) State budget:

None--State government will not receive or be required to expend any funds as a result of the amendment.

B) Local governments:

None--Local governments will not receive or expend any additional funding as a result of the amendment because they are not eligible to participate in the program.

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

None--Small businesses will not receive or be required to expend any funds as a result of the amendment because participation in the program is voluntary.

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

None--Non-small businesses will not receive or be required to expend any funds as a result of the amendment because participation in the program is voluntary.

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

None--Participation in the program is voluntary for persons other than small businesses, non-small businesses, state, or local government entities.

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

None--Participation in the program is voluntary for potentially 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 proposed amendment will have no fiscal impact on businesses. 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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 26-46-102

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	**Date:**	04/09/2022

R434. Health, Family Health and Preparedness, Primary Care and Rural Health.
R434-40. Utah Health Care Workforce Financial Assistance Program[~~ Rules~~].
R434-40-1. Purpose.

This rule implements the Utah Health Care Workforce Financial Assistance Program Act, [~~Utah Code, Title 26,~~]Chapter 46; which governs the award of grant funds to geriatric[~~ professionals~~],[~~ and~~] health care[~~ professionals~~], and mental health professionals to repay loans taken for educational expenses,[~~;~~] and the award of scholarship funds to individuals seeking to become nurse educators, in exchange for serving for a specified period [~~of time~~]in an underserved area of the state.

R434-40-2. Authority.

This rule is required by Subsections 26-46-102(3) and 26-46-103(6)(a), and is promulgated under the authority of Section 26-1-5.

R434-40-3. Definitions.

The definitions as they appear in Section 26-46-101 apply. In addition:

(1) "Applicant" means an individual who submits a completed application and meets the application requirements established by the Department for a loan repayment or scholarship grant under the act.

(2) "Approved site" means a site approved by the Department that meets the eligibility criteria established in this rule and that is:

(a) within an underserved area where health care is provided and the majority of patients served are medically underserved due to lack of health care insurance, unwillingness of existing geriatric professional and health care professionals to accept patients covered by government health programs, or other economic, cultural, or language barriers to health care access; or

(b) that is a Utah nursing school or training institution that provides a nursing education course of study to prepare persons for the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act; has a shortage of nurse educator faculty; and meets the criteria established by the Department.

(3) "Clinical-related administrative, management or other activities" means charting, administrative care coordination activities, training, laboratory follow-up, patient correspondence, attending staff meetings, activities related to maintaining professional licensure and other non-treatment related activities pertaining to the participant's approved practice. Any time spent in a management role is also considered to be an administrative activity. Clinical service provided by award recipients while a student or resident observes should be counted as patient care, not teaching, as the award recipient is treating the patient.

(4) "Committee" means the Utah Health Care Workforce Advisory Committee created by Section 26-1-7.

(5[~~4~~]) "Dentist" means an individual licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, to practice dentistry.

(6[~~5~~]) "Department" means the Utah Department of Health and Human Services.

(7[~~6~~]) "Educational expenses" means the cost of education in a health care profession, including books, education equipment, fees, materials, reasonable living expenses, supplies, and tuition.

(8[~~7~~]) "Educational loan" means a commercial, government, or government-guaranteed loan taken to pay educational expenses.

(9[~~8~~]) "Geriatric" means individuals 65 years old and older.

(10[~~9~~]) "Geriatric professional" is further defined to mean an individual who has successfully completed one or more of the following:

a. graduate level certification in gerontology from a nationally accredited certifying organization or transcripted program of an accredited academic institution;

b. graduate degree in gerontology; or

c. additional training focused on the geriatric or gerontological aspects of the professional's discipline. Additional training may include[~~, but is not limited to,~~] internship, practicum, preceptorship, residency, or fellowship.

(11[~~0~~]) "Grant" means a grant of funds under a grant agreement.

(12[~~1~~]) "Loan repayment" means a grant of funds under a grant to defray educational loans in exchange for service for a specified period [~~of time~~]at an approved site.

(13[~~2~~]) "Mental health professional[~~therapist~~]" means[~~ an individual licensed under~~]:

(a) a mental health therapist, as defined in Subsection 58-60-102(5)[~~Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act~~]; or

(b) an individual practicing within the scope of practice described in Title 58, Chapter 60, Part 5, Substance Use Disorder Counselor Act.[~~Title 58, Chapter 67, Utah Medical Practice Act, as a physician and surgeon, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as an osteopathic physician and surgeon who is engaged in the practice of mental health therapy~~].

(14[~~3~~]) "Nurse" means an individual licensed to practice nursing in the state under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(15[~~4~~]) "Nurse educator" means a nurse employed by a Utah school of nursing providing nursing education to individuals leading to licensure or certification as a nurse.

(16[~~5~~]) "Occupational Therapist" means an individual licensed to practice in the state under Title 58, Chapter 42a, Occupational Therapy Practice Act.

(17[~~6~~]) "Pharmacist" means an individual licensed to practice in the state under Title 58, Chapter 17b, Pharmacy Practice Act.

(18[~~7~~]) "Physical Therapist" means an individual licensed to practice in the state under Title 58, Chapter 24b, Physical Therapy Practice Act.

(19[~~8~~]) "Physician" means an individual licensed to practice in the state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(20[~~19~~]) "Physician assistant" means an individual licensed to practice in the state under Title 58, Chapter 70a, Physician Assistant Practice Act.

(21[~~0~~]) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for licensure of a geriatric[~~ professional~~], [~~and~~]health care[~~ professionals~~],[~~ licensure~~] or a mental health professional, and as required by this rule.

(22[~~1~~]) "Publicly funded" means any behavioral health facility that is either administered or run by a state, local or municipal government agency, contracted with a government agency to provide

services on behalf of the government agency, or receives a substantial amount of state or federal funding, either state or federal.

(23) "Recipient" means an applicant selected to receive a loan repayment or scholarship grant under the act.

(24[~~2~~]) "Scholarship" means a grant of funds for educational expenses given to an individual under a grant agreement where the individual agrees to become a nurse educator in exchange for service for a specified period[~~ of time~~] at an approved site that is a Utah nursing school or training institution.

(2[~~3~~]5) "Service obligation" means professional service rendered at an approved site for a minimum of three[~~two~~] years in exchange for a scholarship or loan repayment grant.

R434-40-4. [~~Geriatric Professionals and Health Care Professionals~~]Loan Repayment Grants -- Terms and Service.

(1) [~~To increase the number of geriatric professionals and health care professionals in underserved areas of the state, t~~]The Department may provide loan repayment grants to geriatric[~~ professional~~],[~~ and~~] health care[~~ professionals~~], and mental health professionals to repay loans taken for educational expenses in exchange for their agreement to serve for a specified period [~~of time~~]at an approved site in the state.

(2) Loan repayment grants may be given only to repay bona fide loans taken by eligible individuals[~~a geriatric professional and health care professional~~] for educational expenses incurred while pursuing an education at an institution that awards a degree that qualifies the applicant[~~a geriatric professional and health care professional~~] to practice in the applicant's professional[~~'s~~] field.

(3) Loan repayment grants under this section may not:

(a) be used to satisfy other obligations owed by the recipient[~~geriatric professional and health care professional~~] under any similar program and may not be used to repay a loan that is in default at the time of application; or

(b) be in an amount greater than the total outstanding balance on the loans taken for educational expenses, including accrued interest.

(4) The Department may not disburse any grant [~~monies~~]moneys under the act until the recipient has performed at least six months of service at the approved site.

R434-40-5. [~~Health Care Professionals~~]Scholarship Grants -- Terms and Service.

(1) To increase the number of nurse educators in underserved areas in the state, the Department may provide scholarship grants to individuals seeking to become nurse educators in exchange for their agreement to serve for a specified period [~~of time~~]at an approved site in the state.

(2) Scholarship grants may be given to pay educational expenses while pursuing an education at an institution accredited by the National League of Nursing that provides training leading to the award of a final degree that qualifies the applicant to become a nurse educator in the state.

(3) Scholarship grants given under this section may not be used to satisfy other obligations owed under any similar program and may not be in an amount more than is reasonably necessary to meet educational expenses.

(4) Scholarship grant recipients shall seek a course of education following a schedule of at least a minimum number of course hours per year as set by the Department which leads to receipt of a degree or completion of specified additional course work in a number of years as established by the Department.

R434-40-6. Loan Repayment Grant Administration.

(1) The Department may award loan repayment grants to repay loans taken for eligible individuals'[~~geriatric professionals' and health care professionals'~~] educational expenses. The Department may consider committee recommendations in awarding loan repayment grants.

(2) As requested by the Department, a loan repayment grant recipient shall provide information reasonably necessary for administration of the program.

(3) The Department shall determine the total amount of the loan repayment grant.

(4) The loan repayment grant recipient may not enter into any other similar contract until the recipient satisfies the service obligation described in the grant agreement.

(5) The Department may approve payment to a loan repayment grant recipient for increased federal, state, and local taxes caused by receipt of the loan repayment grant.

(6) The Department shall not pay for an educational loan of a loan repayment grant applicant who is in default at the time of an application.

(7) Before receiving a loan repayment grant, the applicant must enter into a grant agreement with the Department that binds the individual[~~him~~] to the terms of the program.

(8) A loan repayment grant recipient must have a permanent, unrestricted license to practice in the recipient's health care specialty in Utah before the recipient's first day of service under the grant agreement.

(9) [~~Prior to~~]Before beginning to fulfill the service obligation, a loan repayment grant recipient must obtain approval from the Department of the site where the recipient may complete the service obligation.

(10) A loan repayment grant recipient must obtain approval from the Department [~~prior to~~]before changing the approved site where the recipient fulfills the service obligation.

R434-40-7. Scholarship Grant Administration.

(1) The Department may award scholarship grant funds to an applicant for a maximum of four years or until earning the nursing postgraduate degree. The Department may consider committee recommendations in awarding scholarship grants.

(2) The Department may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(3) The scholarship grant recipient may not enter into a scholarship agreement other than with the program established in Section 26-46-1 until the service obligation agreed upon in the grant agreement with the Department is satisfied.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in the grant agreement with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year the recipient received a scholarship grant under this program, with a minimum of [~~two~~]three years required.

(6) The Department may cancel a scholarship grant at any time if it finds that the scholarship grant recipient has voluntarily or involuntarily terminated the recipient's schooling, postgraduate training, or if it appears to be a reasonable certainty that the scholarship grant recipient does not intend to practice as required by statute, rules, and grant agreement in an underserved area in the state.

(7) Upon completion of schooling and required postgraduate training, the scholarship grant recipient is responsible for finding employment at an approved site.

(8) A scholarship grant recipient must obtain approval from the Department [~~prior to~~]before beginning service obligation at an approved site.

(9) A scholarship grant recipient must obtain approval from the Department [~~prior to~~]before changing the approved site where the recipient fulfills the service obligation.

(10) A scholarship grant recipient must obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period [~~of time~~]at an approved site within three months of completion of postgraduate training.

(11) If there is no available approved site upon a scholarship grant recipient's graduation, the recipient shall repay the scholarship grant amount as negotiated in the scholarship grant agreement.

R434-40-8. Eligible Bona Fide Loans.

(1) An eligible bona fide loan is a loan used to pay for educational expenses leading to a qualifying receipient's[~~geriatric professional or health care~~] professional degree approved by the Department.

(2) A bona fide loan includes the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person that is documented by a contract notarized at the time of the making of the loan, indicative of an arm's length transaction, and with competitive term and rate as other loans available to students; or

(d) a loan that the applicant conclusively demonstrates to the Department is a bona fide loan.

R434-40-9. Full-Time Equivalency Provisions for Recipients.

(1) The loan repayment grant amount is based on the level of full-time equivalency that the loan repayment grant recipient agrees to work.

(2) For full-time providers of primary medical care services, clinicians must work a minimum of 40 hours/week, for a minimum of 45 weeks/service year. At least 32 hours/week are spent providing patient care at the approved service sites during normally scheduled office hours. Of the minimum 32 hours spent providing patient care, no more than 8 hours per week may be spent in a teaching capacity. The remaining 8 hours/week may be spent providing patient care for patients at the approved sites, providing patient care in an approved alternative site, including hospitals, nursing homes, or shelter, or performing clinical-related administrative activities.[~~A loan repayment grant recipient who provides services for at least 40 hours per week may be awarded a loan repayment grant based on the percentages as determined by the Department.~~]

(3) For part-time providers of primary medical care services, clinicians must work a minimum of 20 hours/week, for a minimum of 45 weeks/service year. At least 16 hours/week are spent providing patient care at the approved service sites during normally scheduled office hours. Of the minimum 16 hours spent providing patient care, no more than 4 hours per week may be spent in a teaching capacity. The remaining 4 hours/week are spent providing patient care at the approved sites, providing patient care in an approved alternative site, including hospitals, nursing homes, or shelters, or performing clinical-related administrative activities.[~~A loan repayment grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower loan repayment grant based on a full-time equivalency of 40 hours per week.~~]

(4) For full-time providers of mental health services, clinicians must work a minimum of 40 hours/week, for a minimum of 45 weeks/service year. At least 20 hours/week must be spent providing patient care at the approved service sites during normally scheduled office hours. Of the minimum 20 hours spent providing patient care, no more than 8 hours/week may be spent in a teaching capacity, performing clinical-related administrative activities, or in an alternative site, including hospitals, nursing homes, or shelters, as directed by the approved sites. The remaining 20 hours/week must be spent providing patient care at the approved service sites or performing service as a behavioral or mental health professional in schools or other community-based settings when directed by the approved sites.

(5) For part-time providers of mental health services, clinicians must work a minimum of 20 hours/week, for a minimum of 45 weeks/service year. At least 10 hours/week are spent providing patient care at the approved service sites during normally scheduled office hours. Of the minimum 10 hours spent providing patient care, no more than 4 hours per week may be spent in a teaching capacity, performing clinical-related administrative activities, or in an alternative site, including hospitals, nursing homes, and shelters, as directed by the approved sites. The remaining 10 hours/week may be spent providing patient care at the approved service sites or performing service as a behavioral or mental health professional in schools or other community-based settings when directed by the approved sites.

(6) A full-time loan repayment grant recipient whose professional responsibilities change such that the recipient no longer meets the criteria for a full-time award may receive part-time award funding for the remainder of the service obligation, provided that the recipient meets the criteria for a part-time award and the recipient's site approves the new funding amount.

(7) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in the scholarship grant with the Department.

(8[~~5~~]) A scholarship grant recipient must serve one year of service obligation for each year the recipient received a scholarship grant under this program, with a minimum of [~~two~~]three years required.

(9[~~6~~]) The Department may approve a full-time equivalency of less than 40 hours per week if the applicant's employer can demonstrate that performing less than 40 hours per week at the work site combined with other activities, such as on-call service, is equivalent to a 40 hour work week.

R434-40-10. Approved Site Determination.

(1) The Department shall approve sites based on comprehensive applications submitted by sites.

(2) The criteria the Department may use to determine an approved site for sites that are not nursing schools include:

(a) the percentage of the population with incomes under 200% of the federal poverty level;

(b) the percentage of the population 65 years of age and over;

(c) the percentage of the population under 18 years of age;

(d) the distance to the nearest geriatric[~~ professionals~~], [~~or~~]health care[~~ professionals~~], or mental health professional, and barriers to [~~reaching the geriatric professionals or health care professionals~~]accessing their services;

(e) ability of the site to provide support facilities and services for the requested [~~geriatric professional or~~]health care professional;

(f) financial stability of the site;

(g) percent of patients served who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP; and

(h) the applicant's policy and practice to provide care regardless of a patient's ability to pay.

(3) The criteria the Department may use to determine an approved site for sites that are nursing schools include:

(a) a demonstrated shortage of nursing educator faculty;

(b) number of and degrees sought by students;

(c) number of students denied for each degree sought;

(d) residency of students;

(e) ability of the nursing school to provide support facilities and services for the requested position to be trained;

(f) faculty to student ratio, including ratios of clinical and classroom instructors;

(g) average class sizes for each of the degrees offered by the school;

(h) school plans to expand enrollment;

(i) diversity of students;

(j) current and projected staffing for the type of instructor requested;

(k) sources and stability of funding to hire and support the prospective instructor; and

(l) distance to the next closest nursing school.

(4) The Department may give preference to sites that provide letters of support from the area served by the prospective employer, such as from:

(a) a majority of practicing health care professionals;

(b) county and civic leaders;

(c) hospital administrators;

(d) business leaders, local chamber of commerce, citizens; and

(e) local health departments.

(5) The Department may give preference to sites located in a service area designated by the Secretary of Health and Human Services as having a health care professional shortage and that are requesting one of the following medical specialties:

(a) family practice;

(b) internal medicine;

(c) obstetrics and gynecology;[~~ and~~]

(d) pediatrics; or

(e) mental health.

(6) To become approved, a site must offer a salary and benefit package competitive with salaries and benefits of other geriatric professionals and health care professionals in the service area.

(7) The health care facility employing the eligible professional shall provide education loan repayment assistance to the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional.

(8) Other criteria that the site applicant can demonstrate as furthering the purposes of the act.

R434-40-11. Loan Repayment Grant Eligibility and Selection.

(1) In selecting a loan repayment grant recipient for a loan repayment grant award, the Department may evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training in a health care specialty is needed at an approved site;

(b) the applicant's commitment to serve in an underserved area, which can be demonstrated in any of the following ways:

(i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, worked with geriatric populations, or other service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, has worked with geriatric populations, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of health care services to the medically underserved;

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes the applicant's commitment to serve in an underserved area; and

(v) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(c) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving in an underserved area;

(iii) board certification or eligibility;

(iv) postgraduate training achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the Department that establishes the applicant's professional competence or conduct;

(d) the applicant's financial need;

(e) the applicant's willingness to serve patients who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;

(f) the applicant's willingness to provide care regardless of a patient's ability to pay;

(g) the applicant's ability and willingness to provide care; and

(h) the applicant's achieving an early match with an approved site.

(2) To be eligible for a loan repayment grant, an applicant must be a United States citizen or permanent resident.

(3) The applicant shall submit a written commitment from the health care facility employing the eligible professional that the health care facility will provide education loan repayment assistance to the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional.

(4) The Department may consider only grant applicants who apply within 18 months of the applicant's beginning employment at an approved eligible site.

(5) The Department may give priority to health care professionals working in publicly funded sites.

R434-40-12. Scholarship Grant Eligibility and Selection.

(1) In selecting a recipient for a nurse scholarship grant, the Department may evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in an underserved area, which may be demonstrated in any of the following ways:

(i) has worked or volunteered to serve in an underserved area or service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for services in an underserved area; and

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes the applicant's commitment to the medically underserved.

(b) evidence that the applicant has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;

(c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;

(d) the applicant's evidence that they have[~~s~~] been accepted by or currently attends an accredited school;

(e) the applicant's projected educational expenses;

(f) the applicant's educational, personal, and professional references that demonstrate the applicant's good character and potential to successfully complete school; and

(g) the applicant's essay which is required as part of the scholarship application.

(2) In selecting a scholarship grant recipient, the Department may give preference to applicants who agree to serve for a greater length of time in return for scholarship assistance.

(3) To be eligible to receive a scholarship grant, an applicant must be a United States citizen or permanent resident.

R434-40-13. Loan Repayment and Scholarship Grant Service Obligation.

(1) Before receiving an award under the act, the recipient shall enter into a grant agreement with the state agreeing to the conditions upon which the award is to be made.

(2) The grant agreement shall include necessary conditions to carry out the purposes of the act.

(3) In exchange for financial assistance under the act, the recipient shall serve for a period established at the time of the award, but which may not be for less than 24 months, in an underserved area at a site approved by the Department.

(4) The recipient's service in an underserved area at a site approved by the Department retires the amount owed for the award according to the schedule established by the Department at the time of the award.

(5) Periods of internship, preceptorship, or other clinical training do not satisfy the service obligation under the act.

(6) A scholarship grant recipient must:

(a) be a full-time matriculated student and meet the school's requirements to continue in the program and receive an advanced degree within the time specified in the scholarship grant agreement, unless extended pursuant to Section R434-40-16;

(b) within three months before and not exceeding one month following graduation or completion of postgraduate training, a scholarship grant recipient shall provide to the Department documented evidence of an approved site's intent to hire [~~him~~]the recipient;[~~.~~]

(c) upon completion of schooling or postgraduate training, the scholarship grant recipient must find employment at an approved site;[~~.~~]

(d) obtain an unrestricted license to practice in Utah [~~prior to~~]before beginning to fulfill the service obligation at the approved site;[~~.~~]

(e) obtain approval from the Department [~~prior to~~]before beginning to fulfill the recipient's service obligation at an approved site;[~~.~~]

(f) begin employment at the approved site within three months of graduation or completion of postgraduate training; and[~~.~~]

(g) obtain Department approval [~~prior to~~]before changing the approved site where the recipient fulfills the service obligation.

R434-40-14. Loan Repayment Grant Breach, Repayment, and Penalties.

Penalties for a recipient who fails to complete the service obligation shall be made in accordance with the grant agreement.

R434-40-15. Scholarship Grant Breach, Repayment, and Penalties.

Penalties for a recipient who fails to complete the service obligation shall be made in accordance with the grant agreement.

R434-40-16. Extension of Loan Repayment and Scholarship Grants.

(1) The Department may extend the period within which the loan repayment grant recipient must complete the service obligation:

(a) if the loan repayment grant recipient has signed a grant agreement for three[~~two~~] years the loan repayment grant recipient may apply on or after the recipient's first day of service under a loan repayment grant to extend the grant agreement by one year;

(b) a loan repayment grant may be extended only at an approved site; and

(c) a loan repayment grant recipient who desires to extend the loan repayment grant must inform the Department in writing of the recipient's interest in extending the grant agreement at least six months [~~prior to~~]before the end of the current service obligation.

(2) The Department may extend the period within which the scholarship grant recipient must complete the recipient's education:

(a) if the scholarship grant recipient has a serious illness;

(b) if the scholarship grant recipient is activated by the military; or

(c) for other good cause shown, as determined by the Department.

(3) The service obligation may be extended only at an approved site.

R434-40-17. Release of Recipient from Service Obligation.

(1) The Department may cancel or release, in full or in part, a recipient from [~~his~~]the service obligation under the grant agreement without penalty:

(a) if the service obligation has been fulfilled;

(b) if the recipient fails to meet the conditions of the award or if it reasonably appears the recipient will not meet the loan repayment or scholarship grant conditions;

(c) if the recipient [~~is unable to~~]cannot fulfill the service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;

(d) if the recipient dies; or

(e) for other good cause shown, as determined by the Department.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

(a) inability to complete the required schooling or fulfill service obligation due to permanent disability that prevents the recipient from completing school or performing any work for remuneration or profit; or

(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

(3) The Department may develop alternative service obligation criteria that a loan repayment or scholarship grant recipient may use to fulfill the service obligation if the loan repayment or scholarship grant recipient [~~is unable to~~]cannot fulfill the service obligation at an approved site due to reasons beyond the recipient's control.

R434-40-18. Reporting Requirements of Award Recipients.

The Department may require an award recipient to provide information regarding:

(1) the academic performance;

(2) commitment to underserved areas;

(3) continuing financial need;

(4) service obligation fulfillment; and

(5) other information reasonably necessary for the administration of the program during the period the recipient is in school; postgraduate training; and during the period the award recipient is completing the service obligation.

R434-40-19. Reporting Requirements of Approved Sites.

The Department may require the approved site to provide information regarding:

(1) the award recipients' performance;

(2) commitment to underserved areas;

(3) service obligation fulfillment; and

(4) other information reasonably necessary for the administration of the program during the period the award recipient is completing the service obligation.

KEY: medically underserved, grants, scholarships
Date of Last Change: 2022[~~June 24, 2021~~]
Notice of Continuation: May 8, 2019
Authorizing, and Implemented or Interpreted Law: 26-46-102

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	**R590-173**	**Filing ID 54524**

Agency Information

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901
Contact person(s):	
Name:	**Phone:** / **Email:**
Steve Gooch	801-957-9322 / sgooch@utah.gov
Please address questions regarding information on this notice to the agency.	

General Information

2. Rule or section catchline:

R590-173. Credit for Reinsurance

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 to reorganize this rule to match more closely with the NAIC model regulation that is required for accreditation. It is also being updated in compliance with Executive Order No. 2021-12.

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

Section R590-173-9 is a new section that is required for NAIC accreditation. It deals with recognizing reinsurance credit for liabilities ceded to an international company regulated by a reciprocal jurisdiction. Other changes fix style issues to bring the rule text more in line with current rulewriting standards, make the language of this rule more clear, and update Section R590-173-16 to use the Department of Insurance's (Department) current language.

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

B) Department head approval of regulatory impact analysis:
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-201	Section 31A-17-404.3	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	04/15/2022

R590. Insurance, Administration.
R590-173. Credit For Reinsurance.
[~~R590-173-1. Authority.~~
~~This rule is promulgated pursuant to the authority granted by Section 31A-2-201 of the Insurance Code.~~

~~R590-173-2. Purpose.~~
~~The purpose of this rule is to set forth requirements the commissioner deems necessary to carry out the provisions of Section 31A-17-404. The actions and information required by this rule are~~

~~necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.~~

~~R590-173-3. Definitions.~~

~~A. "Accredited Reinsurer" means an insurer that has, by order of the commissioner, been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied in that it is an authorized insurer in at least one state as provided for in Subsection 31A-17-404(3)(e).~~

~~B. "Beneficiary" means the entity for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.~~

~~C. "Grantor" means the entity that has established a trust for the benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited, untrusteed assuming insurer.~~

~~D. "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means and includes:~~

~~(1) For business ceded by domestic insurers authorized to write accident and health or property and casualty insurance:~~

~~(a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer:~~

~~(b) reserves for losses reported and outstanding;~~

~~(c) reserves for losses incurred but not reported;~~

~~(d) reserves for allocated loss expenses; and~~

~~(e) unearned premiums.~~

~~(2) For business ceded by domestic insurers authorized to write life, accident and health or annuity insurance:~~

~~(a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums:~~

~~(b) aggregate reserves for accident and health policies;~~

~~(c) deposit funds and other liabilities without life or accident and health contingencies; and~~

~~(d) liabilities for policy and contract claims.~~

~~E. "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) and that either:~~

~~(1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation, that:~~

~~(a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S. C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and~~

~~(b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Section 1703; or~~

~~(2) is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection.~~

~~F. "Obligations," means:~~

~~(a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;~~

~~(b) reserves for reinsured losses reported and outstanding;~~

~~(c) reserves for reinsured losses incurred but not reported; and~~

~~(d) reserves for allocated reinsured loss expenses and unearned premiums.~~

~~G. "Promissory note," when used in connection with a manufactured home, includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.~~

~~H.(1) "Qualified United States financial institution" for the purposes of Section R590-173-7 and Subsection R590-173-9.A.(3) means an institution that:~~

~~(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;~~

~~(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and~~

~~(c) has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.~~

~~(2) "Qualified United States financial institution," for general purposes of this rule, means an institution that is eligible to act as a fiduciary of a trust that:~~

~~(a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and~~

~~(b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.~~

~~I. "Trusteed Reinsurer" means an alien insurer which by order of the commissioner has been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied through a trust fund provided for in Subsection 31A-17-404(3)(d).~~

~~R590-173-4. Credit for Reinsurance - Reinsurer Licensed in this State.~~

~~The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers authorized to do business in this state as of the date of the ceding insurer's statutory financial statement.~~

~~R590-173-5. Credit for Reinsurance - Accredited and Trusteed Reinsurers.~~

~~The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been granted accredited or trusteed reinsurer status in this state as of the date of the ceding insurer's statutory financial statement.~~

~~R590-173-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.~~

~~A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:~~

~~(1) is domiciled and licensed in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 31A-17-404 and this rule;~~

~~(2) maintains total adjusted capital above the Company Action Level RBC; and~~

~~(3) files a properly executed Certificate of Assuming Insurer, Form AR-1, with the commissioner as evidence of its submission to this state's authority to examine its books and records.~~

~~B. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same insurance holding company system.~~

~~R590-173-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.~~

~~A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.~~

~~B. The following requirements apply to the following categories of assuming insurer:~~

~~(1) the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than $20,000,000, except as provided in paragraph (2) of this subsection. For purposes of this section, liabilities attributable to business written in the United States means the liabilities attributable to reinsurance ceded by United States domiciled insurers.~~

~~(2) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.~~

~~(3)(a) The trust fund for a group of incorporated and individual unincorporated underwriters shall consist of:~~

~~(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' aggregate liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;~~

~~(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' aggregate insurance and reinsurance liabilities attributable to business written in the United States; and~~

~~(iii) in addition to these trusts, the group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.~~

~~(b) The incorporated members of the group will not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:~~

~~(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or~~

~~(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.~~

~~(4)(a) The trust fund for a group of incorporated insurers under common administration shall:~~

~~(i) consist of funds in trust in an amount not less than the assuming insurers' aggregate liabilities attributable to business ceded by United States domiciled insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group and;~~

~~(ii) maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and~~

~~(iii) file a properly executed Certificate of Assuming Insurer, Form AR-1, as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined shall bear the expense of any such examination.~~

~~(b) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.~~

~~C.(1) Credit for reinsurance will not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the~~

~~ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:~~

~~(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;~~

~~(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;~~

~~(c) the trust shall be subject to examination as determined by the commissioner;~~

~~(d) the trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and~~

~~(e) no later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.~~

~~(2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.~~

~~(b) The assets shall be distributed by and claims of United States trust beneficiaries shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.~~

~~(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part of the assets, to the trustee for distribution in accordance with the trust agreement.~~

~~(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.~~

~~D. Assets deposited in the trust shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust will not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Subsection R590-173-7.D.(1)(e), (3), (5)(b) or (6), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust shall be invested only as follows:~~

~~(1) government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:~~

~~(a) the United States or by any agency or instrumentality of the United States;~~

~~(b) a state of the United States;~~

~~(c) a territory, possession or other governmental unit of the United States;~~

~~(d) an agency or instrumentality of a governmental unit referred to in Subsections R590-173-7.D.(1)(b) and (c) if the obligations shall be by law payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but will not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or~~

~~(e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;~~

~~(2) obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:~~

~~(a) are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;~~

~~(b) are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or~~

~~(c) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;~~

~~(3) obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;~~

~~(4) an investment made pursuant to the provisions of Subsection R590-173-7.D. (1), (2) or (3) shall be subject to the following additional limitations:~~

~~(a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities will not exceed 5% of the assets of the trust;~~

~~(b) an investment in any one mortgage-related security will not exceed 5% of the assets of the trust;~~

~~(c) the aggregate total investment in mortgage-related securities will not exceed 25% of the assets of the trust; and~~

~~(d) preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subsections R590-173-7.D.(2)(a) and (2)(c), but will not exceed 2% of the assets of the trust.~~

~~(5) Equity interests~~

~~(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:~~

~~(i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and~~

~~(ii) the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S. C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust will not invest in equity interests under this subsection an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;~~

~~(b) investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:~~

~~(i) all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and~~

~~(ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;~~

~~(c) an investment in or loan upon any one institution's outstanding equity interests will not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, will not exceed 10% of the assets in the trust;~~

~~(6) obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.~~

~~(7) Investment companies~~

~~(a) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S. C. Section 802, are permissible investments if the investment company:~~

~~(i) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection R590-173-7.D. (1), (2) or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Subsection R590-173-7.D.(1), (2) or (3); or~~

~~(ii) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection R590-173-7.D.(5)(a);~~

~~(b) investments made by a trust in investment companies under this subsection will not exceed the following limitations:~~

~~(i) an investment in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(i) will not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies will not exceed 25% of the assets in the trust; and~~

~~(ii) investments in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(ii) will not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection R590-173-7.D.(5)(a).~~

~~E. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 9 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.~~

~~R590-173-8. Credit for Reinsurance--Certified Reinsurers.~~

~~A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of Administrative Rule R590-114, Letters of Credit, or Sections 10, or 11 of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:~~

~~TABLE~~

~~Ratings~~	~~Security Required~~
~~Secure - 1~~	~~0%~~
~~Secure - 2~~	~~10%~~
~~Secure - 3~~	~~20%~~
~~Secure - 4~~	~~50%~~
~~Secure - 5~~	~~75%~~
~~Vulnerable - 6~~	~~100%~~

~~(1) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.~~

~~(2) The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.~~

~~(3) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:~~

~~(a) Line 1: Fire~~

~~(b) Line 2: Allied Lines~~

~~(c) Line 3: Farmowners multiple peril~~

~~(d) Line 4: Homeowners multiple peril~~

~~(e) Line 5: Commercial multiple peril~~

~~(f) Line 9: Inland Marine~~

~~(g) Line 12: Earthquake~~

~~(h) Line 21: Auto physical damage~~

~~(4) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was~~

~~provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.~~

~~(5) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this Section.~~

~~B. Certification Procedure.~~

~~(1) The commissioner shall promptly post notice upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.~~

~~(2) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.~~

~~(3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:~~

~~(a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to Subsection C of this section.~~

~~(b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000 and a central fund containing a balance of at least $250,000,000.~~

~~(c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:~~

~~(i) Standard and Poor's;~~

~~(ii) Moody's Investors Service;~~

~~(iii) Fitch Ratings;~~

~~(iv) A.M. Best Company; or~~

~~(v) any other nationally recognized Statistical rating organization.~~

~~(d) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.~~

~~(4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited, to the following:~~

~~(a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;~~

~~TABLE~~

~~Financial Strength Ratings by Rating Agency~~

Ratings	Best	S and P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B- , C++, C+, C , C- , D, E, F	BB+, BB, BB , B+, B- , CCC, CC, C, D, R	Ba1, Ba2, Ba3 B1, B2, B3, Caa, Ca, C	BB+, BB, BB- B+, B, B- , CCC+, CC, CCC- , DD

~~(b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;~~

~~(c) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);~~

~~(d) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) available from the commissioner upon request;~~

~~(e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;~~

~~(f) Regulatory actions against the certified reinsurer;~~

~~(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (h) below;~~

~~(h) For certified reinsurers not domiciled in the U.S., audited financial statements, (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last 3 years filed with its non-U.S. jurisdiction supervisor;~~

~~(i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;~~

~~(j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and~~

~~(k) Any other information deemed relevant by the commissioner.~~

~~(5) Based on the analysis conducted under subparagraph 4(e) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subparagraph (4)(a) if the commissioner finds that~~

~~(a) more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed $100,000 for each cedent; or~~

~~(b) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds $50,000,000.~~

~~(6) The assuming insurer must submit a properly executed Form CR-1 (available from the commissioner upon request) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.~~

~~(7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:~~

~~(a) Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;~~

~~(b) Annually, Form CR-F or CR-S, as applicable;~~

~~(c) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (d) below;~~

~~(d) Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last 3 years filed with the certified reinsurer's supervisor;~~

~~(e) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;~~

~~(f) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and~~

~~(g) Any other information that the commissioner may reasonably require.~~

~~(8) Change in Rating or Revocation of Certification.~~

~~(a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph (4)(a).~~

~~(b) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.~~

~~(c) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.~~

~~(d) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 9 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of 3 months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.~~

~~C. Qualified Jurisdictions.~~

~~(1) If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.~~

~~(2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non- U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non- U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:~~

~~(a) The framework under which the assuming insurer is regulated.~~

~~(b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.~~

~~(c) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.~~

~~(d) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.~~

~~(e) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.~~

~~(f) The history of performance by assuming insurers in the domiciliary jurisdiction.~~

~~(g) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.~~

~~(h) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.~~

~~(i) Any other matters deemed relevant by the commissioner.~~

~~(3) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subsections 8.C(2)(a) to (i).~~

~~(4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.~~

~~D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.~~

~~(1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.~~

~~(2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.~~

~~(3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subparagraph B(7)(a) of this section.~~

~~(4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with Subparagraph B(7)(b) of this section, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.~~

~~E. Mandatory Funding Clause. Reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.~~

~~F. The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified juridictions.~~

~~R590-173-9. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 7.~~

~~A. The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:~~

~~(1) cash;~~

~~(2) securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;~~

~~(3) clean, irrevocable, unconditional and "evergreen" letters of credit that comply with Rule R590-114 issued or confirmed by a qualified United States financial institution; or~~

~~(4) any other form of security acceptable to the commissioner.~~

~~B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of R590-114, Letters of Credit and the applicable portions of Sections R590-173-10 and 11 of this rule have been satisfied.~~

~~R590-173-10. Trust Agreements Qualified under Section 9.~~

~~A. Required conditions~~

~~(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution.~~

~~(2) The trust agreement shall create a trust account into which assets shall be deposited.~~

~~(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.~~

~~(4) The trust agreement shall provide that:~~

~~(a) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;~~

~~(b) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;~~

~~(c) it is not subject to any conditions or qualifications outside of the trust agreement; and~~

~~(d) it will not contain references to any other agreements or documents except as provided for in Subsections R590-173-10.A.(11) and (12).~~

~~(5) The trust agreement shall be established for the sole benefit of the beneficiary.~~

~~(6) The trust agreement shall require the trustee to:~~

~~(a) receive assets and hold all assets in a safe place;~~

~~(b) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;~~

~~(c) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;~~

~~(d) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;~~

~~(e) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and~~

~~(f) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.~~

~~(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.~~

~~(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.~~

~~(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.~~

~~(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith.~~

~~(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:~~

~~(a) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;~~

~~(b) to make payment to the assuming insurer any amounts held in the trust account that exceed 102 % of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or~~

~~(c) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsections R590-173-9.A.(11)(a) and (b) as may remain executory after such withdrawal and for any period after the termination date.~~

~~(12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section R590-173-9. in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:~~

~~(a) to pay or reimburse the ceding insurer for:~~

~~(i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and~~

~~(ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;~~

~~(b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or~~

~~(c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Subsections R590-173-10.A.(12)(a) and (b) as may remain executory after withdrawal and for any period after the termination date.~~

~~(13) Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in their insurance agreement.~~

~~(14) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled~~

~~applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that all or part of the trust assets are not necessary to satisfy claims of the United States beneficiaries of the trust, all, or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.~~

~~B. Permitted conditions.~~

~~(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.~~

~~(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.~~

~~(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Subsection R590-173-10.C.(1)(b).~~

~~(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.~~

~~(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.~~

~~C. Additional conditions applicable to reinsurance agreements:~~

~~(1) A reinsurance agreement may contain provisions that:~~

~~(a) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;~~

~~(b) require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;~~

~~(c) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and~~

~~(d) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:~~

~~(i) to pay or reimburse the ceding insurer for:~~

~~(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;~~

~~(II) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and~~

~~(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;~~

~~(ii) to make payment to the assuming insurer, amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.~~

~~(2) The reinsurance agreement also may contain provisions that:~~

~~(a) give the assuming insurer the right to seek approval from the ceding insurer, which will not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:~~

~~(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the current fair market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or~~

~~(ii) after withdrawal and transfer, the current fair market value of the trust account is no less than 102 % of the required amount;~~

~~(b) provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection R590-173-10.C.(1)(e), and for interest payments at a rate not in excess of the prime rate of interest on such amounts held; and~~

~~(c) permit the award by any arbitration panel or court of competent jurisdiction of:~~

~~(i) interest at a rate different from that provided in Subsection R590-173-10.C.(2)(b);~~

~~(ii) court or arbitration costs;~~

~~(iii) attorney's fees; and~~

~~(iv) any other reasonable expenses.~~

~~D. Financial reporting~~

~~(1) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.~~

~~E. Existing agreements~~

~~(1) Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule shall continue to be acceptable until January 1, 1999, at which time the agreements must fully comply with this rule for the trust agreement to be acceptable.~~

~~F. Identification of a beneficiary~~

~~(1) The failure of any trust agreement to specifically identify the beneficiary will not be construed to affect any actions or rights that the commissioner may take or possess pursuant to the provisions of the laws of this state.~~

~~R590-173-11. Other Security.~~

~~A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.~~

~~R590-173-12. Contracts Affected.~~

~~All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.~~

~~R590-173-13. Severability.~~

~~If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.~~]

R590-173-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-17-404.3.

R590-173-2. Purpose and Scope.

(1) The purpose of this rule is to provide procedural requirements to comply with Sections 31A-17-404, 31A-17-404.1, 31A-17-404.3, and 31A-17-404.4.

(2) This rule applies to an insurer, including a reinsurer, authorized to do business in this state.

R590-173-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301 and 31A-17-404. Additional terms are defined as follows:

(1) "Accredited reinsurer" means an insurer that meets the requirements of Section R590-173-5.

(2)(a)(i) "Beneficiary" as used in Section R590-173-12 means a person for whose sole benefit a trust is established and a successor of the beneficiary by operation of law.

(ii) If a court appoints a successor in interest to the named beneficiary, the named beneficiary includes the court appointed domiciliary receiver, rehabilitator, or liquidator.

(b) "Beneficiary" as used in Section R590-173-13 means a domestic insurer for whose benefit a letter of credit is established and a successor of the beneficiary by operation of law.

(3) "Covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. 313 and 314, that:

(a) is currently in effect or in a period of provisional application; and

(b) addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into a reinsurance agreement with a ceding insurer domiciled in this state or allows the ceding insurer to recognize credit for reinsurance.

(4) "Grantor" as used in Section R590-173-12 means an unlicensed, unaccredited assuming insurer that establishes, in conjunction with a reinsurance agreement, a trust for the sole benefit of a beneficiary.

(5) "Jurisdiction" as used in Section R590-173-10 means:

(a) a state, district, or territory of the United States; or

(b) a lawful national government.

(6) "Liabilities" as used in Section R590-173-7 means an assuming insurer's gross liabilities attributable to reinsurance ceded by a U.S. domiciled insurer, excluding liabilities that are otherwise secured by acceptable means, including:

(a) for business ceded by a domestic insurer authorized to write accident and health, and property and casualty insurance:

(i) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(ii) reserves for losses reported and outstanding;

(iii) reserves for losses incurred but not reported;

(iv) reserves for allocated loss expenses; and

(v) unearned premiums; and

(b) for business ceded by a domestic insurer authorized to write life, health, and annuity insurance:

(i) aggregate reserves for life policies and contracts net of policy loans, net due, and deferred premiums;

(ii) aggregate reserves for accident and health policies;

(iii) deposit funds and other liabilities without life or disability contingencies; and

(iv) liabilities for policy and contract claims.

(7) "Manufactured home" has the same meaning as that term is defined in 42 U.S.C. 5402.

(8) "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that:

(a) represents ownership of a promissory note, a certificate of interest, or participation in a note that includes a right designed to assure servicing of, or the receipt or timeliness of receipt by a holder of the note, certificate, or participation of an amount payable under a note, certificate, or participation, that:

(i) is directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, where:

(A) a dwelling or mixed residential and commercial structure is located; or

(B) a residential manufactured home, whether the manufactured home is considered real or personal property under the laws of the state, is located; and

(ii) is originated by:

(A) a savings and loan association;

(B) a savings bank;

(C) a commercial bank;

(D) a credit union;

(E) an insurance company;

(D) a similar institution that is supervised and examined by a federal or state housing authority;

(G) a mortgage approved by the Secretary of Housing and Urban Development under 12 U.S.C. 1709 and 12 U.S.C. 1715b; or

(H) where a note involves a lien on a manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. 1703; or

(b)(i) is secured by a promissory note, certificate of deposit, or participation in a note, with or without recourse to the insurer of the note; and

(ii) by its terms, provides for a payment of principal in relation to a payment, or a reasonable projection of a payment, or note meeting the requirements of Subsections (8)(a)(i) and (8)(a)(ii).

(9) "Obligation" means:

(a) reinsured losses and allocated loss expenses paid by a ceding company, but not recovered from an assuming insurer;
(b) reserves for reinsured losses reported and outstanding;
(c) reserves for reinsured losses incurred but not reported; and
(d) reserves for allocated reinsured loss expenses and unearned premium.
(10) "Promissory note," used in connection with a manufactured home means:
(a) a loan;
(b) an advance or credit sale evidenced by a retail installment sales contract or another instrument.
(11)(a) "Qualified jurisdiction" means a jurisdiction that:
(i) requires an insurer with its domicile or head office in the qualified jurisdiction to receive credit for reinsurance ceded to a U.S. domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by an insurer domiciled in the qualified jurisdiction;
(ii) recognizes a U.S. state's regulatory approach to group supervision and group capital by providing written confirmation, by a competent regulatory authority in the qualified jurisdiction, that an insurer and an insurance group that is domiciled or maintains its head office in this state or another jurisdiction accredited by the NAIC is subject only to worldwide prudential insurance group supervision including:
(A) worldwide group governance;
(B) solvency and capital; and
(C) reporting, as applicable, by the commissioner or the commissioner of the domiciliary state;
(iii) provides written confirmation by a competent regulatory authority in the qualified jurisdiction that information regarding an insurer and its parent, subsidiary, or affiliated entities are provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and the qualified jurisdiction, including:
(A) the International Association of Insurance Supervisors Multilateral Memorandum of Understanding; or
(B) other multilateral memoranda of understanding coordinated by the NAIC; and
(iv) is designated as a qualified jurisdiction by the commissioner pursuant to Subsection 31A-17-404(7)(d) and this rule.
(b) A qualified jurisdiction may not:
(i) require a U.S. domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with a ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow a ceding insurer to recognize credit for reinsurance; and
(ii) be subject to group supervision at the level of the worldwide parent undertaking of an insurance or reinsurance group by the qualified jurisdiction.
(12) "Reciprocal jurisdiction" means a jurisdiction, as designated by the commissioner under Section R590-173-9, that is:
(a) a non-U.S. jurisdiction subject to an in-force covered agreement with the United States, within its legal authority;
(b) in the case of a covered agreement between the United States and the European Union, a member state of the European Union;
(c) a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
(d) a qualified jurisdiction, as determined by the commissioner pursuant to Subsection R590-173-8(6), that is not otherwise described in Subsection (12)(a), (12)(b), or (12)(c).
(13) "Solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to:
(a) requisite majority creditor approval;
(b) judicial sanction in the assuming insurer's home jurisdiction to:
(i) commute liabilities of noticed classed members or creditors of a solvent debtor; or
(ii) reorganize or restructure the debts and obligations of a solvent debtor on a financial basis; and
(c) possible judicial recognition and enforcement of an arrangement by a governing authority outside the ceding insurer's home jurisdiction.
(14) "Statutory financial statement" means a quarterly, annual, or other financial statement required by law.

R590-173-4. Credit for Reinsurance -- Reinsurer Licensed in Utah.
(1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed in Utah as of the date the ceding insurer claims reinsurance credit in a statutory financial statement.
(2) The requisite conditions for credit shall exist at the time the credit is claimed or reported in a statutory financial statement.
(3) The conditions in Subsection (2) shall remain satisfied until the information reported in one statement is replaced by information reported in a subsequent statement.

R590-173-5. Credit for Reinsurance -- Accredited Reinsurer in Utah.
(1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Utah as of the date the ceding insurer claims reinsurance credit in a statutory financial statement.
(2) An accredited reinsurer shall:
(a) file with the commissioner a completed Form AR-1, available on the department's website, https://insurance.utah.gov, evidencing:
(i) the insurer's submission to Utah's jurisdiction; and
(ii) Utah's authority to examine its books and records;
(b) file with the commissioner a certified copy of a certificate of authority or other acceptable evidence that the accredited reinsurer:
(i) is licensed to transact insurance or reinsurance in at least one state; or
(ii) in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
(c) file annually with the commissioner a copy of its annual statement filed with:
(i)(A) the insurance department of its state of domicile; or
(B) in the case of an alien assuming insurer, with the state through which it is entered and is licensed to transact insurance or reinsurance;
(ii) a copy of its most recent audited financial statement; and
(d)(i) maintain a surplus regarding policyholders in an amount not less than $20 million; or
(ii) obtain the affirmative approval of the commissioner upon a finding that:

(A) the insurer has adequate financial capacity to meet its reinsurance obligations; and

(B) is otherwise qualified to assume reinsurance from a domestic insurer.

(3) If the commissioner determines that an assuming insurer failed to meet or maintain any qualification, the commissioner may suspend or revoke the accreditation upon written notice and opportunity for hearing.

(4) Credit may not be allowed a domestic ceding insurer if:

(a) the assuming insurer's accreditation is revoked by the commissioner; or

(b) the reinsurance was ceded while the assuming insurer's accreditation was suspended by the commissioner.

R590-173-6. Credit for Reinsurance -- Reinsurer Domiciled in Another State.

(1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer as of any date a ceding insurer claims reinsurance credit in a statutory financial statement.

(2) Credit is allowed when the assuming insurer:

(a) is domiciled in, or in the case of a U.S. branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance that is equal to or exceeds those applicable under law;

(b) maintains a surplus regarding policyholders in an amount not less than $20 million; and

(c) files with the commissioner a completed Form AR-1, available on the department's website, https://insurance.utah.gov, evidencing its submission to Utah's authority to examine its books and records.

(3) Subsection (2)(b) does not apply to reinsurance ceded and assumed under a pooling arrangement among insurers in the same holding company system.

R590-173-7. Credit for Reinsurance -- Reinsurer Maintains a Trust Fund.

(1)(a) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date a ceding insurer claims reinsurance credit in a statutory financial statement, and thereafter for so long as:

(i) credit for reinsurance is claimed; and

(ii) the assuming insurer maintains a trust fund:

(A) in an amount prescribed in Subsection (2)(a); and

(B) in a qualified United States financial institution for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns, and successors in interest.

(b) An assuming insurer shall report annually to the commissioner substantially the same information required to be reported on the NAIC annual statement form by a licensed insurer, for the commissioner to determine the sufficiency of the trust fund.

(2) This subsection applies to each category of an assuming insurer.

(a) A trust fund for a single assuming insurer shall consist of funds in trust:

(i) in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by a U.S. domiciled insurer; and

(ii) a trusteed surplus of not less than $20 million, except as provided in Subsection (2)(b).

(b)(i) The commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus if:

(A) the assuming insurer permanently discontinues underwriting new business secured by the trust for at least three years; and

(B) the commissioner makes a risk assessment finding that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.

(ii) The risk assessment in Subsection (2)(b)(i):

(A) may involve an actuarial review, including an independent analysis of reserves and cash flows; and

(B) shall consider all material risk factors including:

(I) the lines of business involved;

(II) the stability of the incurred loss estimates; and

(III) the effect of surplus requirements on the assuming insurer's liquidity or solvency.

(iii) A reduction in trusteed surplus under Subsection (2)(b) may not fall below 30% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(c)(i) A trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(A) for reinsurance ceded under a reinsurance agreement with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;

(B) for reinsurance ceded under a reinsurance agreement with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) a trusteed surplus of which $100 million is held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

(ii) The incorporated members of the group:

(A) may not engage in any business other than underwriting as a member of the group; and

(B) are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(iii) The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(A) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(B) if a certification is unavailable, a financial statement, prepared by an independent public accountant, of each underwriter member of the group.

(d)(i) A trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of $10 billion, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and the Accounting Practices and Procedures Manual of the NAIC, and that continuously transacted an insurance business outside the United States for at least three years immediately prior to applying for accreditation, shall:

(A) consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group;

(B) maintain a joint trusteed surplus of which $100 million is held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group; and

(C)(I) file with the commissioner a completed Form AR-1, available on the department's website, https://insurance.utah.gov, evidencing each member's submission to Utah's authority to examine its books and records; and

(II) certify that the member examined will bear the expense of the examination.

(ii) For each underwriter member of a group described in Subsection (2)(d)(i), the group shall file within 90 days after the financial statements are due to be filed with the group's domiciliary regulator:

(A) an annual certification of its solvency by its domiciliary regulator; and

(B) a financial statement prepared by an independent public accountant.

(3)(a) Credit for reinsurance may not be granted unless the form of the trust and any amendments to the trust have been approved by either:

(i) the commissioner of the state where the trust is domiciled; or

(ii) the commissioner of another state who, pursuant to the terms of the trust instrument, accepted responsibility for regulatory oversight of the trust.

(b) The form of a trust and a trust amendment shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

(c) The trust instrument shall provide that:

(i) contested claims be valid and enforceable out of funds in trust to the extent that they remain unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(ii) legal title to the assets of the trust be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns, and successors in interest;

(iii) it is subject to examination as determined by the commissioner;

(iv) it remains in effect for as long as the assuming insurer, or any member or former member of a group of insurers, has outstanding obligations under reinsurance agreements subject to the trust; and

(v) no later than February 28 of each year, the trustee of the trust submit a written report to the commissioner that:

(A) sets forth the balance in the trust;

(B) lists the trust's investments at the preceding year-end; and

(C)(I) certifies the date of termination of the trust, if planned; or

(II) certifies that the trust may not expire before the following December 31.

(d)(i) Notwithstanding any provision in the trust instrument, a trustee shall comply with an order of the commissioner with regulatory oversight over the trust, or with an order of a court of competent jurisdiction, that directs the trustee to transfer to a receiver, including a commissioner with regulatory oversight over the trust, the assets of the trust if:

(A) the trust fund is inadequate because it contains an amount less than the amount required by Subsection (3)(d); or

(B) the grantor of the trust is declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile.

(ii) A receiver described in Subsection (3)(d) shall receive and value claims and distribute assets in accordance with the laws applicable to the liquidation of a domestic insurer in the state in which the trust is domiciled.

(iii) If a receiver described in Subsection (3)(d) determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the receiver shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(iv) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with Subsection (3)(d).

(4)(a) An asset deposited in a trust shall:

(i) be valued according to its current fair market value; and

(ii) consist only of:

(A) cash in U.S. dollars;

(B) certificates of deposit issued by a qualified United States financial institution; and

(C) clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution; and

(D) an investment in or issued by an entity controlling, controlled by, or under common control with either a grantor or a beneficiary of the trust, not to exceed 5% of total investments;

(b) No more than 20% of the total investment in the trust may be foreign investments authorized under Subsection (4)(d)(i)(E), (4)(d)(iii), (4)(d)(iv), or (4)(d)(vi).

(c)(i) No more than 10% of the total investment in the trust may be securities denominated in foreign currencies.

(ii) A depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security is classified as a foreign investment denominated in a foreign currency.

(d) An asset of a trust may be invested only in:

(i) a valid and legally authorized government obligation that is not in default as to principal and interest and is issued, assumed, or guaranteed by:

(A) the United States or its agency or instrumentality;

(B) a state of the United States;

(C) a territory, possession, or other governmental unit of the United States;

(D) an agency or instrumentality of a governmental unit in Subsection (4)(d)(i)(B) or (4)(d)(i)(C) if the obligation is payable, as to principal and interest, from taxes levied or by law required to be levied, or from adequate special revenues pledged or otherwise appropriated, or by law required to be provided for making these payments, but not if the obligation is payable solely out of special assessments on properties benefited by local improvements; or

(E) the government of a country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(ii) an obligation that satisfies the following requirements:

(A)(I) is issued in the United States;

(II) is dollar denominated and issued in a non-U.S. market by a solvent U.S. institution other than an insurance company; or

(III) is assumed or guaranteed by a solvent U.S. institution other than an insurance company;

(B) is not in default as to principal or interest;

(C)(I) is rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(II) is similar in structure and other material respects to other obligations of the same institution that are rated A or higher; and

(D)(I) is insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state, and, after considering the insurance, is rated AAA or the equivalent by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(II) is designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(iii) an obligation rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC and is:

(A) issued, assumed, or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development; or

(B) an obligation of a U.S. corporation issued in a non-U.S. currency;

(iv) an equity interest in a solvent U.S. institution other than an insurance company, if:

(A) the institution's obligations and preferred shares are eligible as investments under Subsection (4)(d)(iv); and

(B) the equity interest is:

(I) registered on a national securities exchange under the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a to 78kk; or

(II) otherwise registered under the Securities Exchange Act of 1934 and a price quotation for the interest is furnished through a nationwide automated quotation system approved by the Financial Industry Regulatory Authority or successor organization; and

(C) the total amount of equity interest investments does not exceed 1% of the assets of the trust;

(v) an equity interest in a solvent non-U.S. institution that is organized under the laws of a member country of the Organization for Economic Cooperation and Development, if:

(A) the institution's obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(B) the institution's equity interests are registered on a securities exchange regulated by the government of a member country of the Organization for Economic Cooperation and Development;

(C) an investment in or loan upon the institution's outstanding equity interests does not exceed 1% of the assets of the trust; and

(D) the cost of investments in equity interests, when added to the aggregate cost of other investments in equity interests already held pursuant to Subsection (4)(d)(v), may not exceed 10% of the assets in the trust;

(vi) an obligation issued, assumed, or guaranteed by a multinational development bank, if the obligation is rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(vii) securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. Sec. 80a, if the investment company:

(A)(I) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection (4)(d)(i), (4)(d)(ii), or (4)(d)(iii);

(II) invests in securities that the commissioner determines are substantively similar to the types of securities set forth in Subsections (4)(d)(i), (4)(d)(ii), and (4)(d)(iii); or

(III) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection (4)(d)(iv); and

(B) includes the aggregate amount of investments in qualifying investment companies when calculating the permissible aggregate value of equity interests pursuant to Subsection (4)(d)(iv); or

(viii) a letter of credit, if:

(A) in the case where a letter of credit expires without being renewed or replaced, the trustee has the right and duty under the deed of trust or other binding agreement, as approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust; and

(B) the trust agreement provides that the trustee is liable for negligence, willful misconduct, or lack of good faith, which may include the failure of a trustee to draw against a letter of credit.

(e) An investment made pursuant to Subsection (4)(d) is subject to the following additional limitations:

(i) an investment in or loan on the obligations of an institution other than an institution that issues mortgage-related securities may not exceed 5% of the assets of the trust;

(ii) an investment in a mortgage-related security may not exceed 5% of the assets of the trust;

(iii) the aggregate total investment in mortgage-related securities may not exceed 25% of the assets of the trust;

(iv) preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if the institution's obligations are eligible under Subsections (4)(d)(ii)(D)(I) and (4)(d)(ii)(D)(II), but may not exceed 2% of the assets of the trust;

(v) a trust's investment in investment companies may not exceed 10% of the assets in the trust;

(vi) the aggregate amount of investments in qualifying investment companies may not exceed 25% of the assets in the trust; and

(vii) an investment in an investment company qualifying under Subsection (4)(e)(vi) may not exceed 5% of the assets in the trust.

(5) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section R590-173-11 is applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presenting a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer.

R590-173-8. Credit for Reinsurance -- Reinsurer is a Certified Reinsurer.

(1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that is certified as a reinsurer in this state whenever the ceding insurer claims credit for reinsurance in a statutory financial statement.

(2) The credit allowed in Subsection (1) is based on the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner.

(3) The security is in a form consistent with Subsection 31A-17-404(7), and Sections R590-173-12 through R590-173-14.

(4) The amount of security required for full reinsurance credit shall correspond with the requirements of this subsection.

(a) Table 1 sets forth the security required for each rating.

TABLE 1	
Rating	Security Required
Secure -- 1	0%
Secure -- 2	10%
Secure -- 3	20%
Secure -- 4	50%
Secure -- 5	75%
Vulnerable -- 6	100%

(b) An affiliated reinsurance transaction shall receive the same opportunity for a reduced security requirement as any other reinsurance transaction.

(c) A certified reinsurer shall post 100% security, for the benefit of the ceding insurer or its estate, upon the entry of an order of receivership, rehabilitation, or liquidation against the ceding insurer.

(d)(i) A certified reinsurer may post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner.

(ii) The one-year deferral period is contingent on the certified reinsurer continuing to pay claims in a timely manner.

(iii) Reinsurance recoverables for the following lines of business, as reported on the NAIC annual financial statement related to the catastrophic occurrence, shall be included in the deferral:

(A) Line 1, Fire;

(B) Line 2, Allied Lines;

(C) Line 3, Farmowners multiple peril;

(D) Line 4, Homeowners multiple peril;

(E) Line 5, Commercial multiple peril;

(F) Line 9, Inland Marine;

(G) Line 12, Earthquake; and

(H) Line 21, Auto physical damage.

(e) Credit for reinsurance under this section is available only for a reinsurance contract that is:

(i) entered into or renewed on or after the effective date of the assuming insurer's certification;

(ii) entered into before the effective date of the certification and is amended with an effective date after the effective date of certification but only for losses incurred and reserves reported after the effective date of certification; or

(iii) new and covers a risk for which credit is allowed before certification based on collateral provided, if the new contract's effective date is after the effective date of certification, but only for losses incurred and reserves reported after the effective date of certification.

(f) A reinsurance agreement may establish security requirements that exceed the minimum security requirements for certified reinsurers in this section.

(5)(a) After receiving an application for certification, the commissioner shall post notice of the application on the department's website, https://insurance.utah.gov, and include instructions on how the public may respond to the application.

(b) The commissioner may not take final action on the application until at least 30 days after posting the notice required in Subsection (5)(a).

(c)(i) The commissioner shall notify the applicant in writing of the final action.

(ii) If the application is approved, the notice shall state the certified reinsurer's rating.

(d) The commissioner shall publish on the department's website a list of all certified reinsurers and their ratings.

(e) An assuming insurer shall meet the following requirements to qualify for certification:

(i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner under Subsection (7);

(ii)(A) maintain capital and surplus, or its equivalent, of not less than $250 million, calculated in accordance with Subsection (5)(f)(ii)(H); and

(B) this requirement may be satisfied by an association including incorporated and individual unincorporated underwriters having:

(I) minimum capital and surplus equivalents, net of liabilities, of at least $250 million; and

(II) a central fund containing a balance of at least $250 million;

(iii)(A) the assuming insurer shall maintain financial strength ratings from two or more rating agencies acceptable to the commissioner;

(B) the ratings shall:

(I) be based on interactive communication between the rating agency and the assuming insurer;

(II) not be based solely on publicly available information; and

(III) be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer; and

(C) acceptable rating agencies include:

(I) Standard & Poor's;

(II) Moody's Investors Service;

(III) Fitch Ratings;

(IV) A.M. Best Company; or

(V) any other nationally recognized statistical rating organization; and

(iv) the certified reinsurer shall comply with all requirements reasonably imposed by the commissioner.

(f)(i) A certified reinsurer is rated on a legal entity basis, with due consideration given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that are approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating.

(ii) Factors that may be considered as part of the evaluation process include:

(A) a certified reinsurer's maximum financial strength rating, calculated based on Table 2;

(I) the lowest financial strength rating given by an approved rating agency is used; and

(II) a certified reinsurer shall maintain at least two financial strength ratings to maintain eligibility;

TABLE 2				
Rating	Best	S&P	Moody's	Fitch
Secure -- 1	A++	AAA	Aaa	AAA

Secure -- 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure -- 3	A	A+, A	A1, A2	A+, A
Secure -- 4	A-	A-	A3	A-
Secure -- 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable -- 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(B) the business practices of a certified reinsurer dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(C) for certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F for property and casualty reinsurers or Schedule S for life and health reinsurers, available on the department's website, https://insurance.utah.gov;

(D) for certified reinsurers not domiciled in the U.S., an annual review of Form CR-F for property and casualty reinsurers or Form CR-S for life and health reinsurers, available on the department's website, https://insurance.utah.gov;

(E) a certified reinsurer's reputation for prompt payment of claims under reinsurance agreements, based on an analysis of a ceding insurer's Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in delinquency, administrative proceedings, or receivership;

(F) regulatory action against the certified reinsurer;

(G) the report of the independent auditor on a financial statement of the insurance enterprise, under Subsection (5)(f)(ii)(H);

(H) for a certified reinsurer not domiciled in the U.S.:

(I) audited financial statements, regulatory filings, and actuarial opinions, filed with the non-U.S. jurisdiction supervisor, translated into English; and

(II) the audited financial statements filed with the non-U.S. jurisdiction supervisor for the last two years;

(I) the liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(J) a certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, that involves U.S. ceding insurers, if the commissioner received prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(K) any other information relevant to the commissioner.

(g) Based on the analysis conducted under Subsection (5)(f)(ii)(E) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security that the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided the commissioner increases the security the certified reinsurer is required to post by one rating level under Subsection (5)(f)(ii) if the commissioner finds that:

(A) more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and exceed $100,000 for each cedent; or

(B) the aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by 90 days or more exceeds $50 million.

(h) The assuming insurer shall file with the commissioner a completed Form CR-1, available on the department's website, https://insurance.utah.gov, evidencing its:

(i) submission to the jurisdiction of this state;

(ii) appointment of the commissioner as an agent for service of process; and

(iii) agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment.

(i) The commissioner may not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner determines does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(j)(i) The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commissioner for an initial application for certification and on an ongoing basis.

(ii) All information submitted by a certified reinsurer that is not public information subject to disclosure is exempted from disclosure under Title 63G, Chapter 2, Government Records Access and Management Act, and is withheld from public disclosure.

(k) A certified reinsurer shall notify or file with the commissioner the following:

(i) within 10 days of any regulatory action taken against the certified reinsurer:

(A) any change in the provisions of its domiciliary license; or

(B) any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefor;

(ii) Form CR-F or CR-S annually, as applicable;

(iii) annually, a report of the independent auditor on the financial statements of the insurance enterprise;

(iv) the most recent audited financial statements, regulatory filings, and actuarial opinion filed with the certified reinsurer's supervisor, translated into English;

(v) upon initial certification, audited financial statements for the last two years filed with the certified reinsurer's supervisor;

(vi) at least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(vii) a certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(viii) any other information the commissioner reasonably requires.

(l) A change in rating or revocation of certification is subject to the following:

(i) in the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall assign a new rating to the certified reinsurer under Subsection (5)(f)(ii)(A);

(ii) the commissioner may suspend, revoke, or modify a certified reinsurer's certification if:

(A) the certified reinsurer fails to meet its obligations or security requirements under this section; or

(B) other financial or operating results of the certified reinsurer, or documented significant delays in payment by the

certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations;

(iii) if a certified reinsurer's rating is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner requires the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating;

(iv) if a certified reinsurer's rating is downgraded by the commissioner, the commissioner requires the certified reinsurer to meet the security requirements applicable to its new rating for all business it assumed as a certified reinsurer;

(v) if the commissioner revokes a certified reinsurer's certification for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer:

(A) the assuming insurer shall post security under Section R590-173-11; or

(B) if the funds continue to be held in trust under Section R590-173-7, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectability and anticipated expenses of trust administration; and

(vi) notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that cedes reinsurance to a certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer unless the reinsurance is found by the commissioner to be at high risk of uncollectability.

(6) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction is recognized as a qualified jurisdiction, the commissioner shall:

(a) publish notice and evidence of the recognition on the department's website, https://insurance.utah.gov; and

(b) establish a procedure to withdraw recognition of the jurisdiction that is no longer qualified.

(7) If the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction under Subsection (6), the commissioner shall:

(a) evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis;

(b) consider the rights, benefits, and extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S.;

(c) determine the appropriate approach for evaluating the qualifications of such jurisdictions;

(d) create and publish a list of jurisdictions whose reinsurers are approved by the commissioner as eligible for certification;

(e) obtain an agreement from a qualified jurisdiction to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled in that jurisdiction;

(f) consider additional factors, at the commissioner's discretion, including:

(i) the framework the assuming insurer is regulated under;

(ii) the structure and authority of the domiciliary regulator regarding solvency regulation requirements and financial surveillance;

(iii) the substance of financial and operating standards for an assuming insurer in the domiciliary jurisdiction;

(iv) the form and substance of financial reports required to be filed or made publicly available by a reinsurer in the domiciliary jurisdiction;

(v) the accounting principles used;

(vi) the domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular;

(vii) the history of performance by assuming insurers in the domiciliary jurisdiction;

(viii)(A) any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction; and

(B) a jurisdiction may not be considered a qualified jurisdiction if the commissioner determines that it does not adequately and promptly enforce final U.S. judgments or arbitration awards;

(ix) any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization; and

(x) any relevant factors established by the commissioner;

(g) consider the list of qualified jurisdictions published through the NAIC committee process in determining qualified jurisdictions;

(h) provide thoroughly documented justification of the criteria under Subsections (7)(f)(i) through (7)(f)(x) if the commissioner approves a jurisdiction as qualified; and

(i) recognize as qualified jurisdictions, U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program.

(8) If an applicant for certification is certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner may:

(a) defer to that jurisdiction's certification;

(b) defer to the rating assigned by that jurisdiction if the assuming insurer:

(i) files with the commissioner a completed Form CR-1, available on the department's website, https://insurance.utah.gov; and

(ii) provides additional information required by the commissioner; and

(c) consider the assuming insurer to be a certified reinsurer in this state.

(9) A change in a certified reinsurer's status or rating in another jurisdiction automatically applies in this state as of the date it takes effect in the other jurisdiction.

(10) The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(11) In recognizing a certification from an accredited jurisdiction, the commissioner may:

(a) withdraw recognition of the other jurisdiction's rating at any time and assign a new rating under Subsection (5)(l); and

(b) withdraw recognition of the other jurisdiction's certification, upon written notice to the certified reinsurer.

(12) Unless the commissioner suspends or revokes a certified reinsurer's certification, the certified reinsurer's certification is in good standing for three months, and shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(13) In addition to the requirements of Section R590-173-15, a reinsurance contract entered into or renewed under this section shall include a proper funding clause requiring the certified reinsurer to provide and maintain security in an amount sufficient to avoid the

imposition of any financial statement penalty on the ceding insurer for reinsurance ceded to the certified reinsurer.

(14) The commissioner shall comply with all reporting and notification requirements established by the NAIC regarding certified reinsurers and qualified jurisdictions.

R590-173-9. Credit for Reinsurance -- Reinsurer is from a Reciprocal Jurisdiction.

(1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and meets the requirements of this rule.

(2) Credit is allowed when reinsurance is ceded from an insurer domiciled in this state to an assuming insurer if the assuming insurer:

(a) is licensed to transact reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction;

(b) meets and maintains minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or on the annual date reported to the reciprocal jurisdiction; and

(c) the minimum capital and surplus is confirmed under Subsection (2)(g) according to the methodology of its domiciliary jurisdiction, in the following amounts:

(A) no less than $250 million; or

(B) if the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(I) minimum capital and surplus equivalents, net of liabilities, or own funds of the equivalent of at least $250 million; and

(II) a central fund containing a balance of the equivalent of at least $250 million;

(d) meets and maintains on an ongoing basis a minimum solvency or capital ratio as follows:

(i) if the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in Subsection R590-173-3(12)(a), the ratio specified in the applicable covered agreement;

(ii) if the assuming insurer is domiciled in a reciprocal jurisdiction as defined in Subsection R590-173-3(12)(b), a risk-based capital ratio of 300% of the authorized control level, calculated according to the formula developed by the NAIC; or

(iii) if the assuming insurer is domiciled in a reciprocal jurisdiction as defined in Subsection R590-173-3(12)(c), after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency;

(e) provides adequate assurance in a completed Form RJ-1, available on the department's website, https://insurance.utah.gov, that the assuming insurer:

(i) will provide prompt written notice and explanation to the commissioner if:

(A) it falls below the minimum requirements set forth in Subsection (2)(b) or (2)(c); or

(B) any regulatory action is taken against it for serious noncompliance with applicable law;

(ii) consents to the jurisdiction of the courts of this state and appoints the commissioner as agent for service of process;

(iii) consents in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer that is enforceable where the judgment was obtained;

(iv) includes in every reinsurance agreement a requirement that it will provide security in an amount equal to 100% of liabilities attributable to reinsurance ceded pursuant to the agreement if it resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained, or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate;

(v) confirms that it is not participating in a solvent scheme of arrangement that involves this state's ceding insurers;

(vi) on entering into a solvent scheme of arrangement, agrees to:

(A) notify the ceding insurer and the commissioner; and

(B) provide 100% security to the ceding insurer consistent with the terms of the scheme, and in a form consistent with the provisions of law and this rule; and

(vii) agrees in writing to meet the applicable information filing requirements of Subsection (2)(f);

(f) provides, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation:

(i) for the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, its annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, including the external audit report;

(ii) for the two years preceding entry into the reinsurance agreement, its solvency and financial condition report or actuarial opinion, if filed with its supervisor;

(iii) before entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance assumed from ceding insurers domiciled in the United States; and

(iv) before entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding its:

(A) assumed reinsurance by the ceding insurer;

(B) ceded reinsurance by the assuming insurer; and

(C) reinsurance recoverables on its paid and unpaid losses allowing for the evaluation of the criteria set forth in Subsection (2)(g);

(g) maintains a practice of promptly paying reinsurance claims as follows:

(i) no more than 15% of its reinsurance recoverables are overdue and in dispute, as reported to the commissioner;

(ii) no more than 15% of its ceding insurers or reinsurers have overdue reinsurance recoverables on paid losses of 90 days or more that are:

(A) not in dispute and exceed for each ceding insurer $100,000; or

(B) as specified in a covered agreement; or

(iii) the aggregate amount of reinsurance recoverables on undisputed paid losses are:

(A) overdue by 90 days or more and exceed $50 million; or

(B) as specified in a covered agreement; and

(h) complies with Subsections (2)(b) and (2)(c) as confirmed by its supervisory authority to the commissioner on an annual basis.

(3) An assuming insurer may provide the commissioner with information on a voluntary basis.

(4) An assuming insurer's consent to the jurisdiction of the courts of this state and to appointing the commissioner as agent for service of process shall be included in each reinsurance agreement under the commissioner's jurisdiction.

(5) Parties to a reinsurance agreement may agree to alternative dispute resolution mechanisms, except to the extent such

agreements are unenforceable under applicable insolvency or delinquency laws.

(6)(a) The commissioner shall create and publish a list of reciprocal jurisdictions that includes a reciprocal jurisdiction as defined under Subsection R590-173-3(12)(a), R590-173-3(12)(b), or R590-173-3(12)(c).

(b) The commissioner shall consider a reciprocal jurisdiction included on the NAIC list of reciprocal jurisdictions.

(7) The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC committee process.

(8)(a) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions on a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law or in accordance with a process published through the NAIC committee process.

(b) The commissioner may not remove from the list a reciprocal jurisdiction defined under Subsection R590-173-3(12)(a), R590-173-3(12)(b), or R590-173-3(12)(c).

(c) When removing a reciprocal jurisdiction from the commissioner's list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction is permitted, if otherwise allowed by law.

(9) The commissioner shall create and publish a list of assuming insurers that qualify as reinsurers from reciprocal jurisdictions satisfying the conditions of this section and where cessions are granted reinsurance credit.

(a) If an NAIC accredited jurisdiction determines that the conditions set forth in Subsection (9)(b) are met, the commissioner may:

(i) defer to that jurisdiction's determination;

(ii) add the assuming insurer to the list of insurers where cessions are granted reinsurance credit; and

(iii) accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC under Subsection (9)(b).

(b) A request to defer to another NAIC accredited jurisdiction's determination shall include:

(i) a completed Form RJ-1, available on the department's website, https://insurance.utah.gov; and

(ii) additional information the commissioner may require.

(c) Upon receipt of a request under Subsection (9)(b), the commissioner shall:

(i) notify other states of the request through the NAIC committee process; and

(ii) provide relevant information about the determination of eligibility.

(10) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer.

(a) During a suspension period, a reinsurance agreement may not be issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured under Section R590-173-11.

(b) Credit for reinsurance may not be available after the effective date of the revocation for a reinsurance agreement entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with Section R590-173-11.

(11) Before denying statement credit, requiring security under Subsection (10), or adopting a similar requirement with the same regulatory impact to requiring security, the commissioner shall:

(a) notify the following that the assuming insurer no longer satisfies one of the conditions listed in Subsection (2):

(i) the ceding insurer;

(ii) the assuming insurer; and

(iii) the assuming insurer's supervisory authority;

(b) give the assuming insurer:

(i) 30 days to submit a plan to remedy the defect; and

(ii) 90 days to remedy the defect unless a shorter period is necessary to protect policyholders and consumers;

(c) take an action described in Subsection (11) if the defect has not been remedied; and

(d) provide the assuming insurer a written explanation for action taken.

(12) A ceding insurer may seek a court order that requires an assuming insurer in receivership, rehabilitation, or liquidation to post security for the assuming insurer's outstanding liabilities.

R590-173-10. Credit for Reinsurance Required by Law.

Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements of this rule but only for the insurance of risks located in a reciprocal jurisdiction defined in Subsection R590-173-3(12), where the reinsurance is required by the laws of that jurisdiction.

R590-173-11. Reinsurance Ceded to an Unauthorized Reinsurer Not Meeting the Requirements of Sections R590-173-4 Through R590-173-10.

(1) A reduction is allowed from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 31A-17-40.

(2) A reduction from liability is:

(a) an amount not exceeding the liabilities carried by the ceding insurer; and

(b) the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract which funds shall be:

(i) held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or

(ii) in the case of a trust, held in a qualified United States financial institution.

(3) The security held under Subsection (2)(b) may be in the form of:

(a) cash;

(b) securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) clean, irrevocable, unconditional, and evergreen letters of credit that:

(i) are issued or confirmed by a qualified United States financial institution;

(ii) are effective no later than December 31 of the year the filing is made;

(iii) are in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement; and

(iv) meet the issuer's standards of acceptability at the time of issuance until their expiration, extension, renewal, modification, or amendment, whichever occurs first; or

(d) any other security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section is allowed only when the requirements of the following are satisfied:

(a) Section R590-173-15; and

(b) the applicable provisions of:

(i) Section R590-173-12;

(ii) Section R590-173-13; or

(iii) Section R590-173-14.

R590-173-12. Trust Agreement Qualified Under Section R590-173-11.

(1) A trust agreement qualified under Section R590-173-11 shall:

(a) be between a beneficiary, a grantor, and a trustee that is a qualified United States financial institution;

(b) create a trust account where assets are deposited;

(c) require that all assets in the trust account be held by a trustee in the trustee's office in the United States;

(d) provide that:

(i) the beneficiary may withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(ii) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(iii) it is not subject to a condition or qualification outside of the trust agreement; and

(iv) it may not contain a reference to another agreement or document except as provided for in Subsections (k) and (l);

(e) be established for the sole benefit of the beneficiary;

(f) require the trustee to:

(i) receive and hold all assets in a safe place;

(ii) place assets in a form that allows the beneficiary, or the trustee upon direction by the beneficiary, to negotiate the assets without consent or signature from the grantor or any other person or entity;

(iii) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(iv) notify the grantor and the beneficiary within 10 days of a deposit to or withdrawal from the trust;

(v) on a beneficiary's written request, immediately take steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(vi) not allow a substitution or withdrawal of an asset from the trust account, except:

(A) on written instruction from the beneficiary; and

(B) the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account;

(g) provide written notification of termination at least 30 days, but not more than 45 days, before termination of the trust, to the trustee and to the beneficiary;

(h) be subject to the laws of the state in which the trust is domiciled;

(i) prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee, except that in order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit expires without being renewed or replaced;

(j) provide that the trustee is liable for its:

(i) negligence or willful misconduct, including the failure of the trustee to draw against the letter of credit in circumstances where the draw would be required; and

(ii) lack of good faith;

(k) notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuity, and accident and health, where a trust agreement is provided for a specific purpose, the trust agreement may provide that the ceding insurer undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to pay or reimburse the ceding insurer for:

(A) the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer; and

(B) the unearned premiums due to the ceding insurer if not paid by the assuming insurer;

(ii) to pay the assuming insurer any amount held in the trust account that exceeds 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(iii) to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution separate from its general assets, in trust for such uses and purposes specified in Subsections (1)(k)(i) and (1)(k)(ii) as may remain executory after such withdrawal and for any period after the termination date where:

(A) the ceding insurer received notification of termination of the trust account; and

(B) the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days before the termination date;

(l) notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Subsection (2) in conjunction with a reinsurance agreement covering life, annuity, or accident and health risks, where a trust agreement is provided for a specific purpose, the trust agreement may provide that the ceding insurer undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to pay or reimburse the ceding insurer for:

(A) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellation of the policies; and

(B) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(ii) to pay the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(iii) to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution separate from its general assets, in trust for the uses and purposes specified in Subsections (1)(l)(i) and (1)(l)(ii) as may remain executory after withdrawal and for any period after the termination date where:

(A) the ceding insurer received notification of termination of the trust; and

(B) the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days before the termination date; and

(m) either the reinsurance agreement or the trust agreement shall provide that assets deposited in the trust account:

(i) be valued according to their current fair market value; and

(ii) consist only of:

(A) cash in United States dollars;

(B) certificates of deposit issued by a United States bank and payable in United States dollars;

(C) investments permitted by Title 31A, Insurance Code; or

(D) a combination of Subsections (1)(m)(A) through (1)(m)(C), provided:

(I) investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust may not exceed 5% of total investments; and

(II) investments are of a type of investment specified in the trust agreement; and

(iii) include provisions required by Subsection (1)(m) if the reinsurance agreement covers life, annuity, or accident and health risks.

(2) Permitted conditions.

(a) The trust agreement may provide that:

(i) the trustee may resign on delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice; and

(ii) the trustee may be removed by the grantor on delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, if:

(A) no such resignation or removal is effective until a successor trustee is duly appointed and approved by the beneficiary; and

(B) the grantor and all assets in the trust are duly transferred to the new trustee.

(b) The grantor has the full and unqualified right to:

(i) vote any shares of stock in the trust account; and

(ii) receive, from time to time, payments of any dividends or interest upon any shares of stock or obligations included in the trust account, if any interest or dividends are:

(A) forwarded promptly upon receipt to the grantor; or

(B) deposited in a separate account established in the grantor's name.

(c) The trustee has authority to invest, and accept substitutions of, any funds in the account if no investment or substitution is made without prior approval of the beneficiary, unless the trust agreement:

(i) specifies categories of investments acceptable to the beneficiary; and

(ii) authorizes the trustee to invest funds and to accept substitutions that the trustee determines are:

(A) at least equal in current fair market value to the assets withdrawn; and

(B) consistent with the restrictions in Subsection (3)(a)(ii).

(d) The trust agreement may provide that:

(i) the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred, conditioned upon the trustee receiving, prior to or simultaneously, other specified assets; and

(ii) upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

(3) A reinsurance agreement may:

(a) require the assuming insurer to:

(i) enter into a trust agreement;

(ii) establish a trust account for the benefit of the ceding insurer; and

(iii) specify what the agreement is to cover;

(b) require the assuming insurer, before depositing assets with the trustee, to:

(i) execute assignments or endorsements in blank; or

(ii) transfer legal title to the trustee of all shares, obligations, or other assets requiring assignment, so the ceding insurer or the trustee, upon direction of the ceding insurer, may, when necessary, negotiate the assets without consent or signature from the assuming insurer or another entity;

(c) require that all settlements of account between the ceding insurer and the assuming insurer are in cash or its equivalent;

(d) state that the assuming insurer and the ceding insurer agree that the assets in the trust account may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, which assets are used for the following purposes:

(i) to be utilized and applied by the ceding insurer or its successors in interest by operation of law, including any liquidator, rehabilitator, or receiver, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer to pay or reimburse the ceding insurer for:

(A) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owner of a policy reinsured under the reinsurance agreement due to cancellation of the policy;

(B) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policy reinsured under the reinsurance agreement; and

(C) any other amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(ii) to pay the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(e) give the assuming insurer the right to seek approval from the ceding insurer, which may not be unreasonably or arbitrarily

withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer replaces, at the time of withdrawal, the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn to always maintain the deposit in the required amount; or

(ii) after withdrawal and transfer, the current fair market value of the trust account is no less than 102% of the required amount;

(f) provide for the return of:

(i) an amount withdrawn in excess of the actual amount under Subsection (3)(d); and

(ii) interest payments at a rate not to exceed the prime rate of interest on such amount; and

(g) permit the award by an arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in Subsection (3)(f);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) other reasonable expenses.

(4) A trust agreement may be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in a financial statement required to be filed with the department in compliance with the provisions of this rule when:

(a) established on or before the date of filing of the financial statement of the ceding insurer;

(b) the reduction for the existence of an acceptable trust account is not more than the current fair market value of acceptable assets available to be withdrawn from the trust account at the time the trust is established; and

(c) the reduction is not greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(5) Failure of a trust agreement to specifically identify the beneficiary may not be construed to affect an action or right that the commissioner may take or possess pursuant to the provisions of the laws of this state.

R590-173-13. Letter of Credit Qualified Under Section R590-173-11.

(1)(a) A letter of credit shall be:

(i) clean;

(ii) irrevocable;

(iii) unconditional; and

(iv) issued or confirmed by a qualified United States financial institution.

(b) A letter of credit shall contain:

(i) an issue date;

(ii) an expiration date; and

(iii) statements that:

(A) to obtain funds, a beneficiary is required only to draw a sight draft under a letter of credit and present it; and

(B) the letter of credit is not subject to a condition or qualification not stated in it.

(c) A letter of credit may not refer to other agreements, documents, or entities, except as provided in Subsection (10).

(2) The heading of a letter of credit may include a boxed section containing the name of the applicant and other appropriate notations shall be clearly marked to indicate that the information is for internal identification purposes only.

(3) A letter of credit shall contain a statement that the issuing financial institution's obligation under the letter of credit is not contingent on reimbursement.

(4)(a) The term of a letter of credit shall be for at least one year.

(b) A letter of credit shall contain an evergreen clause that:

(i) prevents the letter of credit from expiring without notice from the issuer; and

(ii) requires no less than 30 days' notice before the expiration date for nonrenewal.

(5)(a) A letter of credit shall state whether it is subject to and governed by:

(i) the laws of this state;

(ii) the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600);

(iii) International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98); or

(iv) any successor publication to those named in Subsection (5)(a)(ii) or (5)(a)(iii).

(b) Drafts drawn under Subsection (5)(a) shall be presentable at an office in the United States of a qualified United States financial institution.

(6) A letter of credit under Subsections (5)(a)(ii) through (5)(a)(iv) shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of UCP600 or any successor publication occur.

(7) If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution, the following requirements shall be met:

(a) the issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) the evergreen clause shall provide for 30 days' notice before the expiration date for nonrenewal.

(8) Reinsurance agreement provisions.

(a) A reinsurance agreement obtained together with a letter of credit may:

(i) require the assuming insurer to provide letters of credit to the ceding insurer and specify what they cover; or

(ii) state that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(A) to pay or reimburse the ceding insurer for:

(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(II) the assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(B) where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged 10 days before the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, the assuming insurer shall deposit the amounts withdrawn in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsection (8)(ii)(A) as may remain after withdrawal and for any period after the termination date.

(iii) The provisions of Subsection (8)(a) apply without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing in Subsection (8)(a) precludes the ceding insurer and assuming insurer from providing for:

(i) an interest payment, at a rate not in excess of the prime rate of interest, on the amounts held under Subsection (8)(b); or

(ii) the return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

R590-173-14. Other Security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

R590-173-15. Required Provisions in a Reinsurance Contract.

Credit for reinsurance may not be granted, and an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of this rule or Section 31A-17-404 unless the reinsurance agreement:

(1) includes a proper insolvency clause, stipulating that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company;

(2) includes a provision that the assuming insurer, if an authorized assuming insurer:

(a) submits to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;

(b) complies with all requirements necessary to give the court or panel jurisdiction;

(c) designates an agent who service of process may be made upon; and

(d) agrees to abide by the final decision of the court or panel; and

(3) includes a proper reinsurance intermediary clause stipulating that the credit risk for the intermediary is carried by the assuming insurer.

R590-173-16. Severability.

If any provision of this rule, Rule R590-173, 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[~~January 10, 2017~~]
Notice of Continuation: June 5, 2017
Authorizing, and Implemented or Interpreted Law: 31A-2-201

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R590-196**	**Filing ID 54520**

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R590-196. Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form

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

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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

The majority of the changes are being done to fix style issues to bring this rule text more in line with current rulewriting standards. Other changes make the language of this rule more clear, update the new Section R590-196-7 to use the Department's current language, and remove the old Section R590-196-7 and Section R590-196-9 because this rule is already in force and 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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 31A-35-104		

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	04/15/2022

R590. Insurance, Administration.
R590-196. Bail Bond [~~Surety~~]Premium and Fee Standards, Collateral Standards, and Disclosure Form.
R590-196-1. [~~Purpose.~~
~~This rule establishes uniform fee and collateral standards for bail bond surety business in the State of Utah.~~

~~**R590-196-2. Authority.**~~
~~This rule is promulgated pursuant to Section 31A-35-104 which requires the commissioner to adopt by rule standards of conduct for bail bond surety business.~~

~~**R590-196-3. Scope and Applicability.**~~
~~This rule applies to any person engaged in bail bond surety business.~~]**Authority.**
This rule is promulgated by the commissioner pursuant to Section 31A-35-104.

R590-196-2. Purpose and Scope.
(1) The purpose of this rule is to establish:
(a) uniform premium and fees; and
(b) collateral standards.
(2) This rule applies to a person engaged in the bail bond business.

R590-196-3. Definitions.
Terms used in this rule are defined in Sections 31A-1-301 and 31A-35-102. Additional rules are defined as follows:
(1) "Bail bond business" means engaging in conduct authorized under Title 31A, Chapter 35, Bail Bond Act.

R590-196-4. Premium and Fee Standards.
(1) Initial bail bond premium and fees.
(a) Bail bond premium amounts:
(i) the minimum [~~fee:~~]premium charged may not be less than 10% of the bail bond amount;
(ii) the maximum [~~fee:~~]premium charged may not [~~to~~]exceed 20% of the bail bond amount.
(b) [~~Document~~]A document preparation fee may not exceed $20 per set of forms [~~pertaining to one~~]relating to a bail bond.
(c) [~~Credit~~]A credit card fee may not exceed 5% of the amount charged to [~~the~~]a credit card.
(2) Additional fees.
(a) [~~These fees~~]Fees are limited to actual and reasonable expenses incurred by [~~the bail bond surety because~~]a surety insurer or a bail bond agency when:
(i) the defendant fails to appear before the court at [~~any~~]a designated date[~~s~~] and time[~~s~~];
(ii) the defendant fails to comply with [~~the~~]a court order; or
(iii) the defendant or the co-signer fails to comply with the terms of [~~the~~]a bail bond agreement [~~and any~~]or a promissory note[~~s pertaining~~] relating to that agreement.
(b) Reasonable mileage expense [~~fee for mileage is~~]fees are allowed pursuant to the Internal Revenue Service standard [~~for business mileage~~]mileage rates for a business.
(c) [~~Apprehension~~]Reasonable apprehension expenses such as meals, lodging, commercial travel, and communication[~~s, whether or not~~], regardless of whether the defendant is apprehended, are limited to actual expenses incurred and must be reasonable, [~~i.e.~~]for example, meals at mid-range restaurants, lodging at mid-range hotels, commercial travel in coach class, etc.
(d) [~~Reasonable collateral~~]Collateral expense fees are allowed for:
(i) actual expenses to obtain collateral; and
(ii) storage expenses, if in a secured storage area, limited to actual expenses.
(e) A late payment fee of $20 or 5% of the delinquent periodic payment, whichever is less, is allowed.
(f) If a fee is charged by [~~the~~]a court or [~~the~~]a jail to process a bail bond, the actual fee charged may be passed through to the defendant or the co-signer.

R590-196-5. Collateral Standards.
(1) Collateral may be provided to:
(a) secure bail bond fees[~~,~~];
(b) secure the face amount of [~~the~~]a bail bond[~~ issued,~~]; or
(c) both.
(2) If [~~the bail bond~~]a surety insurer or a bail bond agency accepts the same collateral to secure the bail bond fee[~~s~~] and the face amount of [~~the~~]a bail bond[~~ issued, then, in the event of a failure to pay bail bond fees when due~~], the collateral may not be converted until the bail bond is exonerated or judgment entered against the surety insurer or bail bond agency and the depositor has been given [~~no less than~~]at least 15 days to pay any bail bond fees owing.
(3) If [~~the bail bond~~]a surety insurer or bail bond agency accepts different collateral to secure the bail bond fee and the face amount of [~~the~~]a bail bond[~~ issued then~~]:
(i) the collateral securing the bail bond fees may not be converted until payment has been defaulted under the terms of the promissory note for those fees, and the depositor of the collateral has been given [~~no less than~~]at least 15 days to make the required payment;
(ii) the collateral securing the face amount of the bail bond [~~issued~~]may not be converted until the bail bond is exonerated or judgment entered against the surety insurer or bail bond agency and the depositor of the collateral has been given [~~no less than~~]at least 15 days to reimburse the [~~bail bond~~]surety insurer or bail bond agency for any amounts owed to the [~~bail bond~~]surety insurer or bail bond agency.
(4) [~~The bail bond~~]A surety insurer, [~~its agents~~]a bail bond agency, or a bail bond producer taking possession of collateral[~~, or both, will hold said~~] shall hold the collateral as a fiduciary until [~~such time as~~]ownership of the collateral passes to the [~~bail bond~~]surety insurer or bail bond agency.
(5) Collateral held [~~as a fiduciary~~]may not be used by [~~the bail bond surety or its agents~~]a surety insurer, a bail bond agency, or

a bail bond producer without the specific written permission of the depositor of the collateral.

(6) [~~Should~~]If proceeds from converted collateral exceed the outstanding balance due, the [~~bail bond surety will~~]surety insurer or bail bond agency shall return the excess proceeds to the depositor of the collateral.

(7) Notice under [~~the rule shall be deemed~~]this rule is proper if [~~it is~~]sent via first class mail to the address provided by the depositor of the collateral.

R590-196-6. Disclosure Form.

[~~The bail bond surety and its agents will~~]A surety insurer, bail bond agency, or bail bond producer shall use the following disclosure form, or a form that contains substantially similar language.

[~~TABLE~~

~~XYZ Bail Bonds Disclosure Form~~
~~1234 South 1234 East, Salt Lake City, UT 84444:~~
~~801-123-4567 fax: 801-098-7654~~
~~Defendant.....Co-Signer.....~~
~~Court.....Charge.....~~
~~Bond amount $.....Bond number.....~~
~~Initial Fees, non-refundable.~~
~~....bond premium, maximum: no more than 20%;~~
~~minimum: not less than 10%; $.....~~
~~....document preparation, not to exceed $20~~
~~per set of bond forms. $.....~~
~~....credit card fee, not to exceed 5% of amount~~
~~charged to credit card $.....~~
~~total initial fees $.....~~

~~Additional Fees.~~
~~(1) Limited to actual and reasonable expenses required because the defendant fails to appear before the court at any designated times, or fails to comply with the court order, or fails to comply with the terms of the bail bond agreement or any promissory notes pertaining to that agreement. The following are some reasonable expense fees:~~
~~(i) reasonable expense fee for mileage is IRS mileage reimbursement standard for business miles;~~
~~(ii) reasonable apprehension expense fees include meals at mid-range restaurants, lodging at mid-range hotels, transportation at no more than coach fares; and~~
~~(iii) reasonable collateral expense fees: actual expenses to obtain collateral and, actual storage expenses, if collateral is in a secured storage area.~~
~~(2) A late payment fee of $20 or 5% of the delinquent periodic payment whichever is less.~~
~~(3) If a fee is charged by the court or the jail to process a bail bond, the actual fee charged may be passed through to the defendant or the co-signer.~~

~~Grounds for revocation of bond.~~
~~Should the defendant violate any of the following, the defendant shall be subject to immediate bond revocation andthe defendant, or the co-signer, or both, shall be subject to all the costs incurred to return the defendant to the court.~~

~~Grounds for revocation include the following:~~
~~(a) the defendant or co-signer providing materially false information on bail bond application;~~
~~(b) the court's increasing the amount of bail beyond sound underwriting criteria employed by the bail bond agent or bail bond surety;~~
~~(c) a material and detrimental change in the collateral posted by the defendant or one acting on defendant's behalf;~~
~~(d) the defendant changes their address or telephone number or employer without giving reasonable notice to the bail bond agent or bail bond surety;~~
~~(e) the defendant is arrested for another crime, other than a minor traffic violation, while on bail;~~
~~(f) the defendant is back in jail in any jurisdiction and revocations can be served prior to the defendant being released;~~
~~(g) failure by the defendant to appear in court at any appointed times;~~
~~(h) finding of guilt against the defendant by a court of competent jurisdiction;~~
~~(i) a request by the co-signer based on reasons (a) through (h) above. Items (a) through (h) pertain to the defendant; items (a), (c), (e) (g) and (i) pertain to co-signers, if any.~~

~~Collateral.~~
~~The following has been given as collateral to guarantee all court appearances of the defendant until the bond is exonerated:~~
~~.....~~
~~.....~~
~~.....~~
~~The following has been given as collateral to guarantee payment of bond fees:~~
~~.....~~
~~.....~~
~~In the event judgment is entered against the surety or the bonding fee is not paid according to the terms of the bail bond agreement and its promissory note, if any, following written notice to the undersigned of such judgment or non-payment, the undersigned authorize XYZ Bail Bonds to convert the appropriate collateral to collect the judgment or the unpaid bond fees. Should proceeds from the sale of the appropriate collateral be insufficient to cover the outstanding balance due, the defendant, the co-signer, or both, agree to be personally liable for the difference. Should proceeds from the sale exceed the outstanding balance, the difference will be returned to the depositor of the collateral. The depositor's signature below constitutes acknowledgment of a Bill of Sale for the collateral. The depositor accepts this agreement as a bill of sale for the collateral.~~

~~By signing below I certify that I have read and understand this disclosure form, the bail bond agreement and its attached promissory note, if any. I certify under penalty of perjury that all information given to XYZ Bail Bonds verbally and in writing on all documents relevant to this bond are true and accurate. The co-signer agrees that should the co-signer request XYZ Bail Bonds to revoke the defendant's bond, with or without probable cause, the co-signer will be responsible to pay XYZ Bail Bonds and their agents for the time returning the defendant to jail at the rates stated above in additional fees. If requested by the co-signer to revoke the bond without probable cause, the co-signer will be responsible to reimburse the defendant his bond fees.~~

~~Date.....Defendant.....~~
~~Date.....Co-signer.....~~
~~Date.....Depositor.....~~
~~I,....., agent of XYZ Bail Bonds, certify that I have given a copy of all documents pertaining to this bail bond agreement to the defendant, the co-signer, the depositor, or any of the above, at the time and date said bail bond agreement was executed.~~
~~Date.....Bail Bond Agent.....~~]

TABLE	
XYZ Bail Bonds Disclosure Form 1234 South 1234 East, Salt Lake City, UT 84444: 801-123-4567 fax: 801-098-7654	
Defendant:	Cosigner:
Court:	Charge:
Bail bond amount:	Bail bond number:

Initial Premium and Fees, non-refundable.	
....bail bond premium, maximum: no more than 20%; minimum: not less than 10%	$.....
....document preparation, not to exceed $20 per set of bail bond forms	$.....
....credit card fee, not to exceed 5% of amount charged to credit card	$.....
total initial premium and fees	$.....
Additional Fees.	
(1) Limited to actual and reasonable expenses required because the defendant fails to appear before the court at any designated time, fails to comply with a court order, or fails to comply with the terms of a bail bond agreement or a promissory note pertaining to that agreement. The following are reasonable expense fees:	
(i) reasonable mileage expense fee pursuant to IRS standard mileage rates for business;	
(ii) reasonable and actual apprehension expense fees, including meals at mid-range restaurants, lodging at mid-range hotels, transportation at no more than coach fares; and	
(iii) collateral expense fees: actual expenses to obtain collateral and actual storage expenses, if collateral is in a secured storage area.	
(2) A late payment fee of $20 or 5% of the delinquent periodic payment whichever is less.	
(3) If a fee is charged by a court or a jail to process a bail bond, the actual fee charged may be passed through to the defendant or the co-signer.	
Grounds for Revocation of a Bail Bond.	
(1) If the defendant violates any of the following, the defendant shall be subject to immediate bond revocation and the defendant, or the co-signer, or both, shall be subject to all the costs incurred to return the defendant to the court.	
(2) Grounds for revocation include the following:	
(a) the defendant or co-signer providing materially false information on bail bond application;	
(b) the court's increasing the amount of bail beyond sound underwriting criteria employed by the bail bond producer, bail bond agency, or surety insurer;	
(c) a material and detrimental change in the collateral posted by the defendant or someone acting on defendant's behalf;	
(d) the defendant changes their address or telephone number or employer without giving reasonable notice to the bail bond producer, bail bond agency, or surety insurer;	
(e) the defendant is arrested for another crime, other than a minor traffic violation, while on bail;	
(f) the defendant returns to jail in any jurisdiction and revocation is served on the defendant before the defendant is released;	
(g) failure by the defendant to appear in court at any appointed time;	
(h) the defendant is found guilty by a court of competent jurisdiction;	
(i) a request by the co-signer based on reasons (a) through (h) above.	
Items (a) through (h) pertain to the defendant; items (a), (c), (e) (g), and (i) pertain to co-signers, if any.	
Collateral.	
The following has been given as collateral to guarantee all court appearances of the defendant until the bail bond is exonerated:	List collateral.....
The following has been given as collateral to guarantee payment of bail bond premium or fees:	List collateral.....
If judgment is entered against the surety insurer or bail bond agency, or the bonding premium or fee is not paid according to the terms of the bail bond agreement and its promissory note, if any, following written notice to the undersigned of such judgment or non-payment, the undersigned authorize XYZ Bail Bonds to convert the appropriate collateral to collect the judgment or the unpaid bail bond premium or fees. If proceeds from the sale of the collateral are insufficient to cover the outstanding balance due, the defendant, the co-signer, or both, agree to be personally liable for the difference. If proceeds from the sale exceed the outstanding balance, the difference will be returned to the depositor of the collateral. The depositor's signature below constitutes acknowledgment of a Bill of Sale for the collateral. The depositor accepts this agreement as a bill of sale for the collateral.	
By signing below, I certify that I have read and understand this disclosure form, the bail bond agreement and its attached promissory note, if any. I certify under penalty of perjury that all information given to XYZ Bail Bonds verbally and in writing on all documents relevant to this bail bond are true and accurate. The co-signer agrees that should the co-signer request XYZ Bail Bonds to revoke the defendant's bail bond, with or without probable cause, the co-signer will be responsible to pay XYZ Bail Bonds and their agents for the time returning the defendant to jail at the rates stated above, in additional fees. If the co-signer requests to revoke the bail bond without probable cause, the co-signer will be responsible to reimburse the defendant the bail bond premium or fees.	
Date:	Defendant:
Date:	Co-Signer:
Date:	Depositor:
I,....., agent of XYZ Bail Bonds, certify that I have given a copy of all documents pertaining to this bail bond agreement to the defendant, the co-signer, the depositor, or any of the above, at the time and date said bail bond agreement was executed.	
Date:	Bail Bond Agent:

R590-196-7. [~~Penalties.~~

~~Violations of this rule are punishable pursuant to Section 31A-2-308.~~

~~R590-196-8.~~]Severability.

[~~If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.~~

~~R590-196-9. Enforcement Date.~~

~~The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date~~]If any provision of this rule, Rule R590-196, 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, bail bonds
Date of Last Change: 2022[~~April 14, 2010~~]
Notice of Continuation: November 15, 2019
Authorizing, and Implemented or Interpreted Law: 31A-35-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R590-199**	**Filing ID 54521**

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-199. Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule)**:**
The majority of the changes are being done to fix style issues to bring this rule text more in line with current rulewriting standards. Other changes make the language of this rule more clear, and update the new Section R590-199-6 to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?)**:**

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

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

Regulatory Impact Table

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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 31A-2-201	Section 31A-4-115	

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	04/15/2022

R590. Insurance, Administration.
R590-199. Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans.
R590-199-1. Authority.

This rule is promulgated by the commissioner pursuant to [~~Subsections 31A-2-201(3) and 31A-4-115(8)~~]Sections 31A-2-201 and 31A-4-115.

R590-199-2. Purpose and Scope.

[~~This rule is drafted for the purposes of maintaining a health benefit plan market that is stable, fair, and efficient for individuals and small employers and ensuring and maintaining increased access for individuals and small employers to health coverage. It promotes an orderly process by which an insurer can elect to nonrenew health benefit plan coverages without unreasonable disruption to the health insurance market.~~

~~**R590-199-3. Applicability and Scope.**~~

~~This rule applies to accident and health insurers~~](1) The purpose of this rule is to:

(a) maintain a health benefit plan market that is stable and fair;

(b) ensure and maintain access to health benefit plan coverage; and

(c) promote an orderly process without causing disruption to the health insurance market when an insurer elects to withdraw or nonrenew health benefit plan coverage.

(2) This rule applies to an insurer offering a health benefit plan.

R590-199-[4]3. Definitions.

[~~(1) The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.~~]Terms used in this rule are defined in Sections 31A-1-301 and 31A-30-103. Additional terms are defined as follows:

[~~(2)~~](1) "Annual [~~R~~]renewal [~~D~~]date" means the annual anniversary of the date [~~the~~]a policy or plan, under which health insurance benefits are provided, [~~was~~]is initially issued.

R590-199-[5]4. Plan of Orderly Withdrawal.

(1) A [~~covered~~]carrier and each affiliate of a [~~covered~~]carrier that elects to withdraw or nonrenew coverage under a health benefit plan [~~in Utah~~]must file a plan of orderly withdrawal with the commissioner[~~ explaining the process of nonrenewal~~].

(2)(a) The plan of orderly withdrawal must be filed with the commissioner [~~at the time advance~~]no later than 30 working days before the notice [~~is~~]given under [~~Subsection 31A-30-107(3)(e) and 31A-30-107.1.(3)(e) and must~~]Subsection 31A-22-618.6(5)(e)(ii) or 31A-22-618.7(3)(e)(ii).

(b) The plan of orderly withdrawal shall be accompanied by:

(i) a $50,000 withdrawal fee; or

(ii) proof of placement or assumption of all business to another carrier.[~~ This fee is to~~]

(c) The fee shall be made payable to the Utah Insurance Department.

(3) The plan of orderly withdrawal [~~is to~~]shall include the following information:

(a) the name and telephone number of the company representative to contact regarding the [~~nonrenewal~~]withdrawal;

(b) a list of all policy forms affected by the withdrawal;

(c) the number of group or individual policies, or both, that are currently in force;

(d) the number of covered lives, [~~include~~]including the insured, spouse, and dependents, under [~~individual~~]each health benefit plan [~~policies~~]policy form;

(e) [~~number of covered lives, include insured, spouse and dependents, under small employer health benefit plans;~~

~~(f)~~]the number of COBRA or Utah mini-COBRA policies and the number of covered lives for each policy form;

[~~(g)~~](f) a copy of the notice required by [~~Subsections 31A-30-107(3)(e) or 31A-30-107.1(3)(e)~~]Section 31A-22-618.6 or 31A-22-618.7, as applicable;

[~~(h)~~](g) the service or coverage areas, indicating the withdrawal area, within the state[~~, which indicates withdrawal areas~~];

[~~(i)~~](h) a list of all types of [~~all~~]insurance coverage[~~s~~] offered in Utah in the prior year, by line of business, and the premium volume generated[~~ in the prior year~~];

[~~(j)~~](i) any reinsurance ceding arrangements relating to the health benefit plans being [~~nonrenewed~~]withdrawn;

[~~(k)~~](j) a list of all affiliated carriers [~~as~~]described in [~~Section~~]Subsection 31A-30-104(4);

[~~(l) certification of compliance executed by the president of the company stating that the withdrawing company is in compliance with 31A-30, as applicable, at the time the election to withdraw is filed;~~

~~(m) loss ratios for each form issued in Utah calculated in compliance with PPACA standards, including a description of all assumptions made;~~

~~(n)~~](k) if more than 100 covered individuals are being nonrenewed:

(i) a certified actuarial analysis from a qualified actuary of the impact that the withdrawal [~~or nonrenewal~~]will have on the individual and [~~small~~]employer market in Utah; and

[~~(o)~~](ii) an actuarial certification from a qualified actuary certifying to the level of liability related to the [~~policies~~]health benefit plans being nonrenewed;

[~~(p)~~](l) any [~~plans~~]proposal to withdraw or nonrenew any other line of business in Utah in the [~~future~~]next 12 months;

[~~(q) copy of the certificate of authority of the company and all affiliates involved in the withdrawal; and~~

~~(r) demonstrate~~](m) a statement that the nonrenewal of any coverage under a health benefit plan will occur on the annual renewal date of each policy or plan;

(n) proof that all liabilities relating to the policies that will be nonrenewed are fully satisfied or adequately reserved[~~.~~]; and

(o) an acknowledgement that the company is prohibited from writing new business in the health benefit plan market withdrawn from for a period of five years beginning on the date of discontinuation of the last coverage nonrenewed.

[~~(2) Submit two copies of the plan of orderly withdrawal, one copy to be filed and a second set to be returned to you, and a self-addressed return envelope.~~

~~(3)~~](4) If both the written notice and a complete plan of orderly withdrawal are not received, the partial submission will be returned and [~~not considered to have been~~]considered not received by the [~~department~~]commissioner.

[~~(4)~~](5) Availability of coverage through a special enrollment period or [~~a PPACA exchange~~]open enrollment under Section 31A-30-117 is not considered assumption or placement with another carrier.

R590-199-[6]5. Implementation of Withdrawal.

(1) A [~~covered~~]carrier and all its affiliates [~~that elect to withdraw~~]withdrawing from the market [~~or to nonrenew a health benefit plan issued to covered insureds~~]must provide written notice of the decision to [~~do so~~]withdraw to all affected insureds and to the insurance commissioner in each state in which an affected insured resides.

(2) [~~Each insured must be given at least 180 days notice prior to the nonrenewal date.~~

~~(3) The commissioner is to receive written notice of the decision to withdraw or nonrenew any health benefit plan at least three working days prior to the mailing of the notice to affected covered insureds.~~

~~(4)~~]The carrier's [~~must include with the notice to the commissioner its certificate of authority which~~]certificate of authority will be modified to prohibit [~~the~~]writing [~~of~~]business from which the carrier has [~~elected to nonrenew or withdraw from the market~~]withdrawn.

[~~(5) The carrier is prohibited from writing new business in the individual and small employer health benefit plan market for a period of five years beginning on the date of discontinuation of the last coverage not renewed.~~]

[~~(6) A covered~~](3) A carrier's affiliates, as [~~defined~~]described in Subsection 31A-30-104(4), may also be required to withdraw, as determined by the commissioner.

[~~(7) Each plan submitted to the commissioner must provide that the nonrenewal of any coverage under a health benefit plan will occur on the annual renewal date of each policy or plan.~~](4) Nonrenewal shall occur on the annual renewal date.

R590-199-[~~7~~]6. Severability.

[~~If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable~~]If any provision of this rule, Rule R590-199, 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: health insurance
Date of Last Change: 2022[~~October 10, 2014~~]
Notice of Continuation: May 4, 2020
Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-4-115; 31A-30-106; 31A-30-107

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R590-271**	**Filing ID 54522**

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R590-271. Data Reporting for Consumer Quality Comparison

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

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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

The majority of the changes are being done to fix style issues to bring this rule text more in line with current rulewriting standards. Other changes make the language of this rule more clear, remove the old Section R590-271-6 because penalties are already provided for in statute, and update the new Section R590-271-6 to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

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

Regulatory Impact Table

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

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 31A-2-201	Section 31A-2-216	

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:	05/31/2022

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	04/15/2022

R590. Insurance, Administration.
R590-271. Data Reporting for Consumer Quality Comparison.
R590-271-1. Authority.

This rule is promulgated by the commissioner pursuant to [~~Subsection 31A-2-216 wherein the commissioner may adopt rules to educate health care consumers by producing or collecting and disseminating education materials to consumers~~]Sections 31A-2-201 and 31A-2-216.

R590-271-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) [~~define terms;~~

~~(b)~~]define the methodology for determining and comparing insurer transparency information;

[~~(c) provide the data and~~](b) establish a format for [~~submission~~]submitting data to the commissioner; and

[~~(d) provide~~](c) establish the date the [~~information~~]data is due.

(2)(a) This rule applies to [~~all~~]an insurer offering a health benefit plan[~~s issued or renewed on or after January 1, 2015~~].

(b) This rule does not apply to an insurer whose health benefit plans cover fewer than 3,000 individual Utah residents in aggregate.

R590-271-3. Definitions.

[~~In addition to the definitions in Sections 31A-1-301, the following definitions shall apply for the purpose of this rule~~]Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Electronic [~~D~~]data [~~I~~]interchange [~~S~~]standard" means [~~the:~~

~~(a)~~]the standards developed by the UHIN Standards Committee at the request of the commissioner[~~; and~~

~~(b) others as adopted by the commissioner by rule~~].

(2) "HEDIS" means the Healthcare Effectiveness Data and Information Set.

(3) "SFTP" means the Secure File Transfer Protocol.

[~~(3)~~](4) "UHIN" means the Utah Health Information Network.

[~~(4)~~](5) "UHIN Standards Committee" means the Standards Committee of the UHIN.

R590-271-4. Reporting Requirements.

(1)(a) The commissioner adopts the following UHIN electronic data interchange standards developed [~~and adopted~~]by the UHIN Standards Committee, which are [~~hereby incorporated by reference with this rule and are~~]available for public inspection at the department during normal business hours, at [~~www.~~]insurance.utah.gov, or at [~~www.~~]uhin.org:

(i) [~~the~~]Transparency Administration Performance Standard, v1.[~~5~~]8; and

(ii) [~~the~~]Transparency Denial Standard, v1.[~~5~~]8.

(b) [~~Beginning on April 1, 2020, and each year thereafter, an~~]An insurer shall submit [~~the reports~~]to the commissioner a report on each electronic data interchange standard referenced in Subsection R590-271-4(1)(a)[~~ to the commissioner in an electronic data interchange standard which includes data for the previous calendar year through the department's secure file upload site~~].

(c) Each report shall be submitted using the department's secure file upload site at https://forms.uid.utah.gov/insurance/fileuploads.

(d) Each report shall include data for the previous calendar year, and shall combine both paper and electronic claims[~~ combined~~].

[~~(d) S~~](e) The submission format, procedures, and guidelines are described in detail in the adopted transparency standards published by UHIN.

(2) An insurer shall comply with the reporting guidelines, procedures, and format of Rule R428-13 and submit HEDIS data for the preceding calendar year to the Utah Department of Health Office of Health Care Statistics[~~, the Healthcare Effectiveness Data and Information Set, HEDIS, data for the preceding calendar year~~].

R590-271-5. Public Records.

The [~~commissioner finds the~~]data submitted to the commissioner [~~in the Transparency Administration Performance Standard and the Transparency Denial Standards to be considered a~~]pursuant to this rule are public records as defined in Section 63G-2-103 for [~~the purpose of display~~]use on:

(1) the department's website, insurance.utah.gov; and

(2) the department's transparency website, healthrates.utah.gov.

R590-271-6. [~~Penalties.~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

~~R590-271-7.~~]Severability.

[~~If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable~~]If any provision of this rule, Rule R590-271, 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: data, data reporting, insurance
Date of Last Change: 2022[~~January 22, 2020~~]
Authorizing, and Implemented or Interpreted Law: 31A-2-216

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R671-203**	**Filing ID 54489**

Agency Information

1. Department:	Pardons (Board of)	
205	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state and zip:	Murray, UT 84107	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Haddon	801-261-6467	mikehaddon@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R671-203. Victim Input and Notification

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

Rule R671-203 was set for expiration in January 2022. As such, the Board of Pardons and Parole (Board) conducted a review and update of this rule's language.

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)**:**

Several changes are included in the amended Rule R671-203. In part, the amendments clarify the definition of "victim". For purposes of the right to be present at a hearing, changes clarify that "victim" does not include any person currently in jail or prison custody, juveniles whose behavior would be considered an offense if committed by an adult, or an individual in custody for psychological treatment. The amendments include reference to the Board's website as an avenue to find information related to Board hearings and Board decisions. It also includes a reference to the Department of Corrections' website where individuals can review requirements for accessing the prison for a hearing. Additional clarification is provided related to victim representatives by indicating that once a

representative is identified, the Board will notify that representative regarding upcoming hearings unless or until the victim indicates otherwise. The amendments clarify that the right of a victim to attend and testify at a Board hearing is subject to compliance with prison facility regulations and hearing decorum standards. The adjustments also clarify that a Victim Impact Hearing will be conducted in the same manner as other hearings conducted by the Board. Finally, modifications are made throughout this rule to improve clarity, as well as consistency in formatting.

Fiscal Information

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

A) State budget:

The adjustments made in the amended rule are minor and will not impact the Board's regular operations. Therefore, the changes proposed 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 add or remove any burdens for 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 add or remove any burdens for 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 clarifies and makes only minor adjustments to Board processes. The changes do not materially adjust the way the Board currently operates. 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?)**:**

The 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, Utah Board of Pardons and Parole

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

B) Department head approval of regulatory impact analysis:
The 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 77-27-9.5	Section 77-37-3	Section 77-37-4
Section 77-38-1 et seq.	Subsection 63G-3-201(1)	Section 77-27-1 et seq.
Subsection 77-27-9(4)	Article I, Section 28	

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:		05/31/2022
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
05/13/2022	1:00 PM	448 E Winchester Street, Suite 300 Murray, UT 84107

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Director	**Date:**	04/05/2022

R671. Pardons (Board of), Administration.
R671-203. Victim Input and Notification.
R671-203-1. General Provisions.

[~~For purposes of Utah Administrative Code, Title R671 and all rules contained therein:~~]

(1) "Victim" means:

(a) A natural person against whom a charged crime or conduct is alleged to have been perpetrated or attempted by an offender personally or as a[~~an offender, as a principal, accomplice or~~] party to the offense or conduct, [~~committed a criminal offense~~]for which a conviction was entered and for which the Board[~~ of Pardons and Parole (Board)~~] has jurisdiction;

(b) A natural person originally named as an alleged victim in an allegation of criminal conduct who is not a victim of the offense of Board jurisdiction to which the defendant entered a negotiated plea of guilty or no contest; or

(c) A victim representative as provided in Subsection R671-203-1(2)[~~herein~~].

(d) Pursuant to Subsection 77-38-2(9), for purposes of the right to be present, "victim of crime" does not mean any person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment. The Board may consider written submissions from any of the foregoing individuals.

(2) "Victim [~~R~~]representative" means: a person designated by a victim or by this rule to represent a victim during Board processes, hearings, or communications.

(3) Pursuant to [~~Utah Code Ann.~~]Subsection 77-27-13(2), the Department of Corrections (Department) shall provide the Board with any[~~all~~] available information in its records or possession concerning the impact a crime may have had upon the victim or victim's family.

(4)(a) Pursuant to [~~Utah Code Ann.~~]Subsection 77-27-13(5)(a), within 30 days from the date of sentencing the prosecutor of the case responsible for an offender's arrest, conviction, and sentence, shall forward to the Board any victim impact statement in its possession that refers to any physical, mental, or economic loss suffered by the victim or victim's family.

(b) Upon request of the Board pursuant to [~~Utah Code Ann.~~]Subsection 77-27-13(4), any other law enforcement official responsible for an offender's arrest, prosecution, conviction, sentence, supervision or incarceration, shall forward to the Board any victim impact statement in its possession that refers to any victim contact information or any physical, mental, or economic loss suffered by the victim or victim's family.

(5) No victim or victim representative appearing at a hearing may be photographed without the approval of the victim, victim representative, and the presiding hearing official.

(6)(a) Victims are encouraged to:

(i) visit the Board's website, [~~(~~]bop.utah.gov[~~)~~], as soon as possible to obtain information about Board procedures; and

(ii) provide information to the Board for future notifications.

(b) The Board shall maintain information in written form and on its website, [~~(~~]bop.utah.gov[~~)~~], for victims about Board procedures, victim notification, attending hearings, submitting victim impact information, and testifying at hearings.

(7) Victims are encouraged to utilize the Board's website, bop.utah.gov, to learn of decisions and hearing outcomes. Victims may also contact the Board, after any parole hearing, for information concerning the outcome of that hearing. Victims may also contact the Department[~~ of Corrections~~] for information regarding[~~on~~] offender releases.

(8) [~~All p~~]Persons attending hearings must comply with the security and clearance regulations of the facility where the hearing is held. These regulations may include picture identification, appropriate dress, and no contraband. Persons who want to attend a hearing should contact the Department directly or on their website, corrections.utah.gov, for the latest information regarding security and visiting information[~~Contraband for this purpose includes but is not limited to purses/bags, cell phones, and other electronic devices. Visitors should arrive at the facility 15 to 20 minutes prior to the scheduled hearing to allow adequate time for the security clearance~~].

R671-203-2. Victim Representative.

(1) If a victim does not wish to give testimony or cannot[~~is unable to~~] do so, a victim representative may be designated to speak on the victim's behalf.

(a) If a victim is over the age of 18 at the time of a hearing and desires to designate a victim representative, the victim may make that designation on the record at a hearing, or in a notarized statement filed with the Board before[~~prior to~~] or at a hearing.

(b) If a victim is under the age of 18 at the time of a hearing, a victim's parent, guardian, or custodian may represent the victim during Board processes, hearings, and communications.

(c) If a victim is deceased, a family member, or the victim's personal representative as appointed by a court, may be designated as the victim's representative.

(2) A victim representative must[~~, at all times,~~] act according to the instructions, and in the best interests, of the victim.

(3) Notwithstanding [~~any provision of~~]this rule, or any designation, an offender, offender's co-defendant, or offender's attorney may not act as a victim representative in matters before the Board in which the offender was convicted of causing any injury or damage to the victim.

(4) Once a victim representative is identified for a victim under the age of 18, the Board will notify the victim representative unless the victim indicates otherwise.

R671-203-3. Notification.

(1) Notice of an offender's original parole hearing shall be [~~given~~]provided to a victim at least seven days in advance of the hearing, or as soon as practicable, at the victim's most recent address of record as provided to the Board. The notice shall include:

(a) the date, time, and location of the hearing;

(b) the type of hearing, and the cases or offenses involved;

(c) a list of or reference to the statutes and rules applicable to a victim's participation in the hearing;

(d) the [~~address and telephone number~~]contact information of the Board employee who may be contacted for further explanation of procedures regarding victim participation in the hearing;

(e) specific information about how[~~, when, and where~~] the victim may obtain the results of the hearing; and

(f) notification that the victim must maintain their current contact information with the Board [~~in order~~]to receive future notifications of hearings affecting a specific offender's incarceration or parole.

(2) If a victim is deceased, or the Board is otherwise unable to contact the victim, the Board shall make reasonable efforts to identify the victim's immediate family and notify [~~the~~]them [~~victim's immediate family~~]of the hearing.

(3)(a) Following notice of the original hearing, a victim may elect to receive notice of any future hearing[~~ as defined by Utah Code Ann. Subsection 77-38-2(5)(g) and Utah Administartive Code Section R671-203-4~~].

(b) [~~In order t~~]To receive notice of [~~these~~]future hearings, [~~the~~]a victim shall notify the Board of the desire to receive future notices, and shall thereafter maintain current contact information with the Board.

(4) If a victim elects to receive future notices, the notice shall be sent to the victim's most recent contact information as provided to the Board.

R671-203-4. Right to Attend and Testify.

(1) [~~Pursuant to Utah Code Ann.~~]"Hearing" as discussed in Subsection 77-38-2(5)(g)[~~, "hearing"~~] means an open public hearing, as defined by Section R671-302-1, at which the offender is present[~~,~~] and which concerns whether to grant parole or other form of discretionary release from imprisonment.

(2) A victim may attend any hearing regarding the offender.

(3) A victim may testify during any hearing regarding the offender.

(4) A victim may request a re-scheduling or continuance of the hearing if travel or other significant conflict prohibits their attendance at the hearing.

(5) The foregoing rights to attend and to testify are subject to compliance with facility regulations and hearing decorum standards.

R671-203-5. Victim Statements and Testimony.

(1) A victim[~~,~~] or victim representative[~~ or victim's family member (if the victim is a child or deceased)~~], may testify regarding the impact of the offense[~~(s)~~] upon the victim[~~, any restitution claimed,~~] and [~~may present~~]the victim's views concerning[~~ any concerns or statements regarding any~~] the decisions to be made regarding the offender.

(2) The testimony may be presented as a written statement, which may also be read aloud, if the presenter desires; or as oral testimony.

(3) Oral testimony at hearings may be limited [~~in order~~]to accommodate the hearing calendar.

(4) If a deceased victim's [~~family member~~]representative decides to orally testify[~~ies~~], testimony may be limited to two representatives[~~one family member from the victim's marital family (i.e. spouse or children) and one family member from the victim's nuclear/extended family (i.e. parent, sibling or grandparent)~~].

(5) In exceptional or extraordinary circumstances a victim or victim representative may request that additional oral testimony be permitted.

(6)(a) A victim may present oral testimony during the hearing outside the presence of the offender as provided by Subsection 77-27-9.5(7). However, the offender shall be permitted to hear the victim's testimony and respond during the hearing.

(b) If a victim presents testimony during a victim impact hearing held separately from an original hearing or rehearing without the offender present, an audio recording of the victim's testimony shall be made available to the offender.

(7) Victims who desire to testify at hearings shall notify the Board as far in advance of the hearing as possible so that appropriate arrangements can be made and adequate time allocated. Victims shall inform the Board of their intent to testify before each hearing.

(8) Victims or representatives are encouraged to bring a written copy of their testimony to the hearing or send a copy to the Victim Coordinator for the Board's records[~~ file~~].

(9)[~~(a) Any person aggrieved by the conduct of the offender, who is not a victim as defined by this rule, may submit a written statement regarding any impact to the person from the offender's conduct.~~

~~(b)~~]Other than protected identifying information, including [~~but not limited to~~]address, email, and phone numbers, information submitted to the Board by the victim or victim's representative shall be[~~ is~~] disclosed to the offender pursuant to legal requirements.

R671-203-6. Victim Impact Hearings.

(1) If an offender's original parole hearing is scheduled more than three years from the offender's commitment to prison, the

victim or victim representative may request that the Board conduct a Victim Impact hearing[~~, in order~~] to:

(a) [~~preserve~~]keep victim impact testimony for future use and reference by the Board[~~,~~]; or

(b) to ensure the victim has the opportunity to participate in the original hearing.

(2) The Board may also conduct a Victim Impact hearing if a hearing, as defined by [~~Utah Code Ann.~~]Subsection 77-38-2(5)(g) and [~~Utah Administrative Code Section~~]Section R671-203-4, is to be held outside the [~~S~~]state[~~ of Utah~~] because the offender is housed in another state.

(3)(a) [~~The sole purpose of a Victim Impact hearing held pursuant to R671-203-6(1) is to afford an opportunity for victim impact testimony to be made in cases where an offender's original hearing is scheduled more than three years following commitment to prison, so that the victim is not denied an opportunity to participate in the offender's original hearing, simply because of the passage of time between the offender's commitment to prison and original hearing.~~

~~(b)~~]A Victim Impact hearing is not a substitute for an original hearing.

[~~(c)~~](b) A Victim Impact hearing held pursuant to Subsection R671-203-6(1) will not result in a review, re-scheduling, or re-determination of a previously determined original hearing date. [~~(d) Victim Impact hearings are for the convenience of victims, and may take the place of the victim's attendance and testimony at an out of state hearing.~~]

(4) A [~~V~~]victim[~~s~~] or victim's representative who requests, and for whom a Victim Impact hearing[~~s are~~] is conducted, retains the[~~ all~~] rights given[~~afforded~~] pursuant to constitutional provision, statute, or Board rule, including: the right to notice of the original hearing and any future hearings[~~;~~], the right to attend any hearing for the offender[~~;~~], and the right to testify and make future statements to the Board at any hearing for the offender.

(5) In scheduling and conducting a Victim Impact hearing:

(a) [~~All n~~]Notice [~~provisions of this Rule~~]shall comply with Section R671-203-3[~~apply~~].

(b) [~~All v~~]Victim and victim representative appearances[~~, testimony~~] and statements [~~provisions of R671-203~~]shall comply with Section R671-203-4[~~ apply~~].

(c) A Victim Impact hearing shall be conducted in accordance with other hearing procedures and practices except the offender's testimony shall be limited to responding to the victim's testimony[~~Unless the offender is housed in an out of state prison, the offender shall be present, pursuant to the provisions of R671-301, and shall be afforded an opportunity to respond to the victim's testimony. However, this is not an opportunity for the offender to discuss the conviction, sentence or potential release~~].

(6) The Victim Impact hearing shall be recorded, pursuant to the [~~provisions of~~]Rule R671-304.

KEY: victims of crimes
Date of Last Change: 2022[~~January 8, 2018~~]
Notice of Continuation: November 10, 2021
Authorizing, and Implemented or Interpreted Law: Art. I, Sec. 28; 77-27-9.5; 77-37-3; 77-37-4; 77-38-1 et seq.; 63G-3-201(3); 77-27-1 et seq.; 77-27-9(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R671-205**	**Filing ID 54490**

Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state and zip:	Murray, UT 84107	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Haddon	801-261-6467	mikehaddon@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R671-205. Credit for Time Served

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

Rule R671-205 was set for expiration in January 2022. As such, the Board of Pardons and Parole (Board) conducted a review and update of this rule's language.

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)**:**

Several changes are included in the amended Rule R671-205. The amendments include updated statutory citation references. The proposed changes also make explicit that credit for time served is applied to reducing the statutory expiration date of an individual's sentence. It clarifies that credit for time served also applies to those on parole supervision if the individual is held in custody awaiting a hearing or decision regarding a parole violation allegation. Finally, it adjusts requirements for verification related to credit for time served. Prior to the amendment, an offender was required to get documentation of time served from both the court and from the facility of custody. The adjustment now requires documentation of time served from either the court or from the facility of custody, but not both.

Fiscal Information

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

A) State budget:

The adjustments made in the amended rule are minor modifications and do not impact the Board's regular operations. Therefore, the changes proposed 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 are not applicable to 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 with the Board unless they are considered a victim of a crime related to the offender. This rule and the proposed changes are not applicable to victims of crime. Therefore, there will be no financial impact on 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 clarifies and makes minor adjustments to Board processes. The changes do not materially adjust the way the Board currently operates. 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?)**:**

The amendments to this rule do not impact compliance for affected persons. There will be no new or additional 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 Utah Board of Pardons and Parole

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

B) Department head approval of regulatory impact analysis:

The 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 77-18-105	Section 77-27-5	Section 77-27-7
Section 77-27-9	Article VII, Section 12	

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:	05/31/2022	
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
05/13/2022	1:00 PM	448 E Winchester Street, Suite 300 Murray, UT 84107

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Director	**Date:**	04/05/2022

R671. Pardons (Board of), Administration.
R671-205. Credit for Time Served.
R671-205-1. Definitions.

(1) "Custody"[~~,~~] for purposes of this rule, means that a person is held in jail or prison, and includes a person who is:

(a) in the custody of a peace officer pursuant to a lawful arrest;

(b) a minor confined in a facility operated by the Division of Juvenile Justice Services, following conviction as an adult in district court, when the district court obtained jurisdiction over the minor pursuant to [~~Utah Code s~~]Section[~~s~~] 78A-6-450[~~701~~], 78A-6-451[~~702~~], or 80-6-501 et. Seq.[~~78A-6-703~~]; or

(c) committed to the Department of Corrections, but who is housed at the Utah State Hospital or other medical facility.

(2)(a) "Sentence"[~~,~~] for purposes of this rule, means a judgment, sentence, or commitment issued by a district court pursuant to [~~Utah Code~~]Subsection 77-18-105(2) for a criminal conviction and over which the Board has prison release jurisdiction.

(b) When a person is sentenced to prison after being convicted of[~~in~~] multiple counts in the same criminal case, or after being convicted in multiple cases, credit for time served will be calculated separately for each sentence.

R671-205-2. Credit for Time Served.

(1) Credit for time served is applied to reducing the statutory expiration date of a sentence and shall be granted by the Board against an offender's prison sentence for time an offender [~~actually~~]served in custody if, before[~~prior to~~] being sentenced to prison, the offender was held in custody in connection with the specific sentence:

(a) while awaiting trial, conviction, or imposition of the sentence, including any time spent in confinement, detention, or hospitalization in the custody of the Department of Human Services or the Utah State Hospital awaiting competency evaluation or restoration;

(b) while on probation or parole and awaiting a hearing or decision regarding the probation or parole violation allegations;

(c) as a condition of probation following the imposition of a suspended prison sentence, if the offender is later committed to prison on or after October 1, 2015;

(d) as a sanction for a violation of probation, following the revocation and re-start or re-imposition of probation, if the offender is later committed to prison on or after October 1, 2015;

(e) as a response to a violation of probation, pursuant to the [~~AP and P~~]Response and Incentive Matrix, if the offender is later committed to prison on or after October 1, 2015;[~~.~~]

(f) that is reversed, vacated, or otherwise set aside, if a subsequent prison sentence is imposed for the same criminal conduct;

(g) at the Utah State Hospital following a "guilty and mentally ill" conviction; or

(h) outside the [~~S~~]state[~~ of Utah~~] based solely on a Utah warrant issued in connection with the sentence under Board jurisdiction.

(2) The Board may, in its discretion, grant credit for time served in other, extraordinary circumstances.

R671-205-3. Exclusions.

Credit for time served may not be granted for any period of custody served:

(1) for an arrest, pre-trial detention, probation, commitment, case, conviction, or sentence over which the Board has no jurisdiction;

(2) at the Utah State Hospital or comparable non-prison, psychiatric facility while an offender, before[~~prior to~~] commitment to prison is under a civil commitment order or other similar order to remain in the facility;

(3) in a medical or other treatment facility while under court supervision;

[~~(3)~~](4) under home-confinement, house arrest, in a community correctional center, or in any other treatment facility while under court supervision; or

[~~(4)~~](5) for an arrest, pre-trial detention, probation, commitment, or sentence while under the jurisdiction of the federal government.

R671-205-4. Concurrent and Consecutive Sentencing.

(1) If an offender is committed to prison for more than one sentence, credit for time served shall be calculated for each sentence separately.

(2) If an offender is committed to prison to serve consecutive sentences, only the credit for time served attributable to the consecutive sentence shall be granted against that sentence, and the consecutive sentence shall begin only following the expiration of any[~~all~~] prior sentences.

(3) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed concurrently, credit for time served shall begin on the date the subsequent prison sentence is imposed.

(4) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed consecutively, credit for time served may not be granted toward the consecutive sentence, and

the consecutive sentence shall begin only following the expiration of any[~~all~~] prior sentences.

R671-205-5. Verification of Time Served Required.

(1) The Board shall only grant credit for time served if the time in custody is documented in official records of the court or[~~and~~] facility of custody.

(2) If an offender desires credit in addition to that granted by the Board, the offender bears the burden to petition for, and provide copies of records supporting, the additional credit.

KEY: credit for time served, prison release, parole
Date of Last Change: 2022[~~January 8, 2018~~]
Notice of Continuation: November 10, 2021
Authorizing, and Implemented or Interpreted Law: Art. VII Sec. 12; 77-18-105[~~(11)(a)(iii)~~]; [~~77-18-1(12)(e)(iv);~~]77-27-5; 77-27-7; 77-27-9

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal and Reenact		
Utah Admin. Code Ref (R no.):	**R671-207**	**Filing ID 54509**

Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state and zip:	Murray, UT 84107	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Haddon	801-261-6467	mikehaddon@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R671-207. Mentally Ill and Deteriorated Offender Custody Transfer

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

Rule R671-207 was set for expiration in January 2022. As such, the Board of Pardons and Parole (Board) conducted a review and update of this rule's language. Due to the need for substantial adjustments and for re-organizing various sections of this rule, the Board is submitting this rule change as a repeal and reenactment.

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)**:**

Rule R671-207 addresses the processes required to when transferring a mentally ill offender or mentally decompensating offender between the state prison and the state hospital. An offender may be transferred from the prison to the state hospital, and an offender may be transferred from the state hospital back to the prison.

The Board's role in these processes is addressed within this rule. When a transfer of an offender occurs, either to the state hospital or back to the prison, this rule requires either the Department of Corrections (Corrections) or the Department of Health and Human Services (DHHS) to notify the Board of the transfer.

If there is disagreement between Corrections and DHHS regarding the transfer of a mentally ill or mentally decompensating offender, the Board is to be notified of the disagreement, and both agencies are to provide reports and recommendations related to the transfer. The Board will conduct an administrative hearing to resolve the disagreement and will issue its order related to the transfer after completing the hearing.

Fiscal Information

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

A) State budget:

The adjustments made in the amended rule, though substantial, reflect processes currently in place. There are no fundamental changes to processes. Therefore, the changes proposed 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 typically 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 are not related to 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 typically 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 are not related to 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 clarifies and reorganizes Board processes currently in place. The changes do not materially adjust the way the Board operates in these situations. 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?)**:**

The amendments to this rule will 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 the rule as the new language primarily clarifies processes currently in place.

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, Utah Board of Pardons and Parole

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

B) Department head approval of regulatory impact analysis:

The 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 62A-15-605.5	Section 62A-15-610	Section 77-16a-202
Section 77-16a-203	Section 77-16a-204	

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:	05/31/2022

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

On:	**At:**	**At:**
05/13/2022	1:00 PM	448 E Winchester Street, Suite 300 Murray, UT 84107

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Director	**Date:**	04/13/2022

R671. Pardons (Board of), Administration.

[~~**R671-207. Mentally Ill and Deteriorated Offender Custody Transfer.**~~

~~**R671-207-1. Transfer From the Prison to the Hospital of an Offender Whose Mental Health Has Deteriorated.**~~

~~The Department of Corrections will notify the Board whenever a mentally ill offender is transferred from the Hospital to the Prison pursuant to 77-16a-204 (5).The custody transfer of an inmate, who has not been adjudicated as mentally ill by the Court and who is housed at the Prison, whose mental health has deteriorated to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment, will occur when the Prison and the Hospital agree to a transfer. The Department of Corrections will notify the Board's Mental Health Advisor whenever an offender is transferred from the Prison to the Hospital and the Board will stay any hearing until the offender is transferred from the Hospital back to the Prison pursuant to the requirements of 77-16a-204, Utah Code, and the provisions of rule R207-2, Utah Administrative Code.~~

~~If the Prison and the Hospital cannot agree upon the transfer, the Board will make the decision as to whether the transfer should occur pursuant to 62A-15-605. Upon notification by the Department of Corrections to the Board's Mental Health Advisor that the agencies cannot agree, the Mental Health Advisor will conduct an administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Mental Health Advisor will then make a recommendation pursuant to the requirement of 62A-15-605.5 to the Board. The Board will issue its decision within 30 days of the Administrative Hearing.~~

~~**R671-207-2. Mentally-Ill Offender Custody Transfer.**~~

~~Custody transfer of a mentally-ill offender, under the jurisdiction of the Board of Pardons and Parole, and placed by the Court at the Utah State Hospital, will occur when the Hospital and the Prison agree that the Prison can provide the mentally-ill offender with the level of care necessary to maintain the offender's current mental condition and status. The Department of Corrections will notify the Board whenever a mentally-ill offender is transferred from the Hospital to the Prison and the Board will set a date for a parole hearing.~~

~~If the Hospital and the Prison cannot agree upon the transfer, the Board will make the decision as to whether the offender should be transferred to the Prison. Upon notification from the Division of Human Services to the Board's Mental Health Advisor that the agencies cannot agree upon the transfer, the Advisor will conduct an Administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Mental Health Advisor will then make a recommendation, pursuant to the requirements of 77-16a-204, to the Board as to the transfer. The Board will issue its decision within 30 days of the Administrative Hearing.~~

~~**R671-207-3. Retransfer From the Department of Corrections to the Utah State Hospital.**~~

~~Custody transfer of a mentally-ill offender, under the jurisdiction of the Board, whose custody was transferred from the Utah State Hospital to the Utah State Prison may be transferred back to the Utah State Hospital when the Prison and the Hospital agree that the offender's mental condition has deteriorated or the offender has become mentally unstable to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment. The Department of Corrections will notify the Board's Mental Health Advisor whenever a mentally-ill offender is transferred back to the State Hospital from the Prison. The Board will stay any hearing until the offender's mental health has been stabilized and the offender has been transferred back to the prison, in accordance with Rule R207-1, Utah Administrative Code and Section 77-16a-204, Utah Code.~~

~~If the Prison and the Hospital cannot agree upon the transfer, the Board will make the decision as to whether the offender should be transferred back to the Hospital. Upon notification form the Department of Corrections that the Prison and the Hospital cannot agree upon a transfer, the Mental Health Advisor will conduct an administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Advisor will then make a recommendation to the Board as to the transfer pursuant to the requirements of 77-16a-204. The Board will issue its decision within 30 days of the administrative hearing.~~

~~A mentally-ill offender who has been readmitted to the Utah State Hospital pursuant to these rules may be transferred back to the Department of Corrections in accordance with Rule R207-1, Utah Administrative Code and the requirements of Section 77-16a-204, Utah Code.~~]

R671-207. Custody Transfer for Mentally Ill Offenders and Mentally Decompensating Offenders.

R671-207-1. Definitions.

For purposes of this rule the following definitions apply:

(1) "Mentally decompensating offender" means an individual who is in the custody of the Department of Corrections (Department), who has not been adjudicated as a mentally ill offender by a court, but whose mental health has decompensated to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment.

(2) "Mentally ill offender" means an individual who has been adjudicated guilty with a mental illness, including an individual who has an intellectual disability, pursuant to Section 77-16a-202.

(3) "State Hospital" means the Utah State Hospital or other facilities designated by the Utah State Hospital where offenders may be housed for mental health treatment.

(4) "Correctional facility" means any of the Utah prison facilities operated by the Department or any portion of a county jail contracted with the Department to house offenders.

(5) "Health and Human Services" means the Utah Department of Health and Human Services.

R671-207-2. Transferring a Mentally Ill Offender from the State Hospital to a Correctional Facility.

(1) If Health and Human Services and the Department agree that a correctional facility can provide a mentally ill offender with adequate mental health treatment, that mentally ill offender shall be transferred from the State Hospital to a correctional facility in accordance with Subsections 77-16a-204(1) through (3).

(2) If Health and Human Services and the Department do not agree on the transfer of a mentally ill offender from the State Hospital to a correctional facility, Health and Human Services shall notify the Board, in writing, of the dispute. Both the Department and Health and Human Services shall provide written reports and recommendations to the Board before an administrative hearing. The Board shall conduct an administrative hearing and may take testimony at that hearing. The Board shall issue its decision within 30 days of the administrative hearing.

(3) The Department shall notify the Board when a mentally ill offender is transferred from the State Hospital to a correctional facility.

(4) The Board shall schedule any necessary hearing upon the mentally ill offender's transfer to a correctional facility.

(5) The Department shall receive any mentally ill offender when the Board orders the transfer.

R671-207-3. Retransferring a Mentally Ill Offender from a Correctional Facility to the State Hospital and Stay of Board Hearings.

(1) When a mentally ill offender, who has previously been transferred from State Hospital to a correctional facility, and who the Department has accepted, is later evaluated and it is determined that the mentally ill offender's mental condition has decompensated or that the mentally ill offender has become mentally unstable, that mentally ill offender may be retransferred back to the State Hospital if the Department and Health and Human Services agree to the retransfer.

(2) The Board shall stay any hearing for the mentally ill offender until the mentally ill offender is transferred back to a correctional facility, except for hearings regarding transfer back of the mentally ill offender to a correctional facility.

(3) If Health and Human Services and the Department do not agree to the retransfer of a mentally ill offender from a correctional facility to the State Hospital, the Board shall determine whether the mentally ill offender will be retransferred back to the State Hospital.

(4) The Department shall notify the Board, in writing, that the Department and Health and Human Services do not agree on a mentally ill offender's retransfer to the State Hospital. The Board shall conduct an administrative hearing on the matter. Both the Department and Health and Human Services shall provide written reports and recommendations to the Board before the administrative hearing. The Board may take testimony at the hearing. In making its decision, the Board shall consider the factors in Subsection 62A-15-605.5(2). The Board shall issue its decision within 30 days of the administrative hearing.

(5) Health and Human Services shall receive any mentally ill offender in the Department's custody when the Board orders the transfer.

(6) A mentally ill offender who has been retransferred to the State Hospital pursuant to this rule may be transferred back to a correctional facility in accordance with the Board's administrative rules and Section 77-16a-204.

R671-207-4. Transfer of a Mentally Decompensating Offender from a Correctional Facility to the State Hospital and Stay of Hearings.

(1) If the Department determines that a mentally decompensating offender in its custody needs to be transferred to the State Hospital to ensure adequate mental health treatment, the Department may request Health and Human Services transfer that mentally decompensating offender to the State Hospital.

(2) If Health and Human Services and the Department do not agree to transfer a mentally decompensating offender to the State Hospital, the Board shall determine whether the mentally decompensating offender will be transferred to the State Hospital.

(3) Health and Human Services shall notify the Board, in writing, of the dispute.

(4) The Board shall hold an administrative hearing on the matter. Before the hearing, the Department and Health and Human Services shall provide any reports and recommendations to the Board. In making its decision, the Board shall consider the factors in Subsection 62A-15-605.5(2). The Board shall issue its decision within 30 days of the administrative hearing.

(5) Health and Human Services shall receive any mentally decompensating offender in the Department's custody when the Board orders the transfer.

(6) The Department shall notify the Board when a mentally decompensating offender is transferred from a correctional facility to the State Hospital.

(7) The Board shall stay any hearings while a mentally decompensating offender is in the State Hospital, except for hearings regarding retransfer of a mentally decompensating offender to a correctional facility.

R671-207-5. Retransfer of a Mentally Decompensating Offender from the State Hospital to a Correctional Facility.

(1) Mentally decompensating offenders who have previously been transferred to the State Hospital shall be retransferred back to a correctional facility through agreement between the Department and Health and Human Services.

(2) If the Department and Health and Human Services cannot agree on a retransfer, the Board shall determine if the mentally decompensating offender will be retransferred back to a correctional facility.

(3) Health and Human Services shall notify the Board, in writing, of the dispute.

(4) The Board shall hold an administrative hearing on the matter. Before the hearing, the Department and Health and Human Services shall provide any reports and recommendations to the Board. In making this decision, the Board shall consider the factors in Subsection 62A-15-605.5(4). The Board shall issue its decision within 30 days of the administrative hearing.

(5) The Department shall notify the Board when a mentally decompensating offender is transferred back to a correctional facility.

(6) The Board shall schedule any necessary hearing for the mentally decompensating offender upon return to a correctional facility.

(7) The Department shall receive any previously transferred mentally decompensating offender when the Board orders the retransfer.

KEY: criminal competency, mentally ill offender, mentally decompensating offender
Date of Last Change: [~~December 4, 2002~~]2022
Notice of Continuation: November 10, 2021
Authorizing, and Implemented or Interpreted Law: 62A-15-605.5; 62A-15-610; 77-16a-202; 77-16a-203; 77-16a-204

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R671-308**	**Filing ID 54487**

Agency Information

1. Department:	Pardons (Board of)
Agency:	Administration
Street address:	448 E Winchester Street, Suite 300

City, state and zip:	Murray, UT 84107	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Haddon	801-261-6467	mikehaddon@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R671-308. Offender Hearing Assistance

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

Rule R671-308 was set for expiration in January 2022. As such, the Board of Pardons and Parole (Board) conducted a review and update of this rule's language.

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 proposed in Rule R671-308 are minor. The amendments update statutory citations and clarifies that if an attorney is representing an offender in a parole revocation hearing, they must give notice to the Board of such representation prior to the hearing. The amendments also remove unnecessary language related to requirements for attorneys representing a petitioner at either a commutation hearing or a pardon hearing.

Fiscal Information

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

A) State budget:

The adjustments made in the amended rule are minor and do not impact the Board's regular operations. Therefore, the changes proposed 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 current working relationships 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 could be involved with the Board if they are considered a victim of a crime related to the offender. This rule also applies to legal representation which could include small businesses. However, nothing materially changes in the proposed amendments related to qualifications of legal counsel or how legal counsel may interact with the Board. In addition, this rule and the proposed changes do not add or remove any burdens for 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 could be involved with the Board if they are considered a victim of a crime related to the offender. This rule also applies to legal representation which could include non-small businesses such as larger law firms. However, nothing materially changes in the proposed amendments related to qualifications of legal counsel or how legal counsel may interact with the Board. In addition, this rule and the proposed changes do not add or remove any burdens for 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 clarifies and makes only minor adjustments to Board processes. The changes do not materially adjust the way the Board currently operates. 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?)**:**

The amendments to this rule do not impact compliance for affected persons in any way. Legal representatives still must be licensed to practice law in Utah. That is not changed in the proposed amendments. 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 Utah Board of Pardons and Parole

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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The 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 77-27-9	Section 77-27-11
Section 77-27-29		

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:	05/31/2022

B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
05/13/2022	1:00 PM	448 E Winchester Street, Suite 300 Murray, UT 84107

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Director	**Date:**	04/05/2022

R671. Pardons (Board of), Administration.
R671-308. Offender Hearing Assistance.
R671-308-1. Offender Hearing Assistance.

Offenders who are deemed by the Board or a [~~H~~]hearing [~~O~~]official to be unable to effectively represent themselves at a hearing may be allowed to have any assistance the Board determines is necessary to conduct an orderly hearing. This may include a Board-appointed representative.

R671-308-2. Offender Legal Counsel -- Parole Revocation Hearings.

(1)[~~(a)~~] The Board may appoint or assign an attorney to represent offenders at parole violation hearings, including evidentiary hearings, at State expense, unless the offender is the subject of a new criminal conviction for which an initial or original hearing is scheduled.

(2)[~~(b)~~] An offender may choose instead to be represented by their own attorney during parole revocation hearings at the offender's own expense.

(3)[~~(c)~~] Any attorney appearing or representing an offender in parole revocation hearings shall be admitted and licensed to practice law within [~~the state of~~]Utah[~~, as defined by Utah Code Ann. Section 78A-9-103 (1953, as amended) and must comply with the Board's Administrative Rules, including Rule R671-103, Attorneys~~]. Any attorney representing an offender in a parole revocation hearing shall give notice of their representation to the Board before the hearing.

R671-308-3. Offender Legal Counsel -- [~~All~~]Other Hearings.

(1)[~~(a)~~] Except in parole revocation proceedings[~~hearings~~] as set forth in this rule, an offender or petitioner has no right, requirement, or entitlement to legal representation or appointed counsel before the Board or during or in connection with any Board hearing, review, or decision.

(2)[~~(b)~~] No attorney or other person appointed or employed by an offender to assist in any matter or hearing before the Board may testify, speak, or otherwise address the Board during a hearing except as provided in this rule. Only the offender, a person appointed by the Board to assist an offender pursuant to this rule, or a victim as

provided for by Utah law may present testimony or comment during a hearing.

(3)[~~(c)~~] If a pardon or commutation petitioner appoints or employs an attorney at their own expense, to appear or represent the petitioner before the Board, the Board may allow the attorney to participate at the pardon or commutation hearing.[~~ Any attorney appearing or representing a petitioner at a commutation or pardon hearing must meet the requirements of Subsection R671-308-2(c) and must comply with the Board's Administrative Rules.~~]

KEY: parole, inmates
Date of Last Change: 2022[~~October 31, 2016~~]
Notice of Continuation: November 10, 2021
Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11; 77-27-29[~~; 78A-9-103~~]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R671-311**	**Filing ID 54488**

Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state and zip:	Murray, UT 84107	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Haddon	801-261-6467	mikehaddon@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R671-311. Special Attention Reviews, Hearings, and Decisions

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

Rule R671-311 was set for expiration in January 2022. As such, the Board of Pardons and Parole (Board) conducted a review and update of this rule's language.

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)**:**

Many of the changes in Rule R671-311 are intended to clarify language and provide updated statutory citations. Amendments also clarify that the Board may consider continuing an individual on parole supervision, rather than a prison return, which could include modifications or additions to a parolee's supervision conditions. Throughout this rule, the term "institution" is replaced with "correctional facility". In addition, rather than requiring the Department of Corrections (Department) to review a request for a special attention review that was not initiated by the Department itself the language is now permissive in that the Board may or may not request Department review. Modifications to this rule significantly simplifies and clarifies Board processes related to the Earned Time Credit program. Changes also clarify language related to discretionary time reductions for those who have already earned all possible mandatory time adjustments. Additionally, the changes clarify that the forfeiture of an inmate's earned time credit must be due to a major disciplinary violation, a new criminal conviction, or new criminal activity. Finally, the amendments clarify that if there is insufficient time prior to prison release to receive the full earned time credit amount, the Board may allow for a partial earned time credit reduction.

Fiscal Information

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

A) State budget:

Although there are several adjustments proposed in the amended rule, they primarily reflect current Board regular operation. Therefore, the changes proposed 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)**:**

Primarily, 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 add or remove any burdens for 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 add or remove any burdens for 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 primarily clarifies this rule and makes adjustments that are relatively minor to Board processes. The changes do not materially adjust the way the Board currently operates. 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?)**:**

The 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 Utah Board of Pardons and Parole

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

B) Department head approval of regulatory impact analysis:

The 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 63G-3-201(3)	Section 64-13-1	Section 64-13-7.5
Section 64-13-25	Section 77-27-1 et seq.	Section 77-27-5.4
Section 77-27-7	Section 77-27-5	Section 77-27-6
Subsection 77-27-9(4)(a)	Subsection 77-27-10(2)(b)	Section 77-27-11
Article VII, Section 12		

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:	05/31/2022

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

On:	**At:**	**At:**
05/13/2022	1:00 PM	448 E Winchester Street, Suite 300 Murray, UT 84107

10. This rule change MAY become effective on:	06/07/2022

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

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Director of Administrative Services	**Date:**	04/05/2022

R671. Pardons (Board of), Administration.
R671-311. Special Attention Reviews, Hearings, and Decisions.
R671-311-1. Special Attention Reviews and Decisions.

(1) The Board may use special attention reviews or hearings to adjust parole conditions, review [~~prior~~]earlier [~~b~~]Board decisions, and [~~modify prior~~]change earlier decisions when exceptional circumstances exist.

(2) Special attention reviews shall be initiated by Board staff when necessary to correct clerical or other errors in Board orders, or upon the receipt of a written request explaining the exceptional circumstances for which modification is sought.

(3) Exceptional circumstances which may result in a special attention review and decision may include[~~, but are not limited to~~]:

(a) clerical errors in an earlier[~~ prior~~] order;

(b) changes to the [~~special~~]conditions of parole requested by the Department of Corrections (Department);

(c) determination of restitution obligations;

(d) payment of restitution obligations [~~prior to~~]before release;

(e) reinstatement of a rescinded release [~~prior to~~]before a rescission hearing;

(f) modification of an earlier[~~ prior~~] decision due to changes in credit for time served as calculated by the Board;

(g) modification of an earlier[~~prior~~] decision due to changes in applicable guidelines as calculated by the Board;

(h) [~~granting alternative events~~]considering continuation of parole that may include modification or addition of new conditions of parole in lieu of revocation for parole violations;

(i) imposing parole violation sanctions pursuant to a request from the Department and a waiver from the offender;

(j) granting incentives and parole condition changes pursuant to a request from the Department;

(k) exceptional performance or progress in a correctional facility[~~the institution~~];

(l) [~~c~~]Case [~~a~~]Action [~~p~~]Plan (CAP) completion or compliance over a significant period[~~ of time~~];

(m) [~~E~~]earned [~~T~~]time adjustments made pursuant to Section R671-311-3;

(n) exceptional circumstances not previously considered by the Board; or

(o) review of new and significant information not previously considered by the Board.

(4) Unless the request for a special attention review is made by the Department or Board staff, the Board may[~~shall~~] request that the Department review the request[~~,~~] and make a recommendation.

(5) Special attention requests that are repetitive, frivolous, or lacking in substantial merit shall be summarily denied and placed in the offender's file without formal action or response.

(6) Unless otherwise ordered by the Board, special attention reviews shall be processed administratively based on written or electronic reports supplied to the Board without the personal appearance of the offender.

R671-311-2. Special Attention Hearing.

(1) The Board may schedule a special attention hearing if it determines that a personal appearance hearing will assist in making a decision regarding a special attention request.

(2) A special attention hearing shall be scheduled if an alternative parole violation sanction is to be imposed and the offender requests a hearing.

R671-311-3. Earned Time Adjustments.

(1) As required in Section 77-27-5.4, [~~E~~]earned [~~T~~]time adjustments shall reduce the current period of incarceration for offenders who have been granted a release from prison and who successfully complete CAP priorities identified during the current period of incarceration[~~ risk reduction programming or objectives, as defined and specified herein~~]. Earned time adjustment:

(a) means a reduction of an offender's current period of incarceration when a release date has been ordered by the Board; and

(b) [~~(2) Definitions.~~

~~(a) "Adjustment" means:~~

~~(i) a reduction of an offender's period of incarceration when a release date has been ordered by the Board; and~~

~~(ii)~~]has the same meaning as "credit" as used in [~~Utah Code Ann.~~]Section 77-27-5.4.[

~~(b) "Case Action Plan" means the plan, developed by the Department pursuant to Utah Code Ann. Subsection 64-13-1(1), that identifies the program priorities that will reduce the offender's criminal risk factors as determined by a risk and needs assessment.~~

~~(c) "Department" refers to the Utah Department of Corrections and any of its divisions, bureaus, or departments.~~

~~(d) "Earned time adjustment" has the same meaning as, and comprises the program mandated in, Utah Code Ann. Section 77-27-5.4 and as defined in this Rule.~~

~~(e) "Forfeiture" and "Forfeiture of Earned Time Credits" as used in Utah Code Ann. Subsection 77-27-5.4(4) means that a release date granted by the Board following an earned time adjustment is rescinded due to a major disciplinary violation, new criminal conviction, new criminal activity, or other similar action committed by the offender.~~

~~(f) "Programming" means a component, objective, requirement, or program identified in an offender's case action plan that:~~

~~(i) meets the minimum standards and qualifications for programs established by the Department pursuant to Utah Code Ann. Section 64-13-7.5 or 64-13-25; and~~

~~(ii) has been shown by scientific research to reduce recidivism by addressing an offender's criminal risk factors.~~

~~(iii) has been approved by the Board in collaboration with the Department as required by Utah Code Ann. Section 77-27-5.4 (2)(a)(ii).~~

~~(g) "Successful completion" means that an offender has completed case action plan programming and has earned a completion rating of "successful" as determined by standards set by the Department.~~]

[~~(3)~~](2) Earned [~~T~~]time [~~A~~]adjustments.

(a) [~~A~~]an offender shall earn an adjustment of four months for the successful completion of a program identified by the Department as pertaining to, satisfying, or applying within an offender's CAP[~~case action plan~~].

(b) [~~A~~]an offender shall earn an adjustment of four months for successful completion of one additional program as identified by the Department in the offender's CAP[~~case action plan~~].

(c) [~~T~~]the earned time adjustment shall change the previously ordered release date, resulting in a reduction in the length of incarceration.

(d) [~~T~~]the Board, in its discretion, may grant additional[~~earned~~] time adjustments for offenders who have already earned mandatory time adjustments based on[~~ in excess of four months to recognize additional or extraordinary~~] other programming performance or achievement.

(e) the Board, in its discretion, may grant a time adjustment for an offender who has not completed CAP priority programming, when the Board determines there is good cause to do so.

[~~(c)~~](3) The [~~b~~]Board may order the forfeiture of earned time credits under [~~this s~~]Section R671-311-3 if it determines that a rescission hearing is necessary due to a major disciplinary violation, new criminal conviction, new criminal activity, or other similar action committed by the offender[~~ in accordance with Section 77-27-5.4(4)~~].

(4) Exclusions:

(a) [~~O~~]offenders whose previously ordered release date does not provide enough time, including time for transition services, for the adjustment may not be granted a full earned time adjustment, but [~~shall~~]may receive a partial adjustment if the previously ordered release date allows for the same.

(b) [~~E~~]earned time adjustments may not be used to change an offender's original hearing as scheduled by the Board.

(c) [~~O~~]offenders who have been sentenced to life without parole are ineligible for earned time adjustments.

(d) [~~O~~]offenders who have been ordered by the Board to serve a life sentence to expiration are ineligible for earned time adjustments.

(e) [~~E~~]earned time adjustments may not be granted for a second or subsequent completion of the same classes, programs, or CAP[~~case action plan~~] priorities during the same term of incarceration without an intervening release.

(f) [~~O~~]offenders who do not have a current release date are not eligible for the [~~E~~]earned [~~T~~]time adjustment according to [~~Utah Code Ann. ~~]Subsection 77-27-5.4(3)(d); however, the Board shall consider the program completion when making subsequent release decisions.

(g) [~~O~~]offenders who have not met a contingency requirement for release ordered by the Board are ineligible for an earned time adjustment.

(5) The Department shall notify the Board[~~,~~] within 30 days[~~,~~] of an offender's successful completion of a CAP[~~case action plan~~] program that is eligible for an earned time adjustment.

KEY: parole, inmates, sentences, earned time[~~ cut~~], earned time adjustment
Date of Last Change: 2022[~~February 15, 2017~~]
Notice of Continuation: November 10, 2021
Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 63G-3-201(3); 64-13-1; 64-13-7.5; 64-13-25; 77-27-1 et seq.; 77-27-5.4; 77-27-7; 77-27-5; 77-27-6; 77-27-9(4)(a); 77-27-10(2)(b); 77-27-11

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R671-315**	**Filing ID 54493**

Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state and zip:	Murray, UT 84107	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Haddon	801-261-6467	mikehaddon@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R671-315. Pardons

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

Rule R671-315 was set for expiration in January 2022. As such, the Board of Pardons and Parole (Board) conducted a review and update of this rule's language.

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)**:**

Proposed changes to this rule include updates to statutory citations, as well as general language clarification. The amendments clarify that a pardon releases a person from the punishment for a criminal offense and related disabilities to the extent allowable by law. Language is added related to pardon process and documentation requirements that notes reasonable accommodations to such requirements may be considered by the Board if requested by the applicant. The changes update provisions related to satisfaction of imposed restitution, fines, fees, or surcharges by allowing verification from a third party, including the Utah Office on Victims of Crime. Finally, if the offense pardoned included a registration requirement pursuant to Title 77, Chapter 41, Sex and Kidnap Offender Registry, the Board is to notify the Department of Corrections of the pardon and direct that the pardoned individual be removed from the registry.

Fiscal Information

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

A) State budget:

The adjustments made in the amended rule are minor and will not impact the Board's regular operations. There may be a small amount of work required, when appropriate, to remove a person from the Sex and Kidnap offender

registry, but that is now required by law. It is also important to note that there are not a lot of pardons issued by the Board on an annual basis. Therefore, the changes proposed 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 add or remove any burdens for 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 add or remove any burdens for 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 clarifies and makes only minor adjustments to Board processes. The changes do not materially adjust the way the Board currently operates, and, if anything, would reduce burden or impact on other persons or entities. 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?)**:**

The amendments to this rule will 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 Utah Board of Pardons and Parole

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

B) Department head approval of regulatory impact analysis:

The 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 77-27-1(16)	Section 77-27-5	Section 77-27-5.1
Section 77-27-9	Section 77-41-113	Article VII, Section 12

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:	05/31/2022	
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
05/13/2022	1:00 PM	448 E Winchester Street, Suite 300 Murray, UT 84107

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Director	**Date:**	04/05/2022

R671. Pardons (Board of), Administration.
R671-315. Pardons.
R671-315-1. Pardons.

[~~1.~~](1) A pardon is an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction. A pardon releases an applicant[~~offender~~] from the [~~entire~~]punishment prescribed for a criminal offense and from disabilities, to the extent allowable by law, that are a result[~~consequence~~] of the criminal conviction. A pardon reinstates any civil rights lost as a result[~~consequence~~] of conviction or punishment for a criminal offense, to the extent allowable by law.

[~~2.~~](2)(a) The Board may consider an application for a pardon from any individual who has been convicted of an offense in [~~the state of~~]Utah, after the applicant has exhausted[~~ all~~] judicial remedies, including expungement, in an effort to ameliorate the effects of the conviction.

(b) Absent extraordinary circumstances, [~~T~~]the Board will accept and consider a pardon application only after at least five years have[~~has~~] passed since the sentence for the conviction and any enhancement period has terminated or expired.

(c) The Board will not consider pardons for infractions.

[~~3.~~](3)(a) A person seeking a pardon from the Board must complete and submit[~~file~~], to the Board's satisfaction, an application in a form approved by the Board. Every requirement of this rule is subject to reasonable accommodations when requested by the applicant.

(b) No pardon application will be accepted unless it has been signed by the person whose convictions are sought to be pardoned.

(c) Posthumous pardon applications will not be accepted or considered.

(d) A pardon application will not be considered unless the applicant is [~~able and~~]willing to personally attend the pardon hearing.

[~~4.~~](4) In addition to the completed application, the applicant shall provide to Board staff, where possible, [~~shall obtain and provide~~]other relevant information including[~~, but not be limited to~~]:

(a) [~~all~~]any police reports concerning the conviction for which the applicant is seeking a pardon;

(b) [~~all~~]any pre- or post- sentence reports prepared in connection with any sentence served in jail or prison, and for any conviction for which the applicant is seeking a pardon;

(c) the applicant's inmate files;

(d) a recent Bureau of Criminal Identification (BCI) report, National Crime Information Center (NCIC) report, and Interstate Identification Index (III) report concerning the applicant;

(e) verification from the applicant or a third party, including the Office of State Debt Collection, that [~~all~~]imposed restitution, fines, fees, or surcharges have been satisfied[~~ paid in full~~]; and

(f) verification from the applicant that the applicant completed therapy programs ordered by any court or by the Board.

[~~5.~~](5)(a) Board staff shall summarize[~~ all~~] information collected or submitted regarding the application and provide the application and additional information to the Board.

(b) As allowable by law, Board staff shall disclose to the applicant, before[~~prior to~~] the hearing, [~~all~~]any information obtained or received by the Board regarding the pardon application which is not from the applicant.

(c) The Board may request additional information from staff or from the applicant.

[~~6.~~](6) Once complete, and if otherwise compliant with[~~ all~~] Board rules, the pardon application and [~~all~~]any available relevant information will be considered by the Board, which shall vote to grant or deny a pardon hearing.

[~~7.~~](7) If a pardon hearing is granted:

(a) notice of the hearing shall be published on:[-]

(i) the Board's web[-]site; and

(ii) the Utah Public Notice web[-]site; and

(b) for each conviction which is the subject of the pardon hearing, notice of the hearing shall be mailed or otherwise sent to:

(i) any victim of record, if the victim can be located;

(ii) the arresting or investigating[~~ve~~] agency;

(iii) the sentencing court; and

(iv) the respective prosecuting agency[~~or's office~~].

[~~8.~~](8) In furtherance of the Board's obligation to conduct a full and fair hearing, the following pardon hearing procedures apply:

(a) The pardon applicant shall personally appear and shall be required to testify. The applicant may designate a few family members or other supporters to offer testimony at the hearing, if time allows.

(b) Any victim of a conviction for which a hearing has been scheduled may offer testimony, or may submit written material concerning the pardon request. Any victim may designate a representative to testify[~~ or speak~~] on the victim's behalf at a pardon hearing.

(c) An authorized representative of the arresting or investigating[~~ve~~] agency, sentencing court or prosecuting agency[~~or's office~~] for each conviction which is the subject of the hearing may offer testimony or may submit written material concerning the pardon request.

(d) The Board may subpoena any person to attend and testify at a pardon hearing if it determines that such testimony will aid the Board in making a decision regarding the pardon request.

(e) Any person not otherwise specified in this rule may submit letters in support of or in opposition to a pardon request.

(f) [~~All~~]Any testimony or written material regarding a pardon request must be relevant, and must comply with[~~ all~~] other Board administrative rules.

(g) Statements or other material submitted regarding a pardon application or hearing[~~:~~

~~(i)~~] may not be submitted anonymously[~~;~~

~~(ii) may not be based upon hearsay; and~~

~~(iii) shall only be based upon the personal knowledge or opinion of the person submitting the statement or material~~].

(h) The Board may refuse to accept, remove from an [~~offender~~]applicant's file or pardon application, or refuse to consider any statement or material submitted which is irrelevant, inflammatory, defamatory, hearsay, or which does not otherwise conform to Board rules.

(i) The Board may manage the hearing as appropriate to promote efficiency.

[~~9.~~](9) A pardon hearing may be conducted by the full [~~b~~]Board, or by a panel or a single [~~b~~]Board [~~m~~]Member assigned by the [~~b~~]Board [~~c~~]Chair. If conducted by a panel of the [~~b~~]Board, the [~~b~~]Board [~~c~~]Chair may appoint members to the panels in any combination.

[~~10.~~](10) The Board may deny a pardon, grant a conditional pardon, or grant an unconditional pardon. The [~~petitioner~~]applicant will be notified in writing of the results as soon as practicable.

[~~11.~~](11) Pardon decisions must be made by a majority vote. [~~The Board may grant or deny a pardon by majority vote.~~]Pardon decisions are final and are not subject to judicial review.

[~~12.~~](12) Upon granting a pardon, the Board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.

(a) An expungement order, issued by the Board, has the same legal effect and authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah Expungement Act.

(b) The [~~b~~]Board shall provide clear written directions to the pardon recipient along with a list of agencies known to be affected by the expungement order.

(c) If the offense that was pardoned subjected the applicant to a registration requirement pursuant to Title 77, Chapter 41, Sex and Kidnap Offender Registry, the Board shall issue notification to the Department of Corrections of the pardon and direct that the applicant be removed from the registry.

[~~13.~~](13) The Board may dispense with any requirement created by this rule for good cause.

KEY: pardons
Date of Last Change: 2022[~~July 7, 2016~~]
Notice of Continuation: November 10, 2021
Authorizing, and Implemented or Interpreted Law: Art. VII Sec. 12; 77-27-1(16[~~14~~]); 77-27-5; 77-27-5.1; 77-27-9; 77-41-113

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R671-403**	**Filing ID 54492**

Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state and zip:	Murray, UT 84107	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Haddon	801-261-6467	mikehaddon@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R671-403. Restitution

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

Rule R671-403 was set for expiration in January 2022. Additionally, significant statutory changes related to restitution went into effect on July 1, 2021. Due to these circumstances, the Board of Pardons and Parole (Board) conducted a review and update of this rule's language.

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 largest change to this rule is adding language noting the provisions of this rule apply only to offenders sentenced prior to July 1, 2021. Another Board rule has been drafted to address restitution for those sentenced on or after July 1, 2021. Included in the amendments are also rule language adjustments to improve clarity. The rule changes clarifies that the Board may make an initial restitution determination based on the offender's conviction. They also adjust requirements related to an offender's objection of a restitution order and who then requests a restitution hearing. This request must be submitted to the Board in writing within 30 days of the initial restitution determination. The offender's request may include a clear, brief statement explaining the objection and may include an explanation of evidence, documents, or witnesses that will be relied upon in support of the objection. Language is removed that allowed the Board to deny an offender's request for a hearing if they feel the information is duplicative, is erroneous, lacks relevance, or fails to identify why the restitution should be modified.

Updates clarify that the Attorney General's office does not participate in restitution hearings, and that the Board may issue subpoenas to ensure the attendance of necessary witnesses. The amendments remove the requirement that, prior to parole termination, the Department of Corrections must explain why parole should not be revoked or re-started due to restitution obligations not being paid in full. Finally, amendments add language clarifying that when the Board makes a restitution order to two or more individuals for the same event or conduct, the Board may apportion the restitution obligation among the offenders or may hold them jointly and severally liable for the restitution obligation.

Fiscal Information

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

A) State budget:

The adjustments made in the amended rule do not impact how the Board currently operates. Rather, they help clarify current processes. Therefore, the changes proposed 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)**:**

Generally, small businesses are not 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 add or remove any burdens for victims of crime. The changes do not eliminate restitution payment requirements to crime victims. 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)**:**

Generally, non-small businesses are not 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 add or remove any burdens for victims of crime. The changes do not eliminate restitution payment requirements to crime victims. 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***)**:**

Although the amended language clarifies and makes minor adjustments to Board processes, the changes do not materially adjust the way the Board currently operates. 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?)**:**

The 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 Utah Board of Pardons and Parole

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

Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The 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 64-13-30	Section 64-13-33	Subsection 77-18-1(6)(b)
Section 77-22-5	Section 77-27-6	Subsection 77-27-9(4)(a)
Section 77-27-10	Section 77-30-24	Subsection 77-38a-203(2)(d)
Section 77-38a-302	Article VII, Section 12	

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:		05/31/2022
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
05/13/2022	1:00 PM	448 E Winchester Street, Suite 300 Murray, UT 84107

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Director	**Date:**	04/05/2022

R671. Pardons (Board of), Administration.
R671-403. Restitution.
R671-403-1. General Provisions.

(1) This rule applies to offenders sentenced before July 1, 2021, only. For offenders sentenced on or after July 1, 2021, the Board will follow the procedures of Rule R671-404.

(2) If the Board determines that a court has previously ordered or determined restitution applicable to any conviction, or that restitution is owed to any victim as a result of the conduct for which an offender was convicted, or any related conduct as authorized by state law to be considered, the Board may order restitution:

(a) as a condition of parole;

(b) as a contingency to be satisfied before[~~prior to~~] release from prison incarceration earlier than sentence expiration; or

(c) to be converted to a civil judgment, pursuant to [~~the provisions of~~]applicable state law.

[~~(2)~~](3) The Board may, pursuant to [~~the provisions of~~]state law, determine and order an offender to pay restitution at any time while the offender is under the Board's jurisdiction, when:

(a) restitution has been ordered by the sentencing court;

(b) pecuniary damages to a victim occurred as a result of the offender's criminal conduct but were not determined or ordered by the sentencing court;

(c) requested by the Department of Corrections (Department) or other criminal justice agency[~~.~~];

(d) pecuniary damages to any person or entity are caused by an offender's disciplinary violation, conduct, or behavior arising during incarceration;

(e) new information regarding restitution is submitted to the Board which was not available or considered at the time of sentencing or an earlier[~~prior~~] restitution determination; or

(f) the Board determines a restitution order is otherwise appropriate.

[~~(3)~~](4) Restitution determinations shall be:

(a) based upon a preponderance of the evidence; and

(b) made by a majority vote of the Board.

[~~(4)~~](5) When determining restitution, [~~the provisions of Utah Code~~]Subsection[~~s~~] 77-38a-302(1)(2020) and Subsection 77-38a-302(5)(a)[~~-~~] through (b)(2020) shall apply.

[~~(5)~~](6) The Board may determine and order restitution based upon:

(a) [~~prior~~]earlier orders made by a sentencing court;

(b) [~~prior~~]earlier orders involving the same crimes, events, or incidents made by a court in the case of a co-defendant;

(c) amounts and determinations included in pre[~~-~~]sentence reports; or

(d) information received regarding restitution claimed or owed that the Board determines is relevant and reliable.

R671-403-2. [~~Court Ordered~~]Restitution Ordered by the Court.

(1) The Board shall affirm restitution ordered by a court in accordance with [~~Utah Code s~~]Section 77-38a-302(2020).

(2) An offender shall resolve objections regarding restitution entered by a court with the applicable court.

(3) The Board is not an appellate authority or forum in which to litigate restitution amounts previously ordered by a court.

(4) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.

(5) The offender bears the burden to prove the validity and amounts of [~~all~~]any payments, credits, or offsets submitted for consideration.

(6) If restitution was not determined or ordered by the sentencing court, the Board may, within one year of the imposition of sentence, refer the case back to the court for determination of restitution.

R671-403-3. Restitution Included in Pre[~~-S~~]sentence Report.

(1) If any party fails to challenge the accuracy of the restitution determinations, amounts, or information contained in a presentence report at the time of sentencing, that matter shall be considered waived, pursuant to [~~Utah Code~~]Subsection 77[~~8~~]-38a-203(2)(d)(2020), and the Board may order restitution based upon the information in the presentence investigation report.

(2) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.

(3) The offender bears the burden to prove the validity and amounts of [~~all~~]any payments, credits, or offsets submitted for consideration.

R671-403-4. Initial Restitution Determination.

(1) If restitution is not determined and ordered by the Board pursuant to Section R671-403-2 or Section R671-403-3, the Board may make an initial determination of restitution based upon the offender's convictions and the totality of the information available, including:

(a) restitution determinations made by a court applicable to a co-defendant for the same criminal conduct or the same victim;

(b) statements made by a victim, offender, or co-defendant relating to restitution, including statements made as part of a pre[~~-~~]sentence report investigation;

(c) reports or calculations provided by the Department indicating the amount which should be ordered as restitution;

(d) statements made in any civil or criminal proceeding;

(e) statements made in documents provided to the Board; or

(f) statements made during Board hearings.

(2) When the Board determines an initial restitution amount, the Board or the Department shall:

(a) inform the offender of the initial restitution determination; and

(b) inform the offender that any objection to the initial restitution determination must be filed with the Board in accordance with this rule.

[~~(c)~~](3) If the offender agrees with, or does not object to, the initial restitution determination, that restitution amount shall be ordered by the Board.

[~~(d)~~](4) If the offender objects to the initial restitution determination, the offender shall inform the Board of the objection and request a restitution hearing.

[~~(e)~~](5) The offender's objection and request for a hearing[~~ shall be~~]:

[~~(i)~~](a) shall be submitted to the Board in writing within 30 days of the initial restitution determination;

[~~(ii)~~](b) may be accompanied by a clear, brief statement explaining the offender's objections; and

[~~(iii)~~](c) may refer to or be accompanied by an explanation of any evidence, documents, or the names and addresses of witnesses upon which the offender will rely to support the objection.

[~~(f)~~](6) Following receipt of an offender's objection which complies with [~~this s~~]Section R671-403-4, the Board may change[~~modify~~] the initial restitution amount based upon the materials submitted by the offender, or may schedule a restitution hearing.

[~~(g)~~](7) [~~An offender's objection and request for a restitution hearing may be denied if the Board finds that the material submitted by the offender is duplicative, erroneous, lacks relevance or reliability, or fails to state a reason why the initial restitution determination should be modified.~~

~~(h)~~]Failure of an offender to file a timely objection[~~ or otherwise comply with the requirements of this section~~] shall waive and forfeit an offender's ability to contest a restitution order by the Board based upon the initial restitution determination.

R671-403-5. Restitution Hearings - Informal Resolution of Objection.

(1) Following the receipt of a timely objection to an initial restitution determination, the Board may designate a hearing officer or other Board employee to informally, and without hearing, try[~~attempt~~] to resolve the offender's concerns or objections.

(2) This informal resolution may involve correspondence or an interview or other meeting with the offender.

(3) If an offender's objections to an initial restitution determination are not resolved, the Board shall schedule a restitution hearing.

R671-403-6. Restitution Hearings - Procedure.

(1) Restitution hearings may be conducted by a Board member, hearing officer, or other designee of the Board Chair.

(2) Board staff, the Department,[~~the Attorney General's office,~~] the original prosecuting agency, the offender, and any victim may participate in the restitution hearing, as necessary.

(3) The Board may issue[~~ staff may assist non-lawyer hearing participants with~~] subpoenas to procure the attendance of necessary witnesses.

(4) The rules of evidence do not apply at restitution hearings.

(5) [~~The offender bears the burden of proving all objections or assertions, including a~~]Any payments, credits, or offsets, toward a restitution order may be proven by a preponderance of the evidence.

(6) If any amount of restitution is claimed by, or on behalf of, any victim, in addition to any amount previously determined by a court or by the Board, including the initial restitution determination, the proponent of such additional restitution carries the burden of proving such additional restitution by a preponderance of the evidence.

(7) Any party may submit documentation, records, or other written evidence for the Board to consider regarding the issue of restitution.

(8) [~~Within 30 days after the hearing, t~~]The Board shall enter an order determining the amount of restitution owed by the offender, or continue the matter for additional information, further hearing or further consideration as needed.

R671-403-7. Modifications to Restitution Orders.

Modifications to restitution orders may occur:

(1) [~~u~~]Upon a waiver and stipulation of the offender;

(2) [~~u~~]Upon receipt of new or subsequent court orders;

(3) [~~w~~]When restitution claims, damages, or costs continue to accrue after sentencing;

(4) [~~u~~]Upon consideration of offender restitution payments, credits for payments made by others on the offender's behalf, offsets due to insurance or other third-party payments, or modifications based upon property being returned to a victim after the conclusion of court proceedings;

(5) [~~w~~]When an open or on[~~-~~]going claim exists with the Utah Office for Victims of Crime;

(6) [~~f~~]Following an informal resolution regarding new restitution claims or offsets; or

(7) [~~f~~]Following subsequent restitution hearings.

R671-403-8. Compliance With Restitution Orders.

(1) While the offender is under Department or Board jurisdiction, the Department shall enforce the Board's restitution orders and parole conditions.

(2) As part of parole, the Board expects that parolees will make regular monthly payments based on the offender's ability to pay and in amounts sufficient to satisfy the restitution obligation during the parole period.

(3) The Board and the Department have jurisdiction over, and may continue to enforce restitution orders, in cases which may have terminated on or after July 1, 2005, if the Board has had continuing jurisdiction over the offender in any other case.

(4) The Department shall track cases for restitution payment and notify the Board in a timely manner of any action needed regarding restitution orders[~~, payments, or lack of payment~~].

(5) If any restitution ordered by the Board or by a court has not been paid in full [~~prior to~~]before a parole termination request, the Department shall inform the Board, as part of the termination request:

(a) how much of the offender's restitution obligation has been paid;

(b) how much of the restitution obligation, including post-judgment interest, remains unpaid; and

(c) why the restitution obligation was not paid in full during the term of parole[~~; and~~

~~(d) why parole should not be revoked or re-started because the restitution amounts were not paid in full during the parole period~~].

(6) If any restitution ordered by the Board or by a court has not been paid in full [~~prior to~~]before a parole termination request, the Board may deny the parole termination request.

R671-403-9. Unpaid Restitution - Civil Judgments.

(1) [~~If u~~]Upon [~~parole~~]termination or expiration of the sentence of[~~, sentence termination, termination of Board jurisdiction, or sentence expiration,~~] an offender under the Board's jurisdiction, if an offender owes outstanding restitution, or if the Board makes an order of restitution within 60 days following the termination or expiration of the defendant's parole or sentence, the unpaid restitution shall be referred by the Board to the district court for the entry of a civil judgment and for civil collection remedies.

(2) The Board shall forward a restitution order to the sentencing court to be entered on the judgment docket.[~~ The entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil judgment.~~]

(3) If the Board has continuing jurisdiction over the offender for a separate criminal offense, the Board may defer seeking a civil judgment for restitution until termination or expiration of [~~all~~]any of the offender's sentences. The restitution obligation for the terminating or expiring case [~~shall~~]may be made a condition of parole for any separate or subsequent offense under continuing jurisdiction.

(4) The Board may order conversion of restitution to a civil judgment at any time, provided that the restitution amount was determined and ordered by:

(a) a Court;

(b) the Board during its jurisdiction over the offender; or

(c) the Board within 60 days following parole termination, sentence termination, sentence expiration, or other termination of Board jurisdiction.

R671-403-10. Restitution Allocations.

When the Board orders two or more offenders under its jurisdiction to pay restitution for the same event or conduct, the Board may apportion restitution among the offenders or may hold them jointly and severally liable.

KEY: restitution, [~~government~~]hearings, parole
Date of Last Change: 2022[~~November 30, 2015~~]
Notice of Continuation: November 10, 2021
Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 64-13-30; 64-13-33; 77-18-1(6)(b); 77-22-5; 77-27-6; 77-27-9(4)(a); 77-27-10; 77-30-24; 77-38a-203(2)(d); 77-38a-302

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R671-404**	**Filing ID 54508**

Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state and zip:	Murray, UT 84107	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Haddon	801-261-6467	mikehaddon@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R671-404. Restitution and Other Costs Applicable to Persons Sentenced on or After July 1, 2021
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?)**:**
During the 2021 General Session, H.B. 260, Criminal Justice Modifications, was passed and signed into law by the Governor. The legislation substantially changes offender restitution processes for individuals sentenced on or after July 1, 2021. Rule R671-404 is a new rule for the Board of Pardons and Parole necessary to reflect the changes to offender restitution processes.

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 new Rule R671-404 addresses offender restitution processes for individuals sentenced on or after July 1, 2021. Restitution should be entered by the Courts at sentencing, and the Board of Pardons and Parole (Board) may refer restitution back to the Court if it was not initially established.

The Board may assign additional costs to the offender if, after sentencing, the offender causes harm or damage to a third party or to an agency. This rule outlines how restitution payment schedules are addressed by the Board, and what occurs if an offender requests an adjustment to a restitution payment schedule. The Board has authority to remit all or a portion of restitution and other costs, and the process and notification associated with a request to remit restitution is outlined.

Finally, this rule addresses how restitution is handled by the Board at the time an offender's sentence is terminated. If any restitution balance remains when sentence termination is requested, the Board may deny the sentence termination or may revoke parole supervision if non-payment was willful.

Fiscal Information

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

A) State budget:

The content of this rule reflects processes established in H.B. 260 (2021), that went into effect on July 1, 2021. The costs associated with implementing provisions of H.B. 260 (2021) were incorporated in the fiscal note attached to the legislation, and the bill was funded based on what the Utah Legislature deemed appropriate. There are no additional costs or savings associated with this rule that was not addressed by the Utah Legislature during the 2021 General Session.

B) Local governments:

The changes to this rule will not result in either increased costs or cost savings to local governments. Although local prosecuting entities may occasionally respond to and speak to a remittance petition, these same entities previously would participate in restitution hearings and restitution matters before the Board. As such, the Board does not anticipate a financial impact to local governments.

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

Small businesses typically would not be involved with the Board unless they are considered a victim of a crime related to the offender. Small businesses may become engaged if they are a crime victim and an offender petitions the Board for remittance of restitution. However, victims of crime previously were able to participate in Board processes that might impact restitution owed. 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 typically would not be involved in these Board decisions unless they are considered a victim of a crime related to the offender. Non-small businesses may become engaged if they are a crime victim and an offender petitions the Board for remittance of restitution. However, victims of crime previously were able to participate in Board processes that might impact restitution owed. 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***)**:**

Victims of crime other than small businesses or non-small businesses, may become engaged if an offender petitions the Board for remittance of restitution. However, these individuals previously were able to participate in Board processes that might impact restitution owed. Therefore, the Board does not anticipate any additional 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?)**:**

State governmental entities would have received an additional appropriation from the Utah Legislature to comply with the new law. There may be additional costs for offenders who petition the Board for remittance. However, that process would have occurred to some extent previously, and the processes outlined in this new rule reflect statutory requirements.

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

The changes incorporated in this rule will not have a fiscal impact on any businesses. Carrie Cochran, Chair, Utah Board of Pardons and Parole

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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**
B) Department head approval of regulatory impact analysis:			
The 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 77-18-102	Section 77-18-114	Section 77-27-2
Section 77-27-5	Section 77-27-6.1	Section 77-27-11
Section 77-32b-102	Section 77-32b-103	Section 77-32b-104
Section 77-32b-105	Section 77-32b-106	Section 77-38b-102
Section 77-38b-302		

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:	05/31/2022	
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
05/13/2022	1:00 PM	448 E Winchester Street, Suite 300 Murray, UT 84107

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Director	**Date:**	04/12/2022

R671. Pardons (Board of), Administration.
R671-404. Restitution and Other Costs Applicable to Persons Sentenced on or After July 1, 2021.
R671-404-1. General Provisions.

(1) This rule shall apply to offenders sentenced on or after July 1, 2021. For offenders sentenced before July 1, 2021, the procedures of Rule R671-403 shall apply.

(2) When the Board conducts its administrative review of an offender's record for purposes of setting an original hearing, it will determine if an order of restitution has been entered by the sentencing court.

(3) If no restitution order has been entered by the sentencing court when there is a conviction, the Board will refer the issue of restitution back to the sentencing court.

(a) Except in unusual circumstances, the Board will refer the issue of restitution back to the sentencing court before conducting the offender's original hearing.

(b) If an offender receives a new conviction and sentence after the original hearing, the Board will refer the issue of restitution in the new case back to the sentencing court as soon as practicable.

(c) In no event shall the Board refer a restitution issue back to the sentencing court beyond the time limits established in Section 77-18-118.

(4) When there is a conviction, if the sentencing court enters a restitution order, the Board will take no further action.

R671-404-2. Costs.

(1) The Board may, pursuant to state law, determine and order an offender to pay costs while the offender is under the Board's jurisdiction or within 90 days of the termination or expiration of the offender's sentence, when:

(a) the offender's parole violations cause pecuniary damages to a victim;

(b) the Department of Corrections (Department) or other criminal justice agency requests costs caused by the offender's needs or conduct;

(c) the offender's disciplinary violation, conduct, or behavior while incarcerated causes pecuniary damages to any person or entity; or

(d) there are any other incarceration- or supervision-related costs.

(2) If costs are requested by the Department or other criminal justice agency, that agency shall include information regarding whether the agency has already ordered the offender to pay costs to the agency or to a third party as a result of the offender's needs or conduct.

(3) Any costs ordered by the Board shall be forwarded to the sentencing court after entry to be entered on the docket as part of the offender's civil accounts receivable in accordance with Section R671-404-6.

R671-404-3. Payment Schedules.

(1) The Board will not establish a payment schedule for an offender to make payments on a criminal accounts receivable. The Board may, however, pursuant to state law, change the payment schedule of any offender under its jurisdiction.

(2) A petition for modification may be filed by any of the following:

(a) an offender or the offender's counsel;

(b) a victim or victim representative;

(c) the Department or other law enforcement agency; or

(d) the Board.

(3) The Board may hold a hearing on a petition for modification, or it may consider only written submissions.

(4) When a petition for modification is being considered, the offender and victim or victim representative shall receive notice and be permitted to provide comment and information.

(5) When considering a petition for modification, the Board shall consider the factors in Subsection 77-32b-103(3)(b).

(6) The Board will only change the payment schedule in accordance with Subsection 77-32b-105(2)(b).

(7) Incarceration of the offender alone is not a basis to change a payment schedule.

(8) Unless the Board expressly orders otherwise, an offender's payment schedule is stayed during any period the offender is incarcerated or otherwise subject to involuntary commitment and for 60 days after the offender releases from the incarceration or involuntary commitment.

R671-404-4. Payment of Restitution and Costs.

(1) As part of parole, the Board expects that parolees will make regular payments in accordance with the established payment schedule.

(2)(a) the Utah Office of State Debt Collection (OSDC) shall track and collect payments on the criminal accounts receivable.

(b) OSDC shall notify the Department in a timely manner of any nonpayment on the payment schedule.

(3) If any amount remains unpaid on the criminal accounts receivable before a parole termination request, the Department shall inform the Board, as part of the termination request:

(a) how much of the offender's criminal accounts receivable has been paid;

(b) how much of the criminal accounts receivable, including post-judgment interest, remains unpaid; and

(c) why the criminal accounts receivable was not paid in full during the term of parole.

(4) If any portion of the criminal accounts receivable has not been paid in full before a parole termination request, the Board may:

(a) deny the parole termination request; or

(b) revoke parole if the Board finds that the failure to pay was willful.

(5) If the Board has ordered the offender to pay any costs in addition those that are part of the criminal accounts receivable, the Board may require payment of those costs during any period while the offender is on parole.

R671-404-5. Remitting Criminal Accounts Receivables.

(1) Any offender under the Board's jurisdiction or the offender's legal counsel may petition the Board to remit all or part of the offender's criminal accounts receivable.

(2) "Remit" means to forgive or eliminate.

(3)(a) Petitions for remittance must be filed with the Board no later than 90 days after termination of the offender's sentence.

(b) if a timely petition for remittance is filed, the Board retains jurisdiction over the offender past the expiration of the offender's sentence to resolve the petition only.

(4) A petition for remittance shall contain information regarding:

(a) an accounting of the amount still owing on the criminal accounts receivable for each criminal case where an account exists;

(b) the petitioner's specific request for remittance;

(c) whether the defendant has made substantial and good faith efforts to make payments on the criminal accounts receivable;

(d) the needs of victims, if known to the offender;

(e) the offender's rehabilitative needs; and

(f) the other monetary obligations of the offender and the offender's ability to continue to make payments on a civil accounts receivable.

(5)(a) When a petition for remittance is filed, the offender shall serve notice of the petition on the prosecuting entity.

(b) the prosecuting entity is responsible to provide notice of the petition to the victims or victim representatives.

(6) The Board shall hold a hearing on timely-filed petitions for remittance unless the petition is frivolous on its face or it is uncontested after notice has been given to the prosecuting entity and victims or victim representatives.

(7) The Board may seek input from the Department or OSDC on the petition for remittance.

(8)(a) At a hearing held on the petition for remittance, the offender, the victims or victim representatives, and a representative of the prosecuting entity shall be given an opportunity to speak to the Board.

(b) where appropriate, other individuals, including a representative of the Department or OSDC, may also be permitted to speak.

(9) The Board will consider the factors in Subsection 77-32b-106(3) in determining whether to remit any portion of the criminal accounts receivable.

(10) The Board may remit an offender's criminal accounts receivable in whole or in part, but the Board may not remit any portion of the criminal accounts receivable that is the principle of restitution without the express consent of the victim who is owned that restitution.

R671-404-6. Termination of Sentence.

(1) Subject to Subsection R671-404-6(2), no later than 90 days after the termination of an offender's sentence, the Board shall provide an accounting of the remaining balance on the criminal accounts receivable to the sentencing court to be entered as a civil judgment of restitution and a civil accounts receivable. The accounting shall identify:

(a) each victim who is still owed restitution;

(b) the amount still owed to each victim;

(c) any other amounts still owed on the criminal accounts receivable; and

(d) any other amounts ordered by the Board to be included in the civil accounts receivable.

(2) If the offender files a timely petition for remittance, the Board shall not send the accounting to the sentencing court until the petition is resolved.

KEY: restitution, government hearings, parole
Date of Last Change: 2022
Authorizing, and Implemented or Interpreted Law: 77-18-102, 77-18-114, 77-27-2, 77-27-5, 77-27-6.1, 77-27-11, 77-32b-102, 77-32b-103, 77-32b-104, 77-32b-105, 77-32b-106, 77-38b-102, 77-38b-302

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R671-405**	**Filing ID 54491**

Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state and zip:	Murray, UT 84107	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Haddon	801-261-6467	mikehaddon@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R671-405. Parole Termination

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

Rule R671-405 was set for expiration in January 2022. As such, the Board of Pardons and Parole (Board) conducted a review and update of this rule's language.

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)**:**

Many of the changes in this rule reflect updated statutory citations, as well as language to clarify items contained in this rule. Within the amendments, language related to discretionary parole termination and discharged is moved to a different section of this rule. It clarifies the Board may consider a termination request from an offender or offender's counsel in extraordinary circumstances, and the Board may seek a recommendation from the Department of Corrections related to that request. Finally, the amendments add language applicable to the earned compliance credit program noting its effective date and the date when it was removed from statute.

Fiscal Information

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

A) State budget:

The adjustments made in the amended rule are minor and do not impact the Board's regular operations. Therefore, the changes proposed 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 any 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 typically 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 are not directly related to 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 typically 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 are not directly related to 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 clarifies and makes minor adjustments to Board processes. The changes do not materially adjust the way the Board currently operates. 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?):
The 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 Utah Board of Pardons and Parole
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
Total Fiscal Cost	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Governments	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits	**$0**	**$0**	**$0**
Net Fiscal Benefits	**$0**	**$0**	**$0**

B) Department head approval of regulatory impact analysis:
The 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 64-13-21(7)	Section 76-3-202	Subsection 77-27-1(24)
Section 77-27-5	Subsection 77-27-7(4)	Section 77-27-9
Section 77-27-11	Section 77-27-12	Article VII, Section 12

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:	05/31/2022	
B) A public hearing (optional) will be held:		
On:	**At:**	**At:**
05/13/2022	1:00 PM	448 E Winchester Street, Suite 300 Murray, UT 84107

10. This rule change MAY become effective on:	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Director	**Date:**	04/05/2022

R671. Pardons (Board of), Administration.
R671-405. Parole Termination.
R671-405-1. General Provisions.

(1) When an offender is granted parole, the offender shall remain on parole until:

(a) the offender's maximum parole term has been served;

[~~(b) the Board grants a discretionary parole termination and discharge of the offender's sentence, pursuant to Utah Admin. Rule R671-405-3;~~]

[~~(c)~~](b) the Board grants a[~~n earned~~] parole termination and discharge of the offender's sentence, pursuant to [~~Utah Code~~]Subsection[~~s~~] 64-13-21(7)[~~,~~] and Section 76-3-202[~~(1)(a) and Utah Admin. Rule R671-405-4; or~~];

[~~(d)~~](c) the Board revokes the offender's parole[~~ is revoked, the offender is found in violation of parole, the offender agrees to re-start parole in lieu of a parole violation or revocation proceeding,~~]; or

(d) the offender is confined during the parole period.

(2) "Maximum Parole Term" for purposes of this rule is the expiration date of an offender's combined sentences, or the last day of the offender's legislative parole term, as set forth in [~~Utah Code~~]Section 76-3-202, whichever occurs first.

R671-405-2. Termination Request Reports.

[~~All p~~]Parole termination requests or notices submitted by the Department of Corrections (Department) shall include or be accompanied by a report which includes:

(1) [~~t~~]The offender's identification information, supervising agent information, and agent contact information;

(2) [~~a~~]Any incentives granted to, or sanctions imposed on the offender by the Department during the term of parole supervision;

(3) [~~t~~]The number of total months on parole during which the offender was compliant with[~~ all~~] conditions of parole and the offender's case action plan;

(4) [~~a~~]A current risk assessment, score, and risk reduction information[~~ level~~];

(5) [~~t~~]The results of a current sex offender treatment exit polygraph, if the offender is on parole for a sex offense or if requested by the Board;

(6) [~~a~~]An update on the offender's case action plan progress, compliance, and completion and a recommendation from the Department whether parole should be extended to allow successful completion of any necessary treatment program identified in the case action plan which has not yet been completed;

(7) [~~a~~]An update regarding the offender's compliance with or completion of[~~ all~~] any special conditions of parole; and

(8) [~~a~~]A summary which details the offender's payment of restitution obligations or orders, and if restitution has not been paid in full, an explanation of the non-payment, and the efforts the Department has made to collect restitution.

R671-405-3. Discretionary Termination of Parole.

(1) The Department may request that the Board terminate any offender's parole at any time before[~~prior to~~] the final day of the offender's maximum parole term.

(2) The Department shall submit, with the request for early termination of parole, a termination report which contains the information set forth in [~~Rule~~]Section R671-405-2[~~ of this rule~~].

(3) Written notification of the Board's decision regarding the request for parole termination shall be provided to the offender through the Department.

(4) In extraordinary circumstances, the Board may consider a termination request from an offender or offender's counsel. The Board may seek a recommendation from the Department on any parole termination request not submitted by the Department.

R671-405-4. [~~Earned Early~~]Termination of Parole Pursuant to Earned Compliance Credit.

(1) This section is only applicable to individuals placed on parole on or after October 1, 2015, but before January 1, 2019.

(2) When the Department determines that an offender has [~~earned~~]met the requirements for an early termination of parole, pursuant to [~~Utah Code~~]Subsection 64-13-21(7), it shall notify the Board within 30 days and request that the Board terminate the parole of the offender.

[~~(2)~~](3) The Department shall submit, with the request for [~~earned~~]early termination of parole, a termination report which contains the information set forth in [~~Rule~~]Section R671-405-2[~~ of this rule~~].

[~~(3)~~](4) Upon receipt and verification of the Department's [~~earned~~]early termination request, the Board shall terminate the offender's parole, unless the Board determines that:

(a) the offender is currently in violation of parole;

(b) the offender violated the terms and conditions of parole at any point during parole, and the violation was not reported to the Board;

(c) the Board determines that the offender was awarded credit toward the [~~earned~~]early termination for a month in which the offender violated the terms and conditions of parole; or

(d) the Board determines that early parole termination would interrupt the completion of a necessary treatment program, identified in the offender's case action plan.

[~~(4)~~](5) Written notification of the Board's decision regarding the request for [~~earned~~]early parole termination shall be provided to the offender through the Department.

KEY: sentencing, parole
Date of Last Change: 2022[~~November 30, 2015~~]
Notice of Continuation: November 10, 2021
Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 64-13-21(7); 76-3-202; 77-27-1([~~18~~]24); 77-27-5; 77-27-7(4); 77-27-9; 77-27-11; 77-27-12

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at 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.):	**R277-110**	**Filing ID: 50377**
Effective Date:	**04/15/2022**	

Agency Information

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

General Information

2. Rule catchline:
R277-110. Educator Salary Adjustment
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; and Subsection 53F-2-405(5) which authorizes USBE to make rules to administer the educator salary adjustment.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because this rule establishes procedures for on-going distribution of program funds. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	04/15/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R277-433**	**Filing ID: 50419**
Effective Date:	**04/15/2022**	

Agency Information

1. Department:	Education
Agency:	Administration

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

General Information

2. Rule catchline:
R277-433. Disposal of Textbooks in Public Schools
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (USBE); and Section 53G-7-606 requires USBE to make rules for the disposal or reuse of school textbooks.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary in order to meet statutory requirements. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	**Date:**	04/15/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R317-5**	**Filing ID: 50772**
Effective Date:	**04/07/2022**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room no.:	3rd Floor	
Building:	Multi Agency State Office Building (MASOB)	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144870	
City, state and zip:	Salt Lake City, UT 84114-4870	
Contact person(s):		
Name:	**Phone:**	**Email:**
Robert Beers	385-501-9580	rbeers@uath.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R317-5. Large Underground Wastewater Disposal (LUWD) Systems
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 19-5-104(1)(a)(iv) authorized the Utah Water Quality Board to make rules to implement or effectuate the powers and duties of the board. Subsection 19-5-104(1)(a)(v) specifies that the board is to protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule sets design requirements for construction of large underground wastewater treatment and disposal systems as defined in the rule. The Water Quality Board is charged with making the rules that provide the guidelines for review and approval of these systems. This rule is required to meet this charge. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Erica Brown Gaddis, Director	**Date:**	04/07/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R317-550**	**Filing ID: 50786**
Effective Date:	**04/07/2022**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room no.:	3rd Floor	
Building:	Multi Agency State Office Building (MASOB)	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144870	
City, state and zip:	Salt Lake City, UT 84114-4870	
Contact person(s):		
Name:	**Phone:**	**Email:**
Robert Beers	385-501-9580	rbeers@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R317-550. Rules for Liquid Waste 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:

Subsection 19-5-104(1)(a)(iv) authorized the Utah Water Quality Board to make rules to implement or effectuate the powers and duties of the board. Subsection 19-5-104(1)(a)(v) specifies that the board is to protect the public health for the design, construction, operation, and maintenance of liquid waste operations, including the collection, transportation, storage, or disposal of domestic wastewater or sewage.

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 since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required to regulate Liquid Waste Operations in order to protect public health and the environment. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Erica Brown Gaddis, Director	**Date:**	04/07/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R317-560**	**Filing ID: 50794**
Effective Date:	**04/07/2022**	

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room no.:	3rd Floor	
Building:	Multi Agency State Office Building (MASOB)	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144870	
City, state and zip:	Salt Lake City, UT 84114-4870	
Contact person(s):		
Name:	**Phone:**	**Email:**
Robert Beers	385-501-9580	rbeers@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R317-560. Rules for the Design, Construction, and Maintenance of Vault Privies and Earthen Pit Privies

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 19-5-104(1)(a)(iv) authorized the Utah Water Quality Board to make rules to implement or effectuate the powers and duties of the board. Subsection 19-5-104(1)(a)(v) specifies that the board is to protect the public

health for the design, construction, operation, and maintenance of vault and earthen pit privies.
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 since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule regulates the design, construction, operation, and maintenance of vault and earthen pit privies to protect public health and the environment. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Erica Brown Gaddis, Director	**Date:**	04/07/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R320-101**	**Filing ID: 50795**
Effective Date:	**04/08/2022**	

Agency Information

1. Department:	Examiners (Board of)	
Agency:	Administration	
Room no.:	E310	
Building:	Senate Building, Utah Capitol Complex	
Street address:	350 N State St.	
City, state and zip:	Salt Lake City, UT 84114	
Mailing address:	350 N State St., Suite E310	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Tauna MacPherson	801-538-1361	tmacpherson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R320-101. Procedures for Electronic 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:
These provisions govern any meeting at which one or more members of the Board of Examiners or one or more applicants or agencies may appear telephonically or electronically pursuant to Sections 52-4-207 and 63G-9-205.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Because statute is still in place, the Board of Examiners still needs the rule for Electronic Meetings. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Tauna MacPherson, Executive Assistant	**Date:**	04/08/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R380-10**	**Filing ID: 50873**
Effective Date:	**04/07/2022**	

Agency Information

1. Department:	Health	
Agency:	Administration	
Room no.:	430	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state and zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Heather Borski	385-341-1340	hborski@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R380-10. Informal Adjudicative Proceedings
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 sets forth informal adjudicative procedures for the Department of Health (Department) and committees created within the Department under Section 26-1-7. Sections 26-1-5, 26-1-17, and 26- 1-24, and Title 63G, Chapter 4, authorize it.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The Department prefers to resolve disputes at the lowest level. This rule provides key procedural information for informal adjudication of disputes. This rule does not foreclose simple resolution through discussion and negotiation between an agency and any person affected by an agency action. Except as provided in this rule or as otherwise designated by rule or statute or converted pursuant to Subsection 63G-4-202(3), all Department adjudicative proceedings are informal proceedings. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nathan Checketts, Executive Director	**Date:**	04/07/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R380-100**	**Filing ID: 50884**
Effective Date:	**04/15/2022**	

Agency Information

1. Department:	Health
Agency:	Administration
Room no.:	430
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state and zip:	Salt Lake City, UT84116
Mailing address:	PO Box 141000
City, state and zip:	Salt Lake City, UT84114
Contact person(s):	

Name:	**Phone:**	**Email:**
Heather Borski	385-341-1340	hborski@utah.gov

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

General Information

2. Rule catchline:
R380-100. Americans with Disabilities Act Grievance Procedures
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Utah Department of Health (Department) because of a disability.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
As required by 28 CFR 35.107, the Department, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nathan Checketts, Executive Director	**Date:**	04/15/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R414-100**	**Filing ID: 50956**

Effective Date:	**04/15/2022**

Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143101	
City, state and zip:	Salt Lake City, UT 84114-3101	
Contact person(s):		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R414-100. Medicaid Primary Care Network Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26-18-3 requires the Department of Health (Department) to implement Medicaid policy through administrative rules while Section 26-1-5 authorizes the Department to adopt, amend, or rescind rules as necessary.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department did not receive any written comments regarding this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The Department has determined that this rule is necessary because it defines and spells out services under the Primary Care Network. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	**Date:**	04/15/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R414-200**	**Filing ID: 53954**
Effective Date:	**04/15/2022**	

Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143101	
City, state and zip:	Salt Lake City, UT 84114-3101	
Contact person(s):		
Name:	**Phone:**	**Email:**
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R414-200. Non-Traditional Medicaid Health Plan Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26-18-3 requires the Department of Health (Department) to implement Medicaid policy through administrative rules while Section 26-1-5 authorizes the Department to adopt, amend, or rescind rules as necessary. Additionally, Section 1115 of the Social Security Act authorizes these services under a waiver of federal Medicaid 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:
The Department did not receive any written comments regarding this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The Department has determined that this rule is necessary because it defines and spells out services available to Non-Traditional Medicaid members. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	**Date:**	04/15/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R590-273**	**Filing ID: 51448**
Effective Date:	**04/07/2022**	

Agency Information

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901
Contact person(s):	

Name:	**Phone:**	**Email:**
Steve Gooch	801-957-9322	sgooch@utah.gov

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

General Information

2. Rule catchline:

R590-273. Continuing Care Provider 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:

Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, the Insurance Code. Section 31A-44-402 authorizes the insurance commissioner to require by rule an additional reserve fund to offset an actuarial liability. Section 31A-44-602 authorizes the insurance commissioner to establish financial disclosure and market conduct rules including conditions for enforcement.

The other Subsections listed in Section R590-273-1 do not explicitly provide statutory authority and are instead more informational in nature. This will be fixed the next time the Department of Insurance (Department) amends this rule.

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 additional requirements and instruction for the regulation, licensing, and renewal of a continuing care provider that is not contained in statute. This rule is necessary so that current and future licensed continuing care providers will have the information necessary to comply with the statute. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	**Date:**	04/07/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R657-2**	**Filing ID: 51738**
Effective Date:	**04/04/2022**	

Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room no.:	Suite 2110
Building:	DNR – Salt Lake Complex
Street address:	1594 W North Temple
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 146301
City, state and zip:	Salt Lake City, UT 84114-6301
Contact person(s):	

Name:	**Phone:**	**Email:**
Staci Coons	801-450-3093	stacicoons@utah.gov

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

General Information

2. Rule catchline:

R657-2. Adjudicative Proceedings

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Sections 23-13-2 and 63-46b-2, this rule sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the Division of Wildlife Resources.
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 supporting or opposing Rule R657-2 were received since May 2017, when this rule was last reviewed.
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 R657-2 sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the Division specifically governing the requests for agency action, declaratory orders brought pursuant to Section 63-46b-21, requests for species reclassification under Rule R657-3, post issuance requests for a variance or amendment to a license, permit, tag or certification of registration. Rule R657-2 sets the standard procedure for filing timelines, pre-hearing procedures, Decisions and Orders and Judicial Review, this rule helps to govern the legal proceedings for the division. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	J Shirley, Division Director	**Date:**	04/04/23022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R657-4**	**Filing ID: 51735**
Effective Date:	**04/04/2022**	

Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room no.:	Suite 2110
Building:	DNR – Salt Lake Complex
Street address:	1594 W North Temple
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 146301
City, state and zip:	Salt Lake City, UT 84114-6301

Contact person(s):		
Name:	**Phone:**	**Email:**
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-4. Possession of Live Game Birds
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Sections 23-13-4, 23-14-18 and 23-14-19 the Wildlife Board is authorized to adopt rules for the possession, importation, purchase, propagation, sale, barter, trade or disposal of live game birds
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 supporting or opposing Rule R657-4 were received since June 2017, when this rule was last reviewed.
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 R657-4 provides the procedures and requirements for the possession, importation, purchase, propagation, sale, barter, trade or disposal of live game birds. The procedures adopted in this rule have provided an effective and efficient process. This rule is necessary for continued success of this program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	J Shirley, Division Director	**Date:**	04/04/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R657-22**	**Filing ID: 51747**
Effective Date:	**04/04/2022**	

Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources

Room no.:	Suite 2110	
Building:	DNR – Salt Lake Complex	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state and zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	**Phone:**	**Email:**
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-22. Commercial Hunting Areas
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Section 23-17-6, the Wildlife Board is authorized to make rules and regulations concerning the operation of commercial hunting 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 written comments supporting or opposing Rule R657-22 were received since June 2017, when this rule was last reviewed.
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 R657-22 provides the procedures and requirements for establishing, maintaining, and operating a commercial hunting area. The procedures adopted in this rule have provided an effective and efficient process. This rule is necessary for continued success of the commercial hunting area program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	J Shirley, Division Director	**Date:**	04/04/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R657-30**	**Filing ID: 51750**
Effective Date:	**04/04/2022**	

Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	DNR – Salt Lake Complex	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state and zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	**Phone:**	**Email:**
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-30. Fishing License for the Terminally Ill
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 23-19-36 authorizes a resident who is terminally ill, and has less than five years to live, to receive a free fishing license. Rule R657-30 provides the procedures for a terminally ill person to obtain a free fishing license.
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 supporting or opposing Rule R657-30 were received since May 2017, when this rule was last reviewed.
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 R657-30 is necessary to provide an effective and efficient process for issuing free fishing licenses to persons who are terminally ill. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	J Shirley, Division Director	**Date:**	04/04/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R657-44**	**Filing ID: 51758**
Effective Date:	**04/04/2022**	

Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	DNR – Salt Lake Complex	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state and zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	**Phone:**	**Email:**
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-44. Big Game Depredation
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Sections 23-16-2, 23-16-3, 23-16-3.5, and 23-16-4, the Wildlife Board is authorized and required to regulate and prescribe the means for assessing big game depredation, and provide mitigation procedures for big game depredation.
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 supporting or opposing Rule R657-44 were received since June 2017, when this rule was last reviewed.
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 R657-44 provides the procedures, standards, requirements, and limits for assessing big game depredation and mitigation procedures for big game depredation. The procedures adopted in this rule have provided an effective and efficient process. This rule is necessary for continued success of the big game depredation program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	J Shirley, Division Director	**Date:**	04/04/2022

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R850-11**	**Filing ID: 52035**
Effective Date:	**04/04/2022**	

Agency Information

1. Department:	School and Institutional Trust Lands	
Agency:	Administration	
Room no.:	Suite 500	
Street address:	675 E 500 S	
City, state and zip:	Salt Lake City, UT 84102-2818	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Johnson	801-538-5180	mjohnson@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R850-11. Procurement
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 53C-I -201(3)(e) permits the agency to be exempted from the Utah Procurement Code upon board approval and adoption of alternative procurement procedures. Rule R850-11 provides the alternative

procedures for the agency to follow when procuring goods and services related to the administration of the agency or management, development, leasing, or sale of trust lands.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received by the agency for this rule since the previous five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required by statute in order for the agency to be exempt from the provisions outlined under Title 63G, Chapter 6a, Utah Procurement Code, in order to streamline the procurement process and enable the agency to respond to marketing opportunities in a more timely manner and to efficiently fulfill its responsibilities under the law. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Michelle McConkie, Director	**Date:**	03/28/2022

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION** (**EXTENSION**) with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Utah Admin. Code Ref (R no.):	**R105-1**	**Filing ID: 50203**
New Deadline Date:	**08/08/2022**	

Agency Information

1. Department:	Attorney General	
Agency:	Administration	
Room no.:	Suite 230	
Building:	Utah State Capitol Complex	
Street address:	350 N State Street	
City, state and zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 142320	
City, state and zip:	Salt Lake City, UT 84114-2320	
Contact person(s):		
Name:	**Phone:**	**Email:**
David Sonnenreich	801-845-6862	dsonnenreich@agutah.gov
Lonny Pehrson	801-281-1246	lpehrson@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R105-1. Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services
3. Reason for requesting the extension and the new deadline date:
Because of other responsibilities, the agency is still reviewing this rule and asks for an extension.

Agency Authorization Information

Agency head or designee, and title:	Lonny Pehrson, Government Records Counsel	**Date:**	04/08/2022

End of the Notices of Five-Year Review Extensions Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food
Conservation Commission
No. 54357 (New Rule) R64-4: Agricultural Water Optimization Program
Published: 02/15/2022
Effective: 04/05/2022

Regulatory Services
No. 54355 (Amendment) R70-101: Bedding, Upholstered Furniture and Quilted Clothing
Published: 02/15/2022
Effective: 04/05/2022

Cultural and Community Engagement
History
No. 54376 (Amendment) R455-12: Computerized Record of Cemeteries, Burial Locations and Plots, and Granting Matching Funds
Published: 03/01/2022
Effective: 04/21/2022

Environmental Quality
Waste Management and Radiation Control, Radiation
No. 54370 (Amendment) R313-28-140: Qualifications of Mammography Imaging Medical Physicst
Published: 03/01/2022
Effective: 04/18/2022

Governor
Economic Opportunity
No. 54378 (Amendment) R357-3: Economic Development Tax Increment Financing Rule
Published: 03/01/2022
Effective: 04/08/2022

No. 54377 (Amendment) R357-22: Rural Employment Expansion Program
Published: 03/01/2022
Effective: 04/08/2022

Health
Family Health and Preparedness, Primary Care and Rural Health
No. 54219 (Amendment) R434-30: Primary Care Grant Program
Published: 01/15/2022
Effective: 04/22/2022

No. 54219 (Change in Proposed Rule) R434-30: Primary Care Grant Program
Published: 03/15/2022
Effective: 04/22/2022

Center for Health Data, Vital Records and Statistics
No. 54371 (Amendment) R436-4: Delayed Registration of Birth
Published: 03/01/2022
Effective: 04/11/2022

No. 54372 (Amendment) R436-7: Death Registration
Published: 03/01/2022
Effective: 04/11/2022

No. 54373 (Amendment) R436-14: Copies of Data From Vital Records
Published: 03/01/2022
Effective: 04/11/2022

Human Services
Administration, Administrative Services, Licensing
No. 54356 (Amendment) R501-1: General Provisions for Licensing
Published: 02/15/2022
Effective: 04/05/2022

Aging and Adult Services
No. 54297 (Repeal) R510-1: Authority and Purpose
Published: 02/01/2022
Effective: 04/12/2022

No. 54298 (Repeal) R510-101: Carryover Policy for Title III: Grants for State and Community Programs on Aging
Published: 02/01/2022
Effective: 04/12/2022

No. 54299 (Repeal) R510-102: Amendments to Area Plan and Management Plan
Published: 02/01/2022
Effective: 04/12/2022

No. 54300 (Repeal) R510-103: Use of Senior Centers by Long-Term Care Facility Residents Participating in Activities Outside Their Planning and Service Area
Published: 02/01/2022
Effective: 04/12/2022

No. 54293 (Repeal and Reenact) R510-105: Out and About Homebound Transportation Assistance Fund
Published: 02/01/2022
Effective: 04/12/2022

No. 54301 (Repeal) R510-106: Minimum Percentages of Older Americans Act, Title III Part B: State and Supportive Services Funds
Published: 02/01/2022
Effective: 04/12/2022

No. 54302 (Repeal) R510-107: Title V Senior Community Service Employment Program Standards and Procedures
Published: 02/01/2022
Effective: 04/12/2022

No. 54303 (Repeal) R510-108: Definition of Rural for Title III: Grants for State and Community Programs on Aging Reporting under the Older Americans Act
Published: 02/01/2022
Effective: 04/12/2022

No. 54304 (Repeal) R510-109: Definition of Significant Population of Older Native Americans
Published: 02/01/2022
Effective: 04/12/2022

No. 54305 (Repeal) R510-110: Policy Regarding Contractual Involvements of Area Agencies on Aging for Private Eldercare and Case Management Services
Published: 02/01/2022
Effective: 04/12/2022

No. 54306 (Repeal) R510-111: Policy on Use of State Funding for Travel Expenses to Assist the National Senior Service Corps (NSSC)
Published: 02/01/2022
Effective: 04/12/2022

No. 54294 (Repeal and Reenact) R510-200: Long-Term Care Ombudsman Program
Published: 02/01/2022
Effective: 04/12/2022

No. 54295 (Repeal and Reenact) R510-400: Home and Community Based Alternatives Program
Published: 02/01/2022
Effective: 04/12/2022

No. 54296 (Repeal and Reenact) R510-401: Utah Caregiver Support Program
Published: 02/01/2022
Effective: 04/12/2022

Recovery Services
No. 54368 (Amendment) R527-5: Release of Information
Published: 03/01/2022
Effective: 04/11/2022

No. 54369 (Amendment) R527-200: Administrative Procedures
Published: 03/01/2022
Effective: 04/11/2022

No. 54172 (Amendment) R527-305: High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases
Published: 12/15/2021
Effective: 04/01/2022

No. 54172 (Change in Proposed Rule) R527-305: High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases
Published: 03/01/2022
Effective: 04/01/2022

Workforce Services
Administration
No. 54389 (Repeal) R982-301: Councils
Published: 03/15/2022
Effective: 04/21/2022

End of the Notices of Rule Effective Dates Section