

UTAH STATE BULLETIN

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Nancy L. Lancaster, Managing Editor

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

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

Office of Administrative Rules, Salt Lake City 84114

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TABLE OF CONTENTS

NOTICES OF PROPOSED RULES	1
AGRICULTURE AND FOOD	2
Animal Industry	2
R58-7. Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons	2
Plant Industry	7
R68-4. Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	8
R68-23. Utah Firewood Quarantine	12
Regulatory Services	15
R70-440. Egg Products Inspection	16
COMMERCE	17
Occupational and Professional Licensing	17
R156-55c. Plumber Licensing Act Rule	17
CORRECTIONS	22
Administration	22
R251-714. Offender Sexual Assault Prevention	22
ENVIRONMENTAL QUALITY	25
Air Quality	25
R307-401-14. Used Oil Fuel Burned for Energy Recovery	25
Environmental Response and Remediation	27
R311-200. Underground Storage Tanks: Definitions	27
R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training	32
R311-203. Underground Storage Tanks: Technical Standards	40
R311-204. Underground Storage Tanks: Closure and Remediation	47
R311-205. Underground Storage Tanks: Site Assessment Protocol	50
R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms	54
R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks	62
R311-208. Underground Storage Tank Penalty Guidance	67
R311-211. Corrective Action Cleanup Standards Policy -- UST and CERCLA Sites	70

R311-212. Administration of the Petroleum Storage Tank Loan Program	73
GOVERNOR	77
Economic Opportunity	77
R357-5. Motion Picture Incentive Rule	77
HEALTH	81
Health Care Financing, Coverage and Reimbursement Policy	81
R414-40. Private Duty Nursing Service	81
Family Health and Preparedness, Licensing	83
R432-32. Licensing Exemption for Non-Profit Volunteer End-of-Life Care	83
INSURANCE.....	85
Administration.....	85
R590-215. Permissible Arbitration Provisions for Individual and Group	
Health Insurance.....	86
R590-288. Limited Line Producer Line of Authority for Pet Insurance	88
Title and Escrow Commission	90
R592-15. Schedule of Minimum Charges for Escrow Services.....	91
R592-18. Cost of Doing the Escrow Business.....	94
TAX COMMISSION.....	96
Motor Vehicle Enforcement.....	96
R877-23V-14. Dealer Identification of Fees Associated with Issuance	
of Temporary Permits Pursuant to Utah Code Ann. Sections 41-3-301	
and 41-3-302	96
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION	99
COMMERCE	99
Consumer Protection.....	99
R152-34. Utah Postsecondary Proprietary School Act Rule	99
EDUCATION.....	100
Administration.....	100
R277-122. Board of Education Procurement.....	100
R277-410. Accreditation of Schools.....	100
R277-485. Loss of Enrollment	101
R277-911. Secondary Career and Technical Education	102
ENVIRONMENTAL QUALITY	102
Air Quality.....	102
R307-105. General Requirements: Emergency Controls	102
R307-401. Permit: New and Modified Sources.....	103

R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas	103
R307-406. Visibility	104
R307-410. Permits: Emissions Impact Analysis	105
R307-414. Permits: Fees for Approval Orders.....	105
R307-415. Permits: Operating Permit Requirements	106
R307-417. Permits: Acid Rain Sources	107
R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties	107
R307-421. Permits: PM10 Offset Requirements in Salt Lake County and Utah County	108
R307-424. Permits: Mercury Requirements for Electric Generating Units	108
CULTURAL AND COMMUNITY ENGAGEMENT.....	109
Administration.....	109
R450-2. Preservation Pro Fee	109
Library	109
R458-1. Adjudicative Procedures	109
PUBLIC SERVICE COMMISSION.....	110
Administration.....	110
R746-320. Uniform Rules Governing Natural Gas Service	110
SCHOOL AND INSTITUTIONAL TRUST LANDS	110
Administration.....	110
R850-1. Definition of Terms	111
R850-2. Trust Land Management Objectives	111
R850-3. Applicant Qualifications, Application Forms, and Application Processing.....	112
NOTICES OF FIVE-YEAR REVIEW EXTENSIONS	113
INSURANCE.....	113
Administration.....	113
R590-173. Credit for Reinsurance	113
NOTICES OF RULE EFFECTIVE DATES	115

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 May 03, 2022, 12:00 a.m., and May 16, 2022, 11:59 p.m. are included in this, the June 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 July 01, 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 September 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.):	R58-7	Filing ID 54641

Agency Information

1. Department:	Agriculture and Food	
Agency:	Animal Industry	
Street address:	4315 S 2700 W, TSOB, South Bldg, Floor 2	
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
Leann Hunting	801-982-2242	leannhunting@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:
R58-7. Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Sections R58-7-4 and R58-7-5 need to be updated to allow for a change in fees if they are approved by the legislature, to make this rule more consistent with the requirements of the Utah Rulewriting Manual, and to require livestock markets to negotiate and pay for the cost of veterinarians.
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 R58-7-4 has been changed to remove the \$10 licensing fee for a temporary livestock sale in favor of language allowing a fee to be assessed that has been approved by the legislature in the fee schedule. A similar change has been added with respect to the Livestock Dealer Fee in Section R58-7-5. Section R58-7-3 has been changed to require livestock markets to designate isolation

pens to quarantine animals, keep records on each bought animal, provide sale day schedules to the department, and test and vaccinate cattle for brucellosis. Changes have been made to require that livestock markets are responsible for negotiating and paying veterinarians rather than fees being set by and passing through the Department of Agriculture and Food (Department). Additional changes have been made to make this rule text more consistent with the requirements of the Utah Rulewriting Manual.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change will allow for a change to the temporary livestock sale license fee, which could result in an impact to the state; however, it is impossible to estimate the impact of the change at this time since the Brand Board and legislature will have discretion in setting the fee going forward. The change to require livestock markets to negotiate and pay veterinarians will not impact the state because the Department has previously passed through those funds.
B) Local governments:
This rule change should not impact local governments because they do not purchase temporary livestock sales licenses from the Department.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change will allow for a change to the temporary livestock sale license fee, which could result in an impact to small businesses; however, it is impossible to estimate the impact of the change at this time since the Brand Board and legislature will have discretion in setting the fee going forward. Additionally, the cost of paying a veterinarian could impact livestock markets, however, the amount of impact will be dependent on the rate that the market negotiates with the veterinarians and is impossible for the Department to determine at this time.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule change will allow for a change to the temporary livestock sale license fee, which could result in an impact to the state; however, it is impossible to estimate the impact of the change at this time since the Brand Board and legislature will have discretion in setting the fee going forward. Additionally, the cost of paying a veterinarian could impact livestock markets, however, the amount of impact will be dependent on the rate that the market negotiates with the veterinarians and is impossible for the Department to determine at this time.

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

This rule change will allow for a change in the temporary livestock sale license fee, which could result in an impact to the other persons; however, it is impossible to estimate the impact of the change at this time since the Brand Board and legislature will have discretion in setting the fee going forward. Additionally, the cost of paying a veterinarian could impact livestock markets, however, the amount of impact will be dependent on the rate that the market negotiates with the veterinarians and is impossible for the Department to determine at this time.

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 could change due to potential changes in the cost of a temporary livestock sales license; however, it is impossible to estimate the impact at this time since the fee will no longer be set in rule.

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

This rule could have a potential fiscal impact on businesses, however, the fee change will be approved by the legislature and Brand Board. Craig W. Butters, Commissioner

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

Regulatory Impact Table

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
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. Butters, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 4-30-104		
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

10. This rule change MAY become effective on: 07/08/2022

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. Butters, Commissioner	Date:	05/20/2022
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R58. Agriculture and Food, Animal Industry.

R58-7. Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons.

R58-7-1. Authority.

[A-](1) Promulgated under authority of Section 4-30-104 and Section 4-2-103.

NOTICES OF PROPOSED RULES

~~[B-](2)~~ It is the intent of these rules to provide uniformity and fairness in the marketing of livestock within the state, whether sold through regularly established livestock markets or other types of sales.

R58-7-2. Definitions.

~~[A-](1)~~ "Commissioner" means the commissioner of the Utah Department of Agriculture and Food.

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

~~[B-](3)~~ "Livestock" means cattle, domestic elk, swine, equines, sheep, goats, camelids, ratites, and bison.

~~(4)~~ "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.

~~(5)~~ "Livestock market" means a public market place consisting of pens or other enclosures where each class of livestock or poultry are received on consignment and kept for subsequent sale, either through public auction or private sale.

~~[C-](6)~~ "Representative" means a dealer licensed in Utah under Section 4-7-107 who is a resident of this state, or who is a representative of, or who in any capacity conducts business with a livestock auction market licensed under Section 4-30-105, ~~[which]that~~ does business with an in state or out of state satellite video livestock auction market.

~~[D-](7)~~ "Satellite video livestock auction market" means a place or establishment or business conducted or operated for compensation or profit as a public market where livestock or other agricultural related products located in this state are sold or offered for sale at a facility within or outside the state through the use of an electronically televised or recorded media presentation, which is, or can be exhibited at a public auction.

~~E. "Livestock market" means a public market place consisting of pens or other enclosures where all classes of livestock or poultry are received on consignment and kept for subsequent sale, either through public auction or private sale.~~

~~F. "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.]~~

R58-7-3. Livestock Markets.

~~[A-](1)~~ Standards for Approved and Non-approved Markets. The operator of a livestock market shall maintain the following standards ~~[in order]to [obtain]get, [retain]keep,~~ or renew a livestock market license:

~~[4-](a)~~ ~~[F]~~follow procedures outlined in ~~[Section 4-30-105]Title 4, Chapter 30, Livestock Markets,~~ and ~~[all]any~~ state and federal laws ~~[and regulations-]pertaining to livestock health and movement[-];~~

~~[2. Conduct all sales in compliance with the provisions of Utah laws and rules pertaining to livestock health and movement.~~

~~3. Furnish the Department with a schedule of sale days, which have been previously approved by the Commissioner of Agriculture and Food, giving the beginning hour.~~

~~4. Maintain records of animals in the market in accordance with United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Brucellosis Eradication Uniform Methods and Rules, Ch. 1, Part II, 1, G, 2 to 4. Records must be retained for 2 years.]~~

~~(b)~~ keep records on any animals purchased sufficient to enable the department to satisfactorily trace those animals to their herd of origin and destination.

~~(i)~~ Livestock markets shall maintain the identity of ownership of each animal as set forth in Section 4-24-402, and this rule.

~~(ii)~~ Records shall be kept for at least two years;

~~[5. Maintain the identity of ownership of all animals as set forth in Section 4-24-402, and these rules. All test eligible females and breeding bulls two years of age and over shall be backtagged for individual identification as outlined in 9 CFR 71.18-71.19 and 9 CFR 79, January 1, 2001, edition.](c)~~ identify each animal as required in 9 CFR 71.18, 9 CFR 71.19, and 9 CFR 79. ~~[The-]Tags~~ are not to be removed in trading channels[-];

~~[6-](d)~~ ~~[P]~~permit authorized state or federal inspectors to review ~~[all phases]each phase~~ of the livestock market operations including~~[-, but not limited, to]~~ records of origin and destination of livestock handled by the livestock market[-];

~~[7-](c)~~ ~~[P]~~provide adequate space for pens, alleyways, chutes, and sales ring; cover sales ring with a leak-proof roof[-];

~~[8-](f)~~ ~~[Have floors in all]construct each pen[s], alleyway[s], chute[s], and sales ring [constructed in such a manner as]~~ to be safe, easily cleaned, and properly drained in ~~[all types]any type~~ of weather;~~[-and-]~~

~~(g)~~ ~~[to be easily maintained-]maintain the facility in a clean and sanitary [condition-]manner; and~~

~~[9. Maintain all alleyways, pens, chutes, and sales rings in a clean, safe, and sanitary manner.~~

~~10. Furnish and maintain one or more chutes, in addition to the loading chute, at a convenient and usable place in a covered area, suitable for restraining, inspecting, examining, testing, tagging, branding and other treatments and procedures ordinarily required in providing livestock sanitary or health service at markets in a safe manner. Furnish personnel as required to assist Department or federal inspectors.]~~

~~[11-](h)~~ ~~[P]~~provide specially designated isolation pens ~~[or a provision for yarding for diseased animals infected with or exposed to brucellosis, tuberculosis, scabies, anaplasmosis, vesicular disease, pseudorabies, hog cholera, sheep foot rot, or other]to quarantine animals suspected of having a contagious disease.[-or infectious disease.]~~

~~[12. Provide adequate facilities and service at a reasonable cost for cleaning and disinfecting cars, trucks and other vehicles which have been used to transport diseased animals as directed by the Department of Agriculture and Food or its authorized representative.~~

~~13. Do not release any diseased animal or animal exposed to any contagious, infectious or communicable disease from a livestock market until it has been approved for movement by the Department or its authorized representative.~~

~~14. Do not release any livestock from the market which have not complied with Utah laws and rules.]~~

~~(2)~~ Livestock sold through livestock markets shall comply with Utah law and rules including Rule R58-3 Brucellosis Vaccination Requirements, Rule R58-21 Trichomoniasis, Rule R58-22 Equine Infectious Anemia, and Section R58-2-3 Reportable and Quarantinable Animal Diseases.

~~(a)~~ Auction owners or veterinarians shall report any suspected cases of diseases from the Utah List of Reportable Conditions for Animals to the State Veterinarian.

~~(b)~~ These animals shall not be released until approved for movement by the department or its authorized representative.

~~(c)~~ The List of Reportable Conditions is available from the State Veterinarian's office or the department website.

~~[B-](3)~~ Additional Standards for Approved Markets.

~~1. Weigh each reactor individually and record reactor tag number, tattoo or other identifying marks on a separate weigh ticket, and record sales price per pound and net return after deducting expenses for required handling of such reactor. Restrict sale of all reactors to a slaughtering establishment where federal or state inspection is maintained.~~

~~2. Reimburse the Department monthly an amount equal to expenses incurred in providing a veterinarian at the livestock market.]~~

~~(a) Approved livestock markets shall:~~

~~(i) provide the department with a schedule of sale days that have been previously approved by the commissioner, giving the beginning hour;~~

~~(ii) provide and maintain one or more chutes, in addition to the loading chute, at a convenient and usable place in a covered area, suitable for restraining, inspecting, examining, testing, tagging, branding, and other treatments and procedures ordinarily required in providing livestock sanitary or health service at markets in a safe manner;~~

~~(iii) provide personnel as required to assist department or federal inspectors;~~

~~[3-](iv) [P]provide specially designated isolation pens [or a provision for yarding for]to quarantine animals suspected of contagious disease and animals classified as reactors, exposed, suspects, "V" branded, or "S" branded[-];~~

~~4. Provide suitable laboratory space at the market as agreed between the market and the livestock market veterinarian for the conducting of brucellosis and other necessary tests.]~~

~~(v) limit the sale of restricted animals to a slaughtering establishment where federal or state inspection is maintained or a qualified feedlot approved by the department; and~~

~~(vi) arrange with an accredited veterinarian to provide services to ensure compliance with state and federal laws for intrastate and interstate movement.~~

~~(b) Brucellosis testing and vaccination of female cattle not sold for slaughter.~~

~~(i) Unvaccinated female cattle from four to 12 months of age shall be vaccinated prior to leaving the auction.~~

~~(ii) Unvaccinated female cattle over 12 months of age not going to slaughter shall be tested for brucellosis and vaccinated if not pregnant prior to leaving the auction.~~

~~(iii) Unvaccinated pregnant cattle shall be tested for brucellosis prior to leaving the auction. Each buyer shall vaccinate the cattle within 30 days after calving.~~

~~(iv) Testing and vaccination results shall be reported to the department.~~

~~C. Veterinary Medical Services. These services, fees, and collection procedures will be outlined and negotiated between the Department of Agriculture and Food, Livestock Auctions, and Veterinarians in contract agreements signed by each party. Any procedures, payments fees and collection methods done outside the contract terms will be worked out between the livestock market and the veterinarian.]~~

~~[D-](4) Denial, Suspension, or Cancellation of Registration. The [D]department may, after due notice and opportunity for a hearing to the livestock market involved, deny an application for registration, or suspend or cancel the registration when the [D]department is satisfied that the market has:~~

~~[1-](a) violated state [statutes]law or rules governing the interstate or intrastate movement, shipment or transportation of livestock;~~

~~[2-](b) made false or misleading statements in their application for licensing, or false or misleading statements as to the health or physical conditions of livestock regarding official test results or status of the herd of origin;~~

~~[3-](c) knowingly sold [for dairy or breeding purposes cattle]animals [which]that [were affected with]exhibit signs of a communicable disease for purposes other than slaughter;~~

~~[4-](d) demonstrated their inability or unwillingness to carry out the record keeping requirements contained in this rule;~~

~~[5-](e) failed to comply with any law or rule pertaining to livestock health or movement;~~

~~[6-](f) failed to maintain market facilities in a safe, clean and sanitary manner; or~~

~~[7-](g) operated as a livestock market without proper licensing.~~

~~E. Relating to temporary livestock market:~~

~~Temporary Livestock Market Licensees shall not be required to abide by the provisions in R58-7-3A (1,4,5,7-14), R58-7-3B (1-4), and R58-7-3C.]~~

R58-7-4. Temporary Livestock Sale License.

~~[A-](1) A temporary livestock sales license shall be required for each sale where:~~

~~[1-](a) [L]livestock is offered for public bidding and sold on a yardage, commission, or percentage basis[-];~~

~~[2-](b) [S]sales are conducted by or for a person [at which]when livestock owned by [such]the person are sold on [his]their own premises[-, see] pursuant to Sections R58-7-3 and R58-7-4[-];~~

~~[3-](c) [S]sales are conducted for [the purpose of]liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder[-];~~

~~[4-](d) [S]sales are conducted by non-profit breed or livestock associations or clubs;~~

~~[A-](i) It is not the intent of this rule to require a bond from non-profit breed or livestock associations or clubs, or from liquidation sales if they conduct sales themselves and do not assume any financial responsibility between the seller and the buyer[-]; [However, if such]~~

~~(ii) if sales are conducted by outside or professional management, a license and either a bond, trust fund agreement, or letter of credit [will]shall be required[-]; and~~

~~[5-](e) [O]other sales [may be]as approved by the [Department of Agriculture and Food]department.~~

~~[B-](2) A temporary license shall not be required for:~~

~~[1-](a) [S]sales conducted by Future Farmers of America or 4H Club groups[-]; or~~

~~[2-](b) [S]sales conducted in conjunction with state, county, or private fairs.~~

~~[C-](3) The [D]department shall be notified [10]ten days [prior to]before [all such sales]any sales that do not require a temporary license.~~

~~[D-](4) A temporary livestock sales license shall be issued when the [D]department finds:~~

~~[1-](a) [F]that an application [as-]approved by the [D]department has been received, along with the payment of a [\$10.00 license fee]licensing fee included in the fee schedule approved by the legislature pursuant to Section 63J-1-504[-]; and~~

~~[2-](b) [F]that the applicant has filed with the [D]department, where applicable, a bond as required by the [D]department or in accordance with the Packers and Stockyards Act, 7 U.S.C. 181 et seq., except that a letter of credit or a trust fund~~

NOTICES OF PROPOSED RULES

agreement~~[as]~~ approved by the ~~[D]~~department, may replace the bonding requirements.

R58-7-5. Dealers.

~~[A-](1)~~ Dealer Licensing and Bonding. ~~[A-]~~
~~_____~~No person shall operate as a livestock dealer in the state without a license and bond ~~[in accordance with]~~pursuant to Title 4, Chapter 7, Livestock Dealers' Act.

~~[4-](a)~~ Upon receipt of a proper application and payment of ~~[a]the~~ license fee included in the fee schedule approved by the legislature pursuant Section 63J-1-504, [in the amount of \$25.00] and meeting current bonding requirements, the ~~[D]~~department ~~[will]~~shall issue a license allowing the applicant to operate as a livestock dealer through December 31 of each year.

~~[2-](b)~~ The ~~[D]~~department, after due notice and opportunity for hearing to the dealer involved, may deny an application for license, suspend, or cancel the license when the ~~[D]~~department is satisfied that the applicant or dealer has:

~~[a-](i)~~ violated state ~~[statutes]~~law or rules governing the interstate or intrastate movement, shipment, or transportation of livestock;

~~[b-](ii)~~ made false or misleading statements in their application for licensing, or false or misleading statements as to the health or physical conditions of livestock regarding official test results or status of the herd of origin;

~~[c-](iii)~~ knowingly sold for dairy or breeding purposes cattle ~~[which]~~that were affected with a communicable disease;

~~[d-](iv)~~ demonstrated their inability or unwillingness to carry out the record keeping requirements contained in this rule;

~~[e-](v)~~ failed to comply with any law or rule pertaining to livestock health or movement or;

~~[f-](vi)~~ operated as a dealer without meeting proper licensing and bonding requirements.

~~[B-](2)~~ Record Keeping.

~~[4-](a)~~ ~~[All livestock dealers must]~~Each livestock dealer shall keep adequate records to allow accurate trace back of ~~[all]~~ livestock to the prior owner under Section 4-7-109.

~~[2-](b)~~ Dealers shall permit the ~~[D]~~department or its authorized representative to review ~~[all phases]~~each phase of the livestock dealer operations including ~~[, but not limited to,]~~ records of origin and destination of livestock handled by the livestock dealer.

~~[3-](c)~~ Dealers shall retain ~~[above]~~records for ~~[a period of]~~ two years.

R58-7-6. Responsibilities of a Bonded and Licensed Weighperson.

~~[A-](1)~~ Weighperson operator to be competent, licensed, and bonded.

~~[4-](a)~~ Stockyard owner, market agencies, and dealers shall employ only competent, licensed, and bonded persons of good character and known integrity to operate scales for weighing livestock ~~[for the purpose of purchase or sale]~~to purchase or sell. Any person found to be operating scales incorrectly, carelessly, in violation of instructions, or in ~~[such]~~a manner as to favor or injure any party or agency through incorrect weighing or incorrect weight recording shall be removed from ~~[his]~~weighing duties.

~~[2-](b)~~ The primary responsibility of a weigher is to determine and accurately record the weight of a livestock draft without prejudice or favor to any person or agency and without regard for livestock ownership, price condition, fill, shrink, or other considerations. A weigher shall not permit the representations or

attitudes of any persons or agencies to influence ~~[his]~~their judgment or action in performing ~~[his]~~their duties.

~~[3-](c)~~ Unused scale tickets, or those ~~[which]~~that are partially executed but without a printed weight value, shall not be left exposed or accessible to unauthorized personnel. ~~[All such]~~Tickets shall be kept under lock when the weigher is not at ~~[his]~~their duty station.

~~[4-](d)~~ Accurate weighing and correct weight recording require that a weigher shall not permit the operations to be hurried to the extent that inaccurate weights or incorrect weight records may result.

~~_____~~(i) Each draft of livestock ~~[must]~~shall be weighed accurately to the nearest minimum weight value that can be indicated or recorded.

~~_____~~(ii) Manual operations connected with balancing, weighing, and recording shall be performed with the care necessary to prevent damage to the accurately machined and adjusted part of weigh-beams, poses, and printing devices.

~~[5-](c)~~ Livestock owners, buyers, or others having legitimate interest in a livestock draft ~~[must]~~shall be permitted to observe the balancing, weighing, and recording procedures, and a weigher shall not deny them that right or withhold from them any information pertaining to the weight of that draft. ~~[He]~~They shall check the zero balance of the scale or reweigh a draft of livestock when requested by ~~[such]~~the parties.

~~[B-](2)~~ Balancing the empty scale.

~~[4-](a)~~ The empty scale shall be balanced each day before weighing begins, and maintained in correct balance while weighing operations continue.

~~_____~~(i) The zero balance shall be verified at intervals of not more than 15 drafts or 15 minutes, whichever is completed first.

~~_____~~(ii) ~~[In addition, t]~~The zero balance of the scale shall be verified when~~[ever]~~ a weigher resumes weighing duties after an absence from the scale and also when~~[ever]~~ a load exceeding half the scale capacity or 10,000 pounds, whichever is less, has been weighed and is followed by a load of less than 1,000 pounds, verification to occur before the weighing of the load of less than 1,000 pounds.

~~[2-](b)~~ The time at which the empty scale is balanced or its zero balance verified shall be recorded on scale tickets or other permanent records. Balance tickets ~~[must]~~shall be filed with other scale tickets issued on that date.

~~[3-](c)~~ Before balancing the empty scale, the weigher shall ~~[assure himself]~~verify that the scale gates are closed and that no persons or animals are on the scale platform or in contact with the stock rack, gates, or platform.

~~_____~~(i) If the scale is balanced with persons on the scale platform, the zero balance shall be verified when~~[ever]~~ there is a change in ~~[such]~~persons.

~~_____~~(ii) When the scale is properly balanced and ready for weighing, the weigher shall ~~[so indicate]~~show by an appropriate signal.

~~[C-](3)~~ Weighing the load.

~~[4-](a)~~ Before weighing a draft of livestock, the weigher shall ~~[assure himself]~~verify that the entire draft is on the scale platform with the gates closed and that no persons or animals off the scale are in contact with the platform, gates, or stock rack.

~~[D-](4)~~ Sale of livestock by weight.

~~[All-]~~Livestock sold by weight through a satellite video auction market ~~[must]~~shall be sold based on the weight of the livestock on the day of delivery. ~~[All-]~~Livestock sold by weight ~~[must]~~shall be weighed on scales that have been tested and inspected

by the ~~[Department]~~ Division of Weights and Measures in the manner prescribed by law.

R58-7-7. Satellite Video Livestock Auction Market.

~~[1-](1)~~ Before entering into business as or with a satellite video livestock auction market, and annually, on or before January 1, each market or representative shall file an application for a license to transact business as or with a satellite video livestock auction market with the ~~[commissioner]~~ department on a form prescribed by the ~~[commissioner]~~ department. The application ~~[must]~~ shall show:

~~[a-](a)~~ the nature of the business for which a license is desired;

~~[b-](b)~~ the name of the representative applying for the license;

~~[c-](c)~~ the name and address of the proposed satellite video auction or the name and address of the satellite video auction the representative proposes to transact business with; and

~~[d-](d)~~ other information the ~~[commissioner]~~ department may require as listed in Section 4-7-106.

~~[2-](2)~~ The application for a license or for a renewal for a license ~~[must]~~ shall be accompanied by:

~~[a-](a)~~ a license fee set in accordance with Section 4-30-105, determined by the department pursuant to Subsection 4-2-103(2);

~~[b-](b)~~ evidence of proper security bonding as required in Subsection 4-30-105(3) for the satellite video auction and Section 4-7-107 for the representative;

~~[c-](c)~~ a schedule of fees and commissions that will be charged to owners, sellers, or their agents; and

~~[d-](d)~~ other information the ~~[commissioner]~~ department may require as listed in Section 4-7-106.

~~[3-](3)~~ Each satellite video auction ~~[will]~~ shall be considered ~~[as]~~ a temporary livestock sale unless licensed under this chapter as a satellite video auction market. Sales operated by a representative ~~[will]~~ shall be required to ~~[make application]~~ apply as designated in Section R58-7-4.

~~[4-](4)~~ A copy of each ~~[and any]~~ contract between the representative and the satellite video auction market with which the representative proposes to transact business or a contract with the proposed satellite video auction market ~~[must]~~ shall be supplied to the department.

~~(5)~~ The contract ~~[must]~~ shall include a provision authorizing the ~~[commissioner or the commissioners designee]~~ department to have access to the books, papers, accounts, financial records held by financial institutions, accountants or other sources; and other documents relating to the activities of the satellite video livestock market and requiring the satellite video auction market to make ~~[such]~~ documents reasonably available upon the request of the ~~[commissioner or the commissioners designee]~~ department.

~~(a)~~ If the contract between a representative and the satellite video auction market is terminated, rescinded, breached, or materially altered, the representative and the satellite video auction market shall immediately notify the ~~[commissioner]~~ department.

~~(b)~~ Failure to notify will be deemed failure to keep and maintain suitable records and be ~~[deemed to]~~ be a false entry or statement of fact in application filed with the department, pursuant to Section 4-7-201.

R58-7-8. Livestock Market Committee.

~~[A-](1)~~ Hearing on License Application; Notice of Hearing.

~~[4-](a)~~ Upon filing of an application as a satellite video auction livestock market, the chair~~[man]~~ of the ~~[Department of Agriculture and Food's]~~ department's Livestock Market Committee shall set a time and place for a hearing to review the application and determine whether a license will be issued.

~~[2-](b)~~ Upon filing of an application as a representative of a satellite video auction market, the chair~~[man]~~ of the ~~[Department of Agriculture and Food's]~~ department's Livestock Market Committee may elect to hold a hearing to review the application and determine whether a license will be issued.

~~[B-](2)~~ Guidelines delineated for decision on application shall be in accordance with Section 4-30-107 and shall apply to the livestock auction market and the satellite video livestock auction market.

KEY: livestock

Date of Last Change: ~~[July 7, 2020]~~ 2022

Notice of Continuation: December 26, 2019

Authorizing, and Implemented or Interpreted Law: 4-2-2103; 4-30-104

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R68-4

Filing ID
54596

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB, South Bldg, Floor 2	
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:**

R68-4. Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products

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

The changes are needed to reflect the renumbering of Section 4-2-103, and to make this text consistent with Utah Rulewriting Manual 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 language has been updated from the renumbering of Section 4-2-103. Additional changes have been made to make this text consistent with the Utah Rulewriting Manual requirements.

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)		
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	7 CFR Part 51 - Fresh Fruits, Vegetables, and Other Products, (Inspection, Certification, and Standards)
Publisher	Government Publishing Office
Date Issued	03/01/2021

Public Notice Information

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

A) Comments will be accepted until:	07/01/2022
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10. This rule change MAY become effective on:	07/08/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	03/18/2022
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R68. Agriculture and Food, Plant Industry.**R68-4. Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products.****R68-4-1. Purpose and Authority.**

(1) Promulgated under authority of Subsection ~~4-2-2 and 4-2-2(1)(h)~~ 4-2-103(1).

(2) This rule establishes standards and grades for agricultural products and sets fees for services performed by the department in conjunction with the inspection and grading of agricultural products.

R68-4-2. Definitions.

(1) "Container" means any commercial type of package, open or closed, including a barrel, box, basket, carton, crate, lug, sack, or any other receptacle.

(2) "Clean container" means those containers that are free from dirt, filth, or product residues and are found acceptable to the department. These containers shall be of good substantial construction and in good condition.

(3) "Closed container" means any container that is covered by any material in the form of a lid, cover, or wrapping of any kind.

(4) "Deceptive pack" means any container of fruits or vegetables that has in the outer layer or any exposed surface, fruits, or vegetables that are so superior in quality, size, or condition to those in the interior of the container, or the unexposed portion, as to noticeably misrepresent the entire contents; provided that facing that is not in violation is not regarded as deceptive.

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

(6) "Phytosanitary" means sanitary plant health inspection.

(7) "Standards" means the requirements of the federal government, and those of the importing counties of this state or of another state.

R68-4-[2]3. Standards and Grades.

~~The Commissioner of Agriculture and Food has adopted the standards and grades established by the Food Safety and Quality Service, United States Department of Agriculture, for fresh fruits and vegetables. In the case of apricots for processing, no federal standards have been established, therefore, Utah standards have been developed for that commodity. Phytosanitary inspection shall be in accordance with federal standards as well as those of the importing country or state. All other grading of fresh fruit and vegetables in Utah shall be according to official federal grade standards.~~ (1) The standards and grades for fresh fruits and vegetables shall be in accordance with those stated in 7 CFR 51.

~~— (A) Containers.~~

(1) The term "container" is defined as any commercial type of package, open or closed, such as barrel, box, basket, carton, crate, lug, sack, or any other receptacle.

(2) "Clean containers" are defined as those containers which are free from dirt, filth, or product residues and are found acceptable to the Utah Department of Agriculture and Food. Such containers shall be of good substantial construction and be in good condition.

(3) "Closed container" means any container which is covered by any material in the form of a lid, cover, or wrapping of any kind.]

~~[(B)]~~ (2) Packaging and Labeling.

~~[(1)]~~ (a) ~~Each~~ lot[s] of fresh fruits and vegetables packed for sale, offered for sale, transported for sale, or sold in Utah, shall be packaged in clean containers, either open or closed.

~~[(2)]~~ (b) ~~Each~~ closed container[s] is to be of good substantial construction, good commercial type and marked to comply ~~in every way with all marketing requirements of the State of Utah~~ with Section 4-5-201, and are ~~in no way~~ not to conflict with requirements of ~~the U.S. Food, Drug and Cosmetic Act~~ 21 USC 9, the U.S. Food, Drug, and Cosmetic Act.

~~[(3)]~~ (c) The name and address of the grower, packer, or shipper shall be plainly labeled on ~~each~~ closed container[s] of fresh fruits and vegetables offered for sale. ~~It shall be unlawful to offer produce for sale in closed containers which are labeled with the~~

~~brand of another grower, packer or shipper, without permission from such grower, packer, or shipper.~~

~~(i) [Such-]Closed containers shall[-also] be plainly marked on the outside with the name of the product and with terms of either net weight, numerical count, or minimum diameter.~~

~~(ii) Minimum height of numbers and letters for [all]any labeling on packages of ten pounds or more shall be 3/8[" inches.~~

~~[(4)](d) The [above-]labeling requirements in Subsection R68-4-2(2)(c) shall not apply to fresh fruits and vegetables to be used for processing purposes or for repackaging.~~

~~[(5)](e) [In addition to the above requirements, b]Bags of certified seed potatoes [must]shall be officially sealed and tagged with the seal and tag of the certifying agency at point of origin.~~

~~[(C)](3) Deceptive Pack.~~

~~[(1)](a) It [shall be]is unlawful to offer for sale in Utah a deceptive pack of fruits or vegetables or to mislabel any package of fruits or vegetables packed for sale or offered for sale.~~

~~[(2)](b) ["Deceptive Pack" shall mean any container of fruits or vegetables which has in the outer layer or any exposed surface, fruits or vegetables which are so superior in quality, size or condition to those in the interior of the container, or the unexposed portion, as to noticeably misrepresent the entire contents; provided that facing which is not in violation of the foregoing is not regarded as deceptive. Such]A pack is considered deceptive if the outer or exposed surface is composed of products whose size is not an accurate representation of the variation of size of the products in the entire container.~~

~~[(D)](4) Grade Designation.~~

~~(a) [All]Each fresh fruit[s] and vegetable[s] offered for sale in Utah in closed or open containers of any kind, or on display tables, or shelves, where a federal or state grade is designated on the container or on a sign accompanying produce on display, must conform to the grade so designated. If a lot of fruit or vegetables does not meet the [above-]requirements, sale of [such]the lot shall be stopped until the lot is brought into compliance.~~

R68-4-3]4. Prohibited Sale.

~~(1) It [shall be]is unlawful to sell or offer for sale in Utah any fruits or vegetables in bulk or in containers [which]that contain more than [ten percent]10% by count or weight of plant pest injury or serious defects of a progressive nature [which]that has penetrated or damaged the edible portions, including not more than [five percent]5% of fruit with worm holes.~~

~~(2) It is unlawful to offer produce for sale in closed containers that are labeled with the brand of another grower, packer, or shipper, without permission from the grower, packer, or shipper.~~

R68-4-4]5. Authority to Issue Certificates.

~~(1) No person, firm, corporation, or association is permitted to issue, classify, or sign certificates covering the grade of farm products when [such]the farm products have been officially standardized, except as provided by law and only by a person properly qualified, licensed, and designated [as a state agricultural inspector-]by the [Utah Department of Agriculture and Food]department and approved and licensed by the [-federal supervisor]U.S. Department of Agriculture (USDA) - Agricultural Marketing Service -Specialty Crops Inspection Division.~~

R68-4-5]6. Duty of Inspector.

~~(1) When an agricultural inspector finds any lot of fruits or vegetables being offered for sale which fails to meet the requirements of [the regulations herein]this rule, [it shall be his duty to]the~~

~~inspector shall serve notice on the owner or person, who has [possession thereof]the lot of fruits or vegetables, that[the provisions of these regulations-] these rules have been violated and that the produce in question cannot be marketed or sold unless officially released by [said]the inspector.~~

R68-4-6]7. Inspection Notes and Certificates.

~~[(A)](1) Only financially-interested persons are entitled to information from [the]an inspector[s]'s notes unless the applicant directs the inspector to give this information to prospective buyers. This information can only be obtained by others [only by]through a court order[through subpoena].~~

~~[(B)](2) [All]Each certificate[s] issued by authorized agents of the [U.S. Department of Agriculture]USDA [(f)Federal-State Inspection Service] shall be received in [all]any federal court[s] as prima facie evidence of the truth contained [therein]in the certificate.~~

~~[(C)](3) General quantitative terms may be used on the inspection notes and certificates if the inspector cannot get an accurate average.~~

~~[(1)](a) [Averages cannot always be accurately obtained. In such cases the following general terms may be used with the meanings given.]Acceptable terms:~~

~~[(a)](i) "[F]few" means [40 percent]10% or less[-];~~

~~[(b)](ii) "[S]some" means 11 to 25[-percent.];%~~

~~[(c)](iii) "[M]many" means 26 to 45[-percent.];%~~

~~[(d)](iv) "[A]approx. half" means 46 to 54[-percent.];%~~

~~[(e)](v) "[M]most-[M]mostly" means 55 to 89[percent.];%~~

~~[(f)](vi) "[G]generally" means 90[-percent.];% or more[-(see paragraph 447)-];~~

~~[(g)](vii) "[P]practically all" means 95[-percent.];% or more[-]; and~~

~~[(h)](viii) "[O]occasionally" means 5[-percent.];% or less[(Used only in reference to container; see Paragraph 446)], used only in reference to containers.~~

[R68 4 7. Utah Standards for Apricots for Canning or Freezing (There are no Federal Standards for processing apricots).

~~(A) Utah No. 1 shall consist of apricots which are well formed, firm ripe, (but not hard or overripe), well colored, free from decay, mold, worms and worm holes and from damage caused by dirt, growth crack, limb rubs, sun cracks, scald, hail, bird pecks, scale, disease, insects, mechanical factors, or by other means (See minimum size).~~

~~(B) Utah No. 2 shall consist of apricots which are ripe (but not overripe and soft, or hard or shriveled), fairly well colored, not badly misshapen, free from decay, mold, worms, worm holes and from serious damage by any cause.~~

~~(C) Culls shall mean apricots which do not meet the requirements of Utah No. 2 or are affected by blight, scale, scale insects, larvae, or other worm damage, serious bruises and decay.~~

~~(D) Minimum size refers to the greatest diameter, measured through the center of the apricot at right angles to a line running from the stem to the blossom ends. Minimum sizes for Utah No. 1 and Utah No. 2 grades may be fixed by agreement between buyer and seller.~~

~~(E) Definitions of terms used in these grades:~~

~~(1) "Ripe" shall mean the state of maturity wherein the apricots are ready for immediate processing or consumption.~~

~~(2) "Firm" shall mean that the apricots are fairly solid and yield slightly to moderate pressure.~~

~~(3) "Well colored" shall mean that the apricots show at least 90 percent good over all deep yellow or orange color characteristic of ripe fruit.~~

~~(4) "Fairly well colored" shall mean that the apricots show at least two thirds of the over all surface with a good shade of orange or deep yellow color characteristic of ripening apricots.~~

~~(5) "Well formed" shall mean the shape characteristic of the variety and shall not be extremely flat or otherwise misshapen.~~

~~(6) "Damage" shall mean any injuries or defects which materially affect the appearance or the processing quality of the apricots or cause waste of more than five percent (by weight) of the flesh in excess of that which occurs if the apricots were not defective, or cause waste to the extent that the fruit, after trimming, will not yield two reasonably well shaped halves.~~

~~(7) "Serious damage" shall mean any injuries or defects which seriously affect the appearance or processing quality or cause a waste of more than ten percent (by weight) of the flesh in excess of that which would occur if the apricots were not defective.~~

~~(F) Tolerances.~~

~~(1) It is contemplated, in the application of above given standards, that in most instances sellers will not sort their apricots into separate lots of Utah No. 1 and Utah No. 2 grades before delivery to the buyer, and that the buyer will pay on the basis of the percentage of each grade in the sellers' lot as described by inspection. In such cases, no tolerance is needed. Should the contract between buyer and seller call for delivery of lots containing only Utah No. 1 and Utah No. 2, then, unless otherwise specified, a ten percent tolerance shall be allowed for apricots which fail to meet requirements of the grade on which the contract is based, with an additional ten percent tolerance allowed for apricots which fail to meet the minimum size specified in the contract. Lots of apricots which contain in excess of five percent wormy fruit must be reconditioned by the grower to be acceptable for processing purposes.~~

]

R68-4-8. Certification and Grade Standards for Seed Potatoes.

~~(A)(1)~~ Requirements and standards for the certification and grading of seed potatoes are established and regulated by the Utah Crop Improvement Association, Utah Agricultural Experiment Station, Logan, Utah, 84322-4820.

~~(B)(2)~~ Copies of seed certification requirements and standards can be obtained from the Utah Crop Improvement Association, Logan, Utah.

R68-4-9. Controlled Atmosphere (CA) Apples.

~~(A)(1)~~ Licensing.

~~(1)(a)~~ Any person, corporation, partnership, association, or other organized group or person who owns or operates a controlled atmosphere room or storage building shall apply for a license with the ~~[Commissioner of Agriculture and Food]~~ department on a form prescribed by the ~~[Commissioner]~~ department. The licensing period shall ~~[commence]~~ begin on January 1 and end on December 31 of each year.

~~(2)(b)~~ The application for an annual registration to engage in the business of operating a controlled atmosphere storage warehouse or warehouses shall be accompanied by an annual license fee determined by the department pursuant to Subsection ~~[4-2-2(2)]~~ 4-2-103(2).

~~(3)(c)~~ The ~~[Commissioner]~~ department shall assign each approved applicant a registration number preceded by the letters CA. This number shall be marked on ~~[all]~~ each container[s] coming under ~~[the provisions of]~~ these ~~[regulations]~~ rules.

~~(B)(2)~~ Atmospheric Specifications.

~~(1)(a)~~ Apples shall not be identified as being from CA storage unless the ~~[following]~~ requirements in Subsections R68-4-10(2)(a)(i) through (v) have been met as ~~[evidenced]~~ shown by inspection and certification by the ~~[Commissioner of Agriculture and Food]~~ department.

~~(a)(i)~~ The percentage of oxygen within the storage atmosphere shall be reduced to ~~[five percent]~~ 5% within 20 days after the date of sealing.

~~(b)(ii)~~ The period of storage in a sealed room with not more than ~~[five percent]~~ 5% oxygen shall be ~~[a minimum of]~~ at least 45 days for Gala and Jonagold varieties and ~~[a minimum period of]~~ at least 90 days for ~~[all]~~ any other varieties. The maximum period of storage in a sealed room with not more than ~~[five percent]~~ 5% oxygen shall be ten months, but in no case later than September 1 of the year following harvest.

~~(c)(iii)~~ The fruit temperature in the CA storage room shall be maintained without significant deviation in a range of temperature normal for the variety.

~~(d)(iv)~~ A representative of the ~~[Utah Department of Agriculture and Food]~~ department shall be notified ~~[prior to]~~ before opening of the CA facility ~~[following]~~ after the storage period, and ~~[he]~~ the department representative shall inspect the general condition of the facility and contents within 48 hours ~~[following]~~ after the opening.

~~(e)(v)~~ CA Certified Apples ~~[must]~~ shall enter commercial channels of trade within four weeks after storage is opened. Minimum condition and maturity standards shall be the U.S. Condition Standards for Export pursuant to 7 CFR 51.

~~(C)(3)~~ Storage Records.

~~(1)(a)~~ Each owner or operator shall maintain a record for each room on an approved form ~~[or forms]~~. The record shall include owner or operator's name and address, room number, date of sealing, date of opening, capacity in bushels, lot identification, number of bushels within each lot, and the daily air constituents determination including date of test, time of test, percentage of oxygen, percentage of carbon dioxide, temperature, and comments.

~~(2)(b)~~ Each owner or operator shall submit to the ~~[Utah Department of Agriculture and Food]~~ department within 20 days after date of sealing, a ~~[report in writing]~~ written report, for each room showing room number, date of sealing, and number of bushels contained ~~[therein]~~.

~~(D)(4)~~ Marketing CA Apples.

~~(1)(a)~~ Any person selling, offering for sale or transporting for sale any apples ~~[coming]~~ under ~~[the provision of]~~ these ~~[regulations]~~ rules shall furnish an invoice covering the sale of ~~[such]~~ the apples.

~~(i)~~ Each invoice shall ~~[indicate]~~ state the CA registration number assigned to the owner or owners of the controlled atmosphere room or storage building in which each ~~[included]~~ lot ~~[or lots]~~ of apples ~~[included thereon were]~~ was kept.

~~(ii)~~ Enforcement officials may investigate and examine records and invoices relating to any transactions in connection ~~[herewith]~~ with these rules ~~[in order]~~ to determine the identity of apples represented as meeting requirements for ~~[such]~~ identification.

~~(2)(b)~~ It ~~[shall be]~~ is unlawful for any person to sell, hold for sale, or transport for sale any apples represented as having been exposed to "controlled atmosphere storage" or to use any ~~[such]~~ term or form of words or symbols of similar import unless ~~[such]~~ the apples have been stored in ~~[controlled atmosphere]~~ CA storage ~~[which]~~ that meets the requirements of ~~[the regulations adopted herein]~~ Section R68-4-9.

R68-4-10. Standards for Utah Premium Grade for Apples.

(1) ~~Utah Premium~~ ~~[a]~~ Apples shall consist of Utah grown apples which meet or exceed ~~[all]~~ ~~each~~ minimum standard[s] as issued by the "United States Department of Agriculture (USDA) U.S. Extra Fancy Grade,"[~~7~~] including the requirements and tolerances as defined in the "United States Standards for Grades of Apples effective September 1, 1964, as amended and in effect July 25, 1972, as issued by USDA,"[~~7~~] Each apple of this grade shall have the amount of color specified in the USDA Standards for US Extra Fancy given for a specific variety except solid red apples shall have a minimum 85[~~percent~~]~~%~~ good red color.

(2) ~~The~~ Utah Department of Agriculture and Food shall conduct condition and grade inspections to assure the grade and quality of ~~[all]~~ ~~any~~ Utah Premium Apples. Fees for quality assurance inspections will be pursuant to Subsection 4-2-~~102~~(2).

R68-4-11. Phytosanitary Inspection.

(1) Phytosanitary inspections shall be in accordance with federal standards in 7 CFR 353 as well as those of the importing country or state.

(2) ~~[A—]~~ Phytosanitary ~~[I]~~ inspection ~~[must]~~ ~~shall~~ be performed by ~~[the Commissioner of Agriculture and Food or—]~~ a designated employee[s] of the ~~[D]~~ department, on plants or plant products ~~[and may include:]~~ including nursery plants or bulbs, seeds, grains, fruits, vegetables, and other plant materials ~~[for the purpose of]~~ meant for export or sale within the state.

~~[—(A) Definitions.~~

~~(1) Phytosanitary shall mean sanitary plant health inspection.~~

~~(2) Standards shall mean the requirements of the federal government, and those of the importing counties of this state or of another state.~~

~~(3) Information shall mean the information contained on the phytosanitary certificate that represents the plant material listed.]~~

~~[(B)]~~ (3) Shipping Information ~~[such as]~~ including names and descriptions of plant materials, origin of plant material, intended destination, means of transportation, intended date for shipment and name and address of consignee ~~[must]~~ ~~shall~~ be provided by the exporting shipper to the ~~[D]~~ department when ~~[calling for an]~~ requesting the issuance of a certificate.

R68-4-12. Charges for Inspection Services.

~~[(A)]~~ (1) Inspection fees ~~[will]~~ ~~shall~~ be determined pursuant to Subsection ~~[4-2-2(2)]~~ 4-2-103(2).

(2) ~~[Such—f]~~ Fees shall be paid by the person, firm, corporation, or other organization who requested inspection, upon receipt of a billing statement ~~[for same—]~~ from the ~~[Utah Department of Agriculture and Food]~~ department.

(3) ~~[In all cases, p]~~ Payment of ~~[such charges]~~ fees shall be made to the ~~[Utah Department of Agriculture and Food]~~ department within ~~[thirty]~~ 30 days of the date of billing.

(4) If accounts become delinquent, the ~~[D]~~ department may discontinue inspection services until full payment is received.

~~[(B)]~~ (5) Mileage or extra expense incurred ~~[in cases where]~~ when inspection is requested at isolated loading points may be added to the cost of the regular inspection fee. ~~[Such—These]~~ charges shall be the ~~[same as—]~~ those set forth in ~~[the current State of Utah Travel Rules and Regulations]~~ Rule R25-7.

~~[(C)]~~ (6) Charges in addition to regular inspection fees shall be made for inspection services performed during irregular working hours when ~~[such]~~ the hours are not included in the inspectors' scheduled shift.

KEY: food inspection

Date of Last Change: ~~[April 1, 1997]~~ 2022

Notice of Continuation: January 11, 2021

Authorizing, and Implemented or Interpreted Law: ~~[4-2-2]~~ 4-2-103(1)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code **R68-23**

Ref (R no.):

Filing ID

54609

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB, South Bldg, Floor 2	
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:**

R68-23. Utah Firewood Quarantine

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

The changes are needed to make this text consistent with the Utah Rulewriting Manual 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 language has been changed to make this text consistent with the Utah Rulewriting Manual requirements.

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

A) Comments will be accepted until:	07/01/2022
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10. This rule change MAY become effective on:

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

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

Agency Authorization Information

Agency head or designee, and title:	Craig W. Buttars, Commissioner	Date:	05/05/2022
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R68. Agriculture and Food, Plant Industry.

R68-23. Utah Firewood Quarantine.

R68-23-1. Authority and Purpose.

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

(2) ~~This rule is enacted to prevent the movement of invasive insects transported by firewood, including, but not limited to *Agrilus planipennis* (Emerald Ash Borer), *Anoplophora glabripennis* (Asian Longhorned Beetle), *Solenopsis invicta* (Red Imported Fire Ant), *Emerald Ash Borer* (*Agrilus planipennis*), *Asian Longhorned Beetle* (*Anoplophora glabripennis*), and *Red Imported Fire Ant* (*Solenopsis invicta*).~~

R68-23-2. Definitions.

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

~~(1)~~(2) "Department" means the Utah Department of Agriculture and Food.

~~(2)~~(3) "Firewood" means any kindling, logs, timber, or other portions of a tree of any species four ~~(4)~~feet or less in length, cut or split, or intended to be cut or split, into a form and size appropriate for use as fuel for fires in open pit, grill, fireplace, stove, or other wood burning furnaces or devices in any form commonly used for burning in campfires, stoves, or fireplaces.

~~(3)~~(4) "Invasive insects" means any nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state.

~~(4)~~(5) "Person" means any individual, organization, corporation, or partnership.

~~(5)~~(6) "Sales By Package" means a package of firewood offered, exposed, or held for sale.

~~(6)~~(7) "Sale From Bulk" means firewood offered, exposed, or held for sale ~~which~~that is not packaged.

R68-23-3. Area Under Quarantine.

(1) ~~Any~~Any areas of the United States and Canada that are declared high risk by the United States Department of Agriculture or ~~Utah Commissioner of Agriculture and Food~~the commissioner.

(2) The department shall keep an updated list of quarantine areas.

R68-23-4. Articles and Commodities Under Quarantine.

(1) This quarantine applies to ~~all~~any firewood offered, exposed, or held for sale in the ~~S~~state ~~of Utah~~.

R68-23-5. Restrictions.

(1) ~~All~~Any firewood transported, offered, exposed, or held for sale in the state shall be labeled in accordance with Section R68-23-6.

(2) A person ~~may~~shall not transport, offer, expose, or hold for sale firewood from an area under quarantine in this state unless the firewood is treated in accordance with Section R68-23-7.

(3) Any person that transports or supplies firewood in this state for other than personal use shall maintain records, certificates, or other documents for two ~~(2)~~years.

R68-23-6. Labeling Requirements.

(1) Each Sales By Package ~~must~~shall bear a clear and conspicuous declaration of the following:

(a) ~~identification of~~the package as containing firewood, unless the contents can be easily identified through the wrapper or container;

(b) net quantity in terms of weight, measure, or count;

(c) name and address of the manufacturer, packer, or distributor of the firewood, if the package was not produced on the premises where they are offered, exposed, or held for sale; and

(d) origin of harvest identified by county or counties and state.

(2) Each Sale From Bulk ~~must~~shall be accompanied by a delivery ticket containing~~the following information~~:

(a) name and contact information of the person who weighed or measured the firewood;

(b) date delivered;

(c) quantity delivered, by cords or cubic meters, including fractions or count of individually wrapped packages delivered, if more than one is delivered;

(d) quantity on which the price is based, if different than the quantity delivered;

(e) identity of the type of firewood in the most descriptive terms commercially practicable; and

(f) origin of harvest by county or counties and state.

R68-23-7. Importation and Treatment.

(1) ~~All~~Any firewood shall be prohibited entry into Utah from an area under quarantine unless the required certification is produced.

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

(3) The certificate shall bear the:

(a) name and address of the exporter of the firewood;

(b) name and address of the importer of the firewood;

(c) inspection~~or~~ certificate date; and

(d) signature of authorized state agricultural officer.

~~Such~~Certificates shall be issued only if the shipment conforms to the following heat treatment procedure ~~listed below~~:

(a) the temperature of the center of the wood is raised to at least 160 degrees ~~F~~~~(Fahrenheit (F))~~, 71.1 degrees ~~C~~~~(Celsius (C))~~;

(b) the center temperature is maintained at 160 degrees ~~F~~~~(Fahrenheit (F))~~, 71.1 degrees ~~C~~~~(Celsius (C))~~, for at least 75 minutes;

(c) internal wood temperatures are obtained and verified by sensors located in the larger pieces of firewood at representative locations within the stack;

(d) sensors are placed in large firewood pieces in the coldest areas of the kiln as identified by the department;

(e) the full depth of the monitoring probes are placed in the wood;

(f) monitoring probes are sealed within the wood by a gasket, non-hardening putty, or similar material to prevent the probe reading ambient air temperature rather than the temperature of the wood;

(g) temperature monitoring equipment ~~must~~shall be able to provide a record of the treatment that identifies each sensor and ~~indicates~~shows time and temperature; and

(h) portable, stand-alone sensors~~[;]~~ and~~[the]~~ temperature monitoring equipment ~~[such as thermocouples~~[;]~~ or temperature data loggers~~[, etc.] must]~~ shall be:~~

(i) accurate to within ~~[+/-]~~plus or minus 0.9 degrees F~~[-(+) 0.5 deg C]~~, at the treatment temperature~~[;]~~;

(ii) capable of collecting temperature data at least once ~~[every]~~each five ~~[(5-)]~~minutes; and

(iii) capable of recording or storing data for 30 days.

(5) The certifying official shall mail, ~~[FAX]~~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, PO Box 146500, Salt Lake City, Utah 84114-6500]~~4315 South 2700 West, TSOB South Bldg, Floor 2, Taylorsville, UT 84129-2128~~[;]~~;

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

~~_____~~ (c) e~~[-]~~mail: UDAF-insects@utah.gov.

(6) The exporter shall give advance notification of regulated firewood shipment to the department.

(7) The importer shall notify the department of the arrival of firewood imported under ~~[the provisions of]~~this quarantine and shall hold ~~[such]~~the firewood for inspection.

(8) The department shall inspect or release the firewood within ~~[in 10]~~ten business days of delivery.

R68-23-8. Records.

(1) The records, certificates, or other documents of a person who transports or supplies firewood for other than personal use shall include information regarding the source of the firewood, any treatment of the firewood and the disposition of the firewood.

(2) The records, certificates, or other documents of a person that sells firewood shall include information regarding the source and supplier of the firewood.

(3) The department may inspect the records, certificates, documents, inventory, and facilities of a person that transports firewood or of a firewood supplier or seller at any time during reasonable business hours and may take samples of firewood for purposes of detecting invasive insects.

R68-23-9. Exemptions.

(1) Firewood harvested in areas other than those under quarantine are exempted from the treatment requirements in Section R68-23-7.

(2) The department may issue an exemption to the treatment for areas under quarantine upon request.

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

(a) identity of the firewood importer;

(b) origin of harvest identified by county or counties and state; and

(c) type of wood to be imported.

(4) The department shall respond in writing within ~~[10]~~ten business days of the request for an exemption.

(5) Exemptions are valid for a ~~[twelve (12)]~~12 month period.

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

(7) The department shall notify the firewood importer, in writing, identifying the reason~~[(s)]~~ for the revocation.

R68-23-10. Enforcing Powers.

(1) Authorized agents of the department shall refuse admittance into Utah any firewood products that do not meet the provisions of this quarantine.

(2) Any shipment found within Utah in violation of this quarantine shall be treated to comply with this quarantine or be returned to the exporter at once.

R68-23-11. Violations and Penalties.

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

(2) Any intentional movement of firewood from an area under quarantine is a violation. Failure to perform or have inspection ~~[will]~~shall constitute intentional movement as well as willfully moving property after notification.

(3) Failure to give advance notice to the department is a violation of this quarantine.

(4) Failure to comply with any provisions of this quarantine shall be a violation of this quarantine.

(5) Violators of this quarantine shall be subject to civil penalties of not more than \$5,000 per violation as defined in Section 4-2-~~[45]~~304.

(6) Each improperly labeled, transported, or treated package or bulk sale shall be a separate violation of this rule.

KEY: firewood, quarantine, insects

Date of Last Change: ~~[August 3, 2017]~~2022

Authorizing, and Implemented or Interpreted Law: 4-2-~~[2]~~103(1)(k); 4-35-109

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.): R70-440

Filing ID
54614

Agency Information

1. Department:	Agriculture and Food	
Agency:	Regulatory Services	
Street address:	4315 S 2700 W, TSOB, South Bldg, Floor 2	
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

NOTICES OF PROPOSED RULES

Travis Waller	801 982- 2250	twaller@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R70-440. Egg Products Inspection
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this filing is to repeal Rule R70-440. This rule is being repealed as the process for inspecting egg products was handed over to the US Department of Agriculture (USDA) some time ago. The Department of Agriculture and Food (Department) no longer has involvement in this process.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule is being repealed as the process for inspecting egg products was handed over to the USDA. This rule is repealed in its entirety.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There should be no impact to the state budget with this change. This program has been taken over by the USDA officially, making the rule unnecessary; however, it was previously paid for with federal dollars.
B) Local governments:
There should be no impact on local governments because they do not participate or administer the egg inspection program.
C) Small businesses ("small business" means a business employing 1-49 persons):
There should be no impact on small businesses because the program will be administered by the USDA in the same way it was administered by the Department.
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 program will be administered by the USDA in the same way it was administered by the Department.

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 on other persons because the program will be administered by the USDA in the same way it was administered by the Department.

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 should not change because the program will be administered in the same way, just by the USDA.

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 should 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 4-4-102

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:	07/01/2022

10. This rule change MAY become effective on:	07/08/2022
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:	05/16/2022
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R70. Agriculture and Food, Regulatory Services.**[R70 440. Egg Products Inspection.****R70 440 1. Authority.**

1) Promulgated under authority of Section 4-4-102.
 2) This rule shall apply to all egg products sold, bought, processed, manufactured or distributed within the State of Utah. It is the purpose of this rule to provide egg products inspection at least equal to those imposed under the Federal Egg Products Inspection Act (21 U.S.C. 1031-1056).

R70 440 2. Adopt by Reference.

Accordingly, the division adopts the egg products inspection standards and procedures as specified in Animal and Animal Products, 9 CFR Chapter III, Sub Chapter I, Parts 590 and 592, January 1, 2012 edition, which is incorporated by reference within this rule.

~~KEY: food inspection~~~~Date of Last Change: January 15, 2020~~~~Authorizing, and Implemented or Interpreted Law: 4-4-102]~~**NOTICE OF PROPOSED RULE****TYPE OF RULE:** Amendment

Utah Admin. Code Ref (R no.):	R156-55c	Filing ID
		54610

Agency Information

1. Department:	Commerce		
Agency:	Occupational	and	Professional Licensing
Building:	Heber M Wells Building		
Street address:	160 E 300 S		
City, state and zip:	Salt Lake City UT 84111-2316		
Mailing address:	PO Box 146741		
City, state and zip:	Salt Lake City UT 84114-6741		
Contact person(s):			
Name:	Phone:	Email:	
Steve Duncombe	801-530-6235	sduncombe@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule or section catchline:
R156-55c. Plumber Licensing Act Rule
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This filing is made by the Division of Occupational and Professional Licensing (Division) in collaboration with the Plumbers Licensing Board and the Construction Services Commission in accordance with Executive Orders No. 2021-1 and 2021-12, to elucidate the minor plumbing work that is deemed incidental; update and clarify the education, experience, and exam requirements and the competency exam requirements for expedited licensure; and make formatting changes throughout to update and clarify the rule using logical, understandable, and concise language 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):
Subsection R156-55c-102(2) is amended to remove the term "installation" from the definition of "minor plumbing work that is incidental." Section R156-55c-302a is

amended to remove the reference to licensure in Subsection R156-55c-302a(3)(b) and to clarify that work experience that is lawfully performed in accordance with applicable licensing requirements may include work experience obtained while exempt from licensure. Section R156-55c-302b is amended to update the examination requirements to reflect the updated plumber exams. Section R156-55c-302c is amended to update the competency exam requirements for expedited licensure by removing references to competency exams 3A through 4B. Additionally, formatting changes are made throughout to update and clarify this rule in accordance with Executive Order No. 2021-12.

Public hearing information:

A rule hearing will be held electronically via Google Meet before the Construction Services Commission

Join with Google Meet:

meet.google.com/ysf-ntht-yiv

Join by phone

(US) +1 814-429-3857 (PIN: 601865433)

Fiscal Information

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

A) State budget:

The proposed changes are not expected to have any fiscal impact on state government revenues or expenditures. The requested changes reflect current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to ensure that the minimum required standards have been met.

B) Local governments:

The proposed changes are not expected to have any fiscal impact on local governments' revenues or expenditures. This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Utah Rulewriting Manual and current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to ensure that the minimum required standards have been met. None of these changes substantively change the processes so there is no fiscal impact.

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

The proposed changes are not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Utah Rulewriting Manual and current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to ensure that the minimum required standards have been

met. None of these changes substantively change the processes so there is no fiscal impact.

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

The proposed changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures. This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Utah Rulewriting Manual and current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to ensure that the minimum required standards have been met. None of these changes substantively change the processes so there is no fiscal impact.

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

The proposed changes are not expected to have any fiscal impact on affected persons. This rule has been amended to provide technical, conforming, and stylistic changes in accordance with the Utah Rulewriting Manual and current industry standards as approved by the Plumber Licensing Board and Construction Services Commission, and will continue to ensure that the minimum required standards have been met. None of these changes substantively change the processes for affected persons, so there is no fiscal impact.

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

As described above in Box 5E for other persons, the proposed changes are not expected to have any 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):

The Division in collaboration with the Plumbers Licensing Board and the Construction Services Commission propose amendments to update Rule R156-55c, the Plumber Licensing Act Rule. Changes have been made to clarify "minor plumbing work" that is deemed incidental, update education, experience, and exam requirements, as well as the competency exam requirements for expedited licensure. The Division has made formatting changes throughout this rule to conform this rule to the Utah Rulewriting Manual in accordance with Executive Orders No. 2021-1 and 2021-12.

Small Business (less than 50 employees): The Division does not foresee any foreseeable impact on small businesses since these amendments are made to make this rule comport to the Utah Rulewriting Manual. There are no substantial changes but merely conforming the rule

to current industry standards as approved by the Plumber Licensing Board and Construction Services Commission.

Regulatory Impact to Non-Small Businesses (50 or more employees): These amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses. These costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

Margaret W. Busse, 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 Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

Citation Information

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

Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-55-101
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

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

On:	At:	At:
06/29/2022	9:00 AM	Rule hearing information is above in Box 4.

10. This rule change MAY become effective on: 07/08/2022

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:	Mark B. Steinagel, Director	Date:	05/12/2022
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R156. Commerce, Occupational and Professional Licensing.

R156-55c. Plumber Licensing Act Rule.

R156-55c-101. Title.

This rule is known as the "Plumber Licensing Act Rule."[-]

R156-55c-102. Definitions.

~~[In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule]~~ The following definitions supplement the definitions in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 55, Utah Construction Trades Licensing Act:

(1) "Immediate supervision"[-] as used in Subsections 58-55-102(5) and ~~[58-55-102](26) [and this rule,]~~ means:

(a) for non-residential plumbing work, the apprentice and the supervising plumber are physically present on the same project or jobsite but are not required to maintain a direct line of sight;

(b) for residential plumbing work, the supervising plumber, when not physically present on the same project or jobsite as the apprentice, is available to provide direction, oversight, inspection, and evaluation of the apprentice's work ~~[as]~~ to ensure that the end result complies with applicable standards.

NOTICES OF PROPOSED RULES

(2) "Minor plumbing work that is incidental"[~~]~~ as used in Subsection 58-55-305(1)(k)(i) [~~and this rule,~~] means:

(a) [~~installation,~~] repair or replacement of the following residential type Plumbing Appliances:

- (i) dishwashers;
- (ii) refrigerators;
- (iii) freezers;
- (iv) ice makers;
- (v) stoves;
- (vi) ranges;
- (vii) clothes washers;
- (viii) clothes dryers; and

(b) repair or replacement of the following residential type Plumbing Appurtenances, Fixtures and Systems, when the cost of the repair or replacement does not exceed \$300 in total value, including [~~all~~] labor and materials, and including [~~all~~] changes or additions to the contracted or agreed upon work:

- (i) tub or shower trim;
- (ii) tub or shower valve;
- (iii) toilet flush valve;
- (iv) toilet removal and reset;
- (v) garbage disposal;
- (vi) kitchen or lavatory sink P-trap;
- (vii) kitchen or lavatory faucet rebuild and [~~install~~] replacement;

(viii) supply line replacement after the fixture valve; and

(3) "Minor plumbing work that is incidental,"[~~]~~ as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater, or work to include the initial installation of Plumbing Appurtenances, Fixtures and Systems.

(4) "Plumbing Appliances, Appurtenances, Fixtures, and Systems" means the same[~~], as used in this rule, shall have the same meaning~~] as defined [~~by~~] in Title 15A, State Construction and Fire Codes Act.

(5) "Unprofessional conduct" as defined in Title 58, [~~Chapters 1 and 55~~] Chapter 1, Division of Professional Licensing Act and Title 58, Chapter 55, Utah Construction Trades Licensing Act is further defined in accordance with Subsection 58-1-203(1)(e), in S[~~ubs~~]ection R156-55c-501.

R156-55c-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55, Utah Construction Trades Licensing Act.

R156-55c-302a. Qualification for Licensure - Education and Experience Requirements.

[~~—The education and experience requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:~~]

(1) A Master Plumber applicant:

(a) [~~An applicant~~] under Subsection 58-55-302(3)(a)(i)(A), shall have at least 4,000 hours of work experience and at least 4,000 hours of supervisory experience as a licensed Journeyman Plumber[~~]~~; or

(b) [~~An applicant~~] under Subsection 58-55-302(3)(a)(i)(B), shall:

(i) hold at least an associate of applied science degree or a similar degree, from an institution recognized by the Council for Higher Education Accreditation (CHEA); and

(ii) have at least 2,000 hours of supervisory experience as a licensed Journeyman Plumber.

(2) A Residential Master Plumber applicant:

(a) [~~An applicant~~] under Subsection 58-55-302(3)(b)(i), shall have at least 4,000 hours of work experience and at least 4,000 hours of supervisory experience as a licensed Residential Journeyman Plumber[~~]~~; or

(b) [~~An applicant~~] under Subsection 58-55-302(3)(b)(ii), shall:

(i) hold at least an associate of applied science degree or a similar degree, from an institution recognized by the [~~Council for Higher Education Accreditation (CHEA)]~~; and

(ii) have at least 2,000 hours of supervisory experience as a licensed Residential Journeyman Plumber.

(3) A Journeyman Plumber applicant:

(a) [~~An applicant~~] under Subsection 58-55-302(3)(c)(i), shall have completed at least:

(i) [~~at least~~] 576 hours of a planned program of training that meets the requirements of Subsection (5); and

(ii) [~~at least~~] 8,000 hours of full-time work experience as a licensed Apprentice Plumber[~~]~~;

(b) [~~An applicant~~] under Subsection 58-55-302(3)(c)(ii), shall have completed at least 16,000 hours of lawful full-time work experience as an [~~licensed~~] Apprentice Plumber[~~]~~; or

(c) [~~An applicant~~] under Subsection 58-55-302(3)(c)(iii), if licensed as a Residential Journeyman Plumber, shall have completed:

(i) at least 2,000 hours of full-time work experience in non-residential plumbing while licensed as an Apprentice Plumber; and

(ii) the fourth year, [~~4~~] 144 hours[~~]~~, of a planned program of training that meets the requirements of Subsection (5).

(4) A Residential Journeyman Plumber applicant:

(a) [~~An applicant~~] under Subsection 58-55-302(3)(d)(i), shall have completed at least:

(i) [~~at least~~] 432 hours of a planned program of training that meets the requirements of Subsection (5); and

(ii) [~~at least~~] 6,000 hours of full-time work experience as a licensed Apprentice Plumber[~~]~~; or

(b) [~~An applicant~~] under Subsection 58-55-302(3)(d)(ii), shall produce satisfactory evidence, using a form provided by the Division, that the applicant:

(i) has completed at least 12,000 hours of full-time work experience in a maintenance or repair trade; and

(ii) that at least 9,000 of the required 12,000 hours directly involved the plumbing trade.

(5)(a) The "planned program of training approved by the Division" pursuant to Subsections 58-55-302(3)(c)(i) and (d)(i), shall consist of formal classroom education in the plumbing trade that:

(i) includes measures of competency and achievement level for each student;

(ii) is conducted by competent qualified staff;

(iii) is conducted by an entity approved by:

(A) the Utah Board of [~~Regents~~] Higher Education; or

(B) [~~the Utah System of Technical Colleges Board of Trustees; or~~]

—(C)—the Plumbers Licensing Board when the program is out-of-state; and

(iv) includes at least 81 hours of classroom instruction per semester.

(b) "Completion" of a planned program of training under Subsections 58-55-302(3)(c) and (d) and this rule, means that the applicant:

(i) attended a minimum of 72 classroom instruction hours each semester; and

(ii) passed each class with a score of at least 75%.

(6) On the job training and instruction shall include measurements of the apprentice's performance in the plumbing trade.

(7) ~~[No more than]~~An applicant may earn up to 3,000 hours ~~[may be earned]~~during a ~~[ny]~~ 12-month period.

(8) As used in Subsections 58-55-302(3)(c) and (d) and this rule, "full-time training,"¹ "full-time experience,"² "work experience,"³ and "full-time work experience" mean work experience that is lawfully performed preceding the date of application, in accordance with ~~[all]~~applicable licensing and supervision requirements, and may include work experience obtained while exempt from licensure.

R156-55c-302b. Qualifications for Licensure - Examination Requirements.

~~[In accordance with Subsection 58-55-302(1)(c)(i), the examination requirements for licensure are established as follows:]~~

(1) Under Subsection 58-55-302(1)(c), a Master Plumber applicant[s] or Journeyman Plumber applicant shall [pass]have obtained a passing score on:

- (a) the Utah ~~[Master]~~Plumber Theory Exam; and
- (b) the Utah Plumber Practical Exam.

(2) Under Subsection 58-55-302(1)(c), a Residential Master Plumber applicant[s] or Residential Journeyman Plumber applicant shall [pass]have obtained a passing score on:

(a) the Utah Residential ~~[Master]~~Plumber Theory Exam; and

- (b) the Utah ~~[Residential]~~Plumber Practical Exam.

(3) ~~[Journeyman Plumber applicants shall pass:]~~

~~_____ (a) the Utah Journeyman Plumber Theory Exam; and~~

~~_____ (b) the Utah Plumber Practical Exam.~~

~~_____ (4) Residential Journeyman Plumber applicants shall pass:~~

~~_____ (a) the Utah Residential Journeyman Plumber Theory Exam; and~~

~~_____ (b) the Utah Residential Plumber Practical Exam.~~

~~_____ (5) Admission to the exams is permitted after:~~

(a) the applicant has completed all requirements for licensure in Section R156-55c-302a; or

(b) the Journeyman Plumber applicant under Subsection R156-55c-302a(3)(a) has completed:

(i) the first semester of the fourth year of the planned program of training; and

(ii) at least 6,000 hours of the required full-time work experience.

~~[(6)4]~~ [An applicant shall obtain]The passing score for each of the following exams is a minimum of 70%:

(a) ~~[a score of at least 70% on]~~the Utah Plumber Practical Exam;~~[and]~~

(b) ~~[a score of at least 70% on]~~the Utah Plumber Theory Exam;~~and~~

(c) the Utah Residential Plumber Theory Exam.

~~[(7)5]~~ An applicant who fails an exam may retake that exam:

(a) no sooner than 30 days following any failure, up to ~~[three]~~six failures; and

(b) no sooner than ~~[420]~~90 days following any failure thereafter.

R156-55c-302c. Qualifications - Expedited Licensure.

~~[In accordance with Subsections 58-1-203(2) and 58-1-301(3), the requirements for expedited licensure pursuant to Subsections 58-55-302(3)(c)(iii) and 58-55-302(3)(d)(iii) are as follows:]~~

(1) ~~[A]~~Under Subsection 58-55-302(3)(c)(iii) or 58-55-302(3)(d)(iii), a licensed apprentice plumber may take the approved competency exams, in sequence beginning with 1A and continuing through [4]2B, to either satisfy the education requirement, or determine placement in a planned program of training approved by the Division.

(2) Division pre-approval is not required to sit for a~~[ny]~~ competency exam.

(3) An applicant may register directly with the Division's approved exam provider to sit for a competency exam.

(4) An applicant may attempt each competency exam one time.

(5) Admission to the subsequent competency exam is permitted after obtaining a minimum score of 70%.

(6) Placement in a planned program of training is determined when the applicant scores below 70% on the corresponding competency exam.

~~_____ (7) Upon completion of all qualifying competency exams, the applicant may sit for the Utah journeyman or residential journeyman plumber exams.]~~

R156-55c-303. Renewal Cycle - Procedures.

(1) ~~[In accordance with]~~Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle [applicable to]for plumber licensees under Title 58, Chapter 55, Utah Construction Trades Licensing Act is established [by rule]in [Section]Subsection R156-1-308a(1).

(2) Renewal procedures shall be in accordance with ~~[Section R156-1-308e.]Sections R516-1-308b through R156-1-308l.~~

(3) ~~[In accordance with]~~Under Subsection 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee shall comply with the continuing education requirements [set forth]in Section R156-55c-304.

(4) ~~[All licensees]~~Each licensee shall renew their license in an online form approved by the Division, except as permitted by the Division in writing.

R156-55c-304. Continuing Education—Standards].

~~_____ Standards for continuing education shall be in accordance with Subsections R156-55a-303b(2) through (10), except as otherwise provided in this section:~~

~~_____ (1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete at least 12 hours of continuing education during each two year license term. At least eight hours shall be core education. The remaining four hours may be professional or core education.]~~

~~_____ (1) As used in this section:~~

~~[(2)a] "Core continuing education" [is defined as]means~~ education covering:

~~[(a)i] International Building, Mechanical, Plumbing, and International Energy Conservation Codes and Utah building code amendments as adopted or proposed for adoption;~~

~~[(b)ii] the Americans with Disability Act;~~

~~[(e)iii] medical gas, National Fire Protection Association 13D and 54;~~

~~[(d)iv] hydronics and waste water treatment; or~~

~~[(e)v] Occupational Safety and Health Administration (OSHA) training.~~

~~[(3)b] "Professional continuing education" [is defined as]means~~ education covering:

~~[(a)i] energy conservation;~~

~~[(b)ii] management training;~~

NOTICES OF PROPOSED RULES

- (~~[e]~~iii) new technology;
- (~~[d]~~iv) plan reading;
- (~~[e]~~v) lien laws and Utah construction registry; or
- (~~[f]~~vi) government regulations.

(2) Under Sections 58-55-302.7 and 58-55-303, the 12 hours of continuing education required of a licensed plumber during each two-year renewal cycle shall include at least eight hours of core continuing education, and at least four hours of professional continuing education or core continuing education.

(~~[4]~~3) The Division may defer or waive continuing education requirements for:

(a) an instructor of a planned program of training under Subsection R156-55c-302a(5);

(b) a board member who regularly attends the Plumber Licensing Board meetings; or

(c) any licensee as provided in Section R156-1-308d.

(4) The standards for continuing education for licensed plumbers are as follows:

(a) a licensee who lectures in continuing education courses meeting the requirements of this section may receive two hours of continuing education for each hour spent lecturing, but lecturing or teaching credit is not available for participation in a panel discussion;

(~~[5]~~a) ~~[Provider. A]~~a course provider need not be listed in Subsection 58-55-302.5(2), but shall meet the other requirements of this section and be:

(~~[a]~~i) a recognized accredited college or university;

(~~[b]~~ii) a state or federal agency;

(~~[e]~~iii) a professional association or organization involved in the construction trades; or

(~~[d]~~iv) a commercial continuing education provider providing a program related to the plumbing trade[.];

(c) course content shall be relevant to the practice of the plumbing trade and consistent with Utah laws and rules; and

(d) except for Subsection R156-55a-303b(2)(b), the continuing education standards in Subsections R156-55a-303b(1)(g), R156-55a-303b(2) through (4), and R156-55a-303b(7) through (11) are adopted.

~~[(6) Content. Course content shall be relevant to the practice of the plumbing trade and consistent with Utah laws and rules.]~~

R156-55c-305. Licensure by Endorsement.

The Division may issue a license by endorsement in accordance with ~~[the provisions of]~~ Section 58-1-302.

R156-55c-401. Conduct of Apprentice and Supervising Plumber.

~~[(The requirements of Subsections 58-55-102(34) and 58-55-302(3)(c) are clarified and established as follows:)]~~

(1) A plumbing contractor may comply with the supervision requirements of Subsections ~~[58-55-501(12),]~~ 58-55-102(34) and 58-55-302(3)(c) by contracting with a licensed professional employer organization to employ one or more licensed plumbers.

(2) ~~[A]~~Under Subsections 58-55-102(34) and 58-55-302(3)(c), a licensed supervisor may have up to:

(a) three licensed apprentice plumbers under immediate supervision on non-residential projects; or

(b) three licensed apprentice plumbers under immediate supervision on residential projects.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to comply with the supervision requirements ~~[established by]~~ in Subsection 58-55-302(3)(e);

(2) failing to timely provide upon request, the licensee's current plumber license, or license number when performing plumbing work;

(3) failing to provide proof of completed continuing education within 30 days of the Division's request; and

(4) failing to be knowledgeable of the plumber licensing laws and rules.

R156-55c-502. Administrative Penalties.

~~[(1)]~~The administrative penalties ~~[defined]~~ in Sections R156-55a-502 and R156-55a-503 of the Utah Construction Trades Licensing Act Rule are ~~[hereby]~~ adopted as the administrative penalties under this rule.

~~[(2) The administrative penalty for a violation of Subsection 58-1-501(2)(c) under this rule shall be in accordance with Section R156-1-502.]~~

KEY: occupational licensing, licensing, plumbers, plumbing

Date of Last Change: ~~[January 9, 2020]~~ 2022

Notice of Continuation: July 8, 2021

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.): R251-714

Filing ID
54594

Agency Information

1. Department:	Corrections	
Agency:	Administration	
Street address:	14717 S. Minuteman Drive	
City, state and zip:	Draper, UT 84020	
Contact person(s):		
Name:	Phone:	Email:
Matt Anderson	801-545-5589	mattanderson@utah.gov

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

General Information

2. Rule or section catchline:

R251-714. Offender Sexual Assault Prevention

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

Pursuant to Section 64-13-47, the Department of Corrections (Department) is required adopt rules to establish policies and procedures to prevent, detect, respond to, and investigate sexual assaults that occur in Department correctional facilities.

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

This rule establishes policies and procedures to prevent, detect, respond to, and investigate sexual assaults that occur in Department correctional facilities.

Fiscal Information

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

A) State budget:

This rule is not expected to have any fiscal impact on state government revenues or expenditures, as the measures established by this rule have already been implemented by the Department or can readily be accomplished using existing positions and resources.

B) Local governments:

This rule does not apply to local governments and will have no fiscal impact.

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

This rule does not apply to small businesses and will have no fiscal impact.

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

This rule does not apply to non-small businesses and will have no fiscal impact.

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

This rule does not apply to other persons and will have no fiscal impact.

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

This rule does not apply to affected persons and will have no fiscal impact.

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

I have reviewed this fiscal analysis and agree with the described fiscal impacts associated with this rule. Brian Nielson, Executive Director

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

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 Corrections, Brian Nielson, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 63G-3-202	Section 64-13-10	Section 64-13-47
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the

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

A) Comments will be accepted until: 07/01/2022

10. This rule change MAY become effective on: 07/08/2022

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 Nielson, Executive Director	Date:	05/04/2022
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R251. Corrections, Administration.

R251-714. Offender Sexual Assault Prevention.

R251-714-1. Authority and Purpose.

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, and 64-13-47.

(2) This rule establishes policies and procedures to prevent, detect, respond to, and investigate sexual assaults that occur in Department correctional facilities, including the collection and reporting of offender sexual assault data.

R251-714-2. Definitions.

(1) "Correctional facility" means a facility as defined in Subsection 64-13-1(4).

(2) "Department" means the Utah Department of Corrections.

(3) "Offender" means an offender as defined in Subsection 64-13-1(13).

(4) "Offender sexual assault" means a sexual assault that is perpetrated against an offender while housed in a correctional facility.

R251-714-3. Policies and Procedures.

(1) The Department will require education and training regarding offender sexual assaults including:

(a) providing to offenders, at intake and periodically, Department-approved, easy-to-understand information developed by the Department on sexual assault prevention, treatment, reporting, and counseling in consultation with community groups with expertise in sexual assault prevention, treatment, reporting, and counseling; and

(b) providing sexual-assault-specific training to Department mental health professionals and employees who have direct contact with offenders regarding treatment and methods of prevention and investigation.

(2) The Department will require reporting of offender sexual assault, including:

(a) ensuring the confidentiality of offender sexual assault complaints and the protection of offenders who make complaints of sexual assault; and

(b) prohibiting retaliation and disincentives for reporting sexual assault.

(3) The Department will require safety and care for victims of offender sexual assaults, including:

(a) providing, in situations in which there is reason to believe that a sexual assault has occurred, reasonable and appropriate measures to ensure the victim's safety by separating the victim from the assailant, if known;

(b) providing acute trauma care for sexual assault victims, including treatment of injuries, HIV prophylaxis measures, and testing for sexually transmitted infections;

(c) providing confidential mental health counseling for victims of sexual assault, including access to outside community groups or victim advocates that have expertise in sexual assault counseling, and enabling confidential communication between offenders and those organizations and advocates; and

(d) monitoring victims of sexual assault for suicidal impulses, post-traumatic stress disorder, depression, and other mental health consequences resulting from the sexual assault.

(4) The Department will require investigations and, where appropriate, staff discipline for sexual assaults that occur in Department correctional facilities, including:

(a) requiring employees to report any knowledge, suspicion, or information regarding an incident of sexual assault in a correctional facility to the Executive Director or designee, and require disciplinary action for employees who fail to report as required;

(b) requiring investigations described in Section R251-714-4;

(c) requiring corrections investigators to submit completed sexual assault allegations to the Executive Director or designee, who must then submit any substantiated findings that may constitute a crime under state law to the district or county attorney with jurisdiction over the facility in which the alleged sexual assault occurred; and

(d) requiring employees to be subject to disciplinary sanctions up to and including termination for violating agency sexual assault policies, with termination as the presumptive disciplinary sanction for employees who have engaged in sexual assault, consistent with constitutional due process protections and state personnel laws and rules.

(5) The Department will require data collection and reporting as provided in Subsection R251-714-4(3).

R251-714-4. Investigations of Offender Sexual Assaults.

(1) An investigator trained in the investigation of sex crimes shall conduct the investigation of an offender sexual assault.

(2) The investigation shall include:

(a) using a forensic rape kit, if appropriate;

(b) questioning suspects and witnesses; and

(c) gathering and preserving relevant evidence.

(3) The Department shall:

(a) collect and report data regarding allegations of sexual assault from each correctional facility in accordance with the federal Prison Rape Elimination Act of 2003, Pub. L 108-79, as amended; and

(b) annually report the data described in Subsection R251-714-4(3)(a) to the Law Enforcement and Criminal Justice Interim Committee.

KEY: offenders, sex crime

Date of Last Change: 2022

Authorizing, and Implemented or Interpreted Law: 63G-3-201; 64-13-10; 64-13-21

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R307-401-14	Filing ID 54595

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:
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R307-401-14. Used Oil Fuel Burned for Energy Recovery
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The current rule allows an exemption from the requirement to obtain an approval order for boilers with a heat input design of less than 1 million BTUs per hour. The EPA standard for these units is "not more than 0.5 million BTUs per hour" and this change aligns state requirements with the EPA standard. The current rule also contains specific contamination levels and testing requirements that are duplicative of rules enforced by Waste Management and Radiation Control (WMRC). This change removes this language and requires compliance with WMRC rules directly.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule change simplifies and clarifies this rule by replacing language specifying contaminant levels and testing requirements with a requirement to comply with Rule R315-15, Standards for the Management of Used Oil. It also reduces the exemption threshold for requiring an approval order to units with designed to produce 0.5 million BTUs per hour or less.

A public hearing is set for, 06/30/2022. Further details may be found below. The hearing will be canceled should no request for one be made by Wednesday, 06/29/2022, at 10:00 AM MDT. The final status of the public hearing will be posted on Wednesday, 06/29/2022, after 10:00 AM MDT. The status of the public hearing may be checked at the following website location under the corresponding rule.

<https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment>

If there is a hearing, the following information is needed:

Video call link: <https://meet.google.com/zoa-gzxy-kyp>

Or dial: (US) +1 385-404-0876

PIN: 714 284 241#

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

This rule is not expected to have a fiscal impact on state government. The changes to contaminant levels and testing requirements are already enforced through Rule R315-15 by the Department Environmental Quality. All commercially available used oil boilers already meet the proposed design standard of 0.5 million BTU per hour or less and existing permits can be adjusted at no cost to the state.

B) Local governments:

This rule will have no 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 is not expected to have a fiscal impact on small businesses because it clarifies and simplifies requirements that are already enforced in other rules and the largest boilers available for purchase in the United States already conform to the EPA standard.

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

This rule is not expected to have a fiscal impact on non-small businesses because it clarifies and simplifies requirements that are already enforced in other rules and the largest boilers available for purchase in the United States already conform to the EPA standard.

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

This rule is not expected to have a fiscal impact on persons other than small businesses, non-small businesses, state,

NOTICES OF PROPOSED RULES

or local government entities because it does not apply to them.

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

The compliance costs for this rule are expected to be \$0 because used-oil boilers available for purchase already meet the proposed standard and the testing requirements are already required and enforced through Rule R315-15.

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 Division of Air Quality has determined that this proposed rule amendment will not result in a fiscal impact to businesses, because used-oil boilers available for purchase already meet the proposed standard and the testing requirements are already required and enforced through Rule R315-15.

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		
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

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

On:	At:	At:
06/30/2022	1:00 PM	See information in Box 4 above.

10. This rule change MAY become effective on: 08/04/2022

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:	05/04/2022
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R307. Environmental Quality, Air Quality.

R307-401. Permit: New and Modified Sources.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

[— "Boiler" means boiler as defined in R315-1-1(b).]

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) An emission unit that burns used oil, as defined in Section R315-15-1, for energy recovery is exempt from the requirement to obtain an approval order in Sections R307-401-5 through R307-401-8 if the owner or operator complies with Section

R315-15-6 and the heat input design of the emission unit is not more than 0.5 MMBtu/hr. ~~[Boilers burning used oil for energy recovery are exempt from the requirement to obtain an approval order in Sections R307-401-5 through R307-401-8 if the following requirements are met:~~

- ~~_____ (a) the heat input design is less than one million BTU/hr;~~
- ~~_____ (b) contamination levels of all used oil to be burned do not exceed any of the following values:~~
 - ~~_____ (i) arsenic 5 ppm by weight;~~
 - ~~_____ (ii) cadmium 2 ppm by weight;~~
 - ~~_____ (iii) chromium 10 ppm by weight;~~
 - ~~_____ (iv) lead 100 ppm by weight;~~
 - ~~_____ (v) total halogens 1,000 ppm by weight;~~
 - ~~_____ (vi) Sulfur 0.50% by weight; and~~
- ~~_____ (c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.~~
- ~~_____ (3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the director to ensure it meets these requirements. Testing may be performed by the owner or operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the director. Records for used oil consumption and test reports are to be kept for all periods when fuel burning equipment is in operation. The records shall be kept on site and made available to the director or the director's representative upon request. Records must be kept for a three year period.]~~

KEY: air pollution, permits, approval orders, greenhouse gases
Date of Last Change: 2022 ~~March 5, 2020~~
Notice of Continuation: May 15, 2017
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(b)(iii); 19-2-108

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R311-200	Filing ID 54597
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Agency Information

1. Department:	Environmental Quality		
Agency:	Environmental Remediation	Response	and
Building:	Multi Agency State Office Building		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144840		
City, state and zip:	Salt Lake City, UT 84114-4840		
Contact person(s):			
Name:	Phone:	Email:	
David Wilson	385-251-0893	djwilson@utah.gov	

Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R311-200. Underground Storage Tanks: Definitions

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

S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature tasked the Division of Environmental Response and Remediation (DERR) to begin regulation of aboveground petroleum storage tanks (APSTs) and required Waste Management and Radiation Control Board to define specific terms in 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 changes define "Historic contamination," "New releases," "Agricultural operations," and "Historic contamination" which was required by additions to the Underground Storage Tank (UST) Act; and add abbreviations of certain terms found in rule. The changes also clarify terms found in rule and statute such as "In service," "Rests directly on the ground," and "Soil."

Fiscal Information

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

A) State budget:

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

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

This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

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

This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

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

This rule change is not expected to have any fiscal impact on other persons revenues or expenditures because any fiscal impact pertaining to defined terms will be addressed in the relevant rule.

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

Any cost or benefits to affected persons relating to defined terms will be addressed in the relevant rule.

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

No fiscal impact on businesses are expected. Any impact would be found in the other rules to which the definitions apply. Kim Shelley, Executive Director

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

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
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 19-6-105	Section 19-6-403	
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Public Notice Information**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2022
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B) A public hearing (optional) will be held:

On:	At:	At:
06/15/2022	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015

10. This rule change MAY become effective on:	09/29/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Brent Everett, Director	Date:	05/15/2022
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R311. Environmental Quality, Environmental Response and Remediation.**R311-200. Underground Petroleum Storage Tanks: Definitions.****R311-200-1. Definitions.**

(1) Terms used in this rule are defined in Section 19-6-402.

(2) In addition, for purposes of this rule:

(a) "Aboveground petroleum storage tank" or "APST" means a storage tank that is, by volume, less than 10 % buried in the ground, including the pipes connected to the storage tank and:

(i) has attached underground piping; or

(ii) rests directly on the ground;

(A) contains regulated substances;

(B) has the capacity to hold 501 gallons or more; and

(iii) is not:

(A) used in agricultural operations, as defined by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(B) used for heating oil for consumptive use on the premises where stored;

(C) related to a petroleum facility under SIC Code 2911 or 5171 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;

(D) directly related to oil or gas production and gathering operations; or

(E) used in the fueling of aircraft or ground service equipment at a commercial airport that serves passengers or cargo, with commercial airport defined in Section 72-10-102.

([a]b) "Actively participated" for ~~[the purpose of]~~ the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

(c) "Agricultural operation" means any operation on a tract of land devoted to the production of crops, animals, or fowl; fruit or vegetable products; or the production of dairy, nuts, tobacco, nursery, or floral products.

([b]d) "As-built drawing" for ~~[the purpose of]~~ notification means a drawing to scale of newly constructed ~~[USTs]~~PSTs. The ~~[USTs]~~PSTs shall be referenced to buildings, streets, and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size must be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".

([e]e) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the ~~[UST]~~PST system.

([d]f) "Certificate" means a document that evidences certification.

([e]g) "Certification" means approval by the director or the ~~[B]~~board to engage in the activity applied for by the individual.

([g]h) "Certified ~~[E]~~environmental ~~[L]~~laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for ~~[UST]~~PST sampling in Subsection R311-205-2(5).

([f]i) "Certified sampler" is the person who performs environmental media sampling for compliance with Utah ~~[UST]~~PST rules.

([h]j) "Change-in-service" means the continued use of an ~~[UST]~~PST to store a non-regulated substance.

([i]k) "Claimant" means any person eligible to submit requests for reimbursement of costs against the Petroleum Storage Tank ~~[Trust]~~Fund as determined by the director.

([j]l) "Community water system" means a public water system that serves at least ~~[fifteen]~~15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

([k]m) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil over-excavation or any other remedial or investigation activities conducted ~~[for the purpose of determining]~~to determine the extent and degree of contamination.

([l]n) "Consultant" is a person who is a certified ~~[UST]~~PST consultant according to Subsection 19-6-402(7) and Section R~~[-]~~311-201-2.

([m]o) "Cost Guidelines" refers to the Cost Guidelines for Utah Underground Storage Tank Sites document, dated June 3, 2021. This document contains personnel classifications, requirements, and rates, general tasks and responsibilities for personnel, maximum allowable equipment and laboratory rates, and specific items or activities that will and will not be reimbursed by the Petroleum Storage Tank Fund.

([n]p) "Customary, reasonable, and legitimate expenses" means costs incurred during the investigation, abatement, and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

([o]q) "Customary, reasonable, and legitimate work" means work for investigation, abatement, and corrective action that ~~[is required to]~~shall reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and ~~[taking into account]~~considering current or probable land use as determined by the director following the criteria in Rule R311-211.

([p]r) "Department" means the Utah Department of Environmental Quality.

(s) "EAP" means the Environmental Assurance Program established in Section 19-6-410.5.

([q]t) "Eligible exempt UST" for ~~[the purpose of]~~ eligibility for the ~~[Utah]~~Petroleum Storage Tank ~~[Trust]~~Fund means a tank specified in Subsection 19-6-415(1).

([r]u) "Environmental media sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for ~~[the purpose of]~~evaluating environmental contamination.

([s]v) "EPA" means the United States Environmental Protection Agency.

([t]w) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the director.

([u]x) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

([v]y) "Full installation" for the purposes of Subsection 19-6-411(2) means the installation of ~~[an UST]~~a PST.

([w]z) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(aa) "Historic contamination" as referenced in Subsections 19-6-428(3)(c) and 19-6-428(3)(d) is petroleum contamination:

(i) reported after the start of continuous participation in the EAP that has no apparent cause or source and for which the director reasonably determines to have occurred during a period of non-participation; or

(ii) a release which does not meet the definition of a new release.

([x]bb) "Injury or damage[s] from a release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in Subsection R311-211-6(1).

(cc) "In service" means an PST that is actively storing or dispensing regulated substances.

([y]dd) "In use" means that an operational, inactive, or abandoned ~~[UST]~~PST contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to the safety of human health or the environment, as determined by the director.

([z]ee) "Lapse" in reference to the certificate of compliance and coverage under the ~~[Environmental Assurance Program]~~EAP, means to terminate automatically.

([aa]ff) "Native soil" means any soil that is not backfill material, is naturally occurring, and is most representative of the localized subsurface lithology and geology.

(gg) "New release" as referenced in Subsections 19-6-428(3)(c) and 19-6-428(3)(d) are releases that occur on or after the start date for continuous participation in the EAP, which the director reasonably determines to have occurred due to an unusual operating condition, an apparent PST system equipment failure, a failed PST test, an overfill, or a surface spill during the time of program participation.

([bb]hh) "No [F]urther [A]ction determination" means that the director has evaluated information provided by responsible parties or others about the site and determined that any detectable petroleum contamination from a particular release does not present a threat to public health or the environment based upon [B]oard established criteria in Title R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

([ee]ii) "Occurrence" in reference to Section R311-208-4 means a separate petroleum fuel delivery to a single tank.

([dd]jj) "Owners and operators" means either an owner or operator, or both owner and operator.

([ee]kk) "Over-excavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the ~~[UST]~~PST or take environmental media samples during ~~[UST]~~PST closure activities as outlined in Section R311-205-2.

([ff]ll) "Permanently closed" means ~~[UST]~~PSTs that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Rule R311-202.

~~[(gg) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Subsection 19-6-402(21).]~~

([hh]mm) "Petroleum storage tank fee" means the fee which ~~[capitalizes]~~funds the Petroleum Storage Tank ~~[Trust]~~Fund as established in Section 19-6-409.

([ii]nn) "Petroleum Storage Tank ~~[Trust]~~Fund" means the Fund created by Section 19-6-409.

([jj]oo) "Potable drinking water well" means any hole, [ç]dug, driven, drilled, or bored[ç], that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use, [ç]consisting of drinking, bathing, and cooking, or other similar

uses[ç]. Such a well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(pp) "PST" means petroleum storage tank as defined in Subsection 19-6-402(21).

(qq) "PST inspection" is the inspection required by state and applicable federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated PSTs.

(rr) "PST installation" means the installation of a PST, including any component that is critical to:

(i) the integrity of the system;

(ii) protection of the environment; and

(iii) qualifying for a certificate of compliance.

(ss) "PST testing" means:

(i) a testing method which can detect leaks in a PST system;

(ii) testing for compliance with corrosion protection requirements;

(iii) testing or inspection for proper operation of overfill prevention devices and electronic or mechanical leak detection components;

(iv) any testing requirements for exempt USTs or aboveground storage tanks that voluntarily participate in the EAP; or

(v) testing methods that meet applicable performance standards;

(A) 40 CFR 280.40(a)(4), 280.43(c), and 280.44(b) for tank and product piping tightness testing;

(B) 40 CFR 280.35(a)(1)(ii) for testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping;

(C) 40 CFR 280.31(b) for cathodic protection testing;

(D) 40 CFR 280.35(a)(2) for overfill device inspection;

(E) 40 CFR 280.40(a)(3) for testing of mechanical and electronic release detection components; and

(F) interstitial testing for tank and piping secondary containment.

([kk]tt) "Public water system" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least ~~[fifteen]~~15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

([ll]uu) "Registration fee" means ~~[UST]~~PST registration fee.

([mm]vv) "Related parties" for the purposes of Section R311-207-4, means organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.

(ww) "Reportable release" means a spill, overfill, leak, discharge, leachate, or disposal of a regulated substance that results in a release to the environment.

(xx) "Rests directly on the ground" means that at least some portion of a PST situated aboveground is in direct contact with soil.

([nn]yy) "Secondary containment"[ç]

(i) for the purposes of Rule R311-202 and Section R311-203-6, means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space must meet the requirements of 40 CFR 280.43(g).

(ii) for the purposes of Subsection R311-206-4(6), means a dike, vault, enclosure, berm, double-walled system, or any other barrier that meets the secondary containment standards listed in the International Fire Code (IFC) 2306.5 and 5704.2.10.

(~~ee~~zz) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained ~~an UST~~a PST.

(~~pp~~aaa) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, incorporating 40 CFR 280 Subparts E and F.

(~~qq~~bbb) "Site investigation" is work performed by the owner or operator, or their designee, when gathering information for reports required for Utah ~~UST~~PST rules.

(~~rr~~ccc) "Site plat" for ~~the purpose of~~ notification or reporting, refers to a drawing to scale of ~~USTs~~PSTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but must in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former ~~USTs~~PSTs; extent of any excavations; location and volume of any stockpiled soil; locations, depths, and analytical results of all environmental media samples collected; locations and total depths of borings or permanent wells, or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(~~ss~~ddd) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

- (i) fire and explosion hazards have been abated;
- (ii) free flow of the product out of the tank has been stopped[-];
- (iii) free product is being removed from the soil, groundwater, or surface water according to a work plan or corrective action plan approved by the director, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6);
- (iv) alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release; and
- (v) a soil or groundwater management plan or both have been submitted for approval by the director.

(~~eee~~) "Soil" as referenced in Subsection 19-6-402(28) means natural earthen material under which there is no secondary containment.

(~~tt~~fff) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(~~uu~~ggg) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(iii) "Suspected release" means a release that may have occurred from a regulated PST system, for example: petroleum contamination discovered at the PST site or in the surrounding area; unusual operating conditions of the PST system; release detection methods indicating a release may have occurred; inventory control

records indicating unexplained product loss; or, a spill or overfill that occurs outside secondary containment and exceeds 25 gallons.

(~~vv~~hhh) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(~~ww~~iii) "Third-party Class B operator" is any individual who is not the facility owner or operator, or an employee of the owner or operator and who, by contract, provides the services outlined in Subsection R311-201-12(7).

(~~xx~~jii) "Under-dispenser containment,"[?] for the purposes of Section R311-203-6, means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser, ~~[c]check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser[)],~~ from reaching soil or groundwater.

~~[(yy) "UST registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.~~

~~[(zz) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.]~~

(~~aaa~~kkk) "UST inspector" is an individual who performs ~~[underground storage tank]PST~~ inspections for compliance with state and federal rules and regulations as authorized in Subsection 19-6-404(2)(c).

(~~bbb~~lll) "UST installation" means the installation of an ~~[underground storage tank]a PST~~, including construction, placing into operation, building, or assembling an ~~[underground storage tank]a PST~~ in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

- (i) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;
- (ii) vent and product piping assembly;
- (iii) cathodic protection installation, service, and repair;
- (iv) internal lining;
- (v) secondary containment construction; and
- (vi) UST repair and service.

(~~eee~~mmm) "UST installation permit fee" means the fee established by Subsection 19-6-411(2)(a)(ii).

(~~ddd~~nnn) "UST installer" means an individual who engages in ~~[underground storage tank]PST~~ installation.

(~~eee~~ooo) "UST removal" means the removal or permanent closure of ~~[an underground storage tank]a PST system~~ by taking out of service all or part of ~~[an underground storage tank]a PST~~ system.

(~~fff~~ppp) "UST remover" means an individual who engages in ~~[underground storage]PST~~ tank removal.

(~~ggg~~qqq) "UST tester" means an individual who engages in ~~[underground storage tank]PST~~ testing.

~~[(hhh)(i) "UST testing" means:~~

~~(A) a testing method which can detect leaks in an underground storage tank system;~~

~~(B) testing for compliance with corrosion protection requirements;~~

~~(C) testing or inspection for proper operation of overfill prevention devices and electronic or mechanical leak detection components; or~~

~~(D) any testing requirements for exempt USTs or aboveground storage tanks that voluntarily participate in the Environmental Assurance Program.~~

NOTICES OF PROPOSED RULES

~~(ii) testing methods must meet applicable performance standards;~~
~~(A) 40 CFR 280.40(a)(1), 280.43(e), and 280.44(b) for tank and product piping tightness testing;~~
~~(B) 40 CFR 280.35(a)(1)(ii) for testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping;~~
~~(C) 40 CFR 280.31(b) for cathodic protection testing;~~
~~(D) 40 CFR 280.35(a)(2) for overfill device inspection;~~
~~(E) 40 CFR 280.40(a)(3) for testing of mechanical and electronic release detection components; and~~
~~(F) interstitial testing for tank and piping secondary containment.]~~

KEY: petroleum, underground storage tanks

Date of Last Change: 2022[September 13, 2021]

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R311-201	Filing ID 54598
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Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144840	
City, state and zip:	Salt Lake City, UT 84114-4840	
Contact person(s):		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov

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

General Information

2. Rule or section catchline:

R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training

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

S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the Division of Environmental Response and Remediation (DERR) to begin regulation of aboveground petroleum storage tanks (APSTs). This rule clarifies applicability of certain underground storage tanks (USTs) certifications to include work performed on APSTs.

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

The amendment changes the title of Rule R311-201 to Petroleum Storage Tanks: Certification Programs and UST Operator Training. The term USTs was changed to petroleum storage tanks (PSTs) where necessary to reflect enacted changes to the Underground Storage Tank Act.

Fiscal Information

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

A) State budget:

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because the state does not employ PST certified individuals.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because local governments do not employ PST certified individuals.

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

This rule change is expected to have a direct fiscal cost to small businesses because testing companies may choose to hire additional certified individuals to meet testing demands. Since DERR cannot predict behavior, the actual cost to small businesses is inestimable.

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

This rule change is expected to have a direct fiscal cost to non-small businesses because testing companies may choose to hire additional certified individuals to meet testing demands. Since DERR cannot predict behavior, the actual cost to non-small businesses is inestimable.

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

Other persons may have a direct benefit to this rule if they are hired and trained by the small and non-small businesses. This benefit is unknown because DERR

cannot predict how many individuals would be hired by these businesses.

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

This rule change is expected to have a direct fiscal cost to affected persons who choose to be PST certified. There is a certification fee of approximately \$225. It is not possible to predict how many individuals will choose to become certified.

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

This rule will only impact businesses who employ PST certified individuals. Kim Shelley, Executive Director

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

Regulatory Impact Table

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
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 Shelly, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-1-301	Section 19-6-403	Section 63G-4-503
Section 19-6-105	Section 63G-4-102	
Section 19-6-402	Sections 63G-4-201 through 205	

A) Comments will be accepted until: 07/01/2022

B) A public hearing (optional) will be held: MASOB 195 North 1950 West, Salt Lake City, Utah

On:	At:	At:
06/15/2022	2:00 PM.	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015

10. This rule change MAY become effective on: 09/29/2022

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:	Date:
Brent Everett, Director	05/15/2022

R311. Environmental Quality, Environmental Response and Remediation.

R311-201. ~~Underground~~Petroleum Storage Tanks: Certification Programs and UST Operator Training.

R311-201-1. Definitions.

Definitions are found in Rule R311-200.

R311-201-2. Requirement for Certification.

(1) a certified ~~UST~~PST consultant is required as specified in Subsection 19-6-402(7)(b).

NOTICES OF PROPOSED RULES

(a) no person shall provide or contract to provide the following services without having certification to conduct these activities:

(i) provide information, opinions, or advice relating to [UST]PST release management;

(ii) abatement;

(iii) investigation;

(iv) corrective action; or

(v) evaluation for a fee, or in connection with the services for which a fee is charged.

(A) except as outlined in Subsection R311-204-5(2); and

(B) except for releases from a hazardous substance [UST]PST system, as defined in 40 CFR 280.10.

(b) a certified [UST]PST consultant must:

(i) make pertinent project management decisions;

(ii) ensure all aspects of ~~[petroleum storage tank related]~~ work related to PSTs containing petroleum are performed in an appropriate manner; and

(iii) sign ~~[all]~~ required documentation to be submitted to the director for work performed.

(c) any [UST]PST release abatement, investigation, or corrective action work performed by a person who is not certified or who is not working under the direct supervision of a certified [UST]PST consultant, and is performed for compliance with Utah [UST]PST rules, may be rejected by the director.

(2) UST inspector. No person shall conduct ~~[an UST]~~ a PST inspection as authorized in Subsection 19-6-404(2)(c) without having certification to conduct such activities.

(a) the director may issue a limited certification restricting the type of [UST]PST inspections the applicant can perform.

(3) UST tester. No owner or operator shall allow [UST]PST testing to be conducted on ~~[an UST]~~ a PST under their ownership or operation unless the person conducting the [UST]PST testing is certified according to Rule R311-201.

(a) except as outlined in ~~[Subs]~~ Section[s] R311-201-~~2(e)(2)]3[—and R311-201-2(e)(3)]~~, no person shall conduct [UST]PST testing without having certification to conduct such activities.

(b) an individual certified under Rule R311-201 as a UST installer may:

(i) perform a test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used;

(ii) perform an overfill device inspection to meet the requirements of 40 CFR 280.35(a)(2);

(iii) perform a test for proper operation of release detection components to meet the requirements of 40 CFR 280.40(a)(3)(i), 280.40(a)(3)(ii), 280.40(a)(3)(iv), and 280.40(a)(3)(v); and

(iv) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of 40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.

(c) a [UST]PST owner or operator may:

(i) perform a hydrostatic test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used; and

(ii) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of 40 CFR 280.35(a), if no equipment that requires training by the manufacturer is used.

(d) certification by the director under this rule applies only to the specific [UST]PST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment, or by equivalent training as determined by the director, for the following types of testing:

(i) tank, line, and leak detector testing;

(ii) interstitial tests of tanks and piping; and

(iii) spill prevention device and containment sump testing, if equipment that requires training by the manufacturer is used.

(e) the director may issue a limited certification restricting the type of [UST]PST testing the applicant can perform.

(4) Certified sampler. No person shall conduct environmental media sampling for determining levels of contamination which may have occurred from regulated [USTs]PSTs without having certification to conduct these activities.

(a) no owner or operator shall allow any environmental media sampling for determining levels of contamination which may have occurred from regulated [USTs]PSTs to be conducted on a tank under their ownership or operation unless the person conducting the environmental media sampling is certified according to Rule R311-201.

(5) UST installer. No person shall install a [UST]PST without having certification or the on-site supervision of an individual having certification to conduct these activities.

(a) no owner or operator shall allow the installation of a [UST]PST, or any component thereof, under their ownership or operation unless the person installing the [UST]PST is certified according to Rule R311-201.

(b) the director may issue a limited certification restricting the type of [UST]PST installation the applicant can perform.

(6) UST remover. No person shall remove a [UST]PST without having certification or the on-site supervision of an individual having certification to conduct these activities.

(a) no owner or operator shall allow the removal of a [UST]PST, or any component thereof, under their ownership or operation unless the person conducting the [UST]PST removal is certified according to Rule R311-201.

R311-201-3. Eligibility for Certification.

(1) Certified [UST]PST consultant.

(a) training. For initial and renewal certification, an applicant must meet:

(i) Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law; and

(ii) within a six-month period ~~[prior to]~~ before application, complete an approved training course or equivalent in a program approved by the director to provide training to include the following areas:

(A) state and federal statutes;

(B) rules and regulations;

(C) environmental media sampling; and

(D) department policies.

(b) experience. Each applicant must provide with the application a signed statement or other evidence demonstrating:

(i) three years, within the past seven years, of appropriately related experience in [UST]PST release abatement, investigation, and corrective action; or

(ii) an equivalent combination of appropriate education and experience, as determined by the director.

(c) education. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

(i) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education~~[A]~~ or experience as determined by the director;

(ii) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act, or equivalent certification as determined by the director; or

(iii) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the director.

(d) initial certification examination. Each applicant who is not certified pursuant to Section R311-201-4 must successfully pass an initial certification examination or equivalent, administered under the direction of the director.

(i) the director shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-3(1)(a).

(e) renewal certification examination. Certified ~~[UST]~~PST consultants seeking to renew their certification pursuant to Section R311-201-5 must successfully pass a renewal certification examination, or equivalent administered under the direction of the director.

(i) the director shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-3(1)(a).

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) examination for revoked or expired certification. Any applicant who is not a certified ~~[UST]~~PST consultant on the date the renewal certification examination is given because the consultant's prior certification was revoked or expired ~~[prior to]~~ before completing a renewal application, must successfully pass the initial certification examination administered under Subsection R311-201-3(1)(d).

(2) UST inspector.

(a) training. For initial certification, an applicant must have successfully completed a ~~[UST]~~PST inspector training course or equivalent within the six~~[-]~~-month period ~~[prior to]~~ before application.

(i) the training course must be approved by the director and shall include instruction in the following areas:

- (A) corrosion;
- (B) geology;
- (C) hydrology;
- (D) tank handling;
- (E) tank testing;
- (F) product piping testing;
- (G) disposal;
- (H) safety;
- (I) sampling methodology;
- (J) state site inspection protocol;
- (K) state and federal statutes; and
- (L) Utah ~~[UST]~~PST rules and regulations.

(ii) renewal certification training will be established by the director.

(iii) the applicant must provide documentation of training with the application.

(b) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(2)(a), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(3) UST tester.

(a) financial assurance. An applicant or applicant's employer must have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers ~~[UST]~~PST testing and which, in combination, represent an unencumbered value of the largest ~~[UST]~~PST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$50,000, whichever is greater.

(i) an applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the certification application.

(b) training. For initial certification, an applicant must complete a ~~[UST]~~PST tester's training course within the six~~[-]~~-month period ~~[prior to]~~ before application, in a program approved by the director, to provide training to include applicable and related areas of state and federal statutes, rules, and regulations.

(i) renewal certification training will be established by the director.

(A) the applicant must provide documentation of training with the application.

(ii) for initial certification to perform the types of testing specified in Subsection R311-201-2(3)~~(e)~~, an applicant must have successfully passed a training course conducted by the manufacturer of the ~~[UST]~~PST testing equipment that they will be using, or a training course determined by the director to be equivalent to the manufacturer training, in the correct use of the equipment and testing procedures required to operate the ~~[UST]~~PST test system.

(iii) an applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the ~~[UST]~~PST testing equipment that they will be using, or training as determined by the director to be equivalent to the manufacturer training, in the correct use of the equipment and testing procedures required to operate the ~~[UST]~~PST test system.

(A) for renewal certification, refresher training, or equivalent must be completed within one year ~~[prior to]~~ before the expiration date of the certificate.

(iv) cathodic protection testing. For initial and renewal of certification, the applicant must provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12 with the application.

(c) performance standards of equipment. An applicant must submit documentation that demonstrates the ~~[UST]~~PST testing equipment used by the applicant meets the performance standards specified in Subsection R311-200-1(2)~~(hh)(ii)~~(ss)(v).

(i) this documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the director and submitted at the time of application for certification.

NOTICES OF PROPOSED RULES

(d) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(3)(b), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(4) Certified sampler.

(a) training. For initial certification an applicant must successfully complete a petroleum storage tank environmental media sampler training course or equivalent within the six[-]month period ~~[prior to]~~ before application.

(i) the training course must be approved by the director and shall include instruction in the following areas:

- (A) chain of custody;
- (B) decontamination;
- (C) EPA testing methods;
- (D) environmental media sampling protocol;
- (E) preservation of samples during transportation;
- (F) coordination with Utah certified laboratories; and
- (G) state and federal statutes, rules, and regulations.

(ii) renewal certification training will be determined by the director.

(A) the applicant shall provide documentation of training with the application.

(b) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-3(4)(a), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(5) UST installer.

(a) financial assurance. An applicant or the applicant's employer must have insurance, surety bonds, liquid company assets, or other appropriate kinds of financial assurance which covers [UST]PST installation and which, in combination, represents an unencumbered value of not less than the largest [UST]PST installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater.

(i) evidence of financial assurance shall be provided with the application.

(ii) an applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the application.

(b) training. For initial certification, an applicant must have successfully completed a [UST]PST installer training course or equivalent within the six-month period ~~[prior to]~~ before application.

(i) the training course must be approved by the director, and shall include instruction in the following areas:

- (A) tank installation;
- (B) pre-installation tank testing;
- (C) product piping testing;

(D) excavation;

(E) anchoring;

(F) backfilling;

(G) secondary containment;

(H) leak detection methods;

(I) piping;

(J) electrical; and

(K) state and federal statutes, rules, and regulations.

(ii) the applicant must provide documentation of training with the application.

(c) experience. Each applicant must provide with their application a sworn statement or other evidence that they have actively participated in a minimum of three [UST]PST installations.

(d) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(5)(b), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) UST remover.

(a) financial assurance. An applicant or the applicant's employer must have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers [UST]PST removal and which, in combination, represents an unencumbered value of not less than the largest [UST]PST removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater.

(i) evidence of financial assurance shall be provided with the application.

(ii) an applicant who uses their employer's financial assurance must also provide evidence of their employer's approval of the application.

(b) training. For initial certification, an applicant must have successfully completed a [UST]PST remover approved training course or equivalent within the six-month period ~~[prior to]~~ before application.

(i) the training course must be approved by the director and shall include instruction in the following areas:

(A) tank removal;

(B) tank removal safety practices; and

(C) state and federal statutes, rules, and regulations.

(ii) the applicant must provide documentation of training with the application.

(c) experience. Each applicant must provide with their application a sworn statement or other evidence that they have actively participated in a minimum of three [UST]PST removals.

(d) certification examination. An applicant must successfully pass a certification examination administered under the direction of the director.

(i) the director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-3(6)(b), and the standards and criteria against which the applicant will be evaluated.

(ii) the director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

R311-201-4. Application for Certification.

(1) Any individual may apply for certification by paying any applicable fees and by submitting an application to the director to demonstrate that the applicant

(a) meets applicable eligibility requirements specified in Section R311-201-3; and

(b) will maintain the applicable performance standards specified in Section R311-201-6 after receiving a certificate.

(2) Applications submitted under Subsection R311-201-4~~(a)~~(1) shall be reviewed by the director for determination of eligibility for certification.

(a) if the director determines that the applicant meets the applicable eligibility requirements described in Section R311-201-3 and meets the standards described in Section R311-201-6, the director shall issue to the applicant a certificate.

(3) Certification for ~~all~~ certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8.

(a) certificates shall be subject to periodic renewal pursuant to Section R311-201-5.

R311-201-5. Renewal.

(1) A certificate holder may apply for certificate renewal not more than six months ~~prior to~~ before the expiration date of the certificate by:

(a) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in Section R311-201-3 and meets the applicable performance standards specified in Section R311-201-6;

(b) paying any applicable fees; and

(c) passing a certification renewal examination.

(2) If the director determines that the applicant meets the applicable eligibility requirements of Section R311-201-3 and the applicable performance standards of Section R311-201-6, the director shall reissue the certificate to the applicant.

(3) Renewal certificates shall be issued for a period equal to the initial certification period and shall be:

(a) subject to inactivation under Section R311-201-8; and

(b) subject to revocation under Section R311-201-9.

(4) Any applicant who has a certification which has been revoked or expired for more than two years ~~prior to~~ before submitting a renewal application must successfully satisfy the training and certification examination requirements for initial certification under Section R311-201-3 for the applicable certificate before receiving the renewal certification.

(a) except as provided in Subsection R311-201-3(1)(f) for certified ~~UST~~PST consultants.

R311-201-6. Standards of Performance.

(1) Individuals who are certified in accordance with Rule R311-201 must:

(a) display the certificate upon request;

(b) comply with all local, state, and federal laws, rules, and regulations regarding the ~~UST~~PST activity for which certification is granted;

(c) report the discovery of any release caused by or encountered in the course of performing the ~~UST~~PST activity for which certification is granted to the director, the local health district, and the local public safety office within 24 hours.

(i) certified ~~UST~~PST consultants and certified ~~groundwater and soil~~ samplers must report the discovery of any

release caused by or encountered in the course of performing environmental media sampling for compliance with Utah ~~UST~~PST rules, or report the results indicating that a release may have occurred, to the director, the local health district, and the local public safety office within 24 hours.

(d) not participate in fraudulent, unethical, deceitful, or dishonest activity with respect to a certificate application or performance of work for which certification is granted; and

(e) not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(2) The director may audit or commission an ~~audit~~ audit of records which support eligibility for certification, or performance of work for which certification is granted, at any time.

(a) audits may be determined by random selection or for specific reasons, including suspicion or discovery of inaccuracies on an application for certification or performance of substandard work for which certification is granted, or deficiencies in complying with regulations.

(3) Certified individuals must, in addition to meeting the performance standards in Subsection R311-201-6(1), comply with the following:

(a) certified ~~UST~~PST consultant. An individual who provides ~~UST~~PST consulting services in the ~~S~~state ~~of Utah~~ must:

(i) provide, or shall associate appropriate personnel ~~in order~~ to provide a high level of experience and expertise in release abatement, investigation, or corrective action;

(ii) perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;

(iii) perform work and submit documentation in a timely manner;

(iv) review and certify by signature any documentation submitted to the director in accordance with ~~UST~~PST release-related compliance; and

(v) ensure and certify by signature ~~all~~ pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a certified ~~UST~~PST consultant.

(b) UST inspector. An individual who performs ~~UST~~PST inspecting for the Division of Environmental Response and Remediation shall:

(i) conduct inspections of ~~USTs~~PSTs and records to determine compliance with this rule only as authorized by the director.

(c) UST tester. An individual who performs ~~UST~~PST testing in the ~~S~~state ~~of Utah~~ must:

(i) perform ~~all~~ work in a manner that does not cause a release of the contents of the tank;

(ii) assure that ~~all~~ operations of ~~UST~~PST testing which are critical to the integrity of the system and to the protection of the environment are supervised by a certified person; and

(iii) perform work in a manner that the integrity of the ~~UST~~PST system is maintained.

(d) UST installer. An individual who performs ~~UST~~PST installation or repair in ~~the State of~~ Utah must:

(i) be certified to assure the proper installation of all elements of ~~UST~~PST systems which are critical to the integrity of the system and to the protection of the environment, including:

(A) pre-installation tank testing;

(B) tank site preparation including anchoring, tank placement, and backfilling;

(C) cathodic protection installation, service, or repair;

(D) vent and product piping assembly;

(E) fill tube attachment;

(F) installation of tank manholes;

(H) secondary containment construction; and

(ii) notify the director as required by Subsection R311-203-~~4(4)~~3(1) before installing or upgrading an [UST]PST.

(e) UST remover. An individual who performs [UST]PST removal in the [S]tate of Utah must:

(i) assure that ~~all~~ operations of tank removal which are critical to safety and to the protection of the environment which includes:

(A) removal of soil adjacent to the tank;

(B) disassembly of pipe;

(C) final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site must be supervised by a certified person; and

(ii) not proceed to close a regulated [UST]PST without an approved closure plan, except as outlined in Subsection R311-204-2(2).

R311-201-7. Denial of Certification and Appeal of Denial.

(1) Any individual whose application or renewal application for certification or certification renewal is denied will be provided with a written documentation by the director specifying the reason or reasons for denial.

(a) an applicant may appeal the determination using the procedures specified in Section 19-1-301.5, et seq., and Rule R305-7.

R311-201-8. Inactivation of Certification.

(1) If an applicant was certified based upon their employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer.

(2) If the employer loses their financial assurance or the applicant leaves the employer, their certification will automatically be deemed inactive and they will no longer be certified for purposes of this rule.

(3) Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees.

(4) Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

R311-201-9. Revocation of Certification.

(1) Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-3 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked.

(a) procedures for revocation are specified in Rule R305-7.

R311-201-10. Reciprocity.

(1) If the director determines that another state's certification program is equivalent to the certification program referred to in this rule, the applicant successfully passes the Utah

certification examination, and payment of any fees associated with this rule are made, the director may issue a Utah certificate.

(a) The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Subsection R311-201-4(3), whichever occurs first.

R311-201-12. UST Operator Training and Registration.

(1) To meet the operator training requirement ~~[(42 USC Section 6991i)]~~ of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility must have UST facility operators that are trained and registered according to the requirements of this section.

(2) Each facility must have three classes of operators: A, B, and C.

(a) a facility may have more than one person designated for each operator class.

(b) an individual acting as a Class A or B operator may do so for more than one facility.

(3) The UST owner or operator must provide documentation to the director to identify the Class A, B, and C operators for each facility.

(a) if an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all applicable state and federal statutes, rules, and regulations.

(4) New Class A and B operators must be trained and registered within 30 days of assuming responsibility for an UST facility.

(5) New Class C operators must be trained before assuming the responsibilities of a Class C operator.

(6) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(6)(b).

(a) the Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system. The Class A operator must:

(i) have a general knowledge of UST systems;

(ii) ensure that UST records are properly maintained according to 40 CFR 280;

(iii) ensure that yearly UST fees are paid;

(iv) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

(v) make financial responsibility documents available to the director as required; and

(vi) ensure that Class B and Class C operators are trained and registered.

(b) an owner or operator may designate a ~~[third party]~~ third-party Class B operator as a Class A operator if:

(i) the UST owner or operator is a financial institution or person who acquired ownership of an UST facility solely to protect a security interest in that property and has not operated the USTs at the facility;

(ii) all USTs at the facility are properly temporarily closed in accordance with 40 CFR 280.70 and Section R311-204-4; and

(iii) all USTs at the facility are empty in accordance with 40 CFR 280.70(a).

(7) The Class B operator must implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems.

(a) the Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator must:

(i) ensure that on-site UST operator inspections are conducted according to the requirements of Section R311-203-7;

(ii) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(iii) ensure that the status of the UST system is monitored for alarms and unusual operating conditions that may indicate a release;

(iv) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(7)(iii), if it is not reported as a suspected release according to 40 CFR 280.50;

(v) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(vi) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;

(vii) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(viii) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(ix) ensure that Class C operators are trained and registered, and are on-site during operating hours.

(8) Any individual providing services as a third-party Class B operator must be trained and registered in accordance with Subsection R311-201-12(10) and must:

(a) be certified in accordance with Rule R311-201 as:

(i) a UST tester; or

(ii) a UST installer as either a general installer or a service or repair technician; or

(b) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of \$250,000 minimum per occurrence.

(9) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator must:

(a) be present at the facility at all times during normal operating hours;

(b) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(c) properly respond to alarms, spills, and overfills;

(d) notify Class A operators, Class B operators, or both, and appropriate emergency responders when necessary; and

(e) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(10) Operator training and registration.

(a) training and testing.

(i) applicants for Class A and B operator registration must successfully complete an approved operator training course within the six-month period ~~[prior to]~~ before application.

(ii) the training course must be approved by the director, and shall include instruction in the following:

(A) notification;

(B) temporary and permanent closure;

(C) installation permitting;

(D) UST requirements of the 2005 Energy Policy Act;

(E) Class A, B, and C operator responsibilities;

(F) spill prevention;

(G) overfill prevention;

(H) UST release detection;

(I) corrosion protection;

(J) record[-]keeping requirements;

(K) emergency response;

(L) product compatibility;

(M) Utah ~~UST~~ PST rules and regulations;

(N) UST financial responsibility; and

(O) delivery prohibition.

(iii) applicants for Class A and B operator registration must successfully pass a registration examination authorized by the director.

(A) the director shall determine the content of the examination.

(iv) an individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(10)(a)(i) and R311-201-12(10)(a)(iii) by completing the following within the six-month period ~~[prior to]~~ before application:

(A) successfully passing a nationally recognized UST operator examination approved by the director; and

(B) successfully passing a Utah ~~UST~~ PST rules and regulations examination authorized by the director.

(v) the director shall determine the content of the examination.

(vi) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(b) registration application.

(i) applicants for Class A and B operator registration must:

(A) submit a registration application to the director;

(B) document proper training; and

(C) pay any applicable fees.

(ii) Class C operators shall be designated by a Class B operator.

(iii) the Class B operator must maintain a list identifying the Class C operators for each ~~UST~~ PST facility. The list must identify:

(A) each Class C operator;

(B) the date of training; and

(C) the trainer.

(iv) identification on the list serves as the operator registration for Class C operators.

(v) a registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(vi) Class A and B registration shall be effective for a period of three years, and shall not lapse or become inactive if the registered operator leaves the employment of the company under which the registration was obtained.

(c) renewal of registration.

(i) Class A and B operators shall apply for renewal of registration not more than six months ~~[prior to]~~ before the expiration of the registration by:

(A) submitting a completed application form;

(B) paying any applicable fees; and

(C) documenting successful completion of any re-training required by Subsection R311-201-12(10)(d).

(ii) if the director determines that the operator meets ~~[all]~~ the requirements for registration, the director shall renew the applicant's registration for a period equal to the initial registration.

(iii) any applicant for renewal who has a registration that has been expired for more than two years ~~[prior to]~~ before submitting

NOTICES OF PROPOSED RULES

a renewal application must successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(10)(a) before receiving the renewal registration.

(d) re-training.

(i) a Class A operator is subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

(A) lapsing of certificate of compliance;

(B) failure to provide acceptable financial responsibility;

or

(C) failure to ensure that Class B and C operators are trained and registered.

(ii) a Class B operator is subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document compliance, as determined by the Technical Compliance Rate;

(I) Technical Compliance Rate is determined using the EPA "UST and LUST Performance Definitions as of October 2018" and incorporated ~~herein~~ by reference.

(B) failure to perform UST operator inspections required by Section R311-203-7; or

(C) failure to ensure that Class C operators are trained and registered, and are on site during operating hours.

(iii) to be re-trained, Class A and Class B operators must successfully complete the appropriate Class A or B operator training course and examination, or must complete an equivalent re-training course and examination approved by the director.

(iv) Class A and B operators must be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the director within 30 days of the re-training.

(A) if the documentation is not received by the director within 120 days of the date of the determination of non-compliance, the Class A or B operator's registration shall lapse.

(B) to re-register, the operator shall meet the requirements of Subsections R311-201-12(10)(a) and R311-201-12(10)(b).

(v) if a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsection[s] R311-201-12(10)(d)(i) or R311-201-12(10)(d)–(ii), re-training is not required if the Class A or B operator successfully completes and documents re-training under Subsection R311-201-12(10)(d) for a prior determination of non-compliance that occurred during the previous nine months.

(11) Reciprocity.

(a) if the director determines that another state's operator training program is equivalent to the operator training program provided in this rule, ~~he~~ the director may accept an applicant's Class A or Class B registration application, provided that the applicant:

(i) submits a completed application form;

(ii) passes the Utah ~~UST~~ PST rules and regulations examination referenced in Subsection R311-201-12(10)(a)(iv)(B); and

(iii) submits payment of any applicable registration fees.

(b) the Class A or Class B registration is valid until the Utah registration expiration described in Subsection R311-201-12(10)(b)(vi).

KEY: hazardous substances, administrative proceedings, underground storage tanks, petroleum storage tanks, revocation procedures

Date of Last Change: 2022|September 13, 2024|

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-402; 19-6-403; 63G-4-102; 63G-4-201 through 205; 63G-4-503

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R311-203

Filing ID
54599

Agency Information

1. Department:	Environmental Quality		
Agency:	Environmental Remediation	Response	and
Building:	Multi Agency State Office Building		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144840		
City, state and zip:	Salt Lake City, UT 84114-4840		
Contact person(s):			
Name:	Phone:	Email:	
David Wilson	385-251-0893	djwilson@utah.gov	
Therron Blatter	801-554-6762	tblatter@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule or section catchline:
R311-203. Underground Storage Tanks: Technical Standards
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the Division of Environmental Response and Remediation (DERR) to begin regulation of aboveground petroleum storage tanks (APSTs).
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The changes add requirements for notification for APSTs found in Subsection 19-6-407(2). For owners and operators who participate in the environmental assurance program (EAP), added leak detection and testing

requirements for APSTs to meet the requirements for issuance of a certificate of compliance (Section R311-206-3). For owners and operators who participate in the EAP, added phase-in timeline to minimize financial impact for APST owners to meet certain standards.

(EDITOR'S NOTE: The proposed amendment to Rule R311-206 is under ID 54603 in this issue, June 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:

In Section R311-203-2, the fiscal impact of the one-time \$250 processing fee was estimated in the fiscal note attached to S.B. 40 (2021) as required in Subsection 19-6-407(2)(b). Qualified APSTs last used before 05/05/2021 must notify but are not subject to this fee.

In Section R311-203-4, this rule change is expected to have a fiscal cost on the approximately 38 state-owned facilities with APSTs because they will pay a yearly PST registration fee. The approximate total cost for these facilities was estimated in the fiscal note attached to S.B. 40 (2021).

In Section R311-203-4, this rule change is expected to have fiscal benefit on the state government, DEQ-DERR, because the number of PST registration fees collected per year will increase. This benefit is inestimable because it is unknown how many PST systems will be registered.

In Section R311-203-5, this rule change is not expected to have a fiscal impact on the state government's fleet services APST sites because these sites already meet the requirements set forth in the rule.

B) Local governments:

In Section R311-203-2, the fiscal impact of the one-time \$250 processing fee was estimated in the fiscal note attached to S.B. 40 (2021) as required in Subsection 19-6-407(2)(b). Qualified APSTs last used before 05/05/2021 must notify but are not subject to this fee.

In Section R311-203-4, this rule change is expected to have a fiscal cost on the approximately 200 local-government owned facilities with APSTs because they will pay a yearly PST registration fee. The approximate total was estimated in the fiscal note attached to S.B. 40 (2021).

In Section R311-203-5, there is a direct fiscal cost to local-government owned facilities with APSTs. There are approximately 160 sites owned by local governments that will participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total cost for all these facilities combined is \$96,000 per year for FY23. This cost will decrease to \$48,000 for FY24 and FY25. The cost per facility will

increase FY26 due to the phase-in of additional requirements needed by FY27. The FY26 fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

This estimate was reached using the average contractor cost for a facility with 3 APSTs; spill bucket testing (\$300/facility, every 3 years); and line tightness testing (\$300/facility, annually).

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

In Section R311-203-2, the fiscal impact of the one-time \$250 processing fee was estimated in the fiscal note attached to S.B. 40 (2021) as required in Subsection 19-6-407(2)(b). Qualified APSTs last used before 05/05/2021 must notify but are not subject to this fee.

In Section R311-203-4, this rule change is expected to have a fiscal cost on the approximately 200 small business-owned facilities with APSTs because they will pay a yearly PST registration fee. The approximate total cost for all these facilities was estimated in the fiscal note attached to S.B. 40 (2021).

In Section R311-203-5, there is a direct fiscal cost to small business-owned facilities with APSTs. There are approximately 160 sites owned by small business that will participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total cost for all these facilities combined is \$96,000 per year for FY23. This cost will decrease to \$48,000 for FY24 and FY25. The cost per facility will increase FY26 due to the phase-in of additional requirements needed by FY27. The FY26 fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

This estimate was reached using the average contractor cost for a facility with 3 APSTs; Tank Tightness testing (\$900/facility, FY23 only); spill bucket testing (\$300/facility, every 3 years); and line tightness testing (\$300/facility, annually).

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

In Section R311-203-2, the fiscal impact of the one-time \$250 processing fee was estimated in the fiscal note attached to S.B. 40 (2021) as required in Subsection 19-6-407(2)(b). Qualified APSTs last used before 05/05/2021 must notify but are not subject to this fee.

In Section R311-203-4, this rule change is expected to have a fiscal cost on the approximately 200 non-small

business-owned facilities with APSTs because they will pay a yearly PST registration fee. The approximate total cost for all these facilities was estimated in the fiscal note attached to S.B. 40 (2021).

In Section R311-203-5, there is a direct fiscal cost to non-small business-owned facilities with APSTs. There are approximately 160 sites owned by non-small businesses that will participate in the EAP. Each site has an average of 3 APSTs each that will be affected by this rule. The approximate total cost for all these facilities combined is \$96,000 per year for FY23. This cost will decrease to \$48,000 for FY24 and FY25. The cost per facility will increase FY26 due to the phase-in of additional requirements needed by FY27. The FY26 fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

This estimate was reached using the average contractor cost for a facility with 3 APSTs; spill bucket testing (\$300/facility, every 3 years); and line tightness testing (\$300/facility, annually).

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 rule changes are not expected to have any fiscal impact on other persons because the rule changes will not apply to these entities.

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

PST registration annually (\$110/APST annually) required for all APSTs by Section R311-203-4 starting FY23. Spill Bucket (SB) tests (\$100/SB every 3 years) required for APSTs participating in the EAP by Section R311-203-5 starting FY23. Line Tightness Testing (LTT)(\$100/line annually) required for APSTs participating in the EAP by Section R311-203-5 starting FY23.

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

This rule will likely have a cost for businesses who choose to use EAP as their form of financial assurance. Meeting certain standards to participate in the EAP prevents releases and minimizes impact on the petroleum storage tank fund. Kim Shelley, Executive Director

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

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

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	0	0	0
Local Governments	\$96,000	\$48,000	\$48,000
Small Businesses	\$96,000	\$48,000	\$48,000
Non-Small Businesses	\$96,000	\$48,000	\$48,000
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$288,000	\$144,000	\$144,000
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 Shelly, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-6-105 Section 19-6-403 Section 19-6-408

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: 07/01/2022

B) A public hearing (optional) will be held:		
On:	At:	At:
06/15/2022	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015

10. This rule change MAY become effective on:	09/29/2022
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:	Brent Everett, Director	Date:	05/15/2022
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R311. Environmental Quality, Environmental Response and Remediation.**R311-203. [Underground] Petroleum Storage Tanks: Technical Standards.****R311-203-1. Definitions.**

Definitions are found in Rule R311-200.

R311-203-2. Notification.

(1) The owner or operator of an UST must notify the director when ~~ever~~:

- (a) new USTs are brought into use;
- (b) the owner or operator changes;
- (c) changes are made to the tank or piping system; and
- (d) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed, or upgraded.

(2) ~~All~~ Notifications must be submitted on the current approved notification form.

(3) Notifications submitted to meet the requirements of Subsection R311-203-2(~~a~~1) shall be submitted within 30 days of the completion of the work or the change of ownership.

(4) To satisfy the requirement of ~~Subs~~ Section 19-6-407(~~1~~(c)) the certified installer shall:

(a) complete the appropriate section of the form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(b) provide separate notification to the director within 60 days of the completion of the installation.

(5) The owner or operator of an APST that is in service on or after May 5, 2021, must notify the director according to the requirements of Subsection 19-6-407(2).

(6) The owner or operator of an APST that is not in service before May 5, 2021,

(a) must notify the director according to the requirements of Subsection 19-6-407(2)(a)(i);

(b) is subject to delivery prohibition requirements in Section R311-206-8;

(c) is subject to closure requirements under Subsections 19-6-407(2)(a)(iii) and (iv) and Section R311-204-2;

(d) must demonstrate the tank has been emptied of any regulated substance to the lowest discharge point on the tank;

(e) is subject to release reporting requirements as outlined in Subsection 19-6-407(2)(a)(iv); and

(f) must notify local emergency responders of a spill or overfill exceeding 25 gallons within 24 hours.

(7) The owner or operator of an APST that is not in service before May 5, 2021, is not subject to the requirements of Subsection 19-6-407(2)(c) and Section 19-6-412 unless the owner or operator elects to bring the APST back in service.

R311-203-3. New Installations, Permits.

(1) Certified UST installers must notify the director at least ~~[40]~~ten business days, or another time period approved by the director, before commencing any of the following activities:

- (a) the installation of a full UST system or tank only;
- (b) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;
- (c) the internal lining of a previously-existing tank;
- (d) the installation of a cathodic protection system on one or more previously-existing tanks at a facility;
- (e) the installation of a bladder in a tank;
- (f) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;
- (g) the installation of a spill prevention or overfill prevention device;
- (h) the installation of a leak detection monitoring system;

or

(i) the installation of a containment sump or under-dispenser containment.

(2) The UST installation company must submit to the director an UST installation permit fee of \$200 when any of the activities listed in Subsections R311-203-3(1)(a) through R311-203-3(1)(f) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.

(3) The fees assessed under Subsection 19-6-411(2)(a)(i) will be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date.

(a) installations for which the fee assessed under Subsections 19-6-411(2)(a)(ii) and R311-203-3(3) is charged shall count toward the total installations for the 12-month period.

(4) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(4), an installation is considered complete when:

(a) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or

(b) in the case of installation of the components listed in Subsections R311-203-3(1)(d) through R311-203-3(1)(f), the new installation is functional and the UST holds a regulated substance and is operational.

(5) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the director of the change.

(a) when additions are made, the UST installation permit fee shall be increased based on the additional number of tanks to be installed in accordance with Subsection 19-6-411(2)(a)(i) and the

NOTICES OF PROPOSED RULES

Department of Environmental Quality Fee Schedule, as approved annually by the Legislature.

(6) The number of UST installation companies performing work on a particular installation will not be a factor in determining the UST installation permit fee for that installation.

(a) each installation company must be identified on the UST installation permit.

(7) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator must submit to the director an as-built drawing that meets the requirements of Subsection R311-200-1(2)(b).

R311-203-4. ~~Underground~~Petroleum Storage Tank Registration Fee.

(1) Registration fees will be assessed by the Department against ~~all~~ tanks which are not permanently closed for the entire fiscal year, and will be billed per facility.

(2) Registration fees are due on July 1 of the fiscal year for which the assessment is made, or, for ~~USTs~~ PSTs brought into use after the beginning of the fiscal year, ~~UST~~ registration fees are due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(3) The director may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the director.

(4) The director shall issue a certificate of registration to owners or operators for individual ~~USTs~~ PSTs at a facility if:

(a) the tanks are in use or are temporarily closed ~~according to~~ as outlined in 40 CFR Part 280 Subpart G; and

(b) the ~~UST~~ PST registration fee has been paid.

(5) Pursuant to Subsection 19-6-408(5)(c), ~~all~~ past due PST registration fees, late payment penalties and interest must be paid before the director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility.

(a) the director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the ~~USTs~~ PSTs within one year of becoming the new owner or operator of the facility.

(6) A UST will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of compliance with the EPA Technical Compliance Rate during an inspection, and remains out of compliance for six months or greater following the initial inspection.

(a) the higher registration fee is due July 1 following the documented six-month period of non-compliance.

(7) When the director is notified of the existence of a previously un~~-~~registered regulated ~~UST~~ PST, the director shall assess the applicable notification fee and PST registration fee for the current fiscal year.

(a) if the ~~UST~~ PST is properly permanently closed within 90 days of the notification of the existence of the ~~UST~~ PST, the director may decline active collection of past~~-~~due registration fees, late payment penalties, and interest for previous fiscal years.

R311-203-5. ~~UST~~ PST Testing Requirements.

(1) Tank tightness testing. The testing method must be able to test the ~~UST~~ PST system at the maximum level that could contain regulated substances.

(a) tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

(2) Spill prevention equipment. An individual who conducts a test of spill prevention equipment to meet the requirements of 40 CFR 280.35(a)(1)(ii) must report the test results using:

(a) the form "Utah Spill Prevention Test"; or

(b) the form "Appendix C-3 -Spill Bucket Integrity Testing Hydrostatic Test Method Single and Double-Walled Vacuum Test Method,"^[7] found in PEI RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities,"^[7] or

(c) another form approved by the director.

(3) Containment sump testing. An individual who conducts a test of a containment sump used for interstitial monitoring to meet the requirements of 40 CFR 280.35(a)(1)(ii) or a test of a piping containment sump or under-dispenser containment to meet the requirements of Section R311-206-11 must report the test results using:

(a) the form "Utah Containment Sump Test"; or

(b) the form "Appendix C-4 Containment Sump Integrity Testing Hydrostatic Testing Method,"^[7] found in PEI RP1200; or

(c) another form approved by the director.

(4) When a sump sensor is used as an automatic line leak detector, the secondary containment sump must be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the director.

(a) the sensor shall be located as close as is practicable to the lowest portion of the sump.

(5) Cathodic protection testing. Cathodic protection tests must meet the inspection criteria outlined in 40 CFR 280.31(b), or other criteria approved by the director. The tester who performs the test must provide the following information:

(a) location of at least three test points per tank;

(b) location of one remote test point for galvanic systems;

(c) test results in volts or millivolts;

(d) pass^[4] or fail determination for each tank, line, flex connector, or other UST system component tested;

(e) the criteria by which the pass^[4] or fail determination is made;~~and~~

(f) a site plat showing locations of test points~~[-]; and~~

(g) a re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(6) UST testers performing tank and line tightness testing must include the following as part of the test report:

(a) pass^[4] or fail determination for each tank or line tested^[7];

(b) measured leak rate;

(c) test duration;

(d) product level for tank tests;

(e) pressure used for pressure tests;

(f) type of test; and

(g) test equipment used.

(7) overfill prevention equipment inspection. An individual who conducts an inspection of overfill prevention equipment to meet the requirements of 40 CFR 280.35(a)(2) must report the results using:

(a) the form "Appendix C-5 UST Overfill Equipment Inspection Automatic Shutoff Device and Ball Float Valve,"^[7] found

in PEI RP1200, when the overfill prevention is provided by either an automatic shutoff device or a ball float valve;

(b) the form "Appendix C-6 Overfill Alarm Operation Inspection,"^[7] found in PEI RP1200, when overfill prevention is provided by an overfill alarm; or

(c) another form approved by the director.

(8) Automatic tank gauge inspection. An individual who conducts an inspection of automatic tank gauges to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:

(a) the form "Appendix C-7 Automatic Tank Gauge Operation Inspection,"^[7] found in PEI RP1200, and if the ~~[UST]~~PST system or any portion thereof is interstitially monitored, "Appendix C-8: Liquid Sensor Functionality Testing,"^[7] found in PEI RP1200; or

(b) another form approved by the director.

(9) Automatic line leak detector testing. An individual who conducts a test of automatic line leak detectors to meet the requirements of 40 CFR 280.40(a)(3) must report the results using:

(a) the form "Appendix C-9 Mechanical and Electronic Line Leak Detector Performance Tests,"^[7] found in PEI RP1200; or

(b) another form approved by the director.

(10) Leak Detection and Testing Requirements for APSTs using the EAP for financial responsibility:

(a) line tightness testing or monthly monitoring is required for underground piping associated with APSTs.

(i) an individual who conducts a tightness test of product lines must perform the test as set forth in 40 CFR 280.44(b).

(ii) when pressurized underground product piping is connected to an APST that is not double-walled, sensor equipped, and monitored monthly, the product piping must be tested for tightness annually. The test must meet the requirements of Subsection R311-203-5(6).

(b) spill prevention equipment associated with an APST must meet the standards set forth in International Fire Code (IFC) 2306.6.2.6 referenced in the Utah State Fire Code adopted pursuant to Section 15A-5-103 and be double-walled and monitored monthly; or have an integrity test performed every three years. The test must meet the requirements of Subsection R311-203-5(2).

(c) beginning July 1, 2026, an APST resting on the ground must perform monthly interstitial monitoring, a monthly 0.2 gallon per hour release detection test, or a tank tightness test every 5 years. The test must meet the requirements of Subsection R311-203-5(2).

(d) beginning July 1, 2026, if applicable, APSTs and associated piping are required to have cathodic protection that meets the standards set forth in IFC 5704.2.7.9 and National Fire Protection Agency (NFPA) 30.23.3.5 and must have a passing cathodic protection test every 3 years. The test must meet the requirements of Subsection R311-203-5(5).

(e) beginning July 1, 2026, an APST shall have an overfill prevention device that meets the standards set forth in IFC 2306.6.2.3, 5704.2.7.5.8 and 5704.2.927.5 and must have an overfill prevention equipment inspection performed every three years. The overfill prevention equipment inspection must meet the requirements of Subsection R311-203-5(7).

(f) beginning July 1, 2026, an APST with pressurized underground product piping shall have an automatic line leak detector that meets the standards set forth in IFC 2306.7.7.1 and must have an automatic line leak detector test performed annually. The test must meet the requirements of Subsection R311-203-5(9).

R311-203-6. Secondary Containment and Under-Dispenser Containment.

(1) Secondary containment for tanks and piping.

(a) to meet the requirements of Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, ~~[all]~~tanks and product piping that are installed as part of an UST system after October 1, 2008 and before January 1, 2017 must have secondary containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.

(b) the secondary containment installed under Subsection R311-203-6(1) must meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping.

(i) monthly monitoring must meet the requirements of 40 CFR 280.43(g).

(c) containment sumps for piping installed under Subsection R311-203-6(1) are required:

(i) at the submersible pump or other location where the piping connects to the tank;

(ii) where the piping connects to a dispenser, or otherwise goes aboveground; and

(iii) where double-walled piping that is required under Subsection R311-203-6(1) connects with existing piping.

(d) containment sumps for piping that is installed under Subsection R311-203-6(1) must:

(i) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and

(ii) meet the requirements of Subsection~~[s]~~ R311-203-6(2)(b).

(e) in the case of a replacement of tank or piping, only the portion of the UST system being replaced is subject to the requirements of Subsection R311-203-6(1).

(i) if less than 100% of the piping from a tank to a dispenser is replaced, the requirements of Subsection R311-203-6(1) applies to ~~[all]~~new product piping that is installed.

(ii) the closure requirements of Rule R311-205 apply to ~~[all]~~product piping that is taken out of service.

(iii) when new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping must be secondarily contained, and monitored for releases according to 40 CFR 280.43(g).

(f) the requirements of Subsection R311-203-6(1) do not apply to:

(i) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2); or

(ii) piping that connects two or more tanks to create a siphon system.

(g) the requirements of Subsection R311-203-6(1) apply to emergency generator USTs installed after October 1, 2008.

(2) Under-dispenser containment.

(a) to meet the requirements of Subsection 42 USC 6991b(i) of the Solid Waste Disposal Act, ~~[all]~~new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an UST, must have under-dispenser containment if the installation is located 1,000 feet or less from an existing community water system or an existing potable drinking water well.

(b) the under-dispenser containment must:

(i) be liquid-tight on its sides, bottom, and at ~~[all]~~ penetrations;

NOTICES OF PROPOSED RULES

(ii) be compatible with the substance conveyed by the piping; and

(iii) allow for visual inspection and access to the components in the containment system, or be continuously monitored for the presence of liquids.

(c) if an existing dispenser is replaced, the requirements of Subsection R311-203-6(2) apply to the new dispenser if any equipment used to connect the dispenser to the [UST]PST system is replaced.

(i) this equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(3) The requirements of Subsections R311-203-6(1) and R311-203-6(2) do not apply if the installation is located more than 1,000 feet from an existing community water system or an existing potable drinking water well.

(a) the [UST]PST owner or operator must provide to the director documentation to show that the requirements of Subsections R311-203-6(1) and R311-203-6(2) do not apply to the installation.

(b) the documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(i) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1,000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility; and

(ii) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections R311-203-6(1) and R311-203-6(2).

(4) To determine whether the requirements of Subsections R311-203-6(1) and R311-203-6(2) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new UST, piping, or motor fuel dispenser system to:

(a) the closest part of the nearest community water system, including:

(i) the location of the wellheads for groundwater and~~for~~ the location of the intake points for surface water;

(ii) water lines, processing tanks, and water storage tanks; and

(iii) water distribution~~[/]~~ and service lines under the control of the community water system operator, or

(b) the wellhead of the nearest existing potable drinking water well.

(5) If a new UST facility is installed, and is not within 1,000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections R311-203-6(1) and R311-203-6(2) apply if the owner or operator installs a potable drinking water well at the facility that is within 1,000 feet of the UST, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

(6) To meet the requirements of 40 CFR 280.20, ~~[all]~~ tanks and product piping that are installed or replaced as part of an UST system on or after January 1, 2017 must be secondarily contained and use interstitial monitoring in accordance with 40 CFR 280.43(g).

R311-203-7. Operator Inspections.

(1) Owners and operators must perform periodic inspections in accordance with 40 CFR 280.36.

(a) inspections must be conducted by or under the direction of the designated Class B operator.

(b) the Class B operator must ensure that documentation of each inspection is kept and made available for review by the director.

(2) The individual who conducts inspections to meet the requirements of 40 CFR 280.36(a)(1) or 208.36(a)(3) shall use the form "UST Operator Inspection- Utah" or another form approved by the director.

(3) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and Section R311-204-4 must have an annual operator inspection.

(4) An owner or operator who conducts visual checks of tank top containment sumps and under~~[-]~~-dispenser containment sumps for compliance with piping leak detection in accordance with 40 CFR 280.43(g) must conduct the visual checks monthly and report the results on the operator inspection form.

R311-203-8. Unattended Facilities.

(1) An UST facility that:

(a) normally has no employee on site or is open to dispense fuel at times when no employee or trained operator is on site must have:

(i) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders; and

(ii) an emergency shutoff device in a readily accessible location, if the facility dispenses fuel.

KEY: fees, hazardous substances, petroleum, underground storage tanks

Date of Last Change: 2022[September 13, 2021]

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-408

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R311-204

Filing ID
54601

Agency Information

1. Department:	Environmental Quality
Agency:	Environmental Response and Remediation
Building:	Multi Agency State Office Building
Street address:	195 N 1950 W
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 144840
City, state and zip:	Salt Lake City, UT 84114-4840

Contact person(s):		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R311-204. Underground Storage Tanks: Closure and Remediation
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the Division of Environmental Response and Remediation (DERR) to begin regulation of aboveground petroleum storage tanks (APSTs).
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The changes add requirements for closure notification and release reporting for APSTs referenced in Subsection 19-6-407(2).

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is a direct fiscal cost to state-owned facilities with APSTs. The approximate cost for closure per APST is \$20,000 which includes the site assessment (Rule R311-205). The total fiscal cost is inestimable because the number of APSTs that the state will choose to close is unknown. (EDITOR'S NOTE: The proposed amendment to Rule R311-205 is under ID 54602 in this issue, June 1, 2022, of the Bulletin.)
B) Local governments:
There is a direct fiscal cost to local government-owned facilities with APSTs. The approximate cost for closure per APST is \$20,000 which includes the site assessment (Rule R311-205). The total fiscal cost is inestimable because the number of APSTs that local government will choose to close is unknown.

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

There is a direct fiscal cost to small business-owned facilities with APSTs. The approximate cost for closure per APST is \$20,000 which includes the site assessment (Rule R311-205). The total fiscal cost is inestimable because the number of APSTs small businesses will choose to close is unknown.

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

There is a direct fiscal cost to non-small business-owned facilities with APSTs. The approximate cost for closure per APST is \$20,000 which includes the site assessment (Rule R311-205). The total fiscal cost is inestimable because the number of APSTs non-small businesses will choose to close is unknown.

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 rule changes are not expected to have any fiscal impact on other persons because the rule changes will not apply to these entities.

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

Beginning 05/05/2021, APST owners are required to notify when they close an APST (Subsection 19-6-407(2)(iii)). The approximate cost, using certified contractors, is \$20,000/tank which includes the site assessment.

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

These changes will only have a fiscal cost to businesses who chooses to permanently close an APST. Kim Shelley, Executive Director

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

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

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 Shelly, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 19-6-105	Section 19-6-402	Section 19-6-402

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)		
A) Comments will be accepted until:		07/01/2022
B) A public hearing (optional) will be held:		
On:	At:	At:
06/15/2022	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015
10. This rule change MAY become effective on:		
		09/29/2022

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:	Brent Everett, Director	Date:	05/15/2022
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R311. Environmental Quality, Environmental Response and Remediation.

R311-204. ~~[Underground]~~Petroleum Storage Tanks: Closure and Remediation.

R311-204-1. Definitions.

Definitions are found in ~~[Section]~~Rule R311-200.

R311-204-2. ~~[Underground]~~Petroleum Storage Tank Closure Plan.

(1) Owners or operators of ~~[all USTs]~~PSTs or any portion thereof which are to be permanently closed or undergo change-in-service must submit a permanent closure plan to the director.

(a) the permanent closure plan shall be submitted by the owner or operator as fulfillment of the 30-day permanent closure notification requirement in accordance with ~~[40 CFR 280 Subpart G-]~~Subsection 19-6-407(2)(a)(iii) for APSTs and 40 CFR 280 Subpart G for USTs.

(2) If a tank is to be removed as part of corrective action as allowed by 40 CFR 280 Subpart G, the owner or operator is not required to submit a closure plan, but must meet the requirements of 40 CFR 280.66(d) before any removal activity takes place, and must submit a corrective action plan as required by 40 CFR 280.66.

(3) The closure plan shall address applicable issues involved with permanent closure, ~~[or]~~change-in-service, or reuse of APSTs, including:

- (a) product removal;
- (b) sludge disposal;
- (c) vapor purging or inerting;
- (d) removing or securing and capping product piping;
- (e) removing vent lines or securing vent lines open;
- (f) tank cleaning;
- (g) environmental sampling;
- (h) contaminated soil and water management;
- (i) in-place tank disposal or tank removal;
- (j) transportation of tank;
- (k) permanent disposal; and
- (l) other disposal activities which may affect human health, human safety, or the environment.

(4) No ~~[UST]~~PST shall be permanently closed or undergo change-in-service ~~[prior to]~~before the owner or operator receiving final approval of the submitted permanent tank closure plan by the director, except as outlined in Subsection R311-204-2(~~[b]~~2).

(a) closure plan approval is effective for a period of one year.

(b) if the ~~[UST]~~PST has not been permanently closed or undergone change~~[-]~~in~~[-]~~service as proposed within one year following approval from the director, the plan must be re-submitted for approval, unless otherwise approved by the director.

(5) Permanent closure plans shall be prepared using the current approved form according to guidance furnished by the director.

(6) The owner or operator shall ensure that the approved permanent closure plan and approval letter are on site during ~~all~~ closure activities.

(7) Any deviation from or modification to an approved closure plan must be approved by the director ~~[prior to]~~before implementation, and must be submitted in writing to the director.

(8) The director must be notified at least three business days ~~[prior to]~~before the start of closure activities.

R311-204-3. Disposal.

(1) Tank labeling. Immediately after being removed, ~~all~~ tanks which are permanently closed by removal must be labeled with the following in letters at least two inches high:

- (a) the facility identification number;
- (b) the substance contained; and
- (c) the date removed: "month/day/year."[-]

(2) Removed tanks shall be expeditiously disposed of as regulated ~~USTs~~PSTs by the following methods:

- (a) the tank may be cut up after the interior atmosphere is first purged or inerted.
- (b) the tank may be crushed after the interior atmosphere is first purged or inerted.
- (c) the tank may not be used to store food or liquid intended for human or animal consumption.
- (d) the tank may be disposed of in a manner approved by the director.

(3) Any removed APST that is to be reused as an APST must be recertified by the manufacturer of the tank or undergo a tank inspection, conducted by a qualified contractor, using a nationally recognized standard such as API 653.

~~(3)~~(4) Tank transportation. Used tanks which are transported on roads of the ~~S~~state ~~of Utah~~ must be cleaned inside the tank ~~[prior to]~~before transportation, and be free of ~~all~~product, free of ~~all~~vapors, or ~~rendered~~made inert during transport.

R311-204-4. Closure Notice.

(1) Owners or operators of USTs which were permanently closed or had a change-in-service ~~[prior to]~~before December 22, 1988 must submit a completed closure notice, unless the tanks were properly closed on or before January 1, 1974.

(2) Owners or operators of USTs which are permanently closed ~~[or have a change in service]~~after December 22, 1988, and APSTs closed or having a change-in-service as defined in 40 CFR 280 Subpart G after May 5, 2021 must submit a completed closure notice form and the following information within 90 days after tank closure:

- (a) ~~all~~results from the closure site assessment conducted in accordance with Rule R311-205, including analytical laboratory results and chain of custody forms; and
- (b) ~~[effective January 1, 1993,]~~a site plat displaying depths and distances such that the sample locations can be determined solely from the site plat. The site plat shall include:
 - (i) scale;
 - (ii) north arrow;
 - (iii) streets;
 - (iv) property boundaries;
 - (v) building structures;
 - (vi) utilities;
 - (vii) ~~UST~~PST system location;

(viii) location of any contamination observed or suspected during sampling;

(ix) location and volume of any stockpiled soil;

(x) the extent of the excavation zone; and

(xi) any other relevant features.

(c) ~~all~~sample identification numbers used on the site plat shall correspond to the chain of custody form and the lab analysis report.

(3) Owners and operators of ~~USTs~~PSTs that are temporarily closed for a period greater than three months must submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.

(4) ~~All e~~Closure notices for permanent and temporary closure shall be submitted on the current approved forms.

R311-204-5. Remediation.

(1) Any ~~UST~~PST release management, abatement, investigation, corrective action or evaluation activities performed for a fee, or in connection with services for which a fee is charged, must be performed under the supervision of a certified ~~UST~~PST consultant, except as outlined in Subsections 19-6-402(6)(b), R[311-201-2(~~a~~)]1, and R311-204-5(2).

(2) At the time of ~~UST~~PST closure, a certified UST remover may over-excavate and properly dispose of up to 50 cubic yards of contaminated soil per facility, or another volume approved by the director, in addition to the minimum amount required for closure of the ~~UST~~PST.

(a) this over-excavation may be performed without the supervision of a certified ~~UST~~PST consultant.

(b) appropriate confirmation samples must be taken by a certified ~~groundwater and soil~~sampler in accordance with Rule R311-201 ~~[for the purpose of]~~to determine~~ing~~ the extent and degree of contamination.

KEY: hazardous substances, petroleum, underground storage tanks

Date of Last Change: ~~2022~~~~September 13, 2021~~

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-402; 19-6-403

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R311-205	Filing ID 54602
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Agency Information

1. Department:	Environmental Quality
Agency:	Environmental Response and Remediation
Building:	Multi Agency State Office Building
Street address:	195 N 1950 W
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 144840
City, state and zip:	Salt Lake City, UT 84114-4840

Contact person(s):		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R311-205. Underground Storage Tanks: Site Assessment Protocol
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the Division of Environmental Response and Remediation (DERR) to begin regulation of aboveground petroleum storage tanks (APSTs).
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The changes add requirements for notification for APSTs to comply with Subsection 19-6-407(2) requirements for site assessment and release reporting; and make changes to sampling protocol for product dispensers and add sampling requirements remote fills.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is a direct fiscal cost to state-owned facilities with APSTs. The approximate cost to take samples for a site assessment or site check is \$300 per sample not including excavation. Fiscal analysis for closure calculated in the proposed changes to Rule R311-204 which includes the site assessment. The total fiscal cost is inestimable because the number of APSTs that the state will choose to perform a site assessment or site check on is unknown. (EDITOR'S NOTE: The proposed amendment to Rule R311-204 is under ID 54601 in this issue, June 1, 2022, of the Bulletin.)
In Subsection R311-205-2(3)(d), this rule change is not expected to have a fiscal impact on the state-government owned facilities with PSTs because contractors sampling product dispensers for closure currently take one sample per dispenser rather than one per dispenser island.

In Subsection R311-205-2(3)(e), there is a direct fiscal cost to state-owned facilities with PSTs. The approximate cost to take a sample for the relatively few PST sites with remote fills is \$300 per sample not including excavation. The total fiscal cost is inestimable because the number of PSTs with remote fills that the state will choose to perform a site assessment or site check on is unknown.

B) Local governments:

There is a direct fiscal cost to local government-owned facilities with APSTs. The approximate cost to take samples for a site assessment or site check is \$300 per sample not including excavation. Fiscal analysis for closure calculated in the proposed changes to Rule R311-204 which includes the site assessment. The total fiscal cost is inestimable because the number of APSTs that a local government will choose to perform a site assessment or site check on is unknown.

In Subsection R311-205-2(3)(d), this rule change is not expected to have a fiscal impact on a local government-owned facility with PSTs because contractors sampling product dispensers for closure currently take one sample per dispenser rather than one per dispenser island.

In Subsection R311-205-2(3)(e), there is a direct fiscal cost to local government-owned facilities with PSTs. The approximate cost to take a sample for the relatively few PST sites with remote fills is \$300 per sample not including excavation. The total fiscal cost is inestimable because the number of PSTs with remote fills that a local government will choose to perform a site assessment or site check on is unknown.

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

There is a direct fiscal cost to small business-owned facilities with APSTs. The approximate cost to take samples for a site assessment or site check is \$300 per sample not including excavation. Fiscal analysis for closure calculated in the proposed changes to Rule R311-204 which includes the site assessment. The total fiscal cost is inestimable because the number of APSTs that a small business will choose to perform a site assessment or site check on is unknown.

In Subsection R311-205-2(3)(d), this rule change is not expected to have a fiscal impact on a small business-owned facility with PSTs because contractors sampling product dispensers for closure currently take one sample per dispenser rather than one per dispenser island.

In Subsection R311-205-2(3)(e), there is a direct fiscal cost to small business-owned facilities with PSTs. The approximate cost to take a sample for the relatively few PST sites with remote fills is \$300 per sample not including excavation. The total fiscal cost is inestimable because the number of PSTs with remote fills that the small business will choose to perform a site assessment or site check on is unknown.

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

There is a direct fiscal cost to non-small business-owned facilities with APSTs. The approximate cost to take samples for a site assessment or site check is \$300 per sample not including excavation. Fiscal analysis for closure calculated in the proposed changes to Rule R311-204 which includes the site assessment. The total fiscal cost is inestimable because the number of APSTs that a non-small business will choose to perform a site assessment or site check on is unknown.

In Subsection R311-205-2(3)(d), this rule change is not expected to have a fiscal impact on a non-small business-owned facility with PSTs because contractors sampling product dispensers for closure currently take one sample per dispenser rather than one per dispenser island.

In Subsection R311-205-2(3)(e), there is a direct fiscal cost to non-small business-owned facilities with PSTs. The approximate cost to take a sample for the relatively few PST sites with remote fills is \$300 per sample not including excavation. The total fiscal cost is inestimable because the number of PSTs with remote fills that the non-small business will choose to perform a site assessment or site check on is unknown.

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 rule changes are not expected to have any fiscal impact on other persons because the rule changes will not apply to these entities.

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

Beginning 05/05/2021, APST owners may be required to do a site assessment or site check (Subsection 19-6-428(3)(b)). The approximate cost, using certified contractors, is \$300 per sample.

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

These changes will only have a fiscal cost to businesses who chooses to permanently close an APST, perform a site assessment or site check. Kim Shelley, Executive Director

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

Fiscal Cost	FY2023	FY2024	FY2025
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 Shelly, has reviewed and approved this fiscal analysis.

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

Section 19-6-105	Section 19-6-403	Section 19-6-413
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Public Notice Information**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	07/01/2022
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B) A public hearing (optional) will be held:		
On:	At:	At:
06/15/2022	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015

10. This rule change MAY become effective on:	09/29/2022
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:	Brent Everett, Director	Date:	05/15/2022
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R311. Environmental Quality, Environmental Response and Remediation.**R311-205. ~~[Underground]~~Petroleum Storage Tanks: Site Assessment Protocol and Release Reporting.****R311-205-1. Definitions.**

Definitions are found in Rule R311-200.

R311-205-2. Site Assessment Protocol.

(1) General Requirements.

(a) a site assessment or site check is required:

(i) for USTs, pursuant to 40 CFR 280.72 or Subsection 19-6-428(3).

(ii) for APSTs, when the tank or connected piping are permanently closed or as pursuant to Subsections 19-6-420(2)(a) and 19-6-428(3).

(~~[a]~~b) when a site assessment or site check is required, ~~[pursuant to 40 CFR 280 or Subsection 19-6-428(3)]~~, owners or operators shall perform the work or commission the work to be performed according to Rule R311-205 or equivalent, as approved by the director.

(~~[b]~~c) additional environmental media samples must be collected when contamination is found, suspected, or as requested by the director.

(~~[e]~~d) ~~[all]~~ environmental media samples are to be collected according to the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, dated June 1, 2021, which is ~~hereby~~ incorporated by reference, or as determined by the director.

(~~[d]~~e) ~~[O]~~ owners and operators must document and report to the director the following:

- (i) sample types;
- (ii) sample locations and depths;
- (iii) field and sampling measurement methods;
- (iv) the nature of the stored substance;
- (v) the type of backfill and native soil;
- (vi) the depth to groundwater; and

(vii) other factors appropriate for identifying the source area and the degree and extent of subsurface soil and groundwater contamination.

(~~[e]~~f) the owner or operator must report the discovery of any reportable release or suspected release to the director within 24 hours.

(i) owners or operators must begin release investigation and confirmation steps ~~[in accordance with]~~ as outlined in 40 CFR 280, Subpart E and Section 19-6-420 upon suspecting a release.

(ii) owners or operators must begin release response and corrective action ~~[in accordance with]~~ as outlined in 40 CFR 280, Subpart F and Section 19-6-420 upon confirming a release.

(~~[f]~~g) ~~[all]~~ environmental media samples must be collected by a certified sampler who meets the requirements of Rule R311-201.

(i) the certified sampler shall record the depth below grade and location of each sample collected to within one foot.

(~~[g]~~h) ~~[all]~~ environmental media samples must be analyzed within the time frame allowed, in accordance with the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, by a certified environmental laboratory.

(i) soil samples must be corrected for moisture, if necessary, with percent moisture reported to accurately represent the level of contamination.

(~~[h]~~i) environmental media samples for ~~[UST]~~PST permanent closure or change in service must be collected according to the protocol outlined in Subsection R311-205-2(2), after the ~~[UST]~~PST system is emptied and cleaned and after the closure plan has been approved.

(~~[i]~~j) environmental media confirmation samples are required following over-excavation of soils.

(i) confirmation samples shall be taken at locations and depths sufficient to detect the presence, extent, and degree of a release from any portion of the ~~[UST]~~PST ~~[in accordance with]~~ as outlined in 40 CFR 280, Subparts E, F, and G.

(ii) additional confirmation samples may be required as determined by the director.

(~~[j]~~k) upon confirming a release, a site assessment report, an updated site plat, analytical laboratory results, chain of custody forms, and ~~[all]~~ other applicable documentation ~~[required by]~~ referenced in 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the director within the specified time frames.

(~~[k]~~l) when conducting environmental media sampling ~~[to satisfy the requirements of]~~ as referenced in 40 CFR 280, subparts E and F, soil classification samples to determine native soil type shall be collected at locations and depths as requested by the director.

(i) techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification, or a field description from a qualified individual as determined by the director, may be used to satisfy requirements of determining native soil type.

(~~[l]~~m) other types of environmental media or quality assurance samples may be required as determined by the director.

(2) Site assessment protocol for ~~[UST]~~PST closure.

(a) the appropriate number of environmental media samples, as described in Subsections R311-205-2(2) and R311-205-2(3) shall be collected in native soils, below the backfill material, and as close as technically feasible to the tank, piping, or dispenser island.

(i) any other samples required by Subsection R311-205-2(1) must also be collected.

(ii) soil samples shall be collected from a depth of zero to two feet below the backfill and native soil interface.

(A) if groundwater is contacted in the process of collecting the soil samples, the soil samples required by Subsections R311-205-2(2) and R311-205-2(3) shall be collected from the unsaturated zone immediately above the capillary fringe.

(iii) groundwater samples collected from an excavation shall be collected using proper surface water collection techniques according to the Utah Petroleum Storage Tank Environmental Media Sampling Handbook, or as determined by the director.

(b) ~~all~~ environmental media samples must be analyzed using the appropriate analytical methods outlined in Subsections R311-205-2(2) and R311-205-2(5).

(c) one soil classification sample to determine native soil type shall be collected at the same depth as indicated for environmental media samples, at each tank and product piping area.

(i) for ~~all~~ dispenser islands, only one representative sample to determine native soil type is required.

(ii) techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification shall be used to satisfy requirements of determining native soil type when taking samples for ~~UST~~ PST closure.

~~for purposes of complying with Rule R311-205, for tanks or piping to be removed, closed in place or that undergo a change in service, a tank or product piping area is considered to be an excavation zone or equivalent volume of material containing one, or more than one immediately adjacent, UST or piping run.]~~

(3) Environmental sampling protocol for ~~UST~~ PST closures:

(a) for a tank area containing one ~~UST~~ PST, one soil sample shall be collected at each end of the tank.

(i) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank.

(b) for a tank area containing more than one ~~UST~~ PST, one soil sample shall be collected from each corner of the tank area.

(i) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank area.

(c) product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections, and fittings.

(i) these samples must be collected at intervals which do not allow more than 50 linear feet of piping in a single piping area to go unsampled.

(ii) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.

(d) for ~~dispenser islands~~ product dispensers, environmental media samples shall be collected from ~~the middle of~~ beneath each [dispenser island] product dispenser.

~~additional environmental media samples must be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled.]~~

(i) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each product dispenser [island] where groundwater was encountered.

(e) for PSTs with remote fill, environmental media samples shall be collected from beneath each remote fill location and in intervals which do not allow more than 25 linear feet of the piping associated with the remote fill to go unsampled.

(i) if groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each sample location where groundwater was encountered.

(4) Site check requirements for re-applying to participate in the ~~Environmental Assurance Program~~ EAP.

(a) owners or operators wishing to re-apply for participation in the ~~Environmental Assurance Program~~ EAP following a period of lapse or non-participation ~~must~~ may perform a ~~tank tightness test and~~ site check pursuant to Subsection 19-6-428(3) ~~(a)~~.

~~the tank tightness test and site check shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.]~~

(b) the owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program.

(i) the director shall review and approve the site check plan ~~prior to~~ before its implementation.

(c) the site check must meet the sampling requirements for ~~USTs~~ PSTs, dispensers, and piping as defined in Subsection R311-205-2(2), or as determined by the director on a site-specific basis.

(d) additional sampling may be required by the director based on review of the proposed site check plan and site-specific conditions.

(5) Laboratory analyses of environmental media samples.

(a) environmental media samples which have been collected to determine levels of contamination from ~~USTs~~ PSTs must be analyzed by a certified environmental laboratory.

(b) unless otherwise approved by the director, the required analytes and corresponding analytical methods shall be:

(i) for gasoline contamination:

(A) total petroleum hydrocarbons, ~~[extractable TPH as gasoline range organics C₆ - C₁₀]~~ [purgeable TPH as gasoline range organics C₆ - C₁₀], by either EPA 8015 or EPA 8260; and

(B) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), and methyl tertiary butyl ether (MTBE) by either EPA 8021 or EPA 8260.

(ii) for diesel fuel contamination:

(A) total petroleum hydrocarbons, ~~[extractable TPH as diesel range organics C₁₀ - C₂₈]~~ [extractable TPH as diesel range organics C₁₀ - C₂₈], by EPA 8015; and

(B) benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN) by either EPA 8021 or EPA 8260.

(iii) for used oil contamination:

(A) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and

(B) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by EPA 8021 or EPA 8260.

(iv) for new oil contamination:

(A) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664.

(v) contamination from ~~USTs~~ PSTs which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the director.

(vi) for contamination of an unknown petroleum product type:

(A) total petroleum hydrocarbons, ~~[purgeable TPH as gasoline range organics C₆ - C₁₀]~~ [purgeable TPH as gasoline range organics C₆ - C₁₀], by either EPA 8015 or EPA 8260;

(B) total petroleum hydrocarbons, ~~[extractable TPH as diesel range organics C₁₀ - C₂₈]~~ [extractable TPH as diesel range organics C₁₀ - C₂₈], by EPA 8015;

NOTICES OF PROPOSED RULES

(C) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and

(D) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by either EPA 8021 or EPA 8260.

(vii) potential vapor intrusion from petroleum product types shall be analyzed for appropriate constituents as determined by the director.

(c) ~~all~~ original laboratory sample results must be returned to the certified ~~groundwater and soil~~ sampler or certified ~~UST~~ PST consultant to verify ~~all~~ chain of custody protocols, including holding times and analytical procedures, were properly followed.

(d) environmental media samples must be collected and transported under chain of custody according to EPA methods as approved by the director.

(e) reporting limits used by laboratories analyzing environmental media samples taken under this rule shall be below Initial Screening Levels for the contaminated media under study.

(i) environmental media samples shall be analyzed with the least possible dilution to ensure reporting limits are below Initial Screening Levels to the extent possible.

(ii) if more than one determinative analysis is performed on any given environmental media sample, the final dilution factor used and the reporting limit must be reported by the laboratory.

(A) as an alternative to diluting environmental media samples, the laboratory shall use appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference.

(iii) any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

KEY: petroleum, underground storage tanks

Date of Last Change: ~~2022~~ September 13, 2021

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-413

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R311-206	Filing ID 54603
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Agency Information

1. Department:	Environmental Quality
Agency:	Environmental Response and Remediation
Building:	Multi Agency State Office Building
Street address:	195 N 1950 W
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 144840
City, state and zip:	Salt Lake City, UT 84114-4840

Contact person(s):

Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov

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

General Information

2. Rule or section catchline:

R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms

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

S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the Division of Environmental Response and Remediation (DERR) to begin regulation of aboveground petroleum storage tanks (APSTs). Requirements were added to the Underground Storage Tank Act for APSTs to have a certificate of compliance and financial assurance (FA) mechanism per Subsection 19-6-407(2).

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 changes add the requirement for owners or operators of APSTs to declare a form of FA to obtain a Certificate of Compliance; add further requirements to this rule for APSTs that choose to participate in the Environmental Assurance Program (EAP) which includes a phase-in for certain requirements by 07/01/2026; defines eligible exempt aboveground storage tanks (ASTs) participation in the EAP; adds requirements for delivery prohibition for APSTs; and simplifies language in this rule by deleting Subsection R311-206-10(2) due to changes in Subsection 19-6-428(3) which no longer required facilities to do a site check to participate in the EAP after a period of non-participation.

Fiscal Information

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

A) State budget:

In Subsection R311-206-2(1), any fiscal cost to state government was accounted for in the fiscal note attached to S.B. 40 (2021).

In Subsection R311-206-3(1)(g), this rule change is not expected to have a fiscal impact on the state government-owned APST sites because there is no requirement to hire a third party to create a site plat or as-built drawing.

In Subsection R311-206-4(6), this rule change is not expected to have a fiscal impact on the state government-owned APST sites because these sites already meet the requirements set forth in this rule.

In Subsection R311-206-5(1), this rule change is not expected to have any fiscal impact on state government revenues or expenditures because all proposed changes are just clarifications and this rule.

In Subsection R311-206-6(2), this rule change is not expected to have a fiscal impact on state government-owned facilities that have exempt USTs and ASTs because the participation of these exempt tanks is voluntary and there is no way to know how many of these facilities will wish to voluntarily participate in the EAP.

In Subsection R311-206-8(3), there is a direct fiscal cost to state-owned facilities with APSTs. The total fiscal cost is inestimable because the number of APSTs owned by the state which will require delivery prohibition by never being qualified for a Certificate of Compliance or having their Certificate of Compliance revoked or lapsed is unknown.

In Section R311-206-10, there may be a direct fiscal benefit to state-owned facilities with PSTs. PSTs owned by the state are required by statute to participate in the EAP, so any facility that loses coverage under the EAP due to lapse or revoking of their Certificate of Compliance may not be required to complete a site check to reapply. Historically, very few of state-owned facilities have had their Certificate of Compliance lapsed or revoked so the benefit will be very little.

In Subsection R311-206-11(8) according to statute (Subsection 19-6-10.5(5)(e)(iv)), this rule change will not have an immediate fiscal impact on the state government-owned facilities because the Environmental Assurance Fee rebate does not apply to APSTs until 07/01/2026.

B) Local governments:

In Subsection R311-206-2(1), any fiscal cost to local governments was accounted for in the fiscal note attached to S.B. 40 (2021).

In Subsection R311-206-4(6), this rule change is expected to have a fiscal cost on the approximately 160 local government-owned facilities with APSTs that choose to participate in the EAP. The fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

In Subsection R311-206-5(1), this rule change is not expected to have any fiscal impact on local governments'

revenues or expenditures because all proposed changes are just clarifications and this rule.

In Subsection R311-206-6(2), this rule change is not expected to have a fiscal impact on local government-owned facilities that have exempt USTs and ASTs because the participation of these exempt tanks is voluntary and there is no way to know how many of these facilities will choose to voluntarily participate in the environmental assurance program.

In Subsection R311-206-8(3), there is a direct fiscal cost to local government-owned facilities with APSTs. The total fiscal cost is inestimable because the number of APSTs owned by local governments which will require delivery prohibition by never being qualified for a Certificate of Compliance or having their Certificate of Compliance revoked or lapsed is unknown.

In Section R311-206-10, there may be a direct fiscal benefit to local government-owned facilities with PSTs but the number of facilities that choose to participate in the EAP after a period of non-participation, due to a change from an alternate form of financial assurance, or due to lapsing or revoking of their Certificate of Compliance, is inestimable.

In Subsection R311-206-11(8) according to statute (Subsection 19-6-10.5(5)(e)(iv)), this rule change will not have an immediate fiscal impact on the local government-owned facilities because the Environmental Assurance Fee rebate does not apply to APSTs until 07/01/2026.

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

In Subsection R311-206-2(1), any fiscal cost to small businesses was accounted for in the fiscal note attached to S.B. 40 (2021).

In Subsection R311-206-4(6), this rule change is expected to have a fiscal cost on the approximately 160 small business-owned facilities with APSTs that choose to participate in the EAP. The fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

In Subsection R311-206-5(1), this rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because all proposed changes are just clarifications and this rule.

In Subsection R311-206-6(2), this rule change is not expected to have a fiscal impact on small business-owned facilities that have exempt USTs and ASTs because the participation of these exempt tanks is voluntary and there is no way to know how many of these facilities will choose to voluntarily participate in the environmental assurance program.

In Subsection R311-206-8(3), there is a direct fiscal cost to small business-owned facilities with APSTs. The total fiscal cost is inestimable because the number of APSTs owned by small businesses which will require delivery prohibition by never being qualified for a Certificate of Compliance or having their Certificate of Compliance revoked or lapsed is unknown.

In Section R311-206-10, there may be a direct fiscal benefit to small business-owned facilities with PSTs but the number of facilities that choose to participate in the EAP after a period of non-participation, due to a change from an alternate form of financial assurance, or due to lapsing or revoking of their Certificate of Compliance, is inestimable.

In Subsection R311-206-11(8) according to statute (Subsection 19-6-10.5(5)(e)(iv)), this rule change will not have an immediate fiscal impact on small business-owned facilities because the Environmental Assurance Fee rebate does not apply to APSTs until 07/01/2026.

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

In Subsection R311-206-2(1), any fiscal cost to non-small businesses was accounted for in the fiscal note attached to S.B. 40 (2021).

In Subsection R311-206-4(6), this rule change is expected to have a fiscal cost on the approximately 160 non-small business-owned facilities with APSTs that choose to participate in the EAP. The fiscal cost is inestimable due to variation in type of APST facilities which may require upgrades to meet these standards which are already required to meet International Fire Code as adopted pursuant to Utah State Fire Code Section 15A-5-103.

In Subsection R311-206-5(1), this rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because all proposed changes are just clarifications and this rule.

In Subsection R311-206-6(2), this rule change is not expected to have a fiscal impact on non-small business owned facilities that have exempt USTs and ASTs because the participation of these exempt tanks is voluntary and there is no way to know how many of these facilities will choose to voluntarily participate in the environmental assurance program.

In Subsection R311-206-8(3), there is a direct fiscal cost to non-small business-owned facilities with APSTs. The total fiscal cost is inestimable because the number of APSTs owned by non-small businesses which will require delivery prohibition by never being qualified for a Certificate of Compliance or having their Certificate of Compliance revoked or lapsed is unknown.

In Section R311-206-10, there may be a direct fiscal benefit to non-small business-owned facilities with PSTs but the number of facilities that choose to participate in the

EAP after a period of non-participation, due to a change from an alternate form of financial assurance, or due to lapsing or revoking of their Certificate of Compliance, is inestimable.

In Subsection R311-206-11(8) according to statute (Subsection 19-6-10.5(5)(e)(iv)), this rule change will not have an immediate fiscal impact on the non-small business-owned facilities because the Environmental Assurance Fee rebate does not apply to APSTs until 07/01/2026.

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 rule changes are not expected to have any fiscal impact on other persons because the rule changes will not apply to these entities.

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

New for APSTs:

APSTs using alternate form of FA Subsection R311-206-3(1)(f): \$420 initial \$240 annual policy review for all facilities of a single owner.

APSTs using EAP as form of FA: \$150/tank throughput >70,000 gals \$450/tank no throughput reported or <70,000 gals.

APSTs using EAP as form of FA: Add Spill Bucket (if required) \$5 to \$5,000/PST.

APSTs using EAP as form of FA: Add Overfill (if required) \$1,500/PST.

APSTs using EAP as form of FA: Add Automatic Line Leak Detector (if required) \$1,500/PST.

APSTs using EAP as form of FA: Add Cathodic Protection (if required) \$15,000/PST.

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

This rule will likely have a cost for businesses who choose to use EAP as their form of financial assurance. Meeting certain standards to participate in the EAP prevents releases and minimizes impact on the petroleum storage tank fund. Kim Shelley, Executive Director

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

Regulatory Impact Table

Fiscal Cost	FY2022	FY2023	FY2024
State	\$0	\$0	\$0
Government			

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 19-6-105	Section 19-6-402	Section 19-6-428
Section 19-6-410.5		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2022
B) A public hearing (optional) will be held:	

On:	At:	At:
06/15/2022	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015

10. This rule change MAY become effective on:	09/29/2022
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:	Brent Everett, Director	Date:	05/15/2022
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R311. Environmental Quality, Environmental Response and Remediation.**R311-206. ~~[Underground]~~Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.****R311-206-1. Definitions.**

Definitions are found in Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(1) To demonstrate financial assurance, as required by [40 CFR 280, subpart H]Section 19-6-412 and Subsection 19-6-407(2)(c), owners or operators of petroleum storage tanks must:

(a) ~~declare they will participate in the EAP and meet [all]the requirements for participation in the [Environmental Assurance Program]~~EAP under Sections 19-6-410.5, 19-6-428 and R311-206-4; or

(b) demonstrate financial assurance by an allowable method specified in [40 CFR 280, subpart H]Section R311-206-5.

~~[(2) Owners or operators must declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.]~~

~~[(3)]~~(2) For the purposes of Subsection 19-6-412(6), [all] tanks at a facility must be covered by the same financial assurance mechanism, and must be considered to be in one area, unless the director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(1) The director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(a) the owner or operator has a certificate of registration;

(b) ~~[the tank is substantially in compliance with all state and federal statutes, rules and regulations]~~the owner or operator must certify that the PST is in substantial compliance with state and federal statutes, rules, and regulations applicable to PST systems;

(i) APSTs using the EAP for financial responsibility, the owner or operator may meet the requirements outlined in Subsection R311-206-4(6).

(c) the [UST] tank tightness test, as required by Section 19-6-413 conducted within six months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual [UST] PST is not leaking;

(d) the owner or operator has submitted a letter to the director stating that based on customary business inventory practices there has been no release from the tank;

(e) the owner or operator has submitted a completed application according to a form provided and approved by the director, and [has declared] demonstrated the financial assurance mechanism that will be used;

(f) the owner or operator has met [all] the requirements for the financial assurance mechanism chosen, including payment of [all] applicable fees;

(g) the owner or operator has submitted an as-built drawing, for newly-installed systems, that meets the requirements of Subsection R311-200-1(2)(b) or a site plat, for existing systems, that meets the requirements of Subsection R311-200-1(2)(rr); and

(h) the owner or operator has, for newly-installed tanks, submitted the completed tank manufacturer's installation checklist.

R311-206-4. Requirements for Environmental Assurance Program Participants.

(1) In accordance with Subsection 19-6-411(1)(a), the annual facility throughput rate, if reported, shall be reported to the director as a specific number of gallons, based on the throughput for the previous calendar year.

(2) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the director, any petroleum storage tank fee for that tank for the current fiscal year is due when the tank is brought into use, as a requirement for receiving a certificate of compliance.

(3) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(4) Auditing of [UST] PST facility throughput records.

(a) owners and operators must retain for seven years the monthly tank throughput records of the facility.

(b) tank throughput records shall include [all] financial and product documentation for receipts, deliveries, transfers, and inventories.

(c) the director may audit or commission an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(i) records must be made available at the [D] department for inspection within 30 calendar days after receiving notice from the director.

(ii) audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(iii) auditing tank throughput may be accomplished by any method approved by the director.

(iv) [all] costs of an independent audit shall be paid by the owner or operator.

(5) Owners or operators eligible for participation in the ~~[Environmental Assurance Program]~~ EAP must demonstrate financial assurance for the difference between coverage provided by the

~~[Environmental Assurance Program]~~ EAP and coverage amounts required by 40 CFR 280 Subpart H.

(a) if the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, they must document a tangible net worth of \$10,000 upon request and to the satisfaction of the director.

(i) the director may require the owner or operator to submit an independent audit to demonstrate new worth for self-insurance.

(A) the owner or operator will bear the expense for the audit.

(B) the criteria for an audit are the same as set forth in Subsection R311-206-4(4)(b).

(b) an owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference.

(c) the processing fee requirement referenced in Subsection R311-206-5(2) is not applicable because the administrative cost is covered by the ~~[Environmental Assurance Program]~~ EAP fee.

(6) For a facility with an APST using the EAP for financial responsibility, the director shall issue a certificate of compliance to an owner or operator for individual APSTs, if:

(a) before July 1, 2026, the owner or operator:

(i) documents compliance with spill prevention equipment requirements and submits a spill prevention equipment test; and

(ii) documents compliance with applicable leak detection and testing requirements outlined in Section R311-203-5.

(b) on or after July 1, 2026, the owner or operator:

(i) if applicable, documents compliance with cathodic protection requirements and submits a cathodic protection test, if required by Subsection R311-203-5(10)(d) indicating that the cathodic protection system is functioning properly;

(ii) documents compliance with overfill prevention requirements and submits an overfill prevention equipment inspection per Subsection R311-203-5(10)(e);

(iii) documents compliance with automatic line leak detector and submits an automatic line leak detector test, if required by Subsection R311-203-5(10)(f), indicating that each individual automatic line leak detector is functioning properly; and

(iv) documents compliance with APST secondary containment requirements as outlined in International Fire Code 2306.5 & 5704.2.10 referenced in the Utah State Fire Code pursuant to Section 15A-5-103.

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(1) Owners and operators who elect to utilize an alternate form of financial assurance must meet the minimum coverage amounts [use] using one or a combination of mechanisms [specified] as outlined in 40 CFR 280.94.

(a) owners and operators must submit to the director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(b) formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(c) if the financial assurance documentation submitted to the director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(2) The processing fee established in Subsection 19-6-408(2) for each new or changed financial assurance document

submitted for approval shall be included with the financial assurance document and shall be payable to the Department.

(a) processing fees for subsequent reviews of financial assurance documents are due on July 1 of the fiscal year for which the review is required.

(b) pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer.

(i) this provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95 through 280.102 and 280.104 through 280.107.

(ii) a showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(2).

(c) if an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the director, and an additional processing fee shall be paid in circumstances as determined by the director.

(3) Evidence of a current and approved financial assurance mechanism must be reported to the director as follows:

(a) owners and operators using the financial test of self-insurance must submit the "Letter from Chief Financial Officer" to the director within the maximum 120-day period specified in 40 CFR 280.95.

(b) owners and ~~Θ~~ operators using insurance and risk retention group coverage for financial assurance must submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the director within 30 days of acceptance of such policy by the insurer or risk retention group.

(i) if the insurance policy or risk retention group coverage is canceled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 280.97(b)(2)2.d. to the director as well as the insured.

(ii) the insurer must have a rating of A- or greater by A.M. Best Co.

(c) owners and operators using an irrevocable letter of credit must submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the director within 30 days of issuance from the issuing institution.

(d) owners and operators using a fully funded trust fund for financial assurance must submit proof of the trust fund and formal certification of acknowledgement to the director within 30 days after implementation of the trust fund.

(e) owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(i) the owner or operator must also submit the guarantor's letter from the chief financial officer within the 120-day period specified in 40 CFR 280.95.

(f) owners and operators using a surety bond for financial assurance must submit the surety bond document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(g) guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(h) owners and operators using one of the local government methods specified in 40 CFR 280.104 through 280.107 must submit the letter from the chief financial officer and associated documents to the director within 120 days of the end of the owner, operator, or guarantor's fiscal year.

(4) The director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time.

(a) information requested must be reported to the director within 30 calendar days after receiving the request.

(b) owners and operators must maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(c) owners and operators must keep records of all financial assurance mechanisms in accordance with 40 CFR 280.111 and 280.113.

(d) the director may audit or commission an audit of records supporting the financial assurance mechanism at any time.

(i) audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(ii) auditing of financial assurance methods may be accomplished by any method approved by the director.

(5) Any ~~and all~~ costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the director is the sole responsibility of the owner or operator.

(6) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the director.

R311-206-6. Voluntary Admission of Eligible ~~Exempt Underground Storage Tanks and Aboveground~~ Exempt Underground Petroleum Storage Tanks and Eligible Exempt Aboveground Storage Tanks Containing Petroleum to the Environmental Assurance Program.

(1) Owners or operators of eligible exempt USTs specified in Subsection 19-6-415(1)(a) may voluntarily participate in the ~~Environmental Assurance Program~~ EAP by:

(a) performing a site check in accordance with Rule R311-205;

(~~a~~)b) meeting the requirements of ~~Section~~ Subsections 19-6-428(3)(a), ~~and Subsections~~ 19-6-415(1) and R311-206-3(1);

(~~b~~)c) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(~~e~~)d) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(2) Owners or operators of eligible exempt aboveground storage tanks containing petroleum may voluntarily participate in the ~~Environmental Assurance Program~~ EAP by:

(a) performing a site check in accordance with Rule R311-205; and

(~~a~~)b) meeting the requirements of ~~Section 19-6-428~~ Subsections 19-6-15(2) and 19-6-428(3)(a), ~~and Subsections 19-6-415(2) and R311-206-3(1);~~ and Sections R311-206-3 and R311-206-4.

~~[(b) meeting applicable requirements of the Utah State Fire Code adopted pursuant to Section 15A-1-403;~~
~~[(c) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and~~
~~[(d) performing a tightness test of all aboveground tanks every five years, using a tightness test method capable of properly testing the tank.]~~

R311-206-7. Revocation and Lapsing of Certificates.

(1) The director shall revoke a certificate of compliance or registration if ~~he~~the director determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(2) A ~~petroleum storage tank~~PST owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(1) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Subsections 19-6-412(2), 19-6-428(3), and Section R311-206-3.

(3) A ~~petroleum storage tank~~PST owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the director after the owner or operator demonstrates compliance with ~~Subsection~~Sections 19-6-412~~(2)~~ and ~~Section~~R311-206-3.

(4) A ~~petroleum storage tank~~PST owner or operator who has had eligibility to receive payments for claims against the ~~F~~fund lapse under Subsection 19-6-411(3)(c)(ii) must:

- (a) meet the requirements of Subsection 19-6-428(3); and
- (b) pay ~~all~~fees, interest, and penalties due to reinstate eligibility.

(5) Upon permanent closure of a tank which is covered by the Petroleum Storage Tank Fund, the eligibility to make a claim against the Petroleum Storage Tank Fund will terminate as specified in Section R311-207-2.

(a) permanently closed tanks are not eligible to be reissued a certificate of compliance.

(6) In accordance with Section 19-6-414, the director may revoke a certificate of compliance for the owner's or operator's failure to comply with the following requirements as outlined in 40 CFR 280[, which requires]:

- (a) release reporting;
- (b) abatement;
- (c) investigation;
- (d) corrective action; or
- (e) other measures to bring the release site under control.

R311-206-8. Delivery Prohibition.

(1) In accordance with Subsection 19-6-411(7) and 19-6-407(2)(d)(ii), the director shall authorize the placement of a delivery prohibition tag identifying a tank:

- (a) for which the certificate of compliance has been revoked in accordance with Section 19-6-414;
- (b) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5);
- (c) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(1)(d); or
- (d) that is a new installation, and has not been issued a certificate of compliance.

(2) For USTs, [F]in accordance with Subsection 19-6-403(1)(b)(i), the director shall authorize the placement of a delivery prohibition tag to be placed on the ~~tank~~UST as soon as practicable after the determination is made that a tank does not have:

(a) spill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);

(b) overfill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);

(c) equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D; or

(d) equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(3) For APSTs, the director shall authorize the placement of a delivery prohibition tag to be placed on the APST as soon as practicable after the determination that the APST was not in service after May 5, 2021.

~~[(3)]~~4 The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

~~[(4)]~~5 A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under Subsection R311-206-8(5).

~~[(5)]~~6 The director may issue written approval for a delivery of petroleum to:

- (a) provide ballast for a new tank during installation, or
- (b) allow for the tank tightness test required under Section 19-6-413.

~~[(6)]~~7 The delivery prohibition tag must remain in place until the director issues:

(a) for tanks that have a tag in place in accordance with Subsection R311-206-8(1):

- (i) a new certificate of compliance for the tank; and
- (ii) written authorization to remove the delivery prohibition tag; or

(b) for tanks that have a tag in place in accordance with Subsection R311-206-8(2):

(i) written authorization to remove the delivery prohibition tag.

~~[(7)]~~8 If a delivery prohibition tag is removed without the authorization specified in Subsection~~[s]~~ R311-206-8(6)(a)(ii) or R311-206-8(6)(b)(i), the ~~UST~~PST owner or operator is ~~be~~subject to:

- (a) a re-inspection and any applicable fees; and
- (b) placement of a new delivery prohibition tag on the tank.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(1) Owners and operators of ~~petroleum storage tanks~~PSTs who have voluntarily elected to participate in the ~~[Environmental Assurance Program]~~EAP may cease participation in the ~~[Environmental Assurance Program]~~EAP and be exempted from the requirements described in Section R311-206-4 by:

(a) permanently closing tanks as outlined in 40 CFR 280, subpart G and Rules R311-204 and R311-205; or

(b) meeting the following requirements:

(i) demonstrating compliance with Section R311-206-5;

and

(ii) notifying the director in writing at least 30 days before the date of cessation of participation in the ~~[Environmental Assurance Program]~~EAP, and specifying the date of cessation.

(A) the director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under Section R311-206-5 for other petroleum storage tanks owned or operated by the owner or operator.

(B) the date of cessation of participation in the ~~[Environmental Assurance Program]~~EAP may occur after the date

designated in Subsection R311-206-9(1)(b)(ii) if the owner or operator does not document compliance with Section R311-206-5 by the date originally designated.

(2) profit refunds will not be given.

(3) For tanks being removed voluntarily from the ~~[Environmental Assurance Program]EAP~~, the date of cessation of participation in the ~~[Environmental Assurance Program]EAP~~ shall be the date on which coverage under the ~~[Environmental Assurance Program]EAP~~ ends.

(a) subsequent claims for payments from the Petroleum Storage Tank Fund must be made in accordance with Sections 19-6-424 and R311-207-2.

(4) For any facility that participates in the ~~[Environmental Assurance Program]EAP~~ and is sold to a company with facilities that do not participate in the ~~[Environmental Assurance Program]EAP~~, the date of termination of coverage is the closing date for the real estate transaction.

(a) the purchaser shall provide documentation of the closing date to the director within 30 days of closing.

R311-206-10. Participation in the Environmental Assurance Program After a Period of ~~Voluntary~~ Non-participation.

(1) Owners and operators ~~[who choose not to participate]~~not participating in the ~~[Environmental Assurance Program]EAP~~ must, before any subsequent participation in the ~~[Environmental Assurance Program]EAP~~, meet the following requirements:

(a) notify the director of the intent to participate in the ~~[Environmental Assurance Program]EAP~~;

(b) comply with the requirements of Subsection 19-6-428(3); and

(c) meet the requirements of ~~[Subsection]~~Section R311-206-3~~(4)~~ to qualify for a new certificate of compliance.

~~[(2) In accordance with Subsection 19-6-428(3)(b), the director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each petroleum storage tank to participate in the Environmental Assurance Program, meets the following requirements at the time the owner or operator applies for participation:~~

~~(a) the last two compliance inspections verify compliance with EPA UST Technical Compliance Rate, and verify that no release has occurred;~~

~~(b) documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:~~

~~(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;~~

~~(ii) the most recent simulated leak test for all automatic line leak detectors;~~

~~(iii) cathodic protection tests, if applicable; and~~

~~(iv) internal lining inspections, if applicable.~~

~~(c) the period of non-participation in the Environmental Assurance Program is less than six months, or the petroleum storage tank is less than ten years old.]~~

R311-206-11. Environmental Assurance Fee Rebate.

(1) To meet the requirements of Subsection 19-6-410.5(5)(d), for each UST Facility participating in the ~~[Environmental Assurance Program]EAP~~, a risk value will be calculated according to the "Environmental Assurance Program Risk

Factor Table and Calculation,"² which is ~~[hereby]~~ incorporated by reference.

(a) the table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(2) The risk value for each facility participating in the ~~[Environmental Assurance Program]EAP~~ shall be:

(a) calculated on a facility basis;

(b) valid for the calendar year;

(c) based on the facility characteristics as of December 15 of the prior calendar year; and

(d) determined, at sites with mixed equipment, by considering the highest risk-valued petroleum storage tank system component for each risk factor.

(3) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

(a) meet the requirements for secondary containment in 40 CFR 280.20; and

(b) meet one of the following:

(i) use an interstitial sensor and documentation of monthly interstitial monitoring; or

(ii) documentation of monthly visual checks of a brine-filled interstitial space.

(4) To qualify as secondarily contained for purposes of risk calculation, piping shall:

(a) meet the requirements for secondary containment outlined in 40 CFR 280.20; and

(b) meet one of the following:

(i) maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or

(ii) use an interstitial monitoring method not listed in Subsection R311-206-11(4)(b)(i).

(5) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps, and under-dispenser containment shall be double-walled with monthly documentation of monitoring of the space between the walls.

(6) Each facility that participates in the ~~[Environmental Assurance Program]EAP~~ may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table,"² dated June 2, 2014, which is ~~[hereby]~~ incorporated by reference.

(7) A facility that begins participation in the ~~[Environmental Assurance Program]EAP~~ after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the ~~[Environmental Assurance Program]EAP~~.

(8) The Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026 as per Subsections 19-6-410.5(5)(d) and 19-6-410.5(5)(e).

KEY: petroleum, underground storage tanks

Date of Last Change: 2022[September 13, 2021]

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-410.5; 19-6-428

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R311-207

Filing ID
54604

Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144840	
City, state and zip:	Salt Lake City, UT 84114-4840	
Contact person(s):		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the Division of Environmental Response and Remediation (DERR) to begin regulation of aboveground petroleum storage tanks (APSTs). This includes APST participation in the Petroleum Storage Tank Fund per Section 19-6-409.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
In Subsection R311-207-2(5), clarifies the reimbursement percentages for new and historic releases for APSTs which join the Environmental Assurance Program (EAP) without performing a site check.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
In Subsection R311-207-2(5), this rule change is expected to have potential minimal impacts on state government fleet services expenditures due to paying the fuel surcharge for participating in the EAP; however, in the long

term, expenditures by fleet services for potential release cleanup costs will be minimized by EAP participation. Because fleet services throughout and number of releases occurring per year varies, these costs are inestimable.

This rule change is expected to have minimal impacts on DERR's expenditures and revenues due to more facilities paying the fuel surcharge for participating in the EAP; however, more facilities will have release cleanup costs covered by the EAP. Because DERR cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

B) Local governments:

In Subsection R311-207-2(5), this rule change is expected to have potential minimal impact on local governments' expenditures due to paying the fuel surcharge for participating in the EAP; however, in the long term, expenditures for potential release cleanup costs will be minimized by EAP participation. Because DERR cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

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

In Subsection R311-207-2(5), this rule change is expected to have potential minimal impact on small businesses expenditures due to paying the fuel surcharge for participating in the EAP; however, in the long term, expenditures for potential release cleanup costs will be minimized by EAP participation. Because DERR cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

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

In Subsection R311-207-2(5), this rule change is expected to have potential minimal impact on non-small businesses expenditures due to paying the fuel surcharge for participating in the EAP; however, in the long term, expenditures for potential release cleanup costs will be minimized by EAP participation. Because DERR cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

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

In Subsection R311-207-2(5), this rule change is expected to have potential minimal impact on other persons expenditures due to paying the fuel surcharge for participating in the EAP; however, in the long term, expenditures for potential release cleanup costs will be minimized by EAP participation. Because DERR cannot know how many facilities will opt to use the EAP for financial responsibility, the number of releases occurring per year varies, and cleanup costs are site specific, these costs are inestimable.

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

Because DERR cannot know how many facilities will opt to use the EAP for financial responsibility these costs are inestimable as a total, but for facilities using the EAP for financial responsibility:

\$0.0065 per gallon surcharge

\$10,000 deductible for eligible releases

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):

Minimal impacts on businesses are expected by this rule.
Kim Shelley, Executive Director

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

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 Shelly, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-6-105	Section 19-6-419	Section 19-6-409
Section 19-6-403		

Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

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

On:	At:	At:
06/15/2022	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015

10. This rule change MAY become effective on: 09/29/2022

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:	Brent Everett, Director	Date:	05/15/2022
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R311. Environmental Quality, Environmental Response and Remediation.

R311-207. Accessing the Petroleum Storage Tank ~~[Trust]~~Fund for Leaking Petroleum Storage Tanks.

R311-207-1. Definitions.

Definitions are found in ~~[Section]~~Rule R311-200.

R311-207-2. Notification of Intent and Eligibility to Claim Against the Petroleum Storage Tank ~~[Trust]~~Fund.

(1) Any responsible party who is making any claim against the Petroleum Storage Tank ~~[Trust]~~Fund must:

(a) have previously satisfied the requirements of Subsection R311-206-3(1);

(b) have a valid certificate of compliance at the time of product release by the covered ~~[UST]~~PST; and

(c) meet the requirements of Section 19-6-424.

(2) Except as provided in Subsection R311-207-2(3), a responsible party eligible to receive payments in accordance with Section 19-6-419 must submit to the director a written eligibility application to make a claim against the Fund:

(a) during a period for which that tank was covered by the Fund;

(b) within one year after that Fund-covered tank is closed;

(c) within six months after the end of the period during which the tank was covered by the Fund; or

(d) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.

(3) For eligible releases that are discovered and reported to the director after July 1, 1994, the responsible party ~~[is required to]~~shall ~~[expend]~~spend the first \$10,000 in eligible costs as determined by the director.

(4) For eligible releases that are discovered ~~[prior to]~~before July 1, 1994, the responsible party ~~[is required to]~~shall ~~[expend]~~spend the first \$25,000 in eligible costs as determined by the director.

(5) Owners and operators of facilities who participate in the EAP after July 1, 2021 without performing a site check:

(a) for new releases, the responsible party shall spend the first \$10,000 in eligible costs as determined by the director and will be covered at 100%.

(b) for historic contamination, the responsible party shall spend the first \$10,000 in eligible costs as determined by the director and will have release coverage percentages as set forth in Subsection 19-6-428(3).

~~[(5)]~~(6) A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in Subsection R311-207-2(2), shall constitute a claim against the Fund in accordance with Section 19-6-424.

~~[(6)]~~(7) The responsible party's share of eligible costs remains the same, regardless of the number of responsible parties who are associated with a release and covered by the Fund.

(a) only one responsible party can claim against the ~~[F]~~Fund per release in accordance with Section 19-6-419.

~~[(7)]~~(8) When a facility has an open release and a subsequent Fund eligible release occurs at that facility, the Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable under Section 19-6-419.

(a) additional Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release.

(b) the director shall determine the allowable coverage for a subsequent release.

~~[(8)]~~(9) The maximum coverage allowed in Section 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.

~~[(9)]~~(10) When the director has made a determination that the clean up standards established for the site pursuant to Section R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status.

R311-207-3. Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank ~~[Trust]~~Fund.

(1) Upon making a claim for coverage under the Petroleum Storage Tank ~~[Trust]~~Fund, and after receiving notice from the director of eligibility to claim against the Fund, the responsible party shall meet compliance time tables issued by the director.

(2) For allowable costs to be covered by the Fund, the director must approve ~~[all]~~work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6).

(a) work plans must include a budget for the work.

(i) budgets must be in compliance with Subsection~~[s]~~ R311-207-4(8).

(ii) budgets must include proposed costs in an itemized format as described in Subsections R311-207-4(1) through R311-207-4(5).

(3) ~~[Prior to]~~Before performing work eligible for reimbursement by the Fund, the consultant must have a Statement of Qualification approved by the director.

(a) the initial Statement of Qualification submittal shall include information about the qualifications of ~~[all]~~certified ~~[UST]~~PST consultants and other persons who will be performing investigation or corrective action activities in accordance with the work plans.

(b) the Statement of Qualification shall include at least three letters of reference from entities that have retained the services of the consultant, and shall document that:

(i) the consultant and other key personnel are of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;

(ii) the consultant and other key personnel have completed applicable Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law; and

(iii) the consultant carries the following insurance:

(A) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of \$1,000,000 minimum per occurrence, \$2,000,000 minimum general aggregate, and \$2,000,000 minimum products or completed operations aggregate;

(B) Comprehensive Automobile Liability Insurance, with limits of \$1,000,000 minimum and \$2,000,000 aggregate; and

(C) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.

(c) the Statement of Qualification must be updated annually in January, and shall be approved by the director for a period of one year.

(i) the update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3(3)(a) and R311-207-3(3)(b).

(4) Work plans must include the ~~[Petroleum Storage Tank Trust]~~ Fund Work Plan Approval Application and Agreement form documenting the claimant's contract with any proposed consultant or other person performing remedial action.

(a) information provided on that form shall demonstrate that the claimant's contract has met the following requirements:

(i) the contract shall be with the consultant and specify the certified ~~[UST]~~ PST consultant and other key personnel for which qualifications are submitted under Subsection R311-207-3(3);

(ii) the contract shall require a 100% payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

(iii) the consultant shall have no cause of action against the state for payment;

(iv) the contract will specify a subcontracting method consistent with the requirements of Rule R311-207;

(v) the contract shall require, and include documentation that the consultant carries, the insurance specified in Subsection R311-207-3(3)(b)(iii);

(vi) payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

(vii) the contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and

(viii) any other requirements specified by the director.

(5) Work plans shall address any additional requirements outlined in 40 CFR 280, Subparts E and F.

(6) The director may waive specific requirements of Rule R311-207 if ~~[he]~~ the director determines there is good cause for a waiver, and that public health and the environment will be protected.

(a) the director may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the Fund will be affected.

(7) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the director shall review and approve or disapprove work plans and the corrective action plan and ~~[all]~~ associated budgets.

(8) A request for time and material reimbursement from the Fund must be received by the director within one year from the date the included work was performed or reimbursement shall be denied.

(a) if there are any deficiencies in the request, the claimant has 90 days from the date of notification of the deficiency to correct the deficiency or the amount of the deficient item~~(s)~~ shall not be reimbursed.

(b) if a release was initially denied eligibility and is subsequently found to be eligible:

(i) work conducted ~~[prior to]~~ before the determination of eligibility is not subject to the one-year requirement; and

(ii) ~~[all]~~ work conducted after the determination of eligibility is subject to the one-year requirement.

(9) The request for final reimbursement from the Fund must be received by the director within one year from the date of the "No Further Action" letter issued by the director or reimbursement shall be denied.

(a) if a release is re-opened as provided for in the "No Further Action" letter, payments from the Fund may be resumed when approved by the director.

(10) For costs incurred by a consultant hired by a third party pursuant to Subsection 19-6-409(2)(e):

(a) the director must approve ~~[all]~~ work plans and associated budgets before the consultant initiates any work~~(s)~~; and

(b) the contract with the consultant shall comply with Subsection~~s~~ R311-207-3(4).

R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank ~~[Trust]~~ Fund.

(1) ~~[In order to]~~ To receive payment from the Petroleum Storage Tank ~~[Trust]~~ Fund, a claimant must submit a request for reimbursement to the director.

(2) The request for reimbursement must be on the form provided by the director.

(a) the form must be properly completed and signed by the claimant and include invoices and other appropriate documentation.

(3) Reimbursement will be on a time and material basis as approved in advance by the director.

(4) ~~[All]~~ Costs for time and material reimbursement must be itemized at a minimum to show the following:

(a) amounts allocated to each approved work plan budget;

(b) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;

(c) sampling, reporting, and laboratory analysis costs;

(d) equipment rental and materials;

(e) utilities;

(f) other direct costs; and

(g) other items as determined by the director.

(5) ~~[All]~~ Itemized expenses must ~~[indicate]~~ state the full name and address of the company or contractor providing materials or performing services.

(6) ~~[All]~~ Expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the director, with a copy of the original bill provided to the director by the claimant.

(a) the claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Section R311-207-5 and Subsection~~s~~ R311-207-4(8).

(7) For time and material reimbursement, before receiving payment under Section 19-6-419, the claimant must provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the director, unless the director has agreed to other arrangements.

(a) the responsible party remains primarily liable, however, for ~~[all]~~ costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

(8) For time and material reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by a consultant or contractor must include one or more of the following items:

(a) a minimum of three competitive bids by responsive bidders. For a bid to be competitive:

(i) two of the bids must be from bidders who are not related parties;

(ii) bids must be submitted on the appropriate standardized Bid Summary form in accordance with the "Cost Guidelines for Underground Storage Tank Sites" document dated June 3, 2021, herein which is incorporated by reference;

NOTICES OF PROPOSED RULES

(iii) the bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition; and

(iv) the bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(b) sole source justification; or

(c) other documentation as required or requested by the director to document expenses are reasonable, customary, and legitimate.

(9) In accordance with Section 19-6-420, the director may not authorize payment from the Fund for services provided by consultants, contractors, or subcontractors which are not in compliance with the requirements of Rule R311-207 or any other applicable federal, state, or local law.

(10) Any third party claims brought against the responsible party or any occurrence likely to result in third party claims against the responsible party as a result of the release must be immediately reported to the State Risk Manager and to the director.

R311-207-5. Customary, Reasonable and Legitimate Expenses.

(1) Costs claimed by the claimant in accordance with Subsection 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the director.

(2) The director may determine the amount of Fund monies that will be reimbursed to a claimant for items ~~such as~~ including, but not limited to, labor, equipment, services, and tasks established according to ~~the provisions of~~ Section R311-207-7, the Cost Guidelines document, or such other methods that are applicable to the item or task.

(3) As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate:

(a) performing abatement;

(b) investigation;

(c) site assessment;

(d) monitoring;

(e) corrective action activities;

(f) providing alternative drinking water supplies; and

(g) settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(4) If a claim that does not comply with the requirements of Rule R311-207 or the Cost Guidelines is returned by the director to a claimant or consultant for correction, the claimant or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.

(5) The Fund may reimburse a responsible party or other eligible claimant for the use or purchase of the consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the director.

(a) the rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates and the materials at cost to the consultant. Material costs shall include:

(i) adjustments for ~~all~~ available discounts;

(ii) refunds;

(iii) rebates;

(iv) allowances which the consultant reasonably should take under the circumstances; and

(v) credits for proceeds the consultant received or should have received from salvage and material returned to suppliers.

(b) in no event shall the price paid by the Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source.

(c) the consultant's claimed direct labor hours for manufacturing and costs shall be documented through time sheets, original invoices, or other documents acceptable to the director.

(d) no reimbursement will be made for labor hours and costs associated with development, patenting, or marketing.

(6) The director may audit or commission an audit of records supporting request for reimbursement or payment at any time.

(a) audits may be determined by random selection or for specific reasons, including the suspicion or discovery of inaccuracies, or deficiencies in complying with regulations.

R311-207-6. Subrogation.

(1) When the state makes a payment from the Petroleum Storage Tank ~~Trust~~ Fund, the state has the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible.

(a) the claimant who receives payment from the Fund must execute and deliver ~~all~~ the necessary documents and cooperate as necessary to preserve the state's rights and do nothing to prejudice them.

R311-207-7. Consultant Personnel Classifications, Requirements, Rates, Tasks, and Responsibilities.

(1) Consultants must assign to one of the categories identified in the Cost Guidelines, any service time for an individual that is billed to a claimant or directly to the Fund and for which reimbursement is claimed.

(a) by submitting a claim for reimbursement for a labor category, the consultant warrants that the person so claimed meets the described education, skills, and experience.

(2) Materials, equipment, and services will be reimbursed in accordance with the Cost Guidelines.

(3) Costs not identified in the Cost Guidelines must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the director.

R311-207-8. Third Party Claims Apportionment.

(1) To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419(7)(a), the director may utilize budget projections to allocate coverage available for the payment of third party claims ~~prior to~~ before a determination that corrective action has been properly performed and completed.

(a) the director may amend budget projections as frequently as deemed appropriate.

(2) Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the State Risk Manager has approved the settlement.

(3) Apportionment and priority shall be based on the order in which an approved and agreed upon claim is received by the director.

R311-207-9. Consultants Hired by Third Parties.

(1) A certified ~~UST~~ PST consultant hired by a third party under Subsection 19-6-409(2)(e) must:

(a) have an approved Petroleum Storage Tank [~~Trust~~] Fund Statement of Qualification in accordance with Subsection R311-207-3(3); and

(b) charge labor rates in accordance with Section R311-207-7.

(2) To ensure compliance with Subsection 19-6-409(4)(a)(ii), one consultant shall be designated by all known third parties claiming injury or damage from a release.

(a) the designation shall be made in writing to the director.

(3) For the claimant to be eligible to receive payments from the Fund under Subsection 19-6-409(2)(c):

(a) ~~all~~ work plans and budgets must be pre-approved by the director in accordance with Subsection R311-207-3(10);

(b) the consultant must comply with Sections R311-207-4 and R311-207-5; and

(c) requests for reimbursement from the Fund shall be made in accordance with Subsections R311-207-3(8) and R311-207-3(9).

KEY: financial responsibility, petroleum, underground storage tanks

Date of Last Change: 2022~~[September 13, 2021]~~

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-409; 19-6-419

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R311-208	Filing ID 54605
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Agency Information

1. Department:	Environmental Quality		
Agency:	Environmental Remediation	Response	and
Building:	Multi Agency State Office Building		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144840		
City, state and zip:	Salt Lake City, UT 84114-4840		
Contact person(s):			
Name:	Phone:	Email:	
David Wilson	385-251-0893	djwilson@utah.gov	
Therron Blatter	801-554-6762	tblatter@utah.gov	

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

General Information

2. Rule or section catchline:

R311-208. Underground Storage Tank Penalty Guidance

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

S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the Division of Environmental Response and Remediation (DERR) to begin regulation of aboveground petroleum storage tanks (APSTs).

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 title of Rule R311-208 to Petroleum Storage Tank Penalty Guidance; and changes the title of Section R311-208-2 to Petroleum Storage Tank Penalty Criteria.

Fiscal Information

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

A) State budget:

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because it is a clarification that this rule now applies to Petroleum Storage Tanks (PSTs). The definition of a PST was recently added to Section 19-6-402.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because it is a clarification that this rule now applies to PSTs. The definition of a PST was recently added to Section 19-6-402.

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

This rule change is expected to have minimal fiscal impact on small businesses' revenues or expenditures because it is a clarification that this rule now applies to PSTs. The definition of a PST was recently added to Section 19-6-402.

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

This rule change is expected to have minimal fiscal impact on non-small businesses' revenues or expenditures because it is a clarification that this rule now applies to PSTs. The definition of a PST was recently added to Section 19-6-402.

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 rule changes are not expected to have any fiscal impact on other persons because the rule changes will not apply to these entities.

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

No compliance costs are anticipated to affected parties because proposed changes are just clarifications of what is in the recently enacted Underground Storage Tank Act (Section 19-6-401).

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

No fiscal impacts on businesses are expected by this rule.
Kim Shelley, Executive Director

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

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 Shelly, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-6-105	Title 19, Chapter 6	
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

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

On:	At:	At:
06/15/2022	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015

10. This rule change MAY become effective on: 09/29/2022

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:	Brent Everett, Director	Date:	05/15/2022
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R311. Environmental Quality, Environmental Response and Remediation.

R311-208. ~~Underground~~Petroleum Storage Tank Penalty Guidance.

R311-208-1. Definitions.

Definitions are found in Rule R311-200.

R311-208-2. ~~Underground~~Petroleum Storage Tank Penalty Criteria.

(1) This guidance provides criteria to the director in implementing appropriate penalties under Sections 19-6-407, 19-6-408, 19-6-416, 19-6-416.5, 19-6-425, and any other ~~[S]~~sections authorizing the director to seek penalties.

(2) The procedures in Rule R311-208 are intended solely for the guidance of the director and are not intended, and cannot be relied upon, to create a cause of action against the ~~[S]~~state.

(3) This guidance and ensuing criteria are intended to be flexible and liberally construed to achieve a fair, just, and equitable result.

R311-208-3. Satisfaction of Penalty Under Stipulated Penalty Agreement.

(1) The director may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Subsection 19-1-102(3):

(a) payment of the penalty may be extended based on a person's inability to pay;

(i) this should be distinguished from a person's unwillingness to pay.

(ii) in cases of financial hardship, the director may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(b) without regard to financial hardship, the director may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the director; or

(c) in some cases, the director may allow the violator to satisfy the stipulated penalty by completing an environmentally beneficial mitigation project approved by the director. The following criteria shall be used in determining the eligibility of such projects:

(i) the project must be in addition to ~~[all]~~regulatory compliance obligations;

(ii) the project preferably should closely address the environmental effects of the violation;

(iii) the actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

(iv) the project must primarily benefit the environment rather than benefit the violator;

(v) the project must be judicially enforceable; and

(vi) the project must not generate positive public perception for violations of the law.

R311-208-4. Factors for Imposition of Section 19-6-416 Penalties.

(1) Where the director determines a penalty is appropriate under Section 19-6-416, the penalty shall not be more than \$500 per occurrence. Factors that mitigate against a higher penalty are:

(a) a facility's certificate of compliance recently lapsed and product has been delivered; or

(b) a facility is in compliance and replaces their tank and received one delivery of fuel without a certificate of compliance or authorization from the department, or a new facility or new tanks receive an initial delivery of fuel without a certificate of compliance or authorization from the director.

(2) The director may assess a penalty against each violator involved in an illegal delivery occurrence.

(a) if a violator is operating as a deliverer and an owner or operator, the violator may be assessed a penalty in each capacity.

R311-208-5. Factors for Seeking or Negotiating Amount of Section 19-6-425 Penalties.

(1) Under Section 19-6-425, the court establishes penalty amounts rather than the director.

(a) nonetheless, the director may enter a stipulated penalty agreement with the violator.

(2) The director shall consider the following factors when negotiating or calculating a penalty to promote a ~~[more swift]~~swifter resolution of environmental problems and promote compliance:

(a) economic benefit. The costs to an owner or operator delayed or avoided by not complying with applicable laws or rules.

(b) gravity of the violation. The extent of deviation from the rules and the potential for harm to health and the environment, regardless of the extent of the harm that actually occurred. This factor may be adjusted upward or downward depending on:

(i) degree of cooperation or noncooperation and good faith efforts to comply, ~~[taking into account]~~considering the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the state;

(ii) willfulness or negligence of the violation;

(iii) history of compliance or noncompliance; and

(iv) other unique factors including how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

(c) environmental sensitivity. The actual impact of the violation~~[f]s[.]~~ that occurred.

(d) number of days of noncompliance.

(e) response and investigation costs incurred by the ~~[S]~~state and others.

(f) the possible deterrent effect of a penalty to prevent future violations.

(3) ~~[All e]~~Cases involving major violations with actual or high-potential for harming public health or the environment, and ~~[all]~~cases involving a history of repeat violations by the same violator will require a penalty as a part of any settlement, unless good cause is shown for not seeking a penalty.

(4) Where the director determines that a penalty is appropriate under Section 19-6-425, the director may negotiate the penalty based on the following categories and ranges:

(a) Major Violations: \$5,000 to \$10,000 per violation.

(i) this category includes major deviations from the requirements of the rules or act, violations that cause or may cause substantial or continuing risk to human health and the environment, or violations that may have a substantial adverse effect on the regulatory program.

(b) Moderate Violations: \$2,000 to \$7,000 per violation.

(i) this category includes moderate deviations from the requirements of the rules or act but some requirements have been implemented as intended, violations that cause or may cause a significant risk to human health and the environment, or violations that may have a significant notable adverse effect on the regulatory program.

(c) Minor Violations: Up to \$3,000 per violation.

(i) this category includes slight deviations from the rules or act but most of the requirements are met, violations that cause or may cause a relatively low risk to human health and the environment, or violations that may have a minor adverse effect on the regulatory program.

NOTICES OF PROPOSED RULES

(5) The director may consult "EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12) as supplemental guidance to Section [to] R311-208-5.

KEY: penalties, petroleum, underground storage tanks

Date of Last Change: ~~2022~~ September 13, 2021

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R311-211	Filing ID 54606
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Agency Information

1. Department:	Environmental Quality	
Agency:	Environmental Response and Remediation	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144840	
City, state and zip:	Salt Lake City, UT 84114-4840	
Contact person(s):		
Name:	Phone:	Email:
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R311- 211. Corrective Action Cleanup Standards Policy - UST and CERCLA Sites
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the Division of Environmental Response and Remediation (DERR) to begin regulation of aboveground petroleum storage tanks (APSTs).
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 title of Rule R311-211 to Corrective Action Cleanup Standards Policy -- PST and CERCLA Sites; changes underground storage tanks (USTs) to petroleum storage tanks (PSTs) where necessary to reflect enacted changes to the Underground Storage Tank Act (Section 19-6-401); and updates punctuation, capitalization, structure, and word selection to better reflect the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

This rule change is expected to have minimal fiscal impact on state government revenues or expenditures because departments which own or operate newly regulated APSTs would have previously had cleanup oversight by the Division of Water Quality (DWQ) which uses DERR standards when directing cleanup.

B) Local governments:

This rule change is expected to have minimal fiscal impact on local governments' revenues or expenditures because those which own or operate newly regulated APSTs would have previously had cleanup oversight by DWQ which uses DERR standards when directing cleanup.

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

This rule change is expected to have minimal fiscal impact on small businesses' revenues or expenditures because those which own or operate newly regulated APSTs would have previously had cleanup oversight by DWQ which uses DERR standards when directing cleanup.

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

This rule change is expected to have minimal fiscal impacts on non-small businesses' revenues or expenditures because those which own or operate newly regulated APSTs would have previously had cleanup oversight by DWQ which uses DERR standards when directing cleanup.

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 expected to have minimal fiscal impact on other persons because those who own or operate newly regulated APSTs would have previously had cleanup oversight by DWQ which uses DERR standards when directing cleanup.

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

These costs are site specific, and due to the diverse nature of PST release sites, are inestimable.

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

Minimal impacts on businesses are expected by this rule.
Kim Shelley, Executive Director

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

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 Shelly, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-6-105 Section 19-6-106 Section 19-6-403

Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

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

On:	At:	At:
06/15/2022	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015

10. This rule change MAY become effective on: 09/29/2022

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:	Brent Everett, Director	Date:	05/15/2022
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R311. Environmental Quality, Environmental Response and Remediation.

R311-211. Corrective Action Cleanup Standards Policy - [UST]PST and CERCLA Sites.

R311-211-1. Definitions.

Definitions are found in [Section]Rule R311-200.

R311-211-2. Source Elimination.

The initial step in [all]corrective actions implemented at [UST]PST and CERCLA sites is to take appropriate action to eliminate the source of contamination either through removal or appropriate source control.

R311-211-3. Cleanup Standards Evaluation Criteria.

[Subsequent to]After source elimination, cleanup standards for remaining contamination which may include numerical, technology-based, or risk-based standards or any combination of those standards, shall be determined on a case-by-case basis, taking into consideration the following criteria:

(1) The impact or potential impact of the contamination on the public health;

- (2) The impact or potential impact of the contamination on the environment;
- (3) Economic considerations and cost effectiveness of cleanup options; and
- (4) The technology available for use in cleanup.

R311-211-4. Prevention of Further Degradation.

In determining background concentrations, cleanup standards, and significance levels, levels of contamination in ground[]water, surface water, soils or air will not be allowed to degrade beyond the existing contamination levels determined through appropriate monitoring or the use of other data accepted by the [B]board or the [D]director as representative.

R311-211-5. Cleanup Standards.

(1) The following shall be the minimum standards to be met for any cleanup of regulated substances, hazardous material, and hazardous substances at a [UST]PST or CERCLA facility in Utah:

- (a) for water-related corrective action, the Maximum Contaminant Limits (MCLs) established under the federal Safe Drinking Water Act or other applicable water classifications and standards;[~~and~~]
- (b) for air-related corrective action, the appropriate air quality standards established under the Federal Clean Air Act[~~;~~ and
- (c) [O]ther standards as determined applicable by the [B]board may be utilized.

(2) Cleanup levels below the MCLs or other applicable water, soil, or air quality standards may be established by the [B]board on a case-by-case basis taking into consideration Sections R311-211-3 and R311-211-4.

(3) In the case of contamination above the MCL or other applicable water, soil, or air quality standards, if, after evaluation of [~~all~~]alternatives, it is determined that applicable minimum standards cannot reasonably be achieved, cleanup levels above these minimum standards may be established on a case-by-case basis utilizing Sections R311-211-3 and R311-211-4. In assessing the evaluation criteria, the following factors shall be considered:

- (a) quantity of materials released;
- (b) mobility, persistence, and toxicity of materials released;
- (c) exposure pathways;
- (d) extent of contamination and its relationship to present and potential surface and ground[~~]~~water locations and uses;
- (e) type and levels of background contamination; and
- (f) other relevant standards and factors as determined appropriate by the [B]board.

R311-211-6. [UST]PST Facility Cleanup Standards.

(1) This rule incorporates by reference the Initial Screening Levels table dated November 1, 2005. The table lists initial screening levels for [UST]PST sites.

(2) If the [D]director determines that a release from an underground storage tank has occurred, the [D]director shall evaluate whether the contamination at the site exceeds Initial Screening Levels for the contaminants released. The [D]director may require owners and operators to submit any information that the [D]director believes will assist in making this evaluation.

(3) If all contaminants are below initial screening levels, the [D]director shall evaluate the site for No Further Action determination.

(4) This rule incorporates by reference the Tier 1 Screening Criteria table dated November 1, 2005. The table lists cleanup

criteria for [UST]PST sites. Tier 1 screening levels are only applicable when the following site conditions are met:

(a) No buildings, property boundaries or utility lines are located within 30 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in [~~subparagraphs~~]Subsections (1) and (4)[~~above~~], respectively, and;

(b) No water wells or surface water are located within 500 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in [~~subparagraphs~~]Subsections (1) and (2)[~~above~~], respectively.

(5) If any contaminants from a release are above the Initial Screening Levels, the [D]director shall require owners and operators to submit [~~all~~]relevant information required to evaluate the site using the Tier 1 Screening Criteria.

(a) If [~~all~~]Tier 1 Screening Criteria have been met, the [D]director shall evaluate the site for No Further Action determination.

(b) If any of the Tier 1 Screening Criteria have not been met, owners and operators shall proceed [~~as described below~~]as follows.

(i) Owners and operators shall conduct a site investigation to provide complete information to the [D]director regarding the factors outlined in Subsection R311-211-5([~~e~~3) and 40 CFR Part 280.

(ii) When the site investigation is complete, owners and operators may propose for the evaluation and approval of the [D]director site-specific cleanup standards based upon an analysis of the factors outlined in Subsection R311-211-5([~~e~~3). Alternatively, the owners and operators may propose for the approval of the [D]director the Initial Screening Levels established in Subsection R311-211-6([~~a~~1) as the site-specific cleanup standards.

(iii) A partial corrective action approach may be approved by the [D]director [~~prior to~~]before completing the site investigation. However, if corrective action is implemented in separate phases, the [D]director will not make a No Further Action determination until all factors outlined in Subsection R311-211-5([~~e~~3) are evaluated.

(iv) Owners and operators may then propose and conduct corrective action approved by the [D]director to attempt to reach the approved site-specific cleanup standards. If the owners and operators demonstrate that the approved site-specific cleanup standards have been met and maintained based upon sampling at intervals and for a period [~~of time~~]-approved by the [D]director, the [D]director shall evaluate the site for No Further Action determination.

(v) If the owners and operators do not make progress toward reaching site-specific cleanup standards after conducting the approved corrective action, the [D]director may require the owners and operators to submit an amended corrective action plan or an amended site-specific cleanup standards proposal and analysis of the factors outlined in Subsection R311-211-5([~~e~~3) for the [D]director's approval. The [D]director may also require further investigation to fully define the exten[~~d~~]t and degree of the contamination if the passage of time or other factors creates the possibility that existing data may no longer be reliable.

R311-211-7. Significance Level.

(1) Where contamination is identified that is below applicable MCLs, water classification standards, or air quality standards or where applicable standards do not exist for either the parameter in question or the environmental media in which the

contamination is found, the cleanup standard shall be established using Section R311-211-3 and will be set between background and the observed level of contamination. Should it be determined that the observed level of contamination will be allowed to remain, this becomes the significance level.

(2) At any time, should continued monitoring identify contamination above the significance level, the criteria of Section R311-211-3 will be reapplied in connection with Section R311-211-4 to re-evaluate the need for corrective action and determine an appropriate cleanup standard.

KEY: petroleum, underground storage tanks

Date of Last Change: 2022[May 15, 2006]

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106; 19-6-403

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R311-212	Filing ID 54607
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Agency Information

1. Department:	Environmental Quality		
Agency:	Environmental Remediation	Response	and
Building:	Multi Agency State Office Building		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144840		
City, state and zip:	Salt Lake City, UT 84114-4840		
Contact person(s):			
Name:	Phone:	Email:	
David Wilson	385-251-0893	djwilson@utah.gov	
Therron Blatter	801-554-6762	tblatter@utah.gov	

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

General Information

2. Rule or section catchline:
R311-212. Administration of the Petroleum Storage Tank Loan Program
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
S.B. 40, Storage Tank Amendment, passed in the 2021 General Session of the Utah State Legislature, tasked the Division of Environmental Response and Remediation

(DERR) to begin regulation of aboveground petroleum storage tanks (APSTs).

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

This rule amendment changes underground storage tank (UST) registration fees to petroleum storage tank (PST) registration fees to reflect enacted changes to the Underground Storage Tank Act Section 19-6-401. Subsection R311-212(3)(4)(c) is changed to clarify that USTs mean petroleum USTs.

Fiscal Information

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

A) State budget:

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because all proposed changes are just clarifications and this rule does not apply to facilities with APSTs.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because all proposed changes are just clarifications and this rule does not apply to facilities with APSTs.

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

This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because all proposed changes are just clarifications and this rule does not apply to facilities with APSTs.

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

This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because all proposed changes are just clarifications and this rule does not apply to facilities with APSTs.

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

This rule change is not expected to have any fiscal impact on other persons revenues or expenditures because proposed changes are just clarifications.

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

No compliance costs are anticipated to affected parties because proposed changes are just clarifications.

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

No fiscal impacts on businesses are expected by this rule.
Kim Shelley, Executive Director

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

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 Shelly, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 19-6-105	Section 19-6-403	Section 19-6-409
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

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

On:	At:	At:
06/15/2022	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT, in Room 1015

10. This rule change MAY become effective on: 09/29/2022

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:	Brent Everett, Director	Date:	05/15/2022
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R311. Environmental Quality, Environmental Response and Remediation.

R311-212. Administration of the Petroleum Storage Tank Fund Loan Program.

R311-212-1. Definitions.

Definitions are found in Rule R311-200.

R311-212-2. Declaration of Loan Application Periods, and Loan Application Submittal.

(1) Application for a loan must be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-409(9).

(a) loan applications will be accepted during application periods designated by the director.

(2) At least one application period shall be designated each calendar year if, on January 1:

(a) the current balance due for ~~all~~ outstanding loans is less than 25% of the cash balance of the Petroleum Storage Tank ~~Trust~~ Fund; and

(b) the cash balance of the Fund exceeds \$10,000,000.

(3) If the requirements of Subsections R311-212-2(2)(a) and R311-212-2(2)(b) are not met on January 1, but are met at a later time in the calendar year, the director may designate an application period.

(4) An open application period will close if:

(a) the current balance due for ~~all~~ outstanding loans exceeds 25% of the cash balance of the Fund; or

(b) the cash balance of the Fund is less than \$10,000,000.

(5) If an open application period closes as required by Subsection R311-212-2(4), loan applications currently under review when the application period closes may be renewed when a new application period opens, unless the applicant must re-apply as required by Subsection R311-212-5(1).

(6) Applications must be received by the director by 5~~:00~~ p.m. on the last day of the application period.

(7) Loan applications received outside the application period will be invalid.

R311-212-3. Eligibility Review.

(1) The director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-409(5) through 19-6-409(8).

(2) To meet the eligibility requirements of Subsection 19-6-409(6) the applicant must, for ~~all~~ facilities for which the applicant requests a loan:

(a) demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with ~~all~~ requirements for remediation of facilities with leaking USTs; or

(b) must be able to achieve compliance with the loan proceeds.

(3) To meet the eligibility requirements of Subsection 19-6-409(6) the applicant must meet the following for ~~all~~ facilities owned or operated by the applicant for which the applicant does not request a loan:

(a) the applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with ~~all~~ requirements for remediation of facilities with leaking USTs;

(b) ~~all~~ regulated USTs owned by the applicant have met the requirements of Subsection 19-6-412(2) and have a current certificate of compliance;

(c) the applicant has paid ~~all UST~~ PST registration fees, interest, and penalties which have been assessed; and

(d) the applicant has paid ~~all~~ applicable petroleum storage tank fees, interest, and penalties which have been assessed.

(4) To meet the requirements of Subsection 19-6-409(5), the loan request must be for ~~the purpose of~~:

(a) upgrading ~~petroleum~~ USTs;

(b) replacing ~~petroleum~~ USTs; or

(c) permanently closing petroleum USTs.

(5) if an applicant requests a loan for closing USTs which will be replaced by aboveground storage tanks, the loan, if approved, will be only for closing the USTs.

(a) the security pledged by the applicant for a loan to replace USTs with aboveground storage tanks will be subject to the limitations in Section R311-212-6.

R311-212-4. Prioritization of Loan Applications.

(1) When determined by the director to be necessary, ~~all~~ applications received during a designated application period shall be prioritized by total points assigned.

(a) ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(i) the applicant has less than \$1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(ii) the applicant's income is derived solely from operations at UST facilities.

(iii) the applicant owns or operates no more than two facilities.

(iv) the facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(v) there are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(vi) loan proceeds will be used solely for replacing or upgrading petroleum USTs.

(vii) ~~all~~ USTs at the facility are greater than 15 years old.

(b) one point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(2) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the director by any other method.

(3) Applications shall remain in priority order regardless of availability of funds until a new application period is declared.

(a) when a new application period begins, priority order of applications which have not been reviewed terminates.

(4) An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-409(5) through 19-6-409(8), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

R311-212-5. Loan Application Review.

(1) The applicant shall ensure that the loan application is complete.

(a) the completed application with supporting documents must contain ~~all~~ information required by the application.

(2) If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(3) ~~All~~ Costs incurred in processing the application shall be the responsibility of and paid for by the applicant including:

(a) appraisals;

(b) title reports; or

(c) UCC-1 releases.

(i) the director may require payment of costs in advance.

(ii) the director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(4) The review and approval of the application shall be based on information provided by the applicant, and:

(a) review of any ~~and all~~ records and documents on file;

(b) verification of any ~~and all~~ information provided by the applicant;

(c) review of credit worthiness and security pledged; and

(d) review of a site construction work plan.

(5) The applicant must close the loan within 30 days after the director conveys the loan documents for the applicant's signature.

(a) if the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply.

NOTICES OF PROPOSED RULES

(b) an exception to the 30-day period may be granted by the director if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

(1) When an applicant applies for a loan of greater than \$30,000, the applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(a) the loan amount may not be greater than 80% of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position; or

(b) the loan amount may not be greater than 60% of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(2) The applicant shall provide acceptable documentation of the value of the property to be used as security using:

(a) a current written appraisal, performed by a State of Utah certified appraiser;

(b) a current county tax assessment notice; or

(c) other documentation acceptable to the director.

(3) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the director by a title company or appropriate professional person approved by the director.

(4) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department.

(a) the director will accept no less than a second mortgage position on real property pledged for loan security.

(5) When ~~ever~~ a corporation seeks a loan, its principals must guarantee the loan personally.

(6) The applicant must provide a complete financial statement with cash flow projections for debt service.

(7) Aboveground storage tanks and real property on which they are located will not be acceptable as security.

(8) USTs and the real property on which they are located will not be acceptable as security unless:

(a) the UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(b) the applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in Section R311-212-3.

(9) If a loan is made without security, the maximum loan repayment period will be seven years.

R311-212-7. Procedure for Making Loans.

(1) Loan funds shall be obligated after ~~all~~ documents to secure a loan are complete, processed, and appropriately signed by the applicant and the director.

(2) The director may approve a borrower's request for one initial disbursement of loan proceeds to the borrower after the loan is closed, and before work begins.

(a) the initial disbursement shall be for the lesser of 40% of the approved loan amount or the amount required by the borrower's contractor as an initial payment before work is done.

(b) disbursement of the remaining loan proceeds, or disbursement of the entire loan proceeds if no initial disbursement is made, shall be made after work at the site is completed, and ~~all~~]paperwork and notifications have been received by the director.

(i) if an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time

period approved by the ~~D~~director, following the initial disbursement.

(ii) disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the director, following the initial disbursement.

(c) if work is not initiated or completed within the time periods established in Subsection R311-212-7(2)(a), the loan balance must be paid within 30 days of notice provided by the director.

(3) Loan proceeds may not be used to pay UST registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(4) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

R311-212-8. Servicing the Loans.

(1) The director shall establish a repayment schedule for each loan based on the financial situation and income circumstances of the borrower and the term of loans allowed by Subsection 19-6-409(8)(b)(ii).

(2) Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay ~~all~~ interest and principal in full.

(a) the initial installment payment shall be due on a date established by the director.

(b) subsequent installment payments shall be due on the first day of each month.

(i) a notice of payment and due date shall be sent for each subsequent payment.

(c) non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(3) The director shall apply loan payments received first to penalty, next to interest, and then to principal.

(4) Loan payments may be made in advance, and the remaining principal balance of the loan may be paid in full at any time without penalty.

(5) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(6) The penalty for late loan payments shall be 10% of the payment due.

(a) the penalty shall be assessed and payable on payments received by the director more than five days after the due date.

(b) a penalty shall be assessed only once on a given late payment.

(7) Payments are considered received the day of the U.S. Postal Service postmark date or receipt date for payments delivered to the director by methods other than the U.S. Postal Service.

(8) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(9) Notice of loans paid in full shall be sent after ~~all~~]penalties, interest, and principal have been paid.

(10) Releases of the director's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

R311-212-9. Recovering on Defaulted Loans.

(1) Loans may be considered in default when:

(a) two consecutive payments are past due by 30 days or more;

(b) when the applicant's ability to receive payments for claims against the Fund lapses; or

(c) if the certificate of compliance lapses or is revoked.

(2) Lapsing under Subsection R311-206-7(5) will not be considered as grounds for default for USTs which are permanently closed.

(3) The director may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(4) The director need not give notice of default ~~[prior to]~~ before declaring the full amount due and payable.

(5) The borrower is liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

R311-212-10. Forms.

(1) The forms dated and listed ~~[below]~~ in this section, on file with the Department, are incorporated by reference as part of Rule R311-212, and shall be used by the director for making loans.

(a) Loan Application version 7/14/16

(b) Balance Sheet version 7/29/14

(c) Loan Agreement version 7/29/14

(d) Corporate Authorization version 7/29/14

(e) Promissory Note version 7/29/14

(f) Extension and Modification of Promissory Note Agreement version 7/29/14

(g) Security Agreement version 7/29/14

(h) Hypothecation Agreement version 7/29/14

(i) General Pledge Agreement version 7/29/14

(j) Assignment version 7/29/14

(k) Assignment of Account version 7/29/14

(l) Trust Deed version 7/29/14

(m) Trust Deed Note version 7/29/14

(n) Extension and Modification of Trust Deed Note Agreement version 7/29/14

(2) The director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process.

(3) The director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

R311-212-11. Rules in Effect.

(1) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

KEY: hazardous substances, petroleum, underground storage tanks

Date of Last Change: ~~2022~~ September 13, 2021

Notice of Continuation: March 8, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-409

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R357-5	Filing ID 54617
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Agency Information

1. Department:	Governor
Agency:	Economic Opportunity

Building:	World Trade Center	
Street address:	60 E South Temple	
City, state and zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Dane Ishihara	801-538-8864	dishihara@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R357-5. Motion Picture Incentive Rule

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

The purpose of this rule filing is to clarify the definition of rural county and update the agreed upon procedures.

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 rural Utah to rural county and the relevant reference. This rule also updates the agreed upon procedures.

Fiscal Information

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

A) State budget:

There is no new aggregate anticipated cost or savings to the state budget. This rule is merely making technical changes and updating program procedures.

B) Local governments:

There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.

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

There is no new aggregate anticipated cost or savings to small businesses because this proposed rule does not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation.

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

There is no new aggregate anticipated cost or savings to non-small businesses because this proposed rule does not create new obligations for non-small businesses, nor does it increase the costs associated with any existing obligation.

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

There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.

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

There are no compliance costs for affected persons because participation in the program is optional.

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

This rule will have no negative impact on businesses. Dan Hemmert, 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 Governor's Office of Economic Opportunity, Dan Hemmert, 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		
63N-8-104		

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)	Agreed-Upon Procedures
Publisher	Utah Film Commission
Date Issued	May 13, 2022
Issue, or version	2.0

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:	07/01/2022
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10. This rule change MAY become effective on:	07/08/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency

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

Agency Authorization Information

Agency head or designee, and title:	Dan Hemmert, Executive Director	Date:	05/13/2022
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R357. Governor, Economic Opportunity.

R357-5. Motion Picture Incentive Rule.

R357-5-101. Authority.

(1) Section 63N-8-104 requires the Office to make rules establishing the standards that a motion picture company and digital media company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive.

R357-5-102. Definitions.

The definitions in this rule are in addition to or serve to clarify the definitions found in Section 63N-8-102.

(1) "Cast" means performers appearing in a particular film with featured or speaking roles.

(2) "Community Film Incentive Program" means a production where a motion picture company has a maximum budget of under \$500,000.

(3) "Crew" means those involved in the production of a film who are not defined as cast or extras.

(4) "Deferred Payment" means, tax credits in amounts over \$2,000,000 paid in installments over a specified number of years but not to exceed three years.

(5) "Extras" means an extra or background actor is a performer in a production, who appears in a non-speaking or non-singing capacity, usually in the background.

(6) "Independent Utah CPA" means a Certified Public Accountant holding an active license in the state that is independent of the production and production activities.

(7) "Made-For-Television" means feature length motion pictures specifically made-for-television or streaming platforms.

(8) "Motion Pictures" means a production that is originally intended for commercial distribution and does not include:

- (a) news;
- (b) commercials;
- (c) live broadcasts;
- (d) digital media products;
- (e) live sporting events;
- (f) live coverage of theatrical or entertainment events; or
- (g) programs that solicit funds.

(9) "Principal photography,"^[7] "Producing" or "Production" means the filming of major and significant portions of a film that involves the lead actors and actresses.

(10) "Rural county~~[Utah]~~" means a county of the third, fourth, fifth, or sixth class~~[each county outside of Davis County, Salt Lake County, Utah County, and Weber County].~~

(11) "Significant Percentage of cast and crew from Utah" means:

(a) For productions that have less than \$500,000 dollars left in state: that at least 85% of the cast and crew are Utah residents excluding extras;

(b) For productions that have more than \$500,000 dollars left in state: that at least 75% of the cast and crew are Utah residents excluding extras and five principal cast members.

(12) "State-approved production" means a production that is:

(a) approved by the Office and ratified by the Governor's Office of Economic Opportunity Board; and

(b) any of the production is produced in the state.

(13) "Total budget for the project" means the total budget for dollars left in state of pre-production, production, and post-production.

(14) "Television series" means a group of episodes of a production released on television or streaming platforms.

(15) "Treatment" means: A written description of the production.

(16) "UFC" means: the Utah Film Commission, a sub-entity of the Utah Governor's Office of Economic Opportunity.

(17) "Utah Resident" means a person who has lived in Utah for at least 183 days even if temporarily outside of Utah for an extended length of time, maintains a permanent home in Utah, and is subject to Utah personal income tax.

R357-5-103. Motion Picture Incentive Applications: Procedures and Minimum Requirements for a Motion Picture Company.

(1) A motion picture company's application may be approved for a motion picture incentive award only if each of the following requirements are met in addition to those listed throughout Title 63N, ~~[Economic Opportunity Act, Chapter 8,]~~ Motion Picture Incentives:

(a) the motion picture company is producing any of a motion picture in Utah;

(b) the motion picture is a state-approved production;

(c) the motion picture company guarantees UFC access to production's behind the scenes footage, interviews and still photography or allow the Office to produce its own;

(d) the motion picture company guarantees the production will display the Utah logo as outlined in the incentive agreement and provide a screenshot of the logo as it appears in the credits;

(e) the motion picture company has obtained financing for 100% of the anticipated dollars left in state for the project, and the applicant provides proof of financing in a form specified in the application documents;

(f) the motion picture company must retain financing as set forth in Subsection (1)(e) for the life of the contract with the state;

(g) the motion picture company intends to report at least \$500,000 dollars left in state if applying for a film incentive under Subsection R357-5-5(1) or a maximum of under \$500,000 if applying for an incentive under Subsection R357-5-5(2); and

(h) if a production has initiated principal photography ~~[prior to]~~ before the Office's receipt of a completed application or will not ~~[commence]~~ start principal photography for more than 90 days from date of application, the application for incentive may be denied.

(2) The motion picture incentive application shall not be construed as a property right and neither the Office nor the Board is required to approve an application.

(3) To receive state approval for an incentive application, a production must, in the state's sole discretion, reflect positively on the image of Utah. In determining whether or not a production reflects positively on the image of the state, the Office and Board may take into consideration:

NOTICES OF PROPOSED RULES

(a) whether and to what extent the motion picture promotes Utah as a tourist destination;

(b) general standards of decency and respect for the diverse beliefs and values of Utahns; and

(c) any other factors related to the production or the motion picture company that may reasonably affect the image of the state.

(4) The Office and Board may consider the relative merit of applications, and the need to reserve its allocations for future applications.

(a) Factors that contribute to the relative merit include:

(i) the overall strength and viability of the script of the production;

(ii) the industry reputation of the production or motion picture company;

(iii) the record of the motion picture company in matters of safety and responsible filmmaking;

(iv) the existence of any legal action or the likelihood of any legal action in relation to either the production or the motion picture company; and

(v) anticipated:

(A) number of jobs in Utah;

(B) number of production days in Utah;

(C) dollars left in state;

(D) local cast and crew wages; and

(E) new state revenue that the film contributes in Utah.

(b) Applications shall be made in the form prescribed by the Office, including required attachments or additional information.

(i) Incomplete applications will not be considered received until the application is deemed complete by the UFC.

(ii) A script is required as part of the application.

(iii) A treatment may only be submitted where a script for a project type is not possible, for example when the project is a documentary. The Utah Film Commission will determine in its sole discretion if a treatment can be substituted for a script.

(5) A production company may file more than one application if it has more than one production in the state, but a separate application must be filed for each production.

(6) Applications will be subject to submission deadlines, which will be posted on the Utah Film Commission Website and are available in other formats upon request.

(7) If the applicant fails to submit a completed application ~~[prior to]~~ before the submission deadline, the application may be considered with the next round of submissions.

(8) Submitting an application does not guarantee approval of a film incentive.

(9) Film incentives are subject to and contingent upon the amount of available funding and tax credit allocation available in the Motion Picture Restricted account.

(10) Lack of state approval shall not be construed as prohibiting a production or prohibiting a motion picture company from filming in Utah.

(11) A production's eligibility for an incentive ends upon approval or denial by the Office. A production may reapply, subject to compliance with program statutes and rules.

R357-5-104. Motion Picture Incentive Applications: Award for a Motion Picture Production.

(1) Upon receipt of a completed application, the Office will align each project into incentive categories as set forth in Section R357-5-105.

(2) In calculating dollars left in the state, the Office may limit the following expenditures:

(a) salary above \$500,000 for one individual;

(b) marketing and distributions expenditures;

(c) any value beyond the depreciated amount for capital expenditures, rentals, and any purchases made where the item is used for only a portion of its useful life; and

(d) any per diem value beyond 100% of the current federal rate for the area.

R357-5-105. Film Categories and Conditions.

(1) Utah Motion Picture Incentive Program.

(a) The Utah Motion Picture Incentive Program will have an incentive cap of 20% of the dollars left in state, unless a higher cap is awarded pursuant to Subsection (1)(c).

(b) Incentives will only be awarded if the motion picture company meets criteria listed in Section R357-5-103[;].

(c) An additional cap of up to 5% may be granted if the motion picture company:

(i) Motion picture company has at least \$1,000,000 in qualified dollars left in state; and

(ii) 75% of the;

(A) cast and crew are Utah residents excluding extras and five principal cast members; or

(B) production days occur in rural county[Utah].

(2) Community Film Incentive Program[-];

~~[(a) The Community Film Incentive Program will provide a maximum of a 20% post-performance cash rebate or tax incentive for dollars left in state by a community film production;~~

~~[(b) Community Film Incentive Program incentives will only be awarded if the motion picture company meets criteria listed in Section R357-5-103 has a minimum budget of \$100,000 and a maximum budget of under \$500,000, and meets the criteria found on the Utah Film Commission Website;~~

~~[(c) Applications for the Community Film Incentive Program will be reviewed monthly.~~

~~[(d) Awards will be made to motion picture companies based upon the criteria outlined in the Community Film Incentive Program application provided by UFC.]~~

~~[(a) will provide a maximum of a 20% post-performance cash rebate or tax incentive for dollars left in state by a community film production;~~

~~[(b) will only be awarded if the motion picture company meets criteria listed in Section R357-5-103 has a minimum budget of \$100,000 and a maximum budget of under \$500,000, and meets the criteria found on the Utah Film Commission Website;~~

~~[(c) applications will be reviewed monthly; and~~

~~[(d) awards will be made to motion picture companies based upon the criteria outlined in the application provided by UFC.~~

(3) For applications made under Subsection[s] (1) or (2), the motion picture company must provide any information and documentation to show measurable outcomes as outlined in the application for any incentive listed in this section .

R357-5-106. Funding -- Post-Performance Compliance.

(1) A motion picture company may qualify for issuance of either a Post-Performance Refundable Tax Credit or Post-Performance Cash award:

(a) based on the method outlined in their contract; and

(b) the motion picture company adheres to the Agreed-Upon Procedures version ~~[1.1 dated July 28, 2021]~~ 2.0 dated May 13, 2022 posted on the Utah Film Commission Website ~~[and hereby adopted and]~~ which is incorporated by reference.

R357-5-107. Funding -- Post-Performance Refundable Tax Credit.

(1) Post-performance refundable tax credits are non-transferable and can only be issued to the state-approved motion picture that submits the motion picture incentive application and is approved by the Office with advice from the Board.

(2) Post-performance refundable tax credits in amounts over \$2,000,000 may be paid in deferred payments over multiple years as authorized by the Office within the approved Board motion for the tax credit.

(a) Deferred payments for tax credits over \$2,000,000 are subject to available tax credit allocation as authorized by the legislature.

(b) Each annual installment of the deferred payment amount shall be outlined in the tax credit agreement.

(c) A deferred payment plan cannot exceed three years.

R357-5-108. Request for Incentive Amendment.

(1) A motion picture company may request an incentive amendment only under the conditions prescribed by the Office.

(2) Amendments will be reviewed and approved by the UFC on a case by case basis with a written explanation for the approval or denial provided to the applicant.

KEY: economic development, motion picture, digital media, new state revenue

Date of Last Change: 2022[October 12, 2021]

Notice of Continuation: March 11, 2021

Authorizing, and Implemented or Interpreted Law: 63N-8-104

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R414-40	Filing ID 54619
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Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact person(s):		
Name:	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 or section catchline:**

R414-40. Private Duty Nursing Service

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

The purpose of this change is to clarify policy for private duty nursing within the Medicaid program.

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

This amendment clarifies eligibility, access, coverage, and reimbursement for private duty nursing services. It also makes other technical changes.

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

There is no impact to the state budget as this change solely clarifies current Medicaid policy.

B) Local governments:

There is no impact on local governments because they neither fund nor provide private duty nursing under the Medicaid program.

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

There is no impact on small businesses as this change solely clarifies current Medicaid policy.

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

There is no impact on non-small businesses as this change solely clarifies current Medicaid policy.

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

There is no impact to other persons or entities as this change solely clarifies current Medicaid policy.

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

There are no compliance costs to a single person or entity as this change solely clarifies current Medicaid policy.

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

Businesses will see no fiscal impact as this change solely clarifies current Medicaid policy. 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 26-1-5	Section 26-18-3	42 CFR 440.80
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Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

10. This rule change MAY become effective on: 07/08/2022

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:	05/16/2022
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-40. Private Duty Nursing Services.****R414-40-1. Introduction and Authority.**

(1) This rule outlines eligibility, access requirements, coverage, limitations, and reimbursement for private duty nursing. This rule is authorized by Sections 26-1-5 and 26-18-3.

(2) Private duty nursing services ~~is~~ are an optional Title XIX program authorized by 42 U.S.C. Sec. 1396 et seq., 42 U.S.C. Sec. 1396d(a)(8), and 42 CFR 440.80.

R414-40-2. ~~Recipient~~ Member Eligibility Requirements.

Early and Periodic Screening, Diagnostic and Treatment (ESPD) eligible children ~~who are~~ under 21 years of age ~~[21]~~ and who are either in transition from the hospital to the home or who are ventilator dependent are eligible for private duty nursing services. The ~~recipient~~ member must require ~~[greater]~~ more than four hours of continuous skilled nursing care ~~[per]~~ day.

R414-40-3. Program Access Requirements.

(1) Only a licensed home health agency enrolled as a Medicaid provider may be reimbursed for private duty nursing services.

(2) A ~~recipient~~ member must have a written physician order establishing the need for private duty nursing services. The private duty nursing provider must develop a ~~[plan of]~~ care plan consistent with the ~~recipient~~ member's diagnosis, the severity of illness, and intensity of services. ~~[The patient must require more than four hours of skilled nursing service.]~~ If medically necessary nursing services require[s] four hours or less of skilled nursing, the service is covered under the home health program.

(3) Medicaid providers shall submit an initial prior authorization request with medical documentation that demonstrates the need for nursing services. The home health agency shall submit an initial certification and ~~[a]~~ recertification at least every 60 days as required by 42 CFR 440.70.

(4) Private duty nursing is only available if a parent, guardian, or primary caregiver is committed to and capable of performing the medical skills necessary to ensure quality care.

(5) The home health agency shall verify that the hospital has provided specialized training for the caregiver before patient discharge to enable the caregiver to provide hands-on care in the home. The private duty nurse initially supervises the caregiver who provides this care to ensure that training has been assimilated to ensure safe, quality patient care.

R414-40-4. Service Coverage for Private Duty Nursing.

(1) Private duty nursing services ~~[is]~~ are a limited benefit that is provided with the expectation that the ~~[patient's]~~ member's need for private duty nursing services will decrease over time.

(2) Medicaid covers medically necessary and appropriate private duty nursing services for a limited time to provide skilled nursing care in the home. Medicaid ~~[provides]~~ covers private duty nursing services while the ~~[private duty nursing service provider]~~ agency trains the ~~[recipient's]~~ member's caregivers to provide the necessary care. Once the caregivers have been given sufficient training for the ~~[recipient's]~~ member's needs, the private duty nursing services end[s]. ~~[However, a client]~~ A member, however, who still requires more than four hours of ongoing skilled nursing services may receive private duty nursing services as provided in this rule.

(3) The number of private duty nursing (PDN) hours that a ~~[patient]~~ member may receive is based on how the ~~[patient]~~ member scores on the PDN Acuity Grid. The PDN provider shall provide supporting documentation to justify the ~~[patient's]~~ member's score. The PDN Acuity Grid must reflect the average daily care given by the nurse during the previous certification period.

(4) After informing the ~~[recipient's]~~ member's family or similar representatives who live with the ~~[recipient]~~ member and in coordination and consultation with the physician, the private duty nurse shall attempt to wean the ~~[patient]~~ member from a device or service and identify new problems.

(5) Medicaid does not cover the following as private duty nursing services ~~[Private duty nursing is not covered to provide services solely for the following]:~~

- (a) custodial or sitter care to ensure the patient is compliant with treatment;
- (b) respite care;
- (c) monitoring behavioral or eating disorders; and
- (d) observation or monitoring medical conditions that do not require skilled nursing care.

(6) Medicaid does not cover ~~[P]~~ private duty nursing services ~~[is not covered]~~ if the services ~~[is]~~ are available from another funding source, agency, or program.

R414-40-5. Reimbursement of Services.

(1) Medicaid reimburses nursing services in accordance with the Utah Medicaid State Plan, Attachment 4.19-B.

(2) A private duty nurse caring for two ~~[patients]~~ members in the ~~[home]~~ same place of residence shall bill with the UN modifier.

(3) A provider ~~[shall]~~ may not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid

Date of Last Change: 2022~~[December 1, 2011]~~

Notice of Continuation: April 28, 2020

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code R432-32

Ref (R no.):

Filing ID

54593

Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Licensing	
Room no.:	1st Floor	
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact person(s):		
Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Kristi Grimes	385-214-9187	kristigrimes@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

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

General Information

2. Rule or section catchline:

R432-32. Licensing Exemption for Non-Profit Volunteer End-of-Life Care

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

This amendment updates this rule to the Utah Rulewriting Manual standards as per the Governor's Executive Order (EO 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):

This rule provides a licensing exemption for non-profit care facilities who are using volunteers for end-of-life care. This filing updates this rule to the Utah Rulewriting Manual standards.

Fiscal Information

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

A) State budget:

This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment only updates this rule to the Utah Rulewriting Manual standards.

B) Local governments:

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment only updates this rule to the Utah Rulewriting Manual standards. Licensing exemptions are regulated by the state health department and not local governments. There will be no change in local business licensing or any other items with which local government is involved.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact small businesses. This amendment is technical in nature, and does not change licensing requirements that would impact small businesses.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact non-small businesses because this amendment only updates this rule to the Utah Rulewriting Manual standards.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment only updates this rule to the Utah Rulewriting Manual standards.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment only updates this rule to the Utah Rulewriting Manual standards.

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

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. 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:

Subsection
26-21-7(6)

Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

10. This rule change MAY become effective on: 07/08/2022

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:	04/29/2022
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R432. Health, Family Health and Preparedness, Licensing.**R432-32. Licensing Exemption for Non-Profit Volunteer End-of-Life Care.****R432-32-1. Purpose and Authority.**

(1) ~~This~~ The purpose of this rule is to establish~~es~~ the exemption from licensure requirements for non-profit facilities that provide volunteer end-of-life care.

(2) This rule is adopted pursuant to ~~Utah Code Section~~ Subsection 26-21-~~7~~6~~(6)~~(2)(c).

R432-32-2. Requirements for Designation as a Non-Profit Facility Providing End-of-Life Care Using Only Volunteers.

(1) A non-profit facility that provides end-of-life care using only volunteers is exempt from licensure if it meets ~~all of~~ the following requirements:

~~(1)~~(a) ~~The~~ facility shall operate~~s~~ as a non-profit facility with a board of trustees to oversee its direction and operation~~[-]~~;

~~(2)~~(b) ~~No~~ no more than six unrelated individuals shall reside in the facility~~[-]~~;

~~(3)~~(c) ~~The~~ residents of the facility ~~do not~~ may not pay for room or board~~[-]~~;

~~(4)~~(d) ~~Each~~ facility resident has a terminal illness and contracts with a licensed hospice agency to receive medical care~~[-]~~; and

~~(5)~~(e) ~~There~~ is no direct compensation for direct care staff at the facility; however, administrative staff ~~to~~ who coordinate with volunteer staff may be compensated.

~~(6)~~(2) Each resident shall sign~~signs~~ an admission agreement that:

(a) indicates the level of service to be provided by volunteers;

(b) provides notice that the facility is not a regulated health care facility under Title 26, Chapter 21~~[-]~~, Health Care Facility Licensing and Inspection Act; and

(c) provides procedures to report grievances to the Board of Directors;

~~(8)~~(3) The facility ~~screens~~ shall:

(a) screen each staff member, including volunteer staff, for criminal convictions through the Department of Public Safety and ~~no~~ staff ~~serves who~~ that ~~has~~ have a conviction for any of the crimes identified in Section R432-35-4 ~~8 may not serve~~~~[-]~~

~~(9)~~ The facility ~~(b)~~ provide~~s~~ in-service training on the reporting requirements for adult abuse, neglect and exploitation to each staff member~~[-]~~ ~~including~~ and volunteer staff~~[-]~~

~~(10)~~ ~~(c)~~ ensure ~~E~~ each resident has a self-directed medical care plan for end-of-life treatment decisions~~[-]~~

~~(11)~~ The facility ~~(d)~~ provide~~s~~ each resident a form for a Physician Order for Life-Sustaining Treatment~~[-]~~

~~(12)~~ The facility ~~(e)~~ comply~~ies~~ with local zoning, health and fire inspection requirements~~[-]~~

~~(13)~~ The facility ~~(f)~~ offer~~s~~ adult immunizations for staff and residents as required in Rule R432-40~~[-]~~ and

~~(14)~~ The facility ~~has~~ ~~(g)~~ have an infection control program, which includes universal precautions, process for reporting communicable diseases~~[-]~~ and ~~OSHA~~ Occupational Safety and Health Administration standards.

KEY: health care facilities

Date of Last Change: 2022~~September 1, 2004~~

Notice of Continuation: April 1, 2019

Authorizing, and Implemented or Interpreted Law: 26-21-7(6)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R590-215	Filing ID 54611
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Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

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

General Information

2. Rule or section catchline:

R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance

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 the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear and update the new Section R590-215-5 to use the Department's current language. Section R590-215-7 is being removed because this rule is already in force. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

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

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 Benefits	Fiscal \$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

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:	07/01/2022

10. This rule change MAY become effective on:	07/08/2022
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:	05/16/2022
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R590. Insurance, Administration.**R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance.****R590-215-1. Authority.**

This rule is promulgated by the commissioner ~~[of Insurance under the general authority granted under Subsection 31A-2-201(3) and incorporates by reference the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective July 1, 2002, and excluding 2560.503-1(a). This federal regulation may be obtained from the Utah Insurance Department]~~ pursuant to Section 31A-2-201.

R590-215-2. Purpose and Scope.

~~[This rule recognizes arbitration as an acceptable method of alternative dispute resolution with regards to health benefit plans. This rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:~~

~~(1) define the term "permissible arbitration provision" as set forth in Subsections 31A-21-313(3)(c) and 31A-21-314(2); and~~
~~(2) provide guidelines upon which disclosure of a contract arbitration provision is to be made.~~

R590-215-3. Applicability and Scope.

~~—](1) The purpose of this rule is to:~~
~~(a) recognize arbitration as an acceptable method of alternative dispute resolution;~~
~~(b) provide guidelines for disclosure of a contract arbitration provision; and~~
~~(c) comply with the requirements outlined in Subsection 29 CFR 2560.503-1.~~
~~(2) This rule applies to [the following] an individual insurance policy and a group [policies] insurance policy issued or renewed on or after July 1, 2002 for:~~
~~(a) income replacement [policies] insurance; and~~
~~(b) a health benefit plan[s].~~
~~[(2) Long Term Care](3) Long-term care and Medicare supplement policies are not considered health benefit plans.~~

R590-215-[4]3. Definitions.

~~[For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301, 78B-11-102, 29 CFR 2560.503-1(m), and the following] Terms used in this rule are defined in Sections 31A-1-301, 31A-22-629, and 29 CFR 2560.503-1(m). Additional terms are defined as follows:~~

~~(1) ["Adverse benefit determination" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan. With respect to individual or group health benefit plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.~~

~~(2) ["Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.~~

~~[(3)](2) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition [precedent to] before the pursuit of an otherwise available judicial remedy.~~

~~(3) "Permissible arbitration provision" means an arbitration provision in an insurance policy that:~~

~~(a) allows for an action to be brought against an insurer;~~
~~(b) prohibits the insurance policy to be construed according to the laws of another jurisdiction, except as necessary to meet the requirements of compulsory insurance laws of the other jurisdiction;~~
~~(c) permits Utah courts of jurisdiction over an action against the insurer; and~~
~~(d) limits the right of action against the insurer to less than three years from the date the cause of action accrues.~~

NOTICES OF PROPOSED RULES

(4) "Voluntary binding arbitration" means a contract provision that, at the election of the insured, requires an insurer to submit to arbitration~~[as set forth in such contract]~~, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

R590-215-[5]4. [Rule]Permissible Arbitration Provisions.

(1) Compulsory binding arbitration is not a permissible arbitration provision.

(2) Compulsory non-binding arbitration is a permissible arbitration provision when ~~[utilized]~~used as an internal review of an adverse benefit determination under 29 CFR ~~[Subsection]~~2560.503-1(c)(4).

(3) Voluntary binding arbitration, at the election of an insured~~[party]~~, is a permissible arbitration provision, and may only be used as a voluntary level of review under 29 CFR ~~[Subsection]~~2560.503-1(c)(3)(iii).

(4) ~~[Policy forms]~~A policy form containing a compulsory binding or a voluntary binding arbitration provision[s] for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv)~~[Such], and these provisions in any previously [approved] filed form[s] are declared not enforceable. They will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107].~~

(5)(a) Each application ~~[pertaining to]~~for an individual or group health benefit plan~~[and]~~ or income replacement insurance policy~~[which]~~ that contains a voluntary arbitration provision~~[must]~~ shall include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF~~[r]~~THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR, A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. THE COMPANY SHALL BEAR THE COSTS OF ARBITRATION, FILING FEES, ADMINISTRATIVE FEES AND ARBITRATOR FEES. OTHER EXPENSES OF ARBITRATION, INCLUDING, BUT NOT LIMITED TO: ATTORNEY FEES, EXPENSES OF DISCOVERY, WITNESSES, STENOGRAPHER, TRANSLATORS, AND SIMILAR EXPENSES, WILL BE BORNE BY THE PARTY INCURRING THOSE EXPENSES. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES, IF ALLOWED BY STATE LAW, AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

~~[Such]~~(b) The statement described in Subsection (5)(a) shall ~~[must]~~be disclosed prior to the execution of the insurance contract between the insurer and the policyholder and~~[r]~~ shall be contained in the certificate of insurance or other disclosure of benefits.

(6) A voluntary binding arbitration provision may not preclude a dispute from being resolved through any small claims court having jurisdiction.

(7) ~~[All]~~Any arbitration provision[s] contained in an insurance ~~[policies shall be in compliance with the "Utah Arbitration Act,"]~~policy shall comply with Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(8) ~~[Any such]~~An agreement for arbitration ~~[shall]~~may not obligate an insured to pay for the arbitration ~~as part of the~~voluntary appeal in accordance with 29 CFR 2560.503-1(c)(3)(v).

(9) ~~[No]~~An arbitration provision may not require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

R590-215-[6]5. Severability.

~~[If any provision of this rule or its application to any person or situation is held 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 R590-215, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

R590-215-7. Enforcement Date.

~~The commissioner will begin enforcing the revised provisions of this rule when they take effect.]~~

KEY: health insurance arbitration

Date of Last Change: 2022~~[May 20, 2003]~~

Notice of Continuation: December 8, 2017

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 29 CFR 2560.503-1

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.):	R590-288	Filing ID	54613
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Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

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

General Information

2. Rule or section catchline:

R590-288. Limited Line Producer Line of Authority for Pet Insurance

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

This rule is created to recognize a limited line license that authorizes insurance agents to sell pet insurance.

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 allows insurance agents to apply for a limited line license to sell pet insurance

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

This rule may result in a trivial savings to the state budget. A pet insurance limited line license will take less time for the Department of Insurance (Department) to process than a property insurance full line license that is now required to sell pet insurance.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule only applies to an agent who applies to sell pet insurance.

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

There is no anticipated cost or savings to small businesses. This rule only applies to an agent who applies to sell pet insurance.

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

There is no anticipated cost or savings to non-small businesses. This rule only applies to an agent who applies to sell pet insurance.

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**):

An insurance agent who sells only pet insurance, or who sells pet insurance along with another line of business aside from property insurance, will see a biennial savings of \$25 compared to the current process. It is impossible for the Department to estimate the aggregate fiscal impact of this rule because the Department cannot know the number of agents who want to be licensed to sell pet insurance. Currently, pet insurance may be sold by a veterinarian or any agent with a property insurance license, but because pet insurance is not separated from

property insurance, we are unable to estimate how many agents sell it.

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

There is no compliance cost for any affected persons. This rule simply allows an insurance agent to more easily apply to sell pet insurance. If a licensed agent chooses to apply, they will pay \$45 for a pet insurance limited line license instead of \$70 for a property insurance license.

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

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-23a-106
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Public Notice Information**9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)**

A) Comments will be accepted until:	07/01/2022
--	------------

10. This rule change MAY become effective on:	07/08/2022
--	------------

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:	05/16/2022
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R590. Insurance, Administration.**R590-288. Limited Line Producer Line of Authority for Pet Insurance.****R590-288-1. Authority.**

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-23a-106.

R590-288-2. Purpose and Scope.

(1) The purpose of this rule is to recognize a limited line producer line of authority for pet insurance.

(2) This rule applies to a person holding a producer license for a line of authority under Subsection 31A-23a-106(2)(a).

R590-288-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. Other terms are defined as follows:

(1) "Pet insurance" means a property insurance policy that provides coverage for an accident or illness of a pet.

R590-288-4. Limited Line Producer Line of Authority for Pet Insurance.

(1) The commissioner recognizes a limited line producer line of authority for pet insurance.

(2) A person holding a property insurance producer license for a line of authority under Subsection 31A-23a-106(2)(a)(iv) may offer pet insurance without any additional license requirements.

(3) A person holding a producer license for a line of authority under Subsections 31A-23a-106(2)(a)(i) through 31A-23a-106(2)(a)(iii) or 31A-23a-106(2)(a)(v) through 31A-23a-106(2)(a)(vii) may apply for a pet insurance limited line producer license.

(4) A person holding a limited line producer license for pet insurance is not required to complete continuing education regarding pet insurance.

R590-288-5. Severability.

If any provision of this rule, Rule R590-288, 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****Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-106****NOTICE OF PROPOSED RULE****TYPE OF RULE:** Repeal

Utah Admin. Code Ref (R no.):	R592-15
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Filing ID	54615
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Agency Information

1. Department:	Insurance	
Agency:	Title and Escrow Commission	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	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:**

R592-15. Schedule of Minimum Charges for Escrow Services

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

This rule is being repealed because it conflicts with proposed Rule R592-18, Cost of Doing the Escrow Business. The Title and Escrow Commission approved the repeal of this rule in its 05/09/2022 meeting by a vote of 4 to 0.

(EDITOR'S NOTE: The proposed new Rule R592-18 is under ID 54616 in this issue, June 1, 2022, of the Bulletin.)

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

This filing repeals this rule in its entirety.

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

There is no anticipated cost or savings to the state budget. Similar information will continue to be reported to the Department of Insurance (Department) and reviewed by the Department as part of the annual report.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule governs the relationship between the Department and its licensees and has no bearing on local governments in any way.

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

There is no anticipated cost or savings to small businesses. Under this rule, licensees only report their minimum escrow service charges when they began performing escrow services, and any time they change their prices for those services. Repealing this rule will mean they will no longer report at those times, but rather as part of the annual report.

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. Under this rule, licensees only report their minimum escrow service charges when they began performing escrow services, and any time they change their prices for those services. Repealing the rule will mean they will no longer report at those times, but rather as part of the annual report.

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. Under this rule, licensees only report their minimum escrow service charges when they began performing escrow services, and any time they change their prices for those services. Repealing the rule will mean they will no longer report at those times, but rather as part of the annual report.

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. An affected person will just not report to us when its escrow service charges 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):

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

NOTICES OF PROPOSED RULES

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-404		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	07/01/2022

10. This rule change MAY become effective on:	07/08/2022
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:	05/16/2022
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R592. Insurance, Title and Escrow Commission.

[R592-15. Schedule of Minimum Charges for Escrow Services.

R592-15 1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404.

R592-15 2. Purpose and Scope.

(1) The purpose of this rule is to establish procedures for filing a Schedule of Minimum Charges for Escrow Services pursuant to Section 31A-19a-209.

(2) This rule applies to a title insurer, an agency title insurance producer, and an individual title insurance producer who is

not an employee of a title insurer or who is not designated to an agency title insurance producer that provides escrow services in Utah.

R592-15 3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301, 31A-2-402, and 31A-19a-102. Additional terms are defined as follows:

(1) "Certification" means a statement that a filing complies with Utah laws and rules.

(2) "Charge" means a dollar amount charged for a service rendered by a title licensee.

(3) "Document preparation" means preparing or compiling documents in connection with an escrow service.

(4) "Electronic filing" or "file electronically" means:

(a) a filing submitted via the internet by a title insurer using the System for Electronic Rate and Forms Filings (SERFF); or

(b) a filing submitted via an email system by an agency title insurance producer or an individual title insurance producer.

(5) "Escrow charge" means a dollar amount charged for an escrow service shown in the Schedule of Minimum Charges for Escrow Services.

(6) "Escrow service" means a service related to a settlement of a real estate transaction.

(7) "File and use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(8) "File before use" means a filing can be used, sold, or offered for sale after it has been filed with the department, and a stated period of time has elapsed from the date filed.

(9) "Filer" means a person who submits a filing.

(10)(a) "Filing Objection Letter" means a letter issued by the commissioner when a review determines that the filing fails to comply with Utah laws and rules.

(b) The Filing Objection Letter may require correction of non-compliant items and request clarification or additional information pertaining to the filing.

(11) "Letter of Authorization" means a letter signed on behalf of a title licensee that gives an individual filing authority.

(12) "Minimum escrow fee" means the minimum amount that must be charged for escrow settlement services rendered.

(13) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(14) "Other settlement service" means an additional service not specifically listed in the Schedule of Minimum Charges for Escrow Services.

(15) "Rejected" means a filing is:

(a) not submitted in accordance with Utah laws and rules;

(b) returned to the filer by the department, with the reasons for rejection; and

(c) not considered filed with the department.

(16) "Title licensee", for purposes of this rule, means a title insurance company, an agency title insurance producer, or an individual title insurance producer.

R592-15 4. Required Documents.

The following documents shall be used for each filing and are available on the department's website, <https://insurance.utah.gov>:

(1) "Transmittal Document for Agency Title Insurance Producer or Individual Title Insurance Producer"; and

(2) "Schedule of Minimum Charges for Escrow Services.

R592-15-5. General Filing Information.

~~(1)(a) A filing shall be accurate, consistent, complete, and contain all required documents for the filing to be processed in a timely and efficient manner.~~

~~(b) The commissioner may request additional information as necessary.~~

~~(2)(a) A filing that does not comply with this rule is rejected and returned to the filer.~~

~~(b) A rejected filing:~~

~~(i) is not considered filed with the department;~~

~~(ii) shall be submitted as a new filing; and~~

~~(iii) will be charged a new filing fee.~~

~~(3) Prior filings are not researched to determine the purpose of the filing.~~

~~(4) The department does not review or proofread every filing.~~

~~(a) A filing may be reviewed:~~

~~(i) when submitted;~~

~~(ii) as a result of a complaint;~~

~~(iii) during a regulatory examination or investigation; or~~

~~(iv) any time the department determines a review is necessary.~~

~~(b) When a Filing Objection Letter or Order to Prohibit Use is issued, a title licensee may be required to disclose the deficiencies to each affected consumer.~~

~~(5) Filing corrections.~~

~~(a) If the filing is in an open status, correction can be made at any time.~~

~~(b) If the filing is in a closed status, a new filing is required.~~

~~(c) The filer must reference the original filing in the filing description.~~

~~(6) When responding to a Filing Objection Letter or an Order to Prohibit Use, a filer shall comply with Section R592-15-9.~~

~~(7) A filer must notify the department when withdrawing a previous filing.~~

R592-15-6. Filing Requirements.

~~(1) The following shall electronically file a Schedule of Minimum Escrow Service Charges:~~

~~(a) a title insurer;~~

~~(b) an agency title insurance producer; and~~

~~(c) an individual title insurance producer who is:~~

~~(i) not an employee of a title insurer; or~~

~~(ii) not designated to an agency title insurance producer.~~

~~(2) Only an individual who is authorized to act on behalf of a title licensee may submit a filing.~~

~~(3)(a) An initial Schedule of Minimum Charges for Escrow Services filing is a file and use filing and is effective the day it is filed.~~

~~(b) A revised Schedule of Minimum Charges for Escrow Services filing is a file before use filing and is effective:~~

~~(i) 30 calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed; or~~

~~(ii) a date specified by the filer that is later than 30 calendar days after the revised Schedule of Minimum Charges for Escrow Services is filed.~~

~~(4) Each filing must be submitted as an electronic filing via:~~

~~(a) email; or~~

~~(b) SERFF.~~

~~(5) A complete email filing consists of the following:~~

~~(a) an email naming the filer and stating that it is an escrow rate filing in the title of the email;~~

~~(b) a complete Transmittal Document for Agency Title Insurance Producer or Individual Title Insurance Producer, containing a complete filing description in the following order:~~

~~(i) Certification.~~

~~(A) A filer shall certify that a filing is complete and complies with Utah laws and rules.~~

~~(B) The filing shall include the following statement in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R592-15 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".~~

~~(C) A filing will be rejected if the certification is false, missing, or incomplete.~~

~~(ii) Indicate if the filing is:~~

~~(A) new;~~

~~(B) replacing or modifying a previous submission, describing the changes;~~

~~(C) previously rejected, with reasons for rejection and previous filing's submission date; or~~

~~(D) previously objected to or prohibited, with reasons for resubmission;~~

~~(e) a Schedule of Minimum Charges for Escrow Services, completed as follows:~~

~~(i) each blank field must be completed;~~

~~(ii) if a listed service is not performed by a title licensee, the field must show "N/A" or "Not Applicable"; and~~

~~(iii) the Schedule of Minimum Charges for Escrow Services may not be altered; and~~

~~(d) a Letter of Authorization.~~

~~(i) When the filer is not a title licensee, a Letter of Authorization from the title licensee shall be included with the filing.~~

~~(ii) The title licensee is responsible for ensuring that the filing complies with Utah laws and rules.~~

~~(e) Under Subsection 31A-19a-203(1)(e)(i), a rate filing fee shall be received by the department within five days of the electronic submission or the filing will be rejected.~~

~~(6) A complete SERFF filing consists of the following:~~

~~(a) a complete description section on the general information tab, presented in the following order:~~

~~(i) Certification.~~

~~(A) A filer shall certify that a filing is complete and complies with Utah laws and rules.~~

~~(B) The filing shall include the following statement in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R592-15 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".~~

~~(C) A filing will be rejected if the certification is false, missing, or incomplete.~~

~~(ii) Indicate if the filing is:~~

~~(A) new;~~

~~(B) replacing or modifying a previous submission, describing the changes;~~

~~(C) previously rejected, with reasons for rejection, and previous filing's submission date; or~~

~~(D) previously objected to or prohibited, with reasons for resubmission;~~

NOTICES OF PROPOSED RULES

~~(b) a Schedule of Minimum Charges for Escrow Services completed as follows:~~

- ~~(i) attach the filing to the rate and rule schedule tab;~~
- ~~(ii) each blank field must be completed;~~
- ~~(iii) if a listed service is not performed by a title licensee, the field must show "N/A" or "Not Applicable"; and~~
- ~~(iv) the Schedule of Minimum Charges for Escrow Services may not be altered; and~~
- ~~(e) a Letter of Authorization.~~
- ~~(i) When the filer is not a title licensee, a Letter of Authorization from the title licensee shall be included with the filing.~~
- ~~(ii) The title licensee is responsible for ensuring that the filing complies with Utah laws and rules.~~
- ~~(d) Under Subsection 31A-19a-203(1)(e)(i), a rate filing fee shall be received by the department within five days of the electronic submission or the filing will be rejected.~~

R592-15-7. Charges.

- ~~(1) Only minimum escrow charges shown in the Schedule of Minimum Charges for Escrow Services shall be filed.~~
- ~~(2) Other settlement service charges will be used for services not specifically shown in the Schedule of Minimum Charges for Escrow Services.~~
- ~~(3) Other settlement service charges shall be filed as a per hour charge.~~
- ~~(4) Only document charges shown in the Schedule of Minimum Charges for Escrow Services shall be filed.~~
- ~~(5) Other services not specifically listed on the Schedule of Minimum Charges for Escrow Services may be provided if a justifiable charge is filed.~~

R592-15-8. Correspondence and Status Checks.

- ~~(1) To identify the original filing, the following information shall be provided:~~
 - ~~(a) type of filing;~~
 - ~~(b) date of filing; and~~
 - ~~(c) submission method.~~
- ~~(2) A filer may request the status of its filing 60 days after the filing date.~~

R592-15-9. Responses.

- ~~(1) A response to a Filing Objection Letter shall include:~~
 - ~~(a) a cover letter identifying the changes made; and~~
 - ~~(b) revised documents with each change highlighted.~~
- ~~(2)(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.~~
- ~~(b) Use of the filing shall be discontinued by the date specified in the Order.~~
- ~~(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.~~
- ~~(d) Once the Order to Prohibit Use has been issued, a new filing is required if the title licensee chooses to make the requested changes addressed in the original Filing Objection Letter.~~

R592-15-10. Severability.

~~If any provision of this rule, Rule R592-15, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.~~

KEY: title escrow filings

Date of Last Change: December 23, 2021

Notice of Continuation: March 30, 2021

Authorizing, and Implemented or Interpreted Law: 31A-2-404]

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.): R592-18

Filing ID
54616

Agency Information

1. Department:	Insurance
Agency:	Title and Escrow Commission
Room no.:	Suite 2300
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorville, 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:
R592-18. Cost of Doing the Escrow Business
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this rule is to establish the standard for determining compliance with Subsection 31A-19a-209(3)(a)(ii). The Title and Escrow Commission approved the filing of this proposed rule in its 05/09/2022 meeting by a vote of 4 to 0.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The law prohibits title insurance agencies from providing below-cost escrow services. For several years, there were varying views as to what constitutes "below-cost." The Department of Insurance (Department) and title industry have now agreed on a process and a method for determining the amount that is considered "below-cost." The rule reflects this agreement.

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 information required by the rule will be reported to the Department and reviewed by the Department as part of the annual report.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule governs the relationship between the Department and its licensees and has no bearing on local governments in any way.

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

There is no anticipated cost or savings to small businesses. Title agencies are already expected to track the cost of escrow per transaction. While this rule requires them to create an average from that information, it can be easily done with common office software.

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. Title agencies and companies are already expected to track the cost of escrow per transaction. While this rule requires them to create an average from that information, it can be easily done with common office software.

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. Title agents are already expected to track the cost of escrow per transaction. While this rule requires them to create an average from that information, it can be easily done with common office software.

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. Title licensees already track the cost of escrow per transaction. Creating an average from that information will not require any additional cost.

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-2-404

Public Notice Information

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

A) Comments will be accepted until: 07/01/2022

10. This rule change MAY become effective on: 07/08/2022

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:	05/16/2022
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R592. Insurance, Title and Escrow Commission.**R592-18. Cost of Doing the Escrow Business.****R592-18-1. Authority.**

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404.

R592-18-2. Purpose and Scope.

(1) The purpose of this rule is to establish the standard for determining compliance with Subsection 31A-19a-209(3)(a)(ii).

(2) This rule applies to a title insurer and a title insurance producer.

R592-18-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-2-402.

R592-18-4. Calculating the Cost of Doing the Escrow Business Under Subsection 31A-19a-209(3)(a)(ii).

(1)(a) A title insurer, an agency title insurance producer, or an individual title insurance producer who is not an employee of a title insurer or who is not designated by an agency title insurance producer shall file with the commissioner, to be submitted with its annual report, a certified statement of the average residential escrow fee charged by the filer for the prior calendar year.

(b) Submitting the certified statement in Subsection (1)(a) satisfies the requirement of filing with the commissioner a schedule of escrow charges in Section 31A-19a-209.

(2)(a) The commissioner shall establish an industry average residential escrow fee by calculating the average of the residential escrow fees submitted under Subsection (1).

(b) The industry average residential escrow fee shall be calculated for the buyer side and the seller side of a transaction.

(c) The industry average residential escrow fee shall include the sum of the fees charged by a filer for conducting escrow services on any transaction involving a dwelling as defined in Section 57-21-2.

(d) The industry average residential escrow fee shall exclude any pass-through cost incurred incident to the escrow services or the issuance of the title insurance and separately charged to the consumer.

(3) On June 1 of each year, the commissioner shall issue a bulletin that notifies title insurers and title insurance producers of the industry average residential escrow fee for the buyer side and the seller side of a transaction.

(4) The industry average residential escrow fee calculated under Subsection (2) shall take effect on September 1 following the issuance of the bulletin.

(5) Under Subsection 31A-19a-209(3)(a)(ii), the cost of doing the escrow business is 50% of the industry average residential escrow fee for the buyer side and the seller side as calculated under Subsection (2).

R592-18-5. Severability.

If any provision of this rule, Rule R592-18, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: title insurance**Date of Last Change: 2022****Authorizing, and Implemented or Interpreted Law: 31A-2-404(2)(a); 31A-19a-209(2)(a)(iii)****NOTICE OF PROPOSED RULE**

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R877-23V-14	Filing ID	54573
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Agency Information

1. Department:	Tax Commission		
Agency:	Motor Vehicle Enforcement		
Building:	Utah State Tax Commission		
Street address:	210 N 1950 W		
City, state and zip:	Salt Lake City, UT 84134		
Contact person(s):			
Name:	Phone:	Email:	
Chantay Asper	801-297-3901	casper@utah.gov	
Please address questions regarding information on this notice to the agency.			

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

R877-23V-14. Dealer Identification of Fees Associated with Issuance of Temporary Permits Pursuant to Utah Code Ann. Sections 41-3-301 and 41-3-302

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

The reason for the change is to clarify the content of the dealer documentary service fee disclosure sign.

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

This amendment makes technical changes and clarifies that the sign required in each motor vehicle dealership to disclose dealer documentary service fees must state the actual dollar amount of the dealer documentary service fee as set forth in the dealer's contract of sale or lease agreement.

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

This amendment is not expected to impact the state budget because it only changes the content of a sign.

B) Local governments:

This amendment is not expected to impact local governments because it only changes the content of a sign.

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

This amendment is not expected to impact small businesses because it only changes the content of a sign.

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

This amendment is not expected to impact non-small businesses because it only changes and content of a sign.

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

This amendment is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities because it only changes the content of a sign.

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

This amendment is not expected to impose compliance costs on affected persons because it only changes the content of a sign.

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

This amendment is not expected to have a fiscal impact on businesses because it only changes and content of a sign. Rebecca L. Rockwell, Commissioner

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

A Commissioner of the Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.

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

Section 41-3-301	Section 41-3-302	
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Public Notice Information

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

A) Comments will be accepted until:	07/01/2022
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10. This rule change MAY become effective on:	07/08/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Rebecca L. Rockwell, Commissioner	Date:	05/16/2022
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R877. Tax Commission, Motor Vehicle Enforcement.

R877-23V. Motor Vehicle Enforcement.

R877-23V-14. Dealer Identification of Fees Associated with Issuance of Temporary Permits Pursuant to Utah Code Ann. Sections 41-3-301 and 41-3-302.

(1) As used in this section, "dealer documentary service fee" means a fee that a dealer charges a purchaser or lessee of a motor

vehicle for preparing or processing any state-mandated documents or services.

~~[(4)](2)~~ Only fees required by Title 41, Chapter 1a, Motor Vehicle Act, may be identified as state-mandated fees.

~~[(2)](3)~~ A dealer that charges the purchaser or lessee of a motor vehicle a ~~[fee for preparing or processing any state-mandated documents or services ("dealer documentary service fees") must, in addition to the requirements set forth in Subsection (1),]~~ dealer documentary service fee shall prominently display a sign in the sales area on the dealer premises in a location that is readily discernable by all purchasers and lessees. The sign shall contain the language set forth in Subsection ~~[(2)(a)](3)(a)~~.

(a) "The ~~[dealer documentary service fee]~~ of \$ _____ as set forth in your contract of sale or lease agreement, represents costs to the dealer for preparing and processing documents and other services related to the sale or lease of your vehicle. These fees are not set or ~~[state]~~ mandated by ~~[state]~~ statute or rule."

(b) The ~~[blank in]~~ amount disclosed under Subsection ~~[(2)(a)](3)(a)~~ shall be the actual amount of the dealer documentary service fee under ~~[may be wording selected by the dealer to describe the fee charged for document preparation and processing and other services, but must be, in all cases, the actual wording used in]~~ the dealer's contract of sale or lease agreement.

KEY: taxation, motor vehicles

Date of Last Change: ~~March 28, 2022~~ 2022

Notice of Continuation: November 9, 2021

Authorizing, and Implemented or Interpreted Law: 41-1a-712; 41-3-105; 41-3-201; 41-3-202; 41-3-210; 41-3-301; 41-3-302; 41-3-305; 41-3-503; 41-3-505; 41-3-506; 41-3-507

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.):	R152-34	Filing ID: 50239
Effective Date:	05/06/2022	

Agency Information

1. Department:	Commerce	
Agency:	Consumer Protection	
Building:	Heber Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Daniel Larsen	801-530-6145	dblarsen@utah.gov

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

General Information

2. Rule catchline:
R152-34. Utah Postsecondary Proprietary School Act Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is enacted in accordance with: Subsection 13-2-5(1), which authorizes the Division of Consumer Protection (Division) to issue rules to administer and enforce the chapters listed in Section 13-2-1; Subsection 13-34-104(6), which requires the Division to establish standards and criteria regarding awarding educational

credentials, bona fide instruction through student-faculty interaction, and determination of a student's ability to benefit from a program; Subsection 13-34-107(6)(a)(i), which allows the Division to prescribe criteria allowing an applicant for a certificate of registration as a postsecondary proprietary school to demonstrate its fiscal responsibility; Subsections 13-34-107(7)(b)(i) through (iv), which allow the Division to make rules regarding the amount of a surety required to obtain a certificate of registration as a postsecondary proprietary school, the execution of that surety, cancellation of that surety, and any other matters relating to that surety in accordance with Subsection 13-34-107(7)(a).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Division is not aware of any written comments from interested persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule assists the Division in its administration and enforcement of Title 13, Chapter 34, Utah Postsecondary Proprietary School Act, by detailing the information and documents a regulated entity is required to submit to the Division to obtain a certificate of registration. This rule defines terms to provide clarity to regulated entities. This rule provides regulated entities with detailed standards applicable to awarding educational credentials, and establishes standards with respect to what is considered bona fide instruction. This rule also protects consumers by setting minimum standards to which regulated entities must adhere when determining whether a student will benefit from a proprietary school's services, and by establishing minimum standards for fair and ethical practices by regulated entities. This rule also details a proprietary school's responsibilities to students and to the

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Division when it intends to close or terminate operations. This rule is critical to the Division's continued administration and enforcement of the statutory scheme. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Daniel Larsen, Commerce Analyst	Date:	05/06/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R277-122	Filing ID:	50392
Effective Date:	05/16/2022		

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:
R277-122. Board of Education 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:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Title 63G, Chapter 6a, Utah Procurement Code.

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:	05/16/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R277-410	Filing ID:	50409
Effective Date:	05/16/2022		

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:
R277-410. Accreditation of 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 Board; and Section 53E-3-501 which

directs the Board to establish rules governing school accreditation.

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 requirements for qualifying secondary schools to be accredited. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/16/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R277-485	Filing ID: 50451
Effective Date:	05/16/2022	

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:
R277-485. Loss of Enrollment
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

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 Section 53F-2-207 which allows the Board to increase funds for a school district in order to avoid penalizing it for an excessive loss in student enrollment due to factors beyond its control.

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 the Board to increase funds for a school district in order to avoid penalizing it for an excessive loss in student enrollment due to factors beyond the school district's control. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/16/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R277-911	Filing ID: 50550
Effective Date:	05/16/2022	

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:
R277-911. Secondary Career and Technical Education
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; Section 53E-3-507 which allows the Board to establish minimum standards for Career and Technical Education (CTE) programs in the public education system; and Sections 53F-2-311 and 53G-6-708 which direct the Board to distribute specific amounts and percentages for specific CTE programs and facilitate administration of various programs.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
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 CTE programs in local education agencies (LEAs). This rule outlines how funding for these programs is calculated and general governance requirements of an LEA's program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	05/16/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-105	Filing ID:	50571
Effective Date:	05/04/2022		

Agency Information

1. Department:	Environmental Quality
Agency:	Air Quality
Building:	Multi-Agency State Office Building
Street address:	195 N 1950 W
City, state and zip:	Salt Lake City, UT 84116

Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	Phone:	Email:
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-105. General Requirements: Emergency Controls
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-2-112 allows the Executive Director of the Department of Environmental Quality, with the concurrence of the Governor, to declare an air pollution emergency and order reductions in emissions of air pollutants. Rule R307-105 establishes the levels of air pollutants that create an emergency, as well as other factors used in determining that an emergency exists.
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.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-105 satisfies federal regulations implementing the Clean Air Act that prevent ambient pollutant concentrations from reaching certain levels that cause significant harm to human health and the environment. These requirements are found in 40 CFR 51.151. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-401	Filing ID:	52316
Effective Date:	05/04/2022		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	Phone:	Email:
Dr. Bo Wood	385-499-3416	rwood@utah.gov

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

General Information

2. Rule catchline:
R307-401. Permit: New and Modified Sources
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-2-108 requires a person to give notice to the director if the person is planning to "construct a new installation which will or might reasonably be expected to increase the amount of or change the character or effect of air pollutants discharged..." Rule R307-401 sets forth the requirements that the owner or operator of a source of air pollution must address in giving notice to the executive secretary under Section 19-2-108. The Board is able to adopt rules that implement Section 19-2-108 because Section 19-2-104 gives the Board the power to control, abate, and prevent air pollution from all sources. A notice requirement and its implementation are a necessary part of controlling, abating, and preventing air pollution. Rule R307-401 is also required by Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan (SIP). This SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
This rule has been amended five times since the last five-year review. Three of the five proposed amendments received no written comments during the public comment period. During the comment period associated with amendments finalized in June of 2019, three comments were received advocating expanding this rule beyond the scope proposed in the amendment. Staff considered these comments but disagreed and made no changes to the proposed rule. During the comment period associated with amendments finalized in March of 2020, three

comments were received regarding definitions and the organization of this rule. Staff generally agreed with the comments and revised the rule accordingly. There have been no comments opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-401 is required by Section 19-2-108 and is also required by Section II, Review of New and Modified Air Pollution Sources, of the SIP, which is incorporated by reference under Rule R307-110. This SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I. Without the SIP, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-403	Filing ID:	50646
Effective Date:	05/04/2022		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	Phone:	Email:
Dr. Bo Wood	385-499-3416	rwood@utah.gov

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

General Information

2. Rule catchline:
R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance 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:

Section 19-2-104 gives the Board the power to control, abate, and prevent air pollution from all sources. Rule R307-403 is an air pollution permitting program that helps control, abate, and prevent air pollution. Rule R307-403 is also required by Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan (SIP). This SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.165.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

This rule has been amended twice since the last five-year review. In one instance, no comments were received. In the other, 11 written comments were received relating to definitions, organization, and language choices. Staff considered and responded to each of these comments, generally agreeing with their intent and modifying the proposed rule to incorporate these changes. No comments opposing this rule have been received since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-403 is required by Section 19-2-108 and by Section II, Review of New and Modified Air Pollution Sources, of the State Implementation Plan (SIP), which is incorporated by reference under Rule R307-110. The SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51.165. Without the SIP, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-406	Filing ID: 50641
Effective Date:	05/04/2022	

Agency Information

1. Department:	Environmental Quality
Agency:	Air Quality
Building:	Multi-Agency State Office Building
Street address:	195 N 1950 W

City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	Phone:	Email:
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-406. Visibility
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-2-104 gives the Board the power to control, abate, and prevent air pollution from all sources. Rule R307-406 helps control, abate, and prevent air pollution for the purpose of increasing visibility at Class I areas - Zion, Bryce, Capitol Reef, Arches, and Canyonlands National Parks. Rule R307-406 is also required by Section XVII, Visibility Protection, of the State Implementation Plan (SIP). This plan is required under Clean Air Act, 42 U.S.C. 7410 and 40 C.F.R. 51 subpart P.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received on this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-406 is required by Section XVII, Visibility Protection, of the SIP, which is incorporated by reference into the Utah Air Quality Rules under Rule R307-110. The SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart P. Without the SIP, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-410	Filing ID: 52751
Effective Date:	05/04/2022	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	Phone:	Email:
Dr. Bo Wood	385-499-3416	rwood@utah.gov

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

General Information

2. Rule catchline:
R307-410. Permits: Emissions Impact Analysis
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-2-104 allows the Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-410 prevents air pollution by requiring an emissions impact analysis from sources to determine what amount of pollution will contribute to a violation of federal air quality standards. Rule R307-410 is also required by Section II, Review of New and Modified Air Pollution Sources and Section XVIII, Demonstration of GEP Stack Height, of the State Implementation Plan (SIP). The SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I, and 40 CFR 51.118.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
This rule has been amended three times since the last five-year review. No written comments were received during any of the public comment periods associated with this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-410 is required by Section XVIII, Demonstration of GEP Stack Height, of the SIP, which is incorporated by reference under Rule R307-110. The SIP is required under Clean Air Act, 42 U.S.C. 7410 and 40 CFR 51 subpart I, and 40 CFR 51.118. Without the SIP, EPA would be required to impose a federal implementation plan. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-414	Filing ID: 50640
Effective Date:	05/04/2022	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	Phone:	Email:
Dr. Bo Wood	385-499-3416	rwood@utah.gov

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

General Information

2. Rule catchline:
R307-414. Permits: Fees for Approval Orders
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-2-104 allows the Utah Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-414 does this by setting up the procedures, including the payment of fees,

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

for administering an air quality permitting program designed to control, abate, and prevent air pollution.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received on this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The fees required in Rule R307-414, which are approved annually by the Legislature, comprise a substantial portion of the budget of the Division of Air Quality (Division). Without these fees, the Division would not be able to review and enforce the air quality permitting program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-415	Filing ID:	53894
Effective Date:	05/04/2022		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	Multi-Agency State Office Building	
Street address:	195 N1950 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:
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-415. Permits: Operating Permit Requirements

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 19-2-104(1)(f) allows the Board to promulgate rules and Section 19-2-109.1 implements an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990. Rule R307-415 controls, abates, and prevents air pollution by requiring permits and establishing an emissions fee for air pollution under the Title V permitting program in the Clean Air Act.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

This rule has been amended twice since the last five-year review. No written comments were received regarding this rule during either public comment period.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-415 is required by Title V of the Clean Air Act; 40 CFR Part 70; and Section 19-2-109.1. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-417	Filing ID:	50647
Effective Date:	05/04/2022		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	Phone:	Email:
Dr. Bo Wood	385-499-3416	rwood@utah.gov

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

General Information

2. Rule catchline:

R307-417. Permits: Acid Rain Sources

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 19-2-104 allows the Utah Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-417 does this by preventing air pollution that contributes to acid rain through an air pollution permitting program. The rule incorporates by reference the federal requirements in 40 CFR Part 72 into Utah's air quality rules for the purpose of meeting the requirements of Title IV of the Clean Air Act.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received on this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule incorporates by reference the federal requirements in 40 CFR Part 72 into Utah's air quality rules for the purpose of meeting the requirements of Title IV of the Clean Air Act. By incorporating the federal requirements into the state rules, Utah is able to implement and enforce its own acid rain program. Without this rule, the EPA would have the sole authority to implement the program in Utah. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R307-420	Filing ID:	50649
Effective Date:	05/04/2022		

Agency Information

1. Department:	Environmental Quality
Agency:	Air Quality
Building:	Multi-Agency State Office Building

Street address:	195 N1950 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:
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 19-2-104 allows the Utah Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-420 does this by implementing ozone offset provisions that require sources to offset increases in emissions before getting an approval order to construct, modify, or relocate under Rule R307-401. The offsetting program is designed to prevent future net increases in air pollution.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received on this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-420 is required to minimize the growth in emissions of ozone precursors in Salt Lake and Davis counties. This rule supports Section IX.D (Ozone Maintenance Plan) of the State Implementation Plan, which is incorporated by reference in Section R307-110-13. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R307-421	Filing ID: 50644
Effective Date:	05/04/2022	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	Phone:	Email:
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-421. Permits: PM10 Offset Requirements in Salt Lake County and Utah County
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 19-2-104 allows the Utah Air Quality Board to promulgate rules that control, abate, and prevent air pollution from all sources. Rule R307-421 does this by ensuring that the growth of particulate matter precursor pollutants is minimized by the use of emission offsets.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received on this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-421 is required to minimize the growth in emissions of PM10 precursors in Salt Lake and Utah County. This rule supports the PM10 Maintenance Plan, which is incorporated by reference in Section R307-110-10. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R307-424	Filing ID: 50648
Effective Date:	05/04/2022	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact person(s):		
Name:	Phone:	Email:
Dr. Bo Wood	385-499-3416	rwood@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-424. Permits: Mercury Requirements for Electric Generating Units
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 was enacted under Section 19-2-104. Section 19-2-104 authorizes the Utah Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source..." Rule R307-424 controls mercury emissions from coal-fired electric generating units. It also establishes maximum allowable quantities of mercury that may be emitted by a source. Each of these regulatory actions (controlling emissions and setting emission standards) are allowed under Section 19-2-104.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received on this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule sets mercury emission limits for coal-fired power plants. It also implements federal emission standards found in 40 CFR 61.24 and is required by Section 111(d) of the Clean Air Act. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Bryce C. Bird, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R450-2	Filing ID: 51117
Effective Date:	05/09/2022	

Agency Information

1. Department:	Cultural and Community Engagement	
Agency:	Administration	
Street address:	3760 S Highland Drive	
City, state and zip:	Salt Lake City, UT 84106	
Contact person(s):		
Name:	Phone:	Email:
Kristin Mead	218-393-2995	kristinmead@utah.gov

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

General Information

2. Rule catchline:
R450-2. Preservation Pro Fee
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Rule R450-2 establishes the procedure for user fees the public pays for the online Preservation Pro tool maintained by State History in accordance with Section 9-8-304 and Subsection 63G-3-201(2).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary in order to keep this needed service available to the public. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jill Love, Executive Directory	Date:	05/09/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R458-1	Filing ID: 51144
Effective Date:	05/09/2022	

Agency Information

1. Department:	Cultural and Community Engagement		
Agency:	Library		
Street address:	250 N 1950 W, Suite A		
City, state and zip:	Salt Lake City, UT 84116-7901		
Contact person(s):			
Name:	Phone:	Email:	
Kristin Mead	218-393-2995	kristinmead@utah.gov	

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

General Information

2. Rule catchline:
R458-1. Adjudicative Procedures
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule establishes that the State Library Division requires adjudicative procedures in accordance with Section 63G-4-202.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required by Section 63G-4-202. This rule is necessary to stay in compliance. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jill Love, Executive Director	Date:	05/09/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R746-320	Filing ID: 51958
Effective Date:	05/11/2022	

Agency Information

1. Department:	Public Service Commission	
Agency:	Administration	
Building:	Heber M Wells Building	
Street address:	160 E 300 S, 4th Floor	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 4558	
City, state and zip:	Salt Lake City, UT 84114-4558	
Contact person(s):		
Name:	Phone:	Email:
Yvonne Hogle	801-530-6709	yhogle@utah.gov

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

General Information

2. Rule catchline:
R746-320. Uniform Rules Governing Natural Gas Service

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Rule R746-320 is enacted pursuant to Sections 54-2-1, 54-4-1, 54-4-7, 54-4-18, and 54-4-23. Section 54-2-1 requires this rule because it defines, in part, "utility" as a "gas corporation" which is defined in this rule as the "utility" to which the rule applies. Under Section 54-4-1, the Public Service Commission (Commission) is tasked with regulating utilities including natural gas utilities and must be able to adopt uniform rules that govern the methods and conditions to be used in the provision of natural gas

service. Therefore, Section 54-2-1 requires Rule R746-320 because this rule governs the methods and conditions to be used in the provision of natural gas service. Section 54-4-7 expressly authorizes the rules, stating "[t]he commission, after a hearing, shall prescribe rules and regulations for the performance of any service...". Section 54-4-18 authorizes and requires the rule, stating "[t]he commission shall have power, after a hearing, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed by all electrical, gas and water corporations...". Section 54-4-23 requires this rule because the statute gives the Commission the power to establish a system of accounts to be kept by all utilities and prescribe the manner in which such accounts are kept. This rule reflects the Commission's adoption of a uniform system of accounts that a gas corporation must use.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received 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:

The authority and requirements for this rule are provided in Box 3 above and they still exist today. This rule is still needed. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Thad LeVar, PSC Chair	Date:	05/11/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R850-1	Filing ID: 52027
Effective Date:	05/12/2022	

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:
R850-1. Definition of Terms
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 53C-1-302(1)(a)(ii) authorizes the Director of the School and Institutional Trust Lands Administration to provide definitions which apply to all rules promulgated by the Director and Trust.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received by the agency for this rule since the previous five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
There are many terms that are unique to various programs administered by the Trust. This rule enables the School and Institutional Trust Lands Administration to define and clarify terminology used throughout the Trust's rules in one location rather than creating a substantial amount of repetition by defining program-related terms within each individual program rule. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Michelle McConkie, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R850-2	Filing ID:	52031
Effective Date:	05/12/2022		

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:
R850-2. Trust Land Management Objectives
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 53C-1-204(1) and Section 53C-1-302 authorize the Director of the School and Institutional Trust Lands Administration to prescribe the general land management objectives for the schools and other institutional 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:
The lands administered by the School and Institutional Trust Lands Administration are held in trust for the benefit of specifically designated beneficiaries. This rule outlines the objectives of the Trust in fulfilling its fiduciary duty to those beneficiaries and with regard to the use and disposition of their respective lands. This rule also clarifies for the general public and other governmental entities the purposes for which these lands were granted. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Michelle McConkie, Director	Date:	05/04/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R850-3	Filing ID: 52022
Effective Date:	05/12/2022	

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:
R850-3. Applicant Qualifications, Application Forms, and Application Processing

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 53C-1-302(1)(a)(ii) and Section 53C-2-404 authorize the Director of the School and Institutional Trust Lands Administration to prescribe the applicant requirements and the form of application for the use and disposition 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 necessary as it sets forth the requirements an applicant must meet in order to qualify as a user of trust lands. It also sets forth guidelines for the Trust to follow for consistency in the acceptance or rejection of submitted applications. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Michelle McConkie, Director	Date:	05/04/2022
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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.):	R590-173	Filing ID: 51387
New Date:	Deadline	10/03/2022

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:
R590-173. Credit for Reinsurance
3. Reason for requesting the extension and the new deadline date:
The five-year review of this rule is due on 06/05/2022. However, an amendment was filed a few weeks ago and it cannot be made effective until 06/07/2022 at the earliest. The Insurance Department (Department) is requesting an extension to ensure the Department is able to use the most recent language of this rule for the review.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	05/06/2022
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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.

Commerce

Real Estate

No. 54391 (Amendment) R162-2f: Real Estate Licensing and Practices Rules
Published: 04/15/2022
Effective: 05/25/2022

Education

Administration

No. 54420 (Amendment) R277-406: Early Learning Program and Benchmark Assessments
Published: 04/01/2022
Effective: 05/11/2022

No. 54475 (Amendment) R277-479: Funding for Charter School Students With Disabilities on an IEP
Published: 04/15/2022
Effective: 05/24/2022

No. 54421 (Amendment) R277-489: Kindergarten Entry and Exit Assessment - Enhanced Kindergarten Program
Published: 04/01/2022
Effective: 05/11/2022

No. 54476 (Amendment) R277-613: LEA Policies and Training Regarding Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct
Published: 04/15/2022
Effective: 05/24/2022

No. 54422 (Amendment) R277-622: School-based Mental Health Qualifying Grant Program
Published: 04/01/2022
Effective: 05/11/2022

No. 54477 (New Rule) R277-628: School Libraries
Published: 04/15/2022
Effective: 05/24/2022

No. 54423 (Amendment) R277-726: Statewide Online Education Program

Published: 04/01/2022
Effective: 05/11/2022

No. 54424 (Amendment) R277-733: Adult Education Programs

Published: 04/01/2022
Effective: 05/11/2022

No. 54478 (Amendment) R277-801: Services for Students who are Deaf, Hard of Hearing, blind, Visually Impaired, and Deaf-Blind

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No. 54479 (Amendment) R277-915: Work-based Learning Programs

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No. 54425 (Amendment) R277-916: College and Career Awareness

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Environmental Quality

Environmental Response and Remediation

No. 54457 (New Rule) R311-402: Utah Hazardous Substances Priority List

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Waste Management and Radiation Control, Radiation

No. 54410 (Amendment) R313-12-3: Definitions

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NOTICES OF RULE EFFECTIVE DATES

No. 54411 (Amendment) R313-19-100: Transportation
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Government Operations

Purchasing and General Services
No. 54463 (Amendment) R33-1: Utah Procurement Rules,
General Procurement Provisions
Published: 04/15/2022
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No. 54464 (Amendment) R33-2: Rules of Procedure for
Procurement Policy Board
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No. 54465 (Amendment) R33-4: Supplemental
Procurement Procedures
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No. 54466 (Amendment) R33-5: Other Standard
Procurement Processes
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No. 54467 (Amendment) R33-6: Bidding
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No. 54468 (Amendment) R33-7: Request for Proposals
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No. 54469 (Amendment) R33-8: Exceptions to Standard
Procurement Process
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No. 54470 (Amendment) R33-9: Cancellations, Rejections,
and Debarment
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No. 54471 (Amendment) R33-12: Terms and Conditions,
Contracts, Change Orders and Costs
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No. 54472 (Amendment) R33-24: Unlawful Conduct and
Ethical Standards
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Health

Administration
No. 54390 (Amendment) R380-406: Medical Cannabis
Pharmacy
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Human Services

Substance Abuse and Mental Health, State Hospital
No. 53930 (Amendment) R525-8: Forensic Mental Health
Facility
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No. 53930 (Change in Proposed Rule) R525-8: Forensic
Mental Health Facility
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Services for People with Disabilities
No. 54228 (Repeal and Reenact) R539-4: Behavior
Interventions
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No. 54228 (Change in Proposed Rule) R539-4: Behavior
Interventions
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Insurance

Administration
No. 54405 (Repeal and Reenact) R590-133: Variable
Contracts
Published: 04/01/2022
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No. 54406 (Amendment) R590-186: Bail Bond Business
Published: 04/01/2022
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No. 54407 (Amendment) R590-200: Diabetes Treatment
and Management
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No. 54419 (New Rule) R590-287: Manufacturer Data
Reporting
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Labor Commission

Occupational Safety and Health
No. 54392 (Amendment) R614-1-4: Incorporation of
Federal Standards
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Natural Resources

Wildlife Resources
No. 54339 (Amendment) R657-10: Taking Cougar
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NOTICES OF RULE EFFECTIVE DATES

No. 54339 (Change in Proposed Rule) R657-10: Taking
Cougar
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No. 54396 (Amendment) R657-13-9: Underwater
Spearfishing
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No. 54397 (Amendment) R657-26-5: Hearings
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No. 54340 (Amendment) R657-33: Taking Bear
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No. 54340 (Change in Proposed Rule) R657-33: Taking
Bear
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Public Safety

Driver License

No. 54451 (Amendment) R708-41: Requirements for
Acceptable Documentation, Storage and Maintenance
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Highway Patrol

No. 54441 (Amendment) R714-560: Technology and
Equipment for Officer-Involved Critical Incident Investigation
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End of the Notices of Rule Effective Dates Section

