

UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

EXECUTIVE ORDER 2022-05

WHEREAS, on August 23, 2022, a State of Emergency exists in Utah due to severe thunderstorms with heavy rain and the impacts from flash flooding in Emery, Grand, and Wayne Counties;

WHEREAS, numerous damaging flood events have impacted multiple counties throughout the state of Utah between August 19th through August 21st, with some communities being flooded multiple times;

WHEREAS, there has been significant damage to homes, businesses, roadways, and other public infrastructure;

WHEREAS, historic drought conditions, record low water levels, low soil moisture, high temperatures, and prolonged dry conditions have contributed to hardened ground surfaces increasing flash flood and debris flow risk;

WHEREAS, storm impacts such as flash flooding and debris flows are a threat to public safety;

WHEREAS, the potential for future and additional flooding in these and surrounding counties still exists;

WHEREAS, declaring a state of emergency will facilitate the protection of persons and property from the impacts of the severe storm and expedite the use of state level resources, as well as the deployment of federal and interstate resources, if required;

WHEREAS, many local communities have declared local states of emergency and have requested resources and support from the state of Utah's departments and agencies to assist them in dealing with these flood emergencies;

WHEREAS, the declaration of emergency will also permit the state of Utah to request and receive mutual aid assistance from other states through the Emergency Management Assistance Compact, if required;

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

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

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

1. The continued execution of the State Emergency Operations Plan, and assistance from state government to political subdivisions as needed and coordinated by the Department of Public Safety.

EXECUTIVE DOCUMENTS

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done in Salt Lake City, Utah, on this, the 23rd day of August, 2022.

(State Seal)

Spencer J. Cox
Governor

ATTEST:

Deidre M. Henderson
Lieutenant Governor

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between August 02, 2022, 12:00 a.m., and August 15, 2022, 11:59 p.m. are included in this, the September 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 October 03, 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 December 30, 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		
Rule or Section Number:	R68-22	Filing ID: 54791

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 persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-22. Industrial Hemp Research
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Changes are needed to make this rule consistent with current statute following passage of H.B. 385 during the 2022 General Session which transferred management of the industrial hemp cultivation program to the USDA. Accordingly, industrial hemp cultivation focused research will no longer be regulated or licensed by the Department of Agriculture and Food (Department). The bill also removed references to an industrial hemp research certificate from the Utah Code and therefore, research will now follow under the Department's current licensing of industrial hemp cultivators.
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 text has been updated to remove references to industrial hemp cultivation throughout, as well as change the name of the Industrial Hemp (Cultivation or

Processing) Research permit to the Industrial Hemp Research License. Additionally, definitions have been updated to make those listed consistent with current statute. The transportation section has been removed and replaced with language consistent with changes the Department recently filed to Rule R68-25, the Industrial Hemp Processor rule.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This change will save the Department an estimated \$2,500 per year because the Department will no longer be inspecting industrial hemp cultivation research.
B) Local governments:
Local governments do not participate in industrial hemp research and will not be impacted by these changes.
C) Small businesses ("small business" means a business employing 1-49 persons):
Small businesses should not be impacted by this change because the regulation of industrial hemp research is not changing.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Non-small businesses should not be impacted by this change because the regulation of industrial hemp research is not changing.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
Other persons should not be impacted by this change because the regulation of industrial hemp research is not changing.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
Compliance costs are not changing because compliance requirements and fees charged by the Department are not changing.
G) 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	FY2023	FY2024	FY2025
State Government	\$2,500	\$2,500	\$2,500
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$2,500	\$2,500	\$2,500
Net Fiscal Benefits	\$2,500	\$2,500	\$2,500
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Butters, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. 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 4-41-103		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	10/03/2022

9. This rule change MAY become effective on:	10/10/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Craig W Butters, Commissioner	Date:	08/08/2022
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R68. Agriculture and Food, Plant Industry.**R68-22. Industrial Hemp Research.****R68-22-1. Authority and Purpose.**

Pursuant to Section 4-41-103, this rule establishes the standards, practices, and procedures of the Industrial Hemp ~~[Growing or Industrial Hemp Processing Certificate]~~ Research License allowing a higher education institution to perform academic ~~[or agricultural]~~ research.

R68-22-2. Definitions.

As used in this rule:

(1) "Academic Research" means ~~[growth or]~~ processing of industrial hemp to discover and enable development of useful processes, information, and products.

~~[(2) "Agricultural Research" means growth of industrial hemp for seed stock from parent material intended for varietal development, phytoremediation, and agronomic practices.]~~

~~[(3)2] "Applicant[+]"~~ means a person, or group of persons from a higher education institution who appl[y]ies for an ~~[Industrial Hemp Growing or]~~ Industrial Hemp ~~[Processing Certificate]~~ Research License from the Utah Department of Agriculture and Food.

(3) "Bill of lading" means a detailed list of the items included in a shipment of industrial hemp or products derived from industrial hemp, in the form of a receipt given by the carrier to the person consigning the industrial hemp.

(4) "Certificate of Analysis" or "COA" means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed.

~~[(4)5]~~ "Department" means the Utah Department of Agriculture and Food.

~~[(5)6]~~ "Final product" means a reasonably homogenous industrial hemp product in its final packaged form created using the same standard operating procedures and the same formulation.

~~[(6) "Growing Area" means the area where the hemp is grown, inside or outside.]~~

(7) "Industrial Hemp" means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a THC concentration of not more than 0.3~~[percent]~~% on a dry weight basis.

(8) "Industrial Hemp ~~[Growing or Industrial Hemp Processing Certificate]~~ Research License" means a ~~[certificate]~~ license issued by the department to a higher education institution granting authorization to ~~[grow, cultivate,]~~ process~~[r]~~ or manufacture industrial hemp for academic research purposes.

(9)(a) "Key Participant" means any person who has a financial interest in the business entity, including members of a limited liability company, a sole proprietor, partners in a partnership, and incorporators or directors of a corporation; and

(b) "key participant" includes an:

(i) individual at an executive level, including a chief executive officer, chief operating officer, or chief financial officers; and

(ii) operation manager, site manager, or any employee who may present a risk of diversion. ~~[means any person who has a financial interest in the business entity including members of a limited liability company, a sole proprietor, partners in a partnership, and incorporators or directors of a corporation. A key participant also includes persons at executive levels including chief executive officer, chief operating officer, or chief financial officer. Key participants are also operation managers and site managers, or any employee who may present a risk of diversion.]~~

(10) "Processing area" means the area where industrial hemp is harvested, extracted, refined, and manufactured ~~[to be prepared for market].~~

(11) "Processing research" means research that involves harvesting, extracting, refining, and manufacturing of industrial hemp.

(12) "Raw plant material" or "Raw concentrate" means industrial hemp plant material or concentrate that is not in final product form.

(13) "Research Plan" means a plan stating the objective and purpose of the academic research being proposed, including ~~[an explanation of whether the research is agricultural research or processing research, as well as]~~ the methods and procedures for carrying out the research, procedures governing the proposed disposition of industrial hemp material, the name and telephone number for the faculty advisor, the institution's name and address, and the names of each individual involved in the project.

(14) "Security Plan" means a plan to control and limit unauthorized access to industrial hemp ~~[whether in seed, plant, or harvested form]~~, and methods used to prevent the inadvertent dissemination of industrial hemp.

(15) "Tetrahydrocannabinol" or "THC" means a delta-9-tetrahydrocannabinol, the cannabinoid identified as CAS# 1972-08-3. ~~["THC" means total composite tetrahydrocannabinol, including delta 9 tetrahydrocannabinol, tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(ii)(AA).]~~

R68-22-3. Application for Industrial Hemp Growing Certificate.

(1) Each applicant seeking an Industrial Hemp Growing Certificate shall submit the following to the department:

(a) a completed application form provided by the Department;

(b) a research plan;

(c) a description of the industrial hemp varieties to be planted on the growing area;

(d) the legal description of the growing area;

(e) the physical address of the growing area;

(f) the global positioning coordinates for the center of the outdoor growing area;

(g) maps of the growing area showing the boundaries and dimensions of the growing area in acres or square feet, and the location of the different varieties within the growing area; and

(h) a security plan.

(2) Each applicant shall acknowledge and agree to the following:

(a) they will comply with the terms and conditions of the certificate, state, and federal laws, and

(b) they will allow department officials on the growing area during normal business hours.]

R68-22-[4]3. Application for Industrial Hemp [Processing Certificate]Research License.

(1) Each applicant seeking an Industrial Hemp ~~[Processing Certificate]~~Research License shall submit the following to the department:

(a) a completed application form provided by the department;

(b) a research plan;

(c) a description of the industrial hemp products to be processed;

(d) the blueprint of the processing building;

(e) the physical address where the industrial hemp will be processed;

(f) maps of the processing area showing the boundaries and dimensions in relation to campus; and

(g) a security plan.

(2) Each applicant shall acknowledge and agree to the following:

(a) they will comply with the terms and conditions of ~~[certificate]~~license, state, and federal laws; and

(b) they will allow department officials in the processing area during normal business hours.

R68-22-[5]4. Terms of the [Certificate]License.

(1) The term of the Industrial Hemp ~~[Growing or Industrial Hemp Processing Certificate]~~Research License is one calendar year beginning in January and ending in December. A person seeking to perform academic research for more than one year shall reapply for a ~~[certificate]~~license each year.

~~[(2) Prior to each planting, applicants shall provide the department with a statement verifying:~~

~~(a) the type and varieties to be planted in the growing area;~~

~~(b) the location of each growing area; and~~

~~(c) the amount to be planted in each location.]~~

(3) Two weeks ~~[prior to]~~before ~~[harvest or]~~product disposal, each applicant shall provide the department with a statement of the intended disposition of the ~~[crop waste or]~~product.

(4) Each applicant shall take any necessary measures to avoid the inadvertent dissemination of industrial hemp.

(5) Each applicant shall notify the department of any change in their research plan.

R68-22-[6]5. Transportation of Industrial Hemp Material.

(1) Each movement of industrial hemp material shall include a transport manifest that includes the following information:

(a) a copy of the COA for each batch included in the shipment;

(b) the location of the sending and receiving parties;

(c) proof of registration or licensure for the sending and receiving parties; and

(d) a bill of lading for the transported material.

~~[(1) A printed transport permit provided by the department shall accompany each transport of any industrial hemp material within the possession of each holder of an Industrial Hemp Growing or Industrial Hemp Processing Certificate.~~

~~(2) The permit shall contain the following information:~~

~~(a) the address and license number of the departure location;~~

~~_____ (b) the physical address and license number of the receiving location;~~

~~_____ (c) the strain name, quantities by weight, and unique identification numbers of each industrial hemp material to be transported;~~

~~_____ (d) the date and time of departure;~~

~~_____ (e) the estimated date and time of arrival; and~~

~~_____ (f) the name and signature of each agent accompanying the industrial hemp material.~~

~~_____ (3) The transport permit may not be voided or changed after departing from the original industrial hemp licensee or certificate holder.~~

~~_____ (4) A copy of the transport permit shall be given to the receiving industrial hemp licensee or certificate holder.~~

~~_____ (5) The receiving industrial hemp licensee or certificate holder shall ensure that the industrial hemp material received is as described in the transport manifest and shall:~~

~~_____ (a) record the amounts received for each strain; and~~

~~_____ (b) document any differences between the quantity specified in the transport permit and the quantities recorded.~~

~~_____ (6) During transportation, industrial hemp material shall be:~~

~~_____ (a) shielded from the public view;~~

~~_____ (b) secured; and~~

~~_____ (c) temperature controlled if perishable.~~

~~_____ (7) A certificate holder shall contact the department within 24 hours if a vehicle transporting industrial hemp material is involved in an accident that involves product loss.~~

~~_____ (8) Only key participants involved in the industrial hemp academic research may occupy a transporting vehicle.]~~

R68-22-[7]6. Reporting Requirements.

~~_____ (1) Within ten days of planting, each Industrial Hemp Growing Certificate holder shall submit a Planting Report, on a form provided by the department, that includes:~~

~~_____ (a) a list of industrial hemp varieties and other plants in the growing area that were planted;~~

~~_____ (b) the actual acres planted or the seeding rate or number of clones planted in the growing area;~~

~~_____ (c) adjusted maps and global position coordinates for the area planted; and~~

~~_____ (d) the amount of seed that was not used.~~

~~_____ (2) 30 days prior to harvest, each Industrial Hemp Growing Certificate holder shall submit a Harvest Report, on a form provided by the department, that includes:~~

~~_____ (a) any contracts entered into between the certificate holder and another certificate holder or licensee or a statement of the intended use of industrial hemp cultivated in the growing area;~~

~~_____ (b) any intended storage areas for industrial hemp or industrial hemp material; and~~

~~_____ (c) the harvest dates and location of each variety cultivated in the growing areas.~~

~~_____ (3) Each Industrial Hemp Growing Certificate holder shall immediately inform the department of any changes in the reported harvest date that exceed five days.]~~

~~_____ (4) By December 31st or at the conclusion of their research, each Industrial Hemp [Growing or Industrial Hemp Processing Certificate holder] Research License holder shall submit:~~

~~_____ (a) a completed production report, on a form provided by the department;[and]~~

~~_____ (b) a report of the results of their research as set forth in their research plan[.]; and~~

~~_____ (c) a report of the disposition of any industrial hemp material involved in their research.~~

~~_____ (5) The failure to submit each report required by this rule may result in the denial of a renewal [certificate]license.~~

R68-22-[8]7. Inspection and Revocation of [Certification] License.

~~_____ (1) The department shall have complete and unrestricted access to industrial hemp plants [and seeds] whether growing or harvested, any raw material and product, and any land, buildings and other structures used for the [cultivation,]processing, and storage of industrial hemp, during normal business hours.~~

~~_____ (2) Any material in the [growing or]processing area is subject to random sampling and testing by the department to ensure the THC concentration is within the limits required by this rule.~~

~~_____ (3) Each Industrial Hemp Growing Certificate holder shall notify the department of their intended harvest date at least three weeks prior to harvest.~~

~~_____ (4) The department shall test each growing area no more than two weeks prior to harvest.]~~

~~_____ (5) Upon receipt of a failed test result the department may revoke the Industrial Hemp [Growing or Processing Certificate]Research License, except as provided in [Subsection R68-22-8(7)]this rule.~~

~~_____ (6) Upon receipt of notice of a failed test, the department shall:~~

~~_____ (a) notify the faculty advisor of each test result; and~~

~~_____ (b) allow for additional testing to be done at the request of the faculty advisor.~~

~~_____ (7) The faculty advisor shall notify the department, in writing, within ten days if they are seeking additional testing.~~

~~_____ (8) In response to receiving notification of a failed test result and notification from the faculty advisor that they will not seek additional testing, the department shall:~~

~~_____ (a) supervise the destruction of the industrial hemp [crop,]raw plant material, raw concentrate, or product; and~~

~~_____ (b) send notification of revocation to the faculty advisor within 30 days if a determination is reached to suspend the [certificate]license.~~

~~_____ (9) Any laboratory test with a total THC and any THC analog concentration[result] of 1.0% or greater will be turned over to the appropriate law enforcement agency and revocation of the [certificate]license will be immediate, unless:~~

~~_____ (a) the applicant declared in the research plan the possibility of exceeding 1% total THC and any THC analog level;~~

~~_____ (b) the research plan includes an explanation for why the total THC and any THC analog level may exceed 0.3%; and~~

~~_____ (c) the research plan includes additional measures that may need to be taken to control access to the industrial hemp.~~

R68-22-[9]8. Renewal.

~~_____ (1) Each Industrial Hemp [Growing or Processing Certificate]Research License shall be renewed on a year to year basis.~~

~~_____ (2) An applicant seeking renewal of the Industrial Hemp [Growing or Processing Certificate]Research License shall resubmit each document required for [certification]licensing, with any updated information, 30 days [prior to]before the expiration of the current year [certificate]license.~~

R68-22-[10]9. Violations.

~~_____ (1) A lot of industrial hemp plants shall be considered to be in violation of the terms of the industrial hemp growing certificate~~

if a sample of the raw plant material is found to contain greater than 0.3% total THC on a dry weight basis, except as specified in Subsection R68-22-8(7).]

([2]1) A batch of hemp raw material or hemp product [shall be considered to be] is in violation of the terms of the [industrial hemp processing certificate] Industrial Hemp Research License if a sample of the product or material is found to contain greater than 0.3% total THC by mass, except as specified in [Subsection R68-22-8(7)] this rule.

([3]2) The holder of an Industrial Hemp [Growing or Industrial Hemp Processing certificate] Research License shall be in violation of the certificate if any raw plant material, raw concentrate, or product is not destroyed following the completion of academic research.

KEY: hemp, academic research

Date of Last Change: ~~October 1, 2021~~ 2022

Notice of Continuation: March 5, 2020

Authorizing, and Implemented or Interpreted Law: 4-41

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R68-37	Filing ID: 54782
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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 persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-37. Industrial Hemp Cannabinoid Product Testing

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

Changes are needed to clarify the requirements of this rule to ensure consumer safety, based on feedback from program staff.

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 requirements of Section R68-37-5 are clarified to require that the cannabinoid profile is listed on each cannabinoid product. Additionally, language is added to prohibit vitamin E acetate in inhalable products.

Fiscal Information

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

A) State budget:

These changes clarify the requirements of this rule and will not have a fiscal impact on the state.

B) Local governments:

Local governments do not manufacture or regulate cannabinoid products and will not be impacted.

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

Small businesses should not be impacted by these changes because they are clarifying the requirements of the program to be consistent with current practice. Any needed changes will be small.

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

Non-small businesses should not be impacted by these changes because they are clarifying the requirements of the program to be consistent with current practice. Any needed changes will be small.

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

Other persons should not be impacted by these changes because they are clarifying the requirements of the program to be consistent with current practice. Any needed changes will be small.

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

Compliance costs for affected persons will not be impacted because the changes are clarifying in nature and any necessary changes will be negligible.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

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

Citation Information

6. 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 4-41-204(2)		
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Public Notice Information

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

A) Comments will be accepted until: 10/03/2022

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

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

Agency Authorization Information

Agency head or designee and title:	Craig W. Buttars, Commissioner	Date:	08/05/2022
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R68. Agriculture and Food, Plant Industry.

R68-37. Industrial Hemp Cannabinoid Product Testing.

R68-37-1. Authority and Purpose.

1) Pursuant to Subsection 4-41-204(2), this rule establishes the standards for industrial hemp cannabinoid product potency testing and sets limits for foreign matter, microbial life, pesticides, residual solvents, heavy metals, and mycotoxins.

R68-37-2. Definitions.

1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to health, including:

- a) pesticides;
- b) heavy metals;
- c) solvents;
- d) microbial life;
- e) mycotoxins; or
- f) foreign matter.

2) "Analyte" means a substance or chemical component that is undergoing analysis.

3) "Batch or lot" means a quantity of:

a) cannabinoid concentrate produced on a particular date and time, following clean up until the next clean up during which the same lots of industrial hemp are used; or

b) cannabinoid product produced on a particular date and time, following clean up until the next clean up during which industrial hemp concentrate is used.

4) "Cannabinoid" means any:

a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or

b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.

5) "Cannabinoid concentrate" means:

a) the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass; and

b) any amount of a natural, derivative, or synthetic cannabinoid in the synthetic cannabinoid's purified state.

6) "Cannabinoid product" means the same as the term is defined in Subsection 4-41-102(1).

7) "Cannabinoid product THC level" means a combined concentration of total THC and any THC analog of less than 0.3% on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the combined concentration of 0.3%.

[7]8) "CBD" means cannabidiol (CAS 13956-29-1).

[8]9) "CBDA" means cannabidiolic acid, (CAS 1244-58-2).

[9]10) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the results for which that testing was performed.

1[0]1) "Department" means the Utah Department of Agriculture and Food.

1[1]2) "Final product" means a reasonably homogenous cannabinoid product in its final packaged form created using the same standard operating procedures and the same formulation.

1[2]3) "Foreign matter" means:

a) any matter that is present in a cannabis lot that is not a part of the cannabis plant; or

b) any matter that is present in a cannabis or cannabinoid product that is not listed as an ingredient.

1[3]4) "Industrial hemp" means a cannabis plant that contains less than 0.3% total THC by dry weight.

1[4]5) "Industrial hemp manufacturer" means an entity that holds, stores, packages, or labels an industrial hemp cannabinoid product.

1[5]6) "Pest" means:

a) any insect, rodent, nematode, fungus, weed; or

b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.

1[6]7) "Pesticide" means any:

a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;

b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid in the application or effect of a pesticide.

1[7]8) "THC" means total composite tetrahydrocannabinol, including delta-9-tetrahydrocannabinol, tetrahydrocannabinolic acid, and any THC analogs as defined in Subsection 58-37-4(2)(a)(ii)(AA).

1[8]9) "THCA" means delta-9-tetrahydrocannabinolic acid (CAS 23978-85-0).

[19]20) "Total CBD" means the sum of the determined amounts of CBD and CBDA, according to the formula: Total CBD = CBD + (CBDA x 0.877).

2[0]1) "Total THC" means the sum of the determined amounts of THC and THCA, according to the formula: Total THC = THC + (THCA x 0.877).

2[1]2) "Unit" means each individual portion of an individually packaged product.

R68-37-3. Required Cannabinoid Product Tests.

1) An industrial hemp manufacturer may not register or sell a cannabinoid product unless a third party testing laboratory has

tested a representative sample of the cannabinoid product to determine:

a) the amount of any THC analogs present in the sample; and

b) the presence of adulterants in the sample.

2) A certificate of analysis shall be included with each batch of cannabinoid product in accordance with Section R68-26-4.

R68-37-4. Foreign Matter Standards.

A sample and related batch of cannabinoid product fails quality assurance testing if:

1) the sample contains foreign matter visible to the unaided human eye;

2) the sample is found to contain microscopic foreign matter considered to be harmful or estimated to comprise greater than 3% of the mass of the representative sample as determined by the testing laboratory; or

3) foreign matter is found that is suspected to have been intentionally added to the sample to increase its visual appeal or market value.

R68-37-5. Potency Testing and Standards.

1) A batch of cannabinoid product shall have the following determined and listed on the COA:

a) quantity of any cannabinoid it is known to contain, including any THC analog, determined and listed on the COA; and

b) the cannabinoid profile by percentage of mass.

2) Cannabinoid products shall not exceed the cannabinoid product THC level.

R68-37-6. Microbial Standards.

A sample and related batch of cannabinoid product fails quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Table [2]1.

[TABLE 2
Microbial Analytes and Action Levels

Material	Microbial Limit Requirement (cfu)
Concentrated oil	Total Aerobic Microbial Count ≤10,000
Tablet	Total Aerobic Microbial Count ≤10,000
Capsule	Total Combined Yeast and Mold Count ≤1,000
Liquid Suspension	Absence of E. Coli and Salmonella spp.
Gelatinous cube	Absence of Staph
Transdermal	Total Aerobic Microbial Count ≤100
	Total Yeast and Mold ≤100
	Absence of Pseudomonas
	Absence of Staph

TABLE 1
Microbial Analytes and Action Levels

Material	Microbial Limit Requirement (cfu)
Concentrated oil	Total Aerobic Microbial Count ≤10,000
Tablet	Total Aerobic Microbial Count ≤10,000
Capsule	Total Combined Yeast and Mold Count ≤1,000
Liquid Suspension	Absence of E. Coli and Salmonella spp.
Gelatinous cube	Absence of Staph
Transdermal	Total Aerobic Microbial Count ≤100
	Total Yeast and Mold ≤100
	Absence of Pseudomonas
	Absence of Staph

R68-37-7. Pesticide Standards.

1) A sample and related batch of cannabinoid product fails quality assurance testing for pesticides if the results exceed the limits as set forth in Table [3]2.

[TABLE 3
Pesticide Analytes and Action Levels

Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etioazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
hexythiazox	78587-05-0	1
imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

TABLE 2
Pesticide Analytes and Action Levels

Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etioazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
hexythiazox	78587-05-0	1
imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4

Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

2) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

3) Pyrethrins should be measured as the cumulative residues of pyrethrin I (CAS 121-21-1), pyrethrin II (CAS 121-29-9), cinerin I (CAS 25402-06-6), and jasmolin I (CAS 4466-14-2).

4) Abamectin is a composite of the amounts of avermectin B1a and avermectin B1b.

R68-37-8. Residual Solvent Standards.

1) A sample and related batch of cannabinoid product fails quality assurance testing for residual solvents if the results exceed the limits provided in Table [4]3 unless the solvent is:

- a component of the product formulation;
- listed as an ingredient; and
- generally considered to be safe for the intended form of use.

[TABLE 4
List of Solvents and Action Levels

Solvent	Chemical Abstract Service (CAS)Registry number	Action level ppm
1,2-Dimethoxyethane	110-71-4	100
1,4-Dioxane	123-9	380
1-Butanol	71-36-3	5,000
1-Pentanol	71-41-0	5,000
1-Propanol	71-23-8	5,000
2-Butanol	78-92-2	5,000
2-Butanone	78-93-3	5,000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5,000
2-Propanol (IPA)	67-63-0	5,000
Acetone	67-64-1	5,000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5,000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3,880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5,000
Ethanol	64-17-5	5,000
Ethyl acetate	141-78-6	5,000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5,000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5,000
n-Hexane	110-54-3	290
Isopropyl acetate	108-21-4	5,000
Methanol	67-56-1	3,000
Methylpropane	75-28-5	5,000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1,090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5,000
Propane	74-98-6	5,000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2,170

TABLE 3 List of Solvents and Action Levels		
Solvent	Chemical Abstract Service (CAS)Registry number	Action level Ppm
1,2-Dimethoxyethane	110-71-4	100
1,4-Dioxane	123-9	380
1-Butanol	71-36-3	5,000
1-Pentanol	71-41-0	5,000
1-Propanol	71-23-8	5,000
2-Butanol	78-92-2	5,000
2-Butanone	78-93-3	5,000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5,000
2-Propanol (IPA)	67-63-0	5,000
Acetone	67-64-1	5,000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5,000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3,880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5,000
Ethanol	64-17-5	5,000
Ethyl acetate	141-78-6	5,000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5,000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5,000
n-Hexane	110-54-3	290
Isopropyl acetate	290	5,000
Methanol	67-56-1	3,000
Methylpropane	75-28-5	5,000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1,090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5,000
Propane	74-98-6	5,000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2,170

2) Xylenes is a combination of the following:

- 1,2-dimethylbenzene;
- 1,3-dimethylbenzene;
- 1,4-dimethylbenzene; and
- ethyl benzene.

R68-37-9. Heavy Metal Standards.

A sample and related batch of cannabinoid product fails quality assurance testing for heavy metals if the results exceed the limits provided in Table [5]4.

[TABLE 5
Heavy Metals

Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<0.82
Lead	<1.2
Mercury	<0.4]

TABLE 4 Heavy Metals	
Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<.82
Lead	<1.2
Mercury	<.4

R68-37-10. Mycotoxin Standards.

A sample and related batch of cannabinoid product fails quality assurance testing for mycotoxin if the results exceed the limits provided in Table [6]5.

[TABLE 6
Mycotoxin

Test	Specification
The total of Aflatoxin B1, Aflatoxin B2, Aflatoxin G1, and Aflatoxin G2	<20 ppb of substance
Ochratoxin A.	<20 ppb of substance]

TABLE 6 Mycotoxin	
Test	Specification
The Total of Aflatoxin B1, Aflatoxin B2, Aflatoxin G1, and Aflatoxin G2	<20 ppb of substance
Ochratoxin A.	<20 ppb of substance

R68-37-11. Prohibited Additives.

Vitamin E Acetate shall not be permitted to be present in any inhalable cannabinoid product.

KEY: industrial hemp, cannabinoid, testing

Date of Last Change: [~~October 1, 2021~~]**2022**

Authorizing, and Implemented or Interpreted Law: 4-41-204(2)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-120	Filing ID: 54797
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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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-120. Licensing of Material Developed with Public Education Funds
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Rule R277-120 is being amended in order to incorporate requirements from the 2022 General Session, H.B. 374.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The amendments specifically clarify that public funds may not be used to produce sensitive materials.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. It simply incorporates the definition of sensitive materials due to recent legislation. Fiscal impacts were already included in the fiscal note of the bill.
B) Local governments:
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. It simply incorporates the definition of sensitive materials due to recent legislation. Fiscal impacts were already considered in the fiscal note and there is no impact to LEAs.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This only affects the Utah State Board of Education (USBE) and Local Education Agencies (LEAs).

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It only affects USBE and LEAs.

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. It simply incorporates the definition of sensitive materials due to recent legislation and the fiscal impact was already addressed in the bill's fiscal note.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(e)(i)
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Public Notice Information

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

A) Comments will be accepted until: 10/03/2022

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.**R277-120. Licensing of Material Developed with Public Education Funds.****R277-120-1. Authority and Purpose.**

- (1) This rule is authorized by:
 - (a) Article X, Section 3 of the Utah Constitution, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Subsection 53E-3-501(1)(e)(i), which directs the Board to encourage school productivity and cost effectiveness measures.
- (2) The purpose of this rule is to:
 - (a) establish requirements for licensing of courseware and materials produced with public education funds; and
 - (b) promote a policy that education materials produced with public funds be openly, publicly, and freely accessible for use by others.

R277-120-2. Definitions.

- (1)(a) "CC-BY license" means a copyright license developed by Creative Commons, which allows other users to:
 - (i) copy and redistribute the material in any medium or format; and
 - (ii) remix, transform, and build upon the material.
- (b) Under a CC-BY license, a licensee may share the materials in any manner, including commercially.
- (c) Under a CC-BY license, a licensee shall:
 - (i) give appropriate credit to the licensor;
 - (ii) provide a link to the license; and
 - (iii) indicate if the licensee made changes to the licensor's work.
- (2) "Public education materials" means courseware and materials developed with public education funds and includes:
 - (a) syllabi;
 - (b) instructional materials;
 - (c) modules;
 - (d) textbooks, including teacher's editions;
 - (e) student guides;
 - (f) supplemental materials;
 - (g) formative and summative assessment supports;
 - (h) laboratory activities;
 - (i) simulations;
 - (j) musical or dramatic compositions;
 - (k) audio, video or photographic material;
 - (l) manuals;
 - (m) codes; and
 - (n) software.
- (3) "Sensitive materials" means the same as the term is defined in Subsection 53G-10-103(1)(g).

~~(3)(4)~~ "Utah Education Network" or "UEN" means an online education materials resource maintained by the Utah Education and Telehealth Network offering services to educators and students throughout the state of Utah.

R277-120-3. Public Education Materials Funded by the Board.

- (1) The Superintendent shall share public education materials developed with funds controlled by the Board under a CC-BY license.
- (2) The Superintendent shall share materials developed in accordance with Subsection (1) through UEN, where appropriate, or

through other appropriate means of making public education materials available to educators and the public.

(3)(a) An individual or entity that shares or adapts public education materials identified in Subsection (1) shall:

- (i) provide attribution to the Board;
- (ii) provide a link to the license; and
- (ii) indicate if any changes were made to the original materials.

(b) An individual or entity may make attribution in any reasonable manner, but not in any way that implies the Board endorses any adaptation of the materials without express authorization of the Board.

(4) The Superintendent may request a copy of shared or adapted public education materials be provided to the Board.

(5) If an employee of the Board develops public education materials as part of the employee's employment, the public education materials shall be the property of the Board, subject to licensing in accordance with ~~this~~ Section R277-120-3.

(6) An individual or entity may not develop sensitive materials using public funds.

R277-120-4. Public Education Materials Funded by an LEA.

(1) An LEA shall develop and maintain a policy regarding public education materials developed with the LEA's funds.

(2) A policy developed in accordance with Subsection (1) shall identify:

- (a) whether the LEA will share public education materials with a CC-BY license or another license approved by the LEA's governing board;
- (b) whether use of LEA developed public education materials will require attribution to the LEA;
- (c) whether the LEA will charge third parties for use of the materials;
- (d) whether the LEA reserves the right to review and approve materials developed by employees on contract time; and
- (e) whether the LEA restricts employees from sharing materials purchased with LEA funds or specifically licensed for LEA use.

(3) A policy developed under Subsection (1) shall prohibit the development of sensitive materials with public funds.

~~(3)(4)~~ An LEA may not charge an educator in a Utah public school for use of materials developed with LEA funds.

R277-120-5. Classroom Materials Developed by Utah Educators.

(1)(a) A public education employee may not sell public education materials developed in whole or in part with funds from the Board or an LEA.

(b) If a public education employee sells public education materials subject to Subsection (1)(a) for personal gain, the employee may be subject to ~~the provisions of~~ Section 67-16-4.

(2) An LEA may review and approve materials developed by educators on contract time consistent with a policy adopted in accordance with Subsection R277-120-4(~~4~~1).

(3)(a) A Utah licensed educator need not seek permission from the educator's LEA to share classroom materials developed using the educator's personal time and resources.

(b) An educator may share materials developed in accordance with Subsection (3)(a) through a CC-BY license.

(4)(a) A Utah licensed educator may only share materials that are consistent with the Utah Professional Educator Standards contained in Rule R277-217.

(b) An educator may not share materials that advocate illegal activities or materials that are inconsistent with the educator's legal and role model responsibilities.

(5) The Superintendent may offer professional development programs that offer support, guidance, and instruction to educators who wish to create, use, or continuously improve public education materials shared in accordance with this Rule R277-120.

KEY: licensing, materials

Date of Last Change: 2022~~August 7, 2017~~

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(e)(i)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-121	Filing ID: 54798
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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 persons:	
Name:	Phone: Email:
Angie Stallings	801-538-7830 angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.	

General Information

2. Rule or section catchline:
R277-121. Board Waiver of Administrative Rules
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Rule R277-121 is being amended in order to clarify that the Utah State Board of Education (USBE) may rescind a waiver from compliance with administrative rules.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The amendments specifically state that during periodic review, with notice, the USBE may rescind a waiver granted under Rule R277-121.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The USBE simply gains the ability to rescind a waiver during a review. There are no cost increases associated with this change for USBE as this would be done in the course of normal processes and procedures.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This change does add an ability for USBE to rescind a waiver for a Local Education Agency (LEA) during a review. Rescinding a waiver could have a fiscal impact to an LEA, but this impact is inestimable because the reasons for waivers vary wildly, and most do not have a fiscal impact for LEAs.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This only affects USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This only affects USBE and LEAs.

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

There are no compliance costs for affected persons. This only affects USBE and LEAs and provides a process change with no additional compliance costs.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	
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Public Notice Information

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

A) Comments will be accepted until: 10/03/2022

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.

R277-121. Board Waiver of Administrative Rules.

R277-121-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

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

(c) Section 53G-7-202, which allows the Board to grant an LEA's request for a waiver from a Board rule.

(2) The purpose of this rule is to establish procedures for an LEA to request a waiver from a Board rule.

R277-121-2. Procedures for Waiver Requests.

(1)(a) An LEA board may request a waiver from a Board rule by filing a written request with the Superintendent.

(b) Except for a request for a waiver due to snow, inclement weather, or other emergency school closure described in Section R277-121-5, a written request under Subsection (1)(a) shall include:

(i) verification that the LEA board voted to request the waiver in an open meeting;

(ii) data that support the requested waiver, which may include:

(A) student achievement data;

(B) community, staff, or student survey data;

(C) student enrollment data; or

(D) data demonstrating the cost effectiveness of the waiver

request;

(iii) a proposed agreement with the Board that includes:

(A) a proposed effective date;

(B) provisions for public review and accountability;

(C) data gathering and reporting timelines; and

(D) a sunset date; and

(iv) in the case of a charter school, a recommendation from the board of the school's authorizer.

(2) An LEA board may not request a waiver from a Board rule:

- (a) that is required by or adopts criteria from a federal statute, federal regulation, or state law;
- (b) that would negatively affect the health, safety, or welfare of public education students;
- (c) that could reasonably result in discrimination or harassment of public school students or employees;
- (d) that would benefit one element of the public education system to the detriment of another; or
- (e) when the concerns giving rise to an LEA board's request could be addressed through means other than waiver of Board rules.

R277-121-3. Board Review of Waiver Requests.

- (1) The Superintendent shall:
 - (a) review an LEA's waiver request; and
 - (b) may provide a recommendation to the Board.
- (2) The Board Executive Committee may assign a waiver request made under this Rule R277-121 to a Board standing committee.
- (3) The standing committee assigned in accordance with Subsection (2):
 - (a) may solicit additional information or testimony;
 - (b) shall review the request in an open meeting; and
 - (c) shall make a recommendation for consideration by the full Board.
- (4) The Board Executive Committee may consolidate consideration of duplicate or similar requests.
- (5) The Board shall consider available data in evaluating an LEA waiver request and shall make data driven decisions.

R277-121-4. Annual Review of Approved Waivers.

- (1) The Board may request an LEA that receives a waiver from Board rule in accordance with this Rule R277-121 for more than one year to report the following to a Board committee:
 - (a) data that supports continuation of the requested waiver; and
 - (b) data related to the data the LEA presented as apart of the LEA's request for waiver.
- (2) During a review described in Subsection (1), the Board may, with notice to the LEA, move to rescind or modify the waiver, unless the waiver agreement explicitly states otherwise.

R277-121-5. Snow, Inclement Weather, or Other Emergency School Closure Days.

- (1) An LEA may seek a waiver directly from the Superintendent from the 180 day requirement described in Subsection R277-419-4(1) if:
 - (a) the LEA closes a school due to excessive snow, inclement weather, or an other emergency; and
 - (b) the school closure will result in the LEA not meeting the 180 day requirement described in Section R277-419-4.
- (2) The Superintendent may grant a waiver due to excessive snow, inclement weather, or other emergency without Board approval if the LEA has provided contingency school days and hours into the LEA's calendar as required in Subsection R277-419-4(5), or has another plan in place to minimize the negative impact on the educational process caused by the waiver.
- (3)(a) An LEA may request the Superintendent to waive the school day and hour requirement pursuant to a directive from the Utah State Health Department or a local health department, that

results in the closure of a school in the event of a pandemic or other public health emergency.

(b) A waiver described in this Subsection (3) may be for a designated time period, for a specific area, or for a specific LEA in the state, as determined by the health department directive.

(c) A waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.

(d) A waiver granted by the Superintendent as described in this Subsection (3) shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(e) A waiver granted as described in this Subsection (3) shall direct an LEA to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(f) The Superintendent may encourage an LEA to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) An LEA request for a waiver due to snow, inclement weather, or other emergency school closure described in this [S]section is not required to include the information described in Subsections R277-121-2(1)(b)(ii) through (iv) unless requested by the Superintendent.

(5) If the Superintendent denies an LEA's request described in this [S]section, the LEA may appeal the Superintendent's decision by making the request of the full Board.

KEY: Utah State Board of Education, waivers, administrative rules

Date of Last Change: 2022[April 9, 2020]

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number: R277-313

Filing ID: 54799

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

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

R277-313. Student Support License Areas of Concentration

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

Rule R277-313 is being created in order to specify responsibilities of licensees under the scope of this rule.

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

This new rule specifically identifies functions, which may be provided by school counselors, school psychologists, and school social workers, and identifies responsibilities, which may only be provided by licensees with specific license areas of concentration.

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

This new rule is not expected to have fiscal impact on state government revenues or expenditures. The Utah State Board of Education (USBE) is authorized to provide licensing guidelines and this rule provides guidance for student support licensing that needed clarification. This does not add requirements, but instead focuses existing requirements in one place for ease of reference.

B) Local governments:

This new rule is not expected to have fiscal impact on local governments' revenues or expenditures. This rule does not add costs for Local Education Agencies (LEAs) but provides guidance to LEAs for student support employees.

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

This new rule is not expected to have fiscal impacts on small business revenues or expenditures. This rule only affects LEAs and USBE.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or

expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This new rule is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only affects USBE and LEAs.

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

There are no compliance costs for affected persons. This rule provides updated guidance for LEAs on student support licensing.

G) 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	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 Benefits	\$0	\$0	\$0

Net Benefits	Fiscal	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:				
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.				

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	10/03/2022

9. This rule change MAY become effective on:	10/10/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.

R277-313. Student Support License Areas of Concentration.

R277-313-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Subsection 53E-6-201(1), which allows the board to establish a system for educator licensing.
- (2) The purpose of this rule is to establish guidelines for student support license areas of concentration.

R277-313-2. Definitions.

- (1) "Counseling" means a method used by school counselors, school psychologists, and school social workers to assist individuals and groups in learning how to solve problems, develop coping strategies, and make decisions about personal, health, social, emotional, behavioral, educational, vocational, financial, and other interpersonal concerns.

(2) "Practicing mental health therapy" has the same meaning as set forth in Subsection 58-60-102(7).

(3) "Psychoeducation" means the process of providing education and information to those seeking or receiving mental health services and their family members.

(4) "Psychological services" includes:

(a) administering psychological and education assessments, and other assessment procedures;

(b) interpreting assessment results;

(c) obtaining, integrating, and interpreting information about student behavior and conditions relating to learning;

(d) consulting with other staff members in planning school programs to meet the special educational needs of student as indicated by psychological assessments, interviews, direct observation, and behavioral evaluations;

(e) planning and managing a program of psychological services, including psychological counseling for students and parents; and

(f) assisting in developing positive behavior intervention strategies.

(5) "Student support license areas" means the following license areas of concentration:

(a) school counselor;

(b) school psychologist; and

(c) school social worker.

R277-313-3. Student Support License Areas Scope of Practice.

(1) An educator with a student support license area may:

(a) make referrals for students and families to community mental and behavioral health resources;

(b) provide professional learning to staff and psychoeducation to parents regarding prevention and mental health related topics;

(c) provide counseling to individuals and small groups of students with identified needs and concerns;

(d) provide, coordinate, and participate in crisis intervention and prevention, including assessing students for risk of suicide;

(e) participate in a multi-disciplinary team for the development of student special services, including:

(i) behavior intervention plans;

(ii) Section 504 accommodations; and

(iii) individualized education program services;

(f) conduct assessments in which the individual is trained in the ethical administration, scoring, and interpretation related to the intended use of the assessment and meet the assessment publisher's criteria for administration; and

(g) act as a related service provider to provide counseling services for students with an individualized education program consistent with Rule R277-750 and the Special Education Rules manual.

(2) A school counselor may implement a school counseling program as outlined in Rule R277-462 and the College and Career Readiness school counseling program model.

(3) A school psychologist may provide psychological services for special education.

(4) A school psychologist or a school social worker who is dual-licensed with the Department of Occupational and Professional Licensing may practice mental health therapy in a school.

KEY: honors

Date of Last Change: 2022

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4)**NOTICE OF PROPOSED RULE****TYPE OF RULE:** Amendment

Rule or Section Number:	R277-320	Filing ID: 54800
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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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-320. Grow Your Own Teacher and School Counselor Pipeline Program
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Rule R277-320 is being amended in order to incorporate changes to the Grow Your Own Program as a result of the Legislature passed in the 2022 General Session, S.B. 251.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The amendments specifically incorporate provision for stipends to school counselor assistants.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. This rule change adds language for school counselor assistants

and a stipend amount. It does not change the program appropriation but gives Local Education Agencies (LEAs) more options to use the grant funding.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. LEAs now have an additional option for expending grant funds.

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

This rule change is not expected to have fiscal impacts on small businesses' revenues or expenditures. This only affects the Utah State Board of Education (USB E) and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This only affects USB E and LEAs.

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

There are no compliance costs for affected persons. This only adds an option for LEAs for school counselor assistants. There are no additional compliance costs.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-5-218

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	10/03/2022

9. This rule change MAY become effective on:	10/10/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.

R277-320. Grow Your Own Teacher and School Counselor Pipeline Program.

R277-320-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53F-5-218, which directs the Board to make rules to implement the Grow Your Own Teacher and School Counselor Pipeline Program.
- (2) The purpose of this rule is to establish requirements for administration of the grant program.

R277-320-2. Definitions.

- (1) "Grant program" means the Grow Your Own Teacher and School Counselor Pipeline Program established in Section 53F-5-218.
- (2) "High leverage" means critical instructional practices that research has demonstrated can impact student achievement and be used across different content areas and grade levels, including:
- (a) collective efficacy;
 - (b) student engagement;
 - (c) systematically designed instruction;
 - (d) feedback; and
 - (e) learning environment.
- (3) "Mentor" means a teacher or school counselor selected in consultation with a candidate's principal who:
- (a) has a professional educator license and license area in the field for which the educator is mentoring;
 - (b) has no less than three years full-time experience in the appropriate license area;
 - (c) has effective or highly effective evaluations in accordance with Rule R277-533;
 - (d) has proven successful in positively improving student outcomes, which may include:
 - (i) for a mentor teacher, better than the statewide average student growth or performance on statewide assessments, where applicable; or
 - (ii) for a mentor counselor, students who meet or exceed performance goals, outlined in school counseling program action research plans or data projects;
 - (e) follows all applicable supervision and mentoring requirements from a candidate's educator preparation program and Rule R277-308; and

- (f) for a mentor teacher:
- (i) models the use of high leverage teaching practices that meet the needs of diverse learners;
- (ii) demonstrates content and grade level expertise; and
- (iii) effectively collaborates with colleagues, families, and the broader community.
- (4) "Regional Education Service Agency or "RESA" has the same meaning as the term is defined in Section 53G-4-410.
- (5) "School counselor assistant" has the same meaning as defined in Section 53F-5-218.
- (~~5~~)6 "Statewide assessment" means an assessment described in Subsection 53G-6-803(9)(a).

R277-320-3. Program Administration.

- (1) The Superintendent shall prepare an application for participation in the grant program and post the application on the Board website by April 20, 2021 for the first cohort of applicants.
- (2)(a) An LEA shall submit an application to the Superintendent by the third Monday in May annually.
- (b) A RESA may submit an application on behalf of one or more of its member LEAs.
- (3) The Superintendent shall determine awards under the grant program taking into consideration the number of applicants for grant program funds in each cohort and subject to the following:
 - (a) The Superintendent may allocate funds to an LEA or RESA annually as follows, subject to Subsection 53F-5-218(6)(a):
 - (i) up to \$12,000 for a candidate in an undergraduate program; and
 - (ii) up to \$14,000 for a candidate in a graduate program;
 - (b) The Superintendent may annually allocate FTE costs up to \$9,000 per candidate per eligible semester subject to the internship limits established in Subsection 53F-5-218(6)(c);
 - (c) The Superintendent may award mentor stipends as follows:
 - (i) \$500 for mentors serving 1-2 candidates;
 - (ii) \$750 for mentors serving 3-4 candidates; and
 - (iii) \$1,000 for mentors serving 5 candidates;~~and~~
 - (d) The Superintendent may award stipends for school counselor assistants up to \$7,000 annually.
- (~~4~~)5 The Superintendent may annually allocate up to \$150,000 for RESA administrative costs.
- (5) An LEA applicant shall provide documentation of efforts by each candidate to maximize financial aid opportunities and programs, including the Free Application for Federal Student Aid.
- (6) The Superintendent shall disburse approved funds to an LEA by July 1 annually.
- (7) The Superintendent shall monitor- LEA expenditures of program funds consistent with Rule R277-113:
 - (a) to ensure compliance with Section 53F-5-218 and this rule; and
 - (b) to collect data required for performance measures and required legislative reporting.
- (8) An LEA shall maintain documentation of information required in Subsection (7) consistent with Rule R277-113.
- (9) The Superintendent may reallocate any funds not expended by an LEA by the end of the fiscal year in which the funds were disbursed.

R277-320-4. Candidate Learning Pathways.

- (1) A grant program candidate's educator preparation pathway:

- (a) shall result in a Utah professional educator license in accordance with Rule R277-303 and Section R277-306-6;
- (b) shall provide courses outside of the candidate's LEA work hours;
- (c) shall incorporate opportunities, where available, for candidates to demonstrate competency in lieu of course completion, assignments, and other preparation requirements for the institution and;
- (d) may not require qualifying exams or prerequisites for program admission.
- (2) A majority of a grant program candidate's clinical experiences, required by the candidate's educator preparation program, shall be at the site of the candidate's school of employment.

KEY: school counselor program, grant program

Date of Last Change: 2022[July 20, 2021]

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; -53E-3-401(4), 53F-5-218

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-326	Filing ID:	54801
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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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:

R277-326. Early Learning Professional Learning Grant Program

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

Rule R277-326 is being amended in order to incorporate changes required as a result of the Legislature passed in the 2022 General Session, S.B. 127.

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

The amendments specifically establish criteria for hiring early learning literacy coaches and update requirements for professional learning grant provisions. The title has also been changed to recognize that this rule now includes provisions for the new program.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This rule adds language for early literacy coaches due to new legislation. All costs were accounted for in the fiscal note of the bill.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule change does not independently impact Local Education Agency (LEA) budgets. All costs were accounted for in the fiscal note of the bill.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This only impacts the Utah State Board of Education (USBE) and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small

businesses, businesses, or local government entities. This rule only affects USBE and LEAs.

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

There are no compliance costs for affected persons. This rule simply adds language and processes for newly funded early literacy coaches. All costs were accounted for in the fiscal note of the bill.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-5-214
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Public Notice Information

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

A) Comments will be accepted until: 10/03/2022

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.**R277-326. Early Learning**~~Professional Learning Grant Program~~.**R277-326-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

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

(c) Section 53F-5-214, which directs the Board to make rules regarding the required elements of the Early Learning Professional Learning Grant and a formula to determine an LEA's grant amount~~[-]; and~~

(d) Subsection 53E-3-1002(2), which directs the Board to make rules to allocate funding for early literacy coaches.

(2) The purpose of this rule is to~~provide~~:

(a)(i) provide the required elements for the Early Learning Professional Learning Grant program including eligibility criteria; and

(b)(ii) establish a formula for the grant distribution~~[-]; and~~

(b) establish criteria for assignment of early literacy coaches in accordance with Section 53E-3-1002.

R277-326-2. Definitions.

(1) "Early literacy coach" means a coach provided by the Board to assist LEAs with early literacy in accordance with Section 53E-3-1002.

(1)(2) "Evidence-based" means the same as the term is defined in Subsection R277-406-2(3).

(2)(3) "Focused" means professional learning that is targeted to strategies that align with an LEA's plan and goals that would best support improving outcomes.

(3)(4) "Job-embedded" means learning that is during the workday and designed to enhance instructional practices with the intent of improving student learning outcomes.

(4)(5) "Professional learning" means the same as the term is defined in Subsection 53G-11-303(1).

(5)(6) "Sustained" means multiple professional learning sessions with ongoing support for implementation of professional learning for long-term change.

R277-326-3. Eligibility and Application.

(1) All LEAs are eligible to apply for the Early Learning Professional Learning Grant.

~~[(2) To receive grant funds, an LEA shall submit an application as part of the LEA's Early Learning Plan as described in Section R277-406-4.]~~

(3)(2) [An]To receive grants funds, an LEA shall [include in the]submit an application to the Superintendent, including the LEA's plan:

(a) for the types of professional learning opportunities, the LEA plans to utilize including:

(i) comprehensive professional learning opportunities as described in Subsection 53G-11-303(2); and

(ii) job-embedded coaching.

(b) how the LEA intends to connect professional learning to the LEA's Early Learning Plan goals; and

(c) how the LEA intends to increase benchmark assessment scores and related outcomes through professional learning opportunities.

(4)(3) An LEA shall only use sustained professional learning opportunities that are evidence-based and focused.

R277-326-4. Distribution and Use of Funds.

(1) The Superintendent may allocate funds annually to one or more Regional Education Service Agencies to provide job-embedded-coaching.

(2) Subject to legislative appropriations, the Superintendent shall distribute the balance of Early Learning Professional Learning Grant funds as follows:

(a) a per teacher allotment shall be calculated by dividing the total amount of grant funds by the total number of preschool through grade 3 teachers of all applicants;

(b) an LEA shall receive a grant amount equal to the product of the per teacher allotment described in Subsection (a) and the total number of preschool through grade 3 teachers in the LEA; and

(c) if an LEA's Early Learning Plan is denied or an LEA chooses to for[e]go any grant funds, the grant funds may be reallocated to all other eligible LEAs receiving grant funds as described in Subsections (1)(a) and (b).

(2)(3) For purposes of calculating a grant amount in Subsection (1), an LEA shall determine the LEA's total number of preschool through grade 3 teachers by using employee data from the previous school year of the application school year.

(3)(4) An LEA may use the grant funds for the following purposes:

(a) teacher stipends to attend trainings;

(b) presenter fees;

(c) coaching supports;

- (d) substitute teachers;
 - (e) to hire a coach or specialist; and
 - (f) supplies and materials for teacher professional learning.
- ([4]5) An LEA may not use grant funds for:
- (a) the purchase of:
 - (i) property;
 - (ii) equipment;
 - (iii) other services; or
 - (iv) student materials and supplies; or
 - (b) travel related expenses.

([5]6) An LEA shall use the grant funds by the end of the fiscal year in which the funds are received.

(7) The Superintendent may reduce grant funds to an LEA in an amount equal to the LEA's unused prior year program funds.

R277-326-5. Early Literacy Coaches.

(1)(a) The Superintendent shall provide, train, and assign early literacy coaches in accordance with Section 53E-3-1002.

(b) An early literacy coach shall meet minimum qualifications established by the Superintendent.

(c) An early literacy coach may perform responsibilities as directed by the Superintendent including those identified in Subsections 53E-3-1002(2)(c)(i) through (viii).

(d) An early literacy coach may not undertake duties unrelated to literacy coaches, as outlined in Subsection 53E-3-1002(2)(d).

(2) An LEA receiving funds for early literacy coaches may not charge indirect costs.

(3)(a) The Superintendent will determine which schools qualify for assistance from early literacy coaches taking into account the previous year's end-of year assessment data from:

- (i) KEEP Exit: Literacy;
- (ii) Acadience Reading (benchmark and growth); and
- (iii) RISE (English Language Arts proficiency).

(b) The Superintendent shall exclude data:

(i) for students who were not enrolled a full academic year; and

(ii) for schools scheduled to close the following year.

(4)(a) The Superintendent shall prioritize services under this program for schools identified in Subsections 53E-3-1002(a)(i) and (ii).

(b) The Superintendent may prioritize services under this program to schools who do not receive support from the Center for Strategic Improvement.

KEY: professional learning, prek-3, early learning, teacher development

Date of Last Change: ~~2022~~**January 5, 2021**

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-5-214

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Rule or Section Number:	R277-514	Filing ID: 54802
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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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R277-514. Deaf Education in Public Schools

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

Rule R277-514 is being repealed because it has been replaced by provisions in Rules R277-301, R277-304, and R277-309.

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

This rule is being repealed in its entirety.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The repeal does not impact the Utah State Board of Education (USBE) fiscally. The provisions in the rule have been moved to the rules listed in Box 3 of this form.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This repeal does not impact Local Education Agency (LEA) budgets. The provisions in the rule have been moved to the rules listed in Box 3 of this form.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This repeal only applies to USBE and LEAs.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This repeal only applies to USBE and LEAs.

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

There are no compliance costs for affected persons. This repeal does not add any costs. The provisions in this rule have been moved to the rules listed in Box 3 of this form.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(a)
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Public Notice Information

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

A) Comments will be accepted until: 10/03/2022

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.

~~**R277-514. Deaf Education in Public Schools.**~~

~~**R277-514 1. Authority and Purpose.**~~

~~(1) This rule is authorized by:~~

~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
~~(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
~~(c) Subsection 53E-3-501(1)(a), which requires the Board to establish the qualification and certification of educators.~~
~~(2) The purpose of this rule is to specify the requirements for Deaf Education licensing.~~

R277-514.2. Deaf Education (Birth to Age 22) License Area of Concentration:

~~(1) A deaf education (birth to age 22) license area of concentration permits an educator to teach a class composed of deaf and hard of hearing students from birth to age 22 if the educator holds the appropriate endorsement as described in R277-520.4.~~
~~(2) The Board may approve an application for a Deaf Education license area of concentration if the applicant:~~
~~(a)(i) completes a deaf education teacher preparation program approved by the Board as described in Section R277-514.3; or~~
~~(ii) holds a valid deaf education license issued by a state other than Utah under the National Association of State Directors of Teacher Education and Certification Interstate Agreement;~~
~~(b) passes a deaf education competency exam approved by the Board;~~
~~(c) has met the requirements of at least one of the following endorsements:~~
~~(i) Listening and Spoken Language endorsement, which indicates that the endorsement holder's preparation focused on teaching deaf and hard of hearing students with listening and spoken language strategies; or~~
~~(ii) ASL/English bilingual/bicultural endorsement, which indicates that the endorsement holder's preparation focused on strategies that promote the development of American Sign Language and English literacy across the curriculum; and~~
~~(d) if the applicant intends to teach in grades six through twelve, has met the requirements of at least one content specific area endorsement.~~

R277-514.3. Deaf Education Program:

~~The Board may approve an institution of higher education's deaf education teacher preparation program if the program includes course work specifically designed to train candidates to:~~
~~(1) understand the legal and ethical issues surrounding deaf education;~~
~~(2) comply with:~~
~~(a) the Individuals with Disabilities Education Act of 2004, Pub. L. No. 108-446; and~~
~~(b) Board rule;~~
~~(3) address specific linguistic and cultural needs of deaf and hard of hearing students throughout the curriculum;~~
~~(4) demonstrate techniques for incorporating language into all aspects of the curriculum;~~
~~(5) demonstrate pedagogical skills unique to teaching reading, writing, math and other content areas to deaf and hard of hearing students;~~
~~(6) demonstrate basic fluency in the use of American Sign Language;~~
~~(7) understand audiological and physiological components of audition;~~

~~(8) understand techniques for teaching speech to deaf and hard of hearing students;~~
~~(9) understand the socio-cultural and psychological implications of hearing loss; and~~
~~(10) assess and address the educational needs and educational progress of deaf and hard of hearing students.~~

KEY: licensing, deaf education

Date of Last Change: August 7, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(a)]

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number:	R277-618	Filing ID: 54803
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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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:
R277-618. Homeless Teen Center Grant Program
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Rule R277-618 is being created due to S.B. 2 passed in the 2022 General Session that appropriated \$3,500,000 for a grant program to create homeless teen centers at several schools around the state. See line 649 of S.B. 2, where the \$3,500,000 is part of the overall "Contracts and Grant" line-item total.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This rule establishes the criteria for ranking applications for a homeless teen center grant submitted by a Local Education Agency (LEA); the funding limits for the grant and allowable uses of awarded money; and the required data collection from an awardee for measuring success of the grant.

Fiscal Information

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

A) State budget:

This new rule is not expected to have fiscal impact on state government revenues or expenditures. This adds guidelines for a new grant program. Funds for this grant were appropriated in the 2022 General Session, S.B. 2 and no additional impacts are estimated.

B) Local governments:

This new rule is not expected to have fiscal impact on local governments' revenues or expenditures. This adds guidelines for a new grant program. Funds for this grant were appropriated in the 2022 General Session, S.B. 2 and no additional impacts are estimated.

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

This new rule is not expected to have fiscal impact on small businesses' revenues or expenditures. This only affects the Utah State Board of Education (USB) and LEAs.

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

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

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

This new rule is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only affects USBE and LEAs.

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

There are no compliance costs for affected persons. This rule only affects LEAs using the grant program. This adds guidelines for a new grant program. Funds for this grant were appropriated in the 2022 General Session, S.B. 2 and no additional impacts are estimated.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)
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Public Notice Information

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

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:	10/10/2022
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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.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.

R277-618. Homeless Teen Center Grant Program.

R277-618-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to provide:
- (a) the criteria for ranking applications for a homeless teen center grant;
 - (b) the funding limit and allowable uses; and
 - (c) the required data collection for measuring success of the grant.

R277-618-2. Definitions.

- (1) "Family service worker" or "FSW" means a school employee who connects families and parents with the resources needed to self-sustain and thrive, including:
- (a) identify physical and emotional self-care;
 - (b) stress-coping mechanisms; and
 - (c) advocate for the family's needs.
- (2) "Free application for student federal aid" or "FASFA" means the official form to apply for federal financial aid to pay for college provided by the Department of Education.
- (3) "Wrap-around services" means services that bring families, providers, and key members of the family's social support network together to collaborate to build a customized plan of care that responds to the unique needs of the child and family.

R277-618-3. Application and Scoring Criteria.

- (1) Subject to legislative appropriation, an LEA may apply for the homeless teen center grant.
- (2) An LEA's application shall include the following:
- (a) capacity of the LEA to staff the center with a FSW that will provide wrap-around services for the students;
 - (b) ability to provide homeless students with assistance, guidance, and connection to necessary resources;
 - (c) the ability to provide the services within the center, including:
 - (i) a food pantry that is community-based allowing access to food services;
 - (ii) showers and hygiene necessities;
 - (iii) laundry facilities, including a washer and dryer;
 - (iv) academic counseling and advisement, including:
 - (A) FAFSA applications for grants and loans; and
 - (B) work study funds available at universities and tech colleges;
 - (v) collaboration with district and county agencies for mental, dental, medical and vision services;
 - (vi) mindfulness and social and emotional resources, including access to a FSW;
 - (vii) availability to connect with spiritual and religious resources; and
 - (viii) collaboration with a local tech college for technical job training before graduation;
 - (d) readiness of facilities to house a homeless teen center at a school campus, including general construction plans, if required;
 - (e) demonstrated need for a homeless teen center, including:
 - (i) homeless teen population within the LEA, including recent population trends;
 - (ii) lack of existing infrastructure or resources to service current population needs;
 - (iii) other quantitative or qualitative data that demonstrate overall need;
 - (f) a budget outlining the intended use of the grant funds;
 - (g) a timeline for achieving an operational homeless teen center; and
 - (h) ability to maintain and keep the homeless teen center operational over time.
- (3) An LEA shall apply for the grant in a form and within the deadlines specified by the Superintendent.
- (4) An LEA's application shall be scored and ranked by the Superintendent based upon the overall:
- (a) demonstrated need for a homeless teen center;
 - (b) quality of the budget proposal and timeline as described in Subsection (2); and
 - (c) capacity to maintain an operational homeless teen center, as described in Subsection (2).
- (5) The Superintendent shall select and notify grant awardees within 30 days of the application deadline.

R277-618-4. Funding and Measurements of Success.

- (1) A grant awardee may not receive more than \$250,000 for an approved application and all awards are reimbursement based.
- (2) A grant awardee shall submit for reimbursement in a form and timeline determined by the Superintendent.
- (3) A grant awardee may only be reimbursed for expenditures outlined within the grant awardee's budget submitted as part of the application described in Subsection R277-618-3(2).

(4) A grant awardee may seek a budget variance from the Superintendent if the variance is sought before the expenditure of funds for the variance.

(5) The Superintendent shall review and approve or deny a variance request within 30 days of receiving the request.

(6) A grant awardee shall collect the following data to measure success of the homeless teen center:

(a) the projected number of students experiencing homelessness that are served by the homeless teen center annually;

(b) evidence of a match of a 0.5 full time equivalent funding for a teen center coordinator within the LEA or school campus hosting the homeless teen center;

(c) participation of community partners, including:

(i) local food bank;

(ii) local health authority; and

(iii) other community-based organizations including religious faith-based services and non-sectarian social services; and

(d) annual attendance data of the students served by the homeless teen center.

(7) A grant awardee shall provide the data described in Subsection (5) to the Superintendent upon request.

KEY: homeless teens, teen center, grant

Date of Last Change: 2022

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number:	R277-629	Filing ID: 54804
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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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-629. Paid Professional Hours for Educators

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

Rule R277-629 is being created in order to implement the program created by the Legislature passed in the 2022 General Session, H.B. 396.

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

This new rule specifically creates criteria for calculating and distributing funds under the new program.

Fiscal Information

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

A) State budget:

This new rule is not expected to have fiscal impact on state government revenues or expenditures. This rule clarifies distribution for a new funding source.

B) Local governments:

This new rule is not expected to have fiscal impact on local governments' revenues or expenditures. This rule clarifies distribution for a new funding source.

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

This new rule is not expected to have fiscal impact on small business revenues or expenditures. This rule only affects the Utah State Board of Education (USBE) and Local Education Agencies (LEAs).

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

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

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

This new rule is not expected to have fiscal impact on revenues or expenditures for persons other than small

businesses, businesses, or local government entities. This rule only affects LEAs and USBE.

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

There are no compliance costs for affected persons. This rule does not add any compliance costs separate from the new funding source.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-7-203
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Public Notice Information

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

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:	10/10/2022
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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.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.

R277-629. Paid Professional Hours for Educators.

R277-629-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

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

(c) Section 53F-7-203, which directs the Board to distribute program funds to LEAs to provide to educators consistent with the statute.

(2) The purpose of this rule is to establish rules for distribution of program funds.

R277-629-2. Definitions.

"Program funds" means funds allocated to LEAs in accordance with Section 53F-7-203.

R277-629-3. Distribution of Funds.

(1) The Superintendent shall distribute program funds to LEAs annually based on November 15 licensing information.

(2) An LEA shall distribute program funds in compliance with Subsections 53F-7-203(3) and (4).

(3)(a) An LEA may only use program funds for educator salary and benefits.

(b) An LEA may not use program funds to cover indirect costs.

- (4)(a) An LEA shall disburse program funds to educators by June 30 annually.
- (b) The Superintendent may:
- (i) offset unused program funds against future allocations to the LEA; or
- (ii) require the LEA to return unused program funds by September 30 of the next school year.

KEY: paid professional hours

Date of Last Change: 2022

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-7-203

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number:	R277-919	Filing ID:	54805
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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 persons:			
Name:	Phone:	Email:	
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule or section catchline:
R277-919. Regulatory Sandbox Innovation Schools
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Rule R277-919 is being created due to requirements to enact a rule as outlined by the Legislature in the 2022 General Session under S.B. 191.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This new rule specifically outlines the requirements for a Local Education Agency (LEA) and innovation school to establish performance measures and data collection

methods for measuring success. This rule also outlines the application criteria and process for an innovation school to utilize the optional financial flexibility that is established by S.B. 191 (2022). These criteria include showing maintenance of effort for existing programs, use of funds, and an itemized spending plan.

Fiscal Information

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

A) State budget:

This new rule is not expected to have fiscal impact on state government revenues or expenditures. This rule provides guidance due to new legislation.

B) Local governments:

This new rule is not expected to have fiscal impact on local governments' revenues or expenditures. This rule simply provides guidance to LEAs on new legislation.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule only impacts LEAs and the Utah State Board of Education (USBE).

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only impacts LEAs and USBE.

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

There are no compliance costs for affected persons. This rule provide requirements for an optional program and this rule provides guidance for LEAs choosing to participate.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53G-7-221(9)
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Subsection 53G-7-222(4)		
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Public Notice Information

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

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:	10/10/2022
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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.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.

R277-919. Regulatory Sandbox Innovation Schools.

R277-919-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53G-7-221(9), which requires the Board to make rules establishing the reporting and monitoring requirements for an approved innovation school program;

(c) Subsection 53G-7-222(4), which requires the Board to make rules establishing the approval criteria and process for the use of restricted funds in funding an approved innovation school program; and

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

(2) The purpose of this rule is to provide:

(a) criteria the state board will use to:

(i) evaluate an innovation plan's progress; and

(ii) terminate an innovation plan;

(b) requirements and process for reporting on a plan's progress; and

(c) the approval process for a plan's funding if using the flexible funds option outlined in Section 53G-7-222.

R277-919-2. Definitions.

(1) "Approved innovation plan" or "plan" means the same as the term is defined in Subsection 53G-7-221(1).

(2) "Innovation school" means the same as the term is defined in Subsection 53G-7-221(1).

(3) "Local approving body" means the same as the term is defined in Subsection 53G-7-221(1).

R277-919-3. Reporting Requirements, Progress Monitoring, and Plan Termination.

(1) A local approving body that submits an approved innovation plan to the Board as described in Subsection 53G-7-221(7) shall:

(a) provide the information in a form and method prescribed by the Superintendent;

(b) include the information described in Subsection 53G-7-221(3) and a detailed budget for successful implementation;

(c) provide a detailed plan of benchmarked progress including the projected timeline for each benchmark that has been agreed upon by the innovation school and local approving body;

(d) provide a suggested reporting schedule between the approved innovation school and the Superintendent; and

(e) provide additional information as requested by the Superintendent at the time of plan submission.

(2) The Superintendent may request changes to the reporting scheduled described in Subsection (1)(d) if a different schedule is needed to facilitate adequate monitoring of all approved innovation school plans.

(3) The Superintendent shall use the following to determine if sufficient progress is being made:

(a) data and metrics described in Subsection 53G-7-221(3)(e);

(b) the agreed upon benchmarks and performance outcome measures; and

(c) appropriate use of funds if budgetary flexibility has been granted pursuant to this rule and Section 53G-7-222.

(4) If the Superintendent determines sufficient progress is not being made, a notice of remediation will be sent to the local approving body and the approved innovation school.

(5) The notice of remediation shall include:

(a) the benchmarks or general progress that has not been made and how that determination was made using the approved performance metrics and agreed upon benchmarks;

(b) the required corrections needed to no longer be in remediation and a remediation timeline which may not be shorter than 180 days; and

(c) the form and method in which the remediation monitoring shall be reported to the Superintendent.

(6) If an approved innovation school fails to meet the requirements and timeline outlined in the notice of remediation, the approved innovation school and the local approval body will be notified within 15 days after the required remediation deadline and be subject to an innovation plan termination review by the Board.

(7) The Board's innovation plan termination review shall take place in a Board meeting no later than 30 days after the approved innovation school has been notified of the innovation school's failure to remediate.

(8) The Board shall consider all elements of the innovation plan when conducting its review including:

(a) the approved innovation plan application including outcomes and performance metrics;

(b) the agreed upon benchmarks and timelines;

(c) implementation efforts of the innovation school for the plan;

(d) efforts made to adhere to the remediation requirements and timelines;

(e) any efforts made by the innovation school to amend the plan; and

(f) any waived Board rule or LEA policies that were intended to facilitate successful implementation of the plan.

(9) As part of the innovation plan termination review, the Superintendent shall provide a recommendation to the Board to:

(a) provide an additional remediation period with additional or new requirements and timelines; or

(b) terminate the approved innovation school's plan including a timeline for the innovation school to return to regular compliance and budgetary requirements that may have been waived or made flexible as part of the innovation plan.

(10) The Superintendent shall provide notice of the Board's decision to the innovation school and the local approving body within 10 days of the decision being made.

(11) The local approving body shall ensure that the approved innovation school returns to regular compliance and budgetary requirements in the timeline approved by the Board and notify the Board when this has been achieved.

R277-919-4. Flexibility of Restricted Funds.

(1) An innovation school with an approved innovation plan may apply to the Board for budgetary flexibility as described in Section 53G-7-222.

(2) The application for budgetary flexibility shall be created by the Superintendent and include:

(a) an itemized budget detailing the expenditures needed to fund the innovation plan;

(b) the current restricted funds that will be used including how much of each fund will be used for the innovation plan; and

(c) a detailed description of how the originating programs supported by the restricted funds will remain in operation and not be unduly hindered by the budgetary flexibility;

(d) if the innovation plan will positively impact any outcomes related to the originating programs the restricted funds support; and

(e) a plan for regular reporting to the Superintendent regarding budgetary expenditures from restricted funds to ensure compliance.

(3) The Board shall approve an application for budgetary flexibility unless the application is in violation of state law on budget and funding matters.

(4) If an approved innovation school receives approval from the Board for budgetary flexibility, the approved innovation school shall report expenditures and evidence in form prescribed by the Superintendent.

(5) The Board may terminate an innovation plan for violation of the approved budget including:

(a) the failure of any originating program from which restricted funds have been diverted as defined by state law;

(b) failure to match expenditures with approved budget; and

(c) failure to provide evidence of expenditures in the format required by the Superintendent.

KEY: innovation; regulatory sandbox; restricted funds**Date of Last Change: 2022****Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53G-7-221(9); 53G-7-222(4); 53E-3-401(4)****NOTICE OF PROPOSED RULE****TYPE OF RULE:** Amendment**Rule or Section Number:** R277-920**Filing ID:** 54806

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R277-920. School Improvement Implementation of the School Turnaround and Leadership Development Act
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Rule R277-920 is being amended due to the passage of the Legislature in the 2022 General Session of S.B. 245, School Turnaround Program Revisions.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The amendments, more specifically: 1) replace references to the "school turnaround" program with "school improvement"; 2) eliminate references to "low performing school" and replacing them with "springboard school" and/or "elevate school"; 3) add a defined term for Utah's Federal ESSA Plan into the rule, to clarify that identification and exit criteria for the federal school improvement programs are subject to our ESSA State Plan; 4) eliminate provisions in the rule that applied to the 2014-15 cohort only (now that all the schools from the 2014-15 cohort have exited the program); and 5) repeal two sections of the rule because those sections have also been removed from Utah Code.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. This rule updates verbiage and makes technical changes to school improvement programs.
B) Local governments:
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule only affects Local Education Agencies (LEAs) in school improvement and does not add costs.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule only affects the Utah State Board of Education (USBE) and LEAs.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only affects LEAs and USBE.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no compliance costs for affected persons. This rule change makes verbiage changes that do not add costs for USBE or LEAs.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information

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

Article X, Section 3	Subsection 53E-3-401(4)	Title 53E, Chapter 5, Part 3
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Incorporations by Reference Information

7. Incorporations by Reference :

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

Official Title of Materials Incorporated (from title page)	2021-2022 Addendum Template for the Consolidated State Plan due to COVID-19 under the Elementary and Secondary Education Act of 1965
Publisher	U.S. Department of Education
Issue Date	December 2021
Issue or Version	Issue 1

Public Notice Information

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

A) Comments will be accepted until: 10/03/2022

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

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.

R277-920. School Improvement[~~Implementation of the School Turnaround~~] and Leadership Development[~~Act~~].

R277-920-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

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

(c) Title 53E, Chapter 5, Part 3, School ~~Turnaround~~ Improvement and Leadership Development[~~Act~~], which requires the Board to make rules to establish:

(i) an appeal process for the denial of a school ~~turnaround~~ improvement plan;

(ii) provisions regarding funding distributed to a ~~low performing~~ springboard school or elevate school;

(iii) criteria for granting an extension to a ~~low performing~~ springboard school;

(iv) criteria for exiting a school that has demonstrated sufficient improvement;

~~[(v)]~~ (v) criteria for approving a teacher recruitment and retention plan;

~~[(vi)]~~ (vi) implications for a ~~low performing~~ springboard school; and

~~[(vii)]~~ (vii) eligibility criteria, application procedures, selection criteria, and procedures for awarding incentive pay for the School Leadership Development Program.

- (2) The purpose of this rule is to:
- (a) enact provisions governing school improvement efforts; and
- (b) implement and administer ~~the~~ Title 53E, Chapter 5, Part 3, School ~~Turnaround~~ Improvement and Leadership Development~~Act~~.

R277-920-2. Definitions.

(1) "Appeal committee" means the committee established by Section R277-920-~~5~~6.

(2) "Baseline performance" means the percentage of possible points earned by a school through the school accountability system in the year the school was identified as a springboard~~low performing~~ school.

(3) "Committee" means a school ~~turnaround~~ improvement committee established in accordance with Subsection~~s~~ 53E-5-303(1) or 53E-5-304(4).

(4) "Continuous improvement expert" means the same as that term is defined in Section 53E-5-301.

(5) "Elevate school" means the same as that term is defined in Section 53E-5-301.

~~(4) "Eligible school" means a low performing school that:~~

~~(a) was designated as a low performing school based on 2014-2015 school-year performance; and~~

~~(b)(i) improves the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the final remedial year; or~~

~~(ii)(A) has been granted an extension under Subsection 53E-5-306(3) and this Rule R277-920; and~~

~~(B) improves the school's grade by at least one letter grade, as determined by comparing the school's letter grade for the school year prior to the initial remedial year to the school's letter grade for the last school year of the extension period.~~

~~(5) "Low performing school" means a school that:~~

~~(a) is for two consecutive school years in the lowest performing;~~

~~(i) 3% of the high schools statewide according to the percentage of possible points earned under the school accountability system; or~~

~~(ii) 3% of the elementary, middle, and junior high schools statewide according to the percentage of possible points earned under the school accountability system; and~~

~~(b) participates in the school turnaround and leadership development program described in Title 53E, Chapter 5, Part 3.~~

(6) "High performing charter school" means the same as that term is defined in Section 53E-5-306.

(7) "Non-Title I school" means a school that does not receive funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

~~(7)~~(8) "School improvement grant" means a Title I grant under the Elementary and Secondary Education Act, 20 U.S.C. Sec. 6303(g).

~~(8)~~(9) "School[s] in critical needs status" means a school that ~~has been identified under Subsection R277-920-3(1).~~ is a:

(a) high school with a four-year adjusted cohort graduation rate of less than or equal to 67% for three school years on average;

(b) Title I school that does not exit targeted needs status; or

(c) Title I school that:

(i) has not been identified as a school meeting the definition of Subsection (9)(a), (9)(b), or (14); and

(ii) performed in the lowest 5% of Title I schools over the past three years on average according to the percentage of points earned under the school accountability system.

(10) "School in targeted needs status" means a school that is identified as a targeted support and improvement school with one or more student groups as described in Section R277-920-5.

~~(9)~~(11) "School leader" means the same as that term is defined in Section 53E-5-309.

(12) "School improvement plan" means a school improvement plan described in Section R277-920-8.

~~(40)~~(13) "School improvement~~turnaround~~ program" ~~or "turnaround program"~~ means the school improvement~~turnaround~~ and leadership development program described in Title 53G, Chapter 5, Part 3.

(14) "Springboard school" means the same as that term is defined in Section 53E-5-301.

~~(44)~~(15) "State review panel" means a state review panel appointed by the Superintendent that includes at least three members who each have demonstrated expertise in two or more of the following fields:

- (a) leadership at the school district or school level;
- (b) standards-based elementary or secondary curriculum instruction and assessment;
- (c) instructional data management and analysis;
- (d) educational program evaluation;
- (e) educational program management;
- (f) teacher leadership;
- (g) change management;
- (h) organizational management; or
- (i) school budgeting and finance.

~~(42)~~(16) "Title I school" means a school that receives funds under the Elementary and Secondary Education Act of 1965, Title I, 20 U.S.C. Sec. 6301 et seq.

(17) "ESSA state plan" means the Revised State Template for the Consolidated State Plan: The Elementary and Secondary Education Act of 1965, Every Student Succeeds Act incorporated by reference in Section R277-920-3.

R277-920-3. Revised State Template for the Consolidated State Plan: The Elementary and Secondary Education Act of 1965 Incorporated by Reference.

(1) This rule incorporates by reference the Revised State Template for the Consolidated State Plan: The Elementary and Secondary Education Act of 1965, Every Student Succeeds Act, which provides clarification of the requirements and the state's plan for seven federal Title programs including school improvement.

(2) A copy of the manual is located at:

(a) <https://www.schools.utah.gov/file/e803c7a4-3c13-459c-97a6-da92b4579c52>; and

(b) the Utah State Board of Education.

R277-920-~~3~~4. Superintendent's Identification of Schools for Critical Needs Status and Springboard Schools -- Readiness Review.

(1) Subject to Subsection (2), on or before ~~September 30~~October 31, the Superintendent shall identify schools for critical needs status ~~if the school is a~~and springboard schools.

~~(a) low performing school;~~

~~(b) high school with a four year adjusted cohort graduation rate of less than or equal to 67% for three school years on average;~~

~~(c) Title I school with chronically underperforming student groups as described in Section R277-920-11; or~~

~~(d) Title I school that:~~
~~(i) has not been identified under Subsection (1)(a), (b), or (c); and~~

~~(ii) performed in the lowest 5% of Title I schools over the past three years on average according to the percentage of points earned under the school accountability system.]~~

(2) The Superintendent shall make the identification under:

(a) Subsection ~~[(1)(b)]~~R277-920-2(9)(a) beginning with the ~~[2018-2019]~~2021-22 school accountability results and every ~~[two]~~three years thereafter, consistent with the ESSA state plan;

(b) Subsection ~~[(1)(e)]~~R277-920-2(9)(b) beginning with the ~~[2022-2023]~~2023-24 school accountability results and every ~~[three years]~~year thereafter, consistent with the ESSA state plan; ~~and]~~

(c) Subsection ~~[(1)(d)]~~R277-920-2(9)(c) beginning with the 2021-2022 school accountability results and every three years thereafter~~[-]~~, consistent with the ESSA state plan; and

(d) Subsection R277-920-2(14) beginning with the 2024-25 school accountability results and every four years thereafter, consistent with Subsection 53E-5-302(1)(a).

(3)(a) Except as provided in Subsection (3)(b), schools in critical needs status are required to comply with ~~[the provisions of]~~ Title 53E, Chapter 5, Part 3, School ~~[Turnaround]~~ Improvement and Leadership Development~~[-Act]~~.

(b) ~~[Schools that are identified under Subsections (1)(b), (1)(e), and (1)(d) are]~~ A school in critical needs status is exempt from the requirement to contract with ~~[an independent school turnaround]~~ continuous improvement expert described in Section 53E-5-305.

R277-920-[4]5. Superintendent's Identification of Schools for Targeted Needs Status.

(1) As used in this section, "student groups" means a group of ~~[10]~~ten or more students:

- (a) who are economically disadvantaged;
- (b) with disabilities;
- (c) who are English learners;
- (d) who are African American;
- (e) who are American Indian;
- (f) who are Asian;
- (g) who are Hispanic;
- (h) who are Multiple races;
- (i) who are Pacific Islander; or
- (j) who are White.

(2)(a) Subject to Subsection (2)(b), the Superintendent shall identify for targeted needs status any school with one or more student groups who:

(i) for two consecutive years, is assigned a percentage of possible points in the state's accountability system that is equal to or below the percentage of possible points associated with the lowest rating in the state's accountability system; and

(ii) is not currently identified for critical needs status under Section R277-920-[3]4.

(b) The Superintendent shall make the identification under Subsection (2)(a) beginning with the 2018-2019 school accountability results and every year thereafter.

(3) A school identified under Subsection (2) shall develop and implement a plan to improve performance of the student group that was the subject of the identification under Subsection (2), in accordance with the Elementary and Secondary Education Act of 1965, 20 U.S.C. Sec. 6301 et seq.

(4) To exit targeted needs status, a school shall demonstrate that the school no longer meets the criteria for which the school was identified for two consecutive years within four school years after the month in which the school was identified.

(5) The Superintendent shall identify a Title I school that does not meet the exit criteria described in Subsection (4) as a school with chronically underperforming student groups as described in Section R277-920-[3]4.

R277-920-[5]6. Identification of New Schools due to Statewide Assessment System Irregularities During the 2020 COVID-19 Pandemic.

The Superintendent may not identify a new school for critical needs status based on school accountability results from the 2019-20 school year due to the waiver to administer assessments described in Section 53E-4-315.

R277-920-7. Superintendent Review of Continuous Improvement Expert Proposals for Springboard and Elevate Schools.

(1) The Superintendent shall review and approve a springboard or elevate school's proposal described in Subsection 53E-5-303(1)(d).

(2) On or before January 15, a local education board of a springboard or elevate school shall submit a proposal described in Subsection 53E-5-303(1) or Subsection 53E-5-304(4) to the Superintendent for approval.

R277-920-[6]8. School ~~[Turnaround]~~ Improvement Plan Submission and Approval Process.

(1) In addition to the requirements described in Subsection 53E-5-303(5), a springboard school, elevate school, or school in critical needs status shall create a school improvement plan and [plan shall] include at least the following:

- (a) ~~[if the school in critical needs status is a district school,~~ a request to the local school board and district superintendent for:
 - (i) additional resources;
 - (ii) personnel; or
 - (iii) exemptions from district policy that may be contributing to the low performance of the district school; and
- (b) a plan for management of school personnel, including:
 - (i) recruitment of an educator or school leader; and
 - (ii) professional development for an educator or school leader.

(2) A local education board shall include in the plan a strategy for sustaining school improvement efforts after a school exits critical needs status.

(3)(a) A local education board may approve or deny a plan in whole or in part, if the part of the plan the board denies is severable from the part of the plan the board approves.

(b) A local education board shall give a reason for a denial of each part of a plan.

~~[(4) On or before January 15, a local education board of a low performing school shall submit a proposal described in Subsection 53E-5-303(1) or Subsection 53E-5-304(4) to the Superintendent for approval.]~~

~~[(5)](4)~~ A local education board shall submit a school improvement plan in accordance with Subsection 53E-5-303(7) or Subsection 53E-5-304(9) to the Board.

~~[(6)](5)~~ In accordance with Subsection 53E-5-305(3), the Board may review and approve or deny a school improvement plan in whole or in part, if the part of the school improvement plan the

Board denies is severable from the part of the school improvement plan the Board approves.

R277-920-[7]9. Appeal Process for Denial of a School ~~Turnaround~~Improvement Plan.

~~As used in this section "plan" means a school turnaround plan described in Subsection 53E-5-303(5).]~~

~~(1)~~ **(2)** A committee or local education board may appeal the denial of a plan, in whole or in part, by following the procedures and requirements of this section.

~~(3)~~ **(2)** An appeal authorized by this rule:

(a) is an informal adjudicative proceeding under Section 63G-4-203; and

(b) shall be resolved by the date specified in Subsection 53E-5-305(6)(b).

~~(4)~~ **(3)(a)** A principal, on behalf of a committee, may request that the local education board reconsider the denial of a plan:

(i) by electronically filing the request;

(A) with the chair of the local education board; and

(B) on a form provided on the Board website; and

(ii) within ~~5~~ five calendar days of the denial.

(b) The reconsideration request may include a modification to the plan if the committee approves the modification.

(c) The local education board shall respond to the request within ~~40~~ ten calendar days by:

(i) refusing to reconsider its action;

(ii) approving a plan, in whole or in part; or

(iii) denying a plan modification.

(d) The principal may appeal the denial of a plan under this Subsection (3):

(i) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(ii) within ~~5~~ five calendar days of the denial.

(e) An appeal filed under this subsection shall be resolved in accordance with Subsections ~~(5)~~ (4) and ~~(6)~~ (5).

~~(5)~~ **(4)** A district superintendent, on behalf of a local school board, or a charter school governing board chair, on behalf of a charter school governing board, may appeal the Board's denial of a plan:

(a) by electronically filing an appeal with the Superintendent on a form provided on the Board website; and

(b) within ~~5~~ five calendar days of the denial.

~~(6)~~ **(5)(a)** At least three members of a Board committee, appointed by the Board as the appeal committee, shall review the written appeal.

(b) The appeal committee may ask the principal, district superintendent, local school board chair, or charter school governing board chair to:

(i) provide additional written information; or

(ii) appear personally and provide information.

(c) The appeal committee shall make a written recommendation within ~~5~~ five business days of receipt of the appeal request to the Board to accept, modify, or reject the plan and give a reason for the recommendation.

~~(7)~~ **(6)** The Board may accept or reject the appeal committee's recommendation and the Board's decision is the final administrative action.

R277-920-[8]10. ~~School Turnaround~~Springboard and Elevate School Program Funding.

(1) The Superintendent shall annually designate an amount of funds available for distribution to ~~low performing~~ springboard and elevate schools under this section, taking into consideration:

~~(a) variability in the number of schools that are identified on an annual basis;~~

(b) ~~(a)~~ encumbered funds; and

(c) ~~(b)~~ other program obligations.

~~(2) The Superintendent shall distribute any funds available for distribution under Subsection (1) after the allocation of funds described in Subsections (3) and (4) to local education boards of low performing schools on a prioritized basis taking need for the funds, as demonstrated by the needs assessment conducted in accordance with Section 53E-5-302, into account.]~~

~~(3)~~ **(2)** ~~Subject to availability of funds, on~~ On or before January 30 of the school year in which a ~~low performing~~ springboard or elevate school is identified, the Superintendent shall distribute at least ~~[\$240,000 per low performing]~~ \$375,000 per springboard or elevate school to each local education board of a ~~low performing~~ springboard or elevate school.

(3) The Superintendent shall distribute any funds available for distribution under Subsection (1) after the allocation of funds described in Subsection (2) to local education boards of springboard and elevate schools on a prioritized basis taking need for the funds, as demonstrated by the needs assessment conducted in accordance with Section 53E-5-302, into account.

~~(4) Subject to availability of funds, in addition to the amount distributed under Subsection (3), the Superintendent shall distribute an amount equal to \$30,000 for each of the following criteria that a school meets:~~

~~(a) the school is located in a county with a county seat that is over 100 miles away from Salt Lake City;~~

~~(b) the school is located within San Juan County; or~~

~~(c) the school:~~

~~(i)(A) has over 75 full time equivalent educators; and~~

~~(B) includes grade 12; or~~

~~(ii)(A) has over 37 full time equivalent educators; and~~

~~(B) does not include grade 12.]~~

~~(5)~~ **(4)(a)** The local education board shall use at least a portion of the funding distributed under Subsections (2) and (3) ~~and (4)]~~ to contract with ~~an independent school turnaround]~~ a continuous improvement expert, including travel costs, in accordance with Sections 53E-5-303 and 53E-5-304.

(b) A local education board shall use funding available after the allocation of funds under Subsection ~~(5)~~ (4)(a) only for interventions identified in a school ~~turnaround]~~ improvement plan.

~~(6)~~ **(5)** The Superintendent may review uses of funds and contracts with ~~independent school turnaround]~~ continuous improvement experts.

~~(7)~~ **(6)** The Superintendent may provide funding to a school that remains in the ~~turnaround]~~ school improvement program beyond the school's identified exit year.

[R277-920-9. Teacher Recruitment and Retention.

~~(1) As used in this section, "matching funds" means funds that are not allocated to a school under Section R277-920-8.~~

~~(2) In accordance with Section 53E-5-308, a local education board of a low performing school may seek and receive matching funds from the state to implement strategies for teacher recruitment and retention identified in a plan described in Subsection (3).~~

~~(3) To qualify for matching funds under this section, on or before January 15, a local education board of a low performing school shall submit a plan to the Superintendent that:~~

~~(a) includes a strategy for teacher recruitment and retention for the school in critical needs status;~~

~~(b)(i) except as provided in Subsection (3)(b)(ii), is responsive to the needs assessment conducted in accordance with Section 53E-5-302; or~~

~~(ii) if the school was identified as a low performing school based on 2014-2015 school accountability results, includes a root cause analysis of the school's teacher recruitment and retention challenges, including:~~

~~(A) a clear definition of the problem to be solved;~~

~~(B) hypotheses for the causes of the problem;~~

~~(C) strategies to address the root causes of the problem;~~

~~(D) current data on teacher retention rates; and~~

~~(E) current recruitment and retention strategies;~~

~~(c) includes the amount of matching funds the local education board is requesting from the state;~~

~~(d) includes assurances that the local education board will allocate matching funds; and~~

~~(e) may include a stipend for educators who work non-contract hours to develop or implement strategies identified in a school improvement plan.~~

~~(4) The Superintendent shall:~~

~~(a) approve a plan that meets the criteria described in Subsection (3); and~~

~~(b) on or before March 1, distribute matching funds to a local education agency that has submitted an approved plan in an amount not to exceed:~~

~~(i) \$1000 per teacher for schools identified based on 2014-2015 school accountability results; or~~

~~(ii) \$1500 per teacher for schools identified based on 2016-17 school accountability results and each year thereafter.]~~

R277-920-[40]11. School Leadership Development Program.

(1) A school leader may apply to participate in the School Leadership Development Program if the school leader:

(a) is assigned to a school in critical needs status; or

(b) is nominated by the school leader's district superintendent or charter school governing board to participate.

(2) A school leader who meets the requirements of Subsection (1) may apply to participate in the School Leadership Development Program by electronically submitting an application to the Superintendent on a form provided on the Board website by the date specified on the Board website.

(3)(a) The Superintendent shall select a school leader to participate in the School Leadership Development Program based on the following selection criteria:

(i) [F]first priority shall be given to a school leader who is assigned to a [low performing]springboard school or elevate school;

(ii) second priority is given to a school leader who is assigned to a school in critical needs status that is not a [low performing]springboard school or elevate school; and

(iii) third priority is given to a school leader who is nominated by the school leader's district superintendent or charter school governing board.

(b) Notwithstanding Subsection (3)(a), the Superintendent may give priority to a school leader who has not received prior leadership training before selecting a school leader who has received prior leadership training.

(4)(a) In accordance with Subsection 53E-5-309(4), the Superintendent shall award incentive pay to a school leader within 30 days after:

(i) the school leader completes the School Leadership Development Program; and

(ii) the school leader's LEA verifies that the school leader entered into a written agreement as described in Subsection 53E-5-309(4).

(b) The Superintendent shall distribute \$400 per session to a school leader who completes at least 75% of the School Leadership Development Program sessions.

(5) The Superintendent may award incentive pay to a school leader described in Subsection (5) for up to five years.

R277-920-[41]12. Exit Criteria for a [Low Performing] Springboard School -- Extensions -- More Rigorous Interventions.

(1) ~~(a) Except as provided in Subsection (1)(b), to]~~ To exit the [school turnaround]springboard school program, a [low performing]springboard school shall demonstrate, in the third or fourth year after which the school was identified as a [low performing]springboard school, that the school:

~~(i)~~(a) meets individualized exit criteria that is calculated by reducing the gap in performance between the springboard school's baseline performance and the threshold score for a 'B' letter grade, as described in Section R277-497-2, by one-third; and

~~(ii)~~(b) exceeds the lowest 5% of all schools in the ranking of schools from the year the school was identified.

~~(b) A low performing school that was identified based on 2014-15 school accountability results is required to improve performance by at least one letter grade, as determined by comparing the school's letter grade for the 2014-15 school year to the school's letter grade for the 2017-18 school year.]~~

(2) In determining whether a school has met the criteria described in Subsection (1), the Superintendent shall apply the indicators, weightings, and threshold scores described in the version of Title 53E, Chapter 5, Part 2, School Accountability System that was in place [at the time]when the school was identified.

(3) If a school does not meet the exit criteria described in Subsection (1)~~(a)~~ in the fourth year after which the school was identified as a [low performing]springboard school, the school may qualify for an extension to continue current school improvement efforts for up to two years if the school:

(a)(i)(A) reduced the gap in performance between the school's baseline performance and the threshold for a 'B' letter grade, as described in Section R277-497-2, by at least one-fourth; and

(B) exceeds at least the lowest 3% of all schools in the ranking of schools from the year the school was scheduled to exit; or

(ii) has met only one of the exit criteria described in Subsection (1)~~(a)~~; and

(b) electronically files an extension request with the Superintendent within 15 days of the release of school accountability results, that provides rationale justifying an extension.

~~(4)(a) The Superintendent shall conduct an in-depth analysis of the alignment of the school's curriculum to the Utah core standards:~~

~~(i) in each school that qualifies for an extension under Subsection (3); and~~

~~(ii) that is individualized to each teacher.~~
~~(b) The Superintendent may require a local education board or school to:~~

~~(i) take actions to remedy issues identified in the analysis described in Subsection (4)(a); or~~

~~(ii) revise the school turnaround plan.]~~

~~[(5)](4)~~ If a school identified as a ~~[low performing]~~ springboard school does not meet the exit criteria described in Subsection (1) or qualify for an extension as described in Subsection (3) the following groups shall make a recommendation to the Board on what action the Board should take:

(a) a state review panel, described in Subsection ~~[(7)](6)~~;

(b) if the school is a district school, the local school board, with input from the community as described in Subsection ~~[(8)](7)~~; and

(c) if the school is a charter school, the charter school authorizer with input from the community as described in Subsection ~~[(8)](7)~~.

~~[(6)](5)~~ The groups described in Subsection ~~[(5)](4)~~ shall make a recommendation within 90 days of the release of school accountability results on whether the Board should:

(a) require personnel changes, including replacement of school leaders or teachers;

(b) if the school is a district school:

(i) require involuntary transfers of school leaders or teachers;

(ii) require the local school board to change school boundaries;

(iii) temporarily appoint a public or non-profit entity other than the local school board to manage and operate the school; or

(iv) permanently transfer control of a school to a public or non-profit entity other than the local education board;

(c) if the school is a charter school:

(i) require that the charter school governing board be replaced; or

(ii) require that the charter school authorizer close the school; or

(d) if the school is a charter school, require that the charter school authorizer:

(i) replace some or all members of the charter school governing board;

(ii) transfer operation and control of the charter school to:

(A) a high performing charter school; or

(B) the school district in which the charter school is located; or

(iii) close the school; or

(e) take other action.

~~[(7)](6)~~(a) The Superintendent shall appoint members of a state review panel.

(b) The state review panel shall critically evaluate at least:

(i) whether the local education agency has the capacity to implement the changes necessary to improve school performance;

(ii) whether the school leadership is adequate to implement change to improve school performance;

(iii) whether the school has sufficient authority to implement change;

(iv) whether the plan is being implemented with fidelity;

(v) whether the state and local education board provided sufficient resources to the school to support school improvement efforts, including whether the local school board prioritized school district funding and resources to the school in accordance with Section 53E-5-303;

(vi) the likelihood that performance can be improved within the current management structure and staffing; and

(vii) the necessity that the school remain in operation to serve students.

~~[(8)](7)~~ A local school board and charter school authorizer shall develop recommendations under this section in collaboration with:

(a) parents of students currently attending the springboard school;

(b) teachers, principals, and other school leaders at the school;

(c) stakeholders representing the interests of students with disabilities, English learners, and other vulnerable student populations; and

(d) other community members and community partners.

R277-920-13. Exit Criteria for a Schools in Critical Needs Status and Elevate Schools.

(1) A school in critical needs status may exit critical needs status as described in the ESSA state plan.

(2) An elevate school may exit after successful completion of four years participating in the implementation of a continuous improvement cycle, including working with the elevate school's continuous improvement expert.

R277-920-[12]14. Exit Criteria for Schools in a year with Statewide Assessment System Irregularities.

(1) For a school year where there are statewide assessment system irregularities or a suspension of the administration of statewide assessments:

(a) the Superintendent shall appoint a state review panel; and

(b) the state ~~[exit]~~review panel shall review the data of a school eligible to be considered for exit at the conclusion of the applicable year and make a recommendation to the Board on whether the school demonstrated adequate progress to exit the ~~[turnaround]~~springboard school program.

(2) A state ~~[exit]~~review panel described in Subsection (1) shall review the following questions to inform the state ~~[exit]~~review panel's recommendation:

~~[(a)](i) for a school identified based on school accountability results from the 2014-15 or 2015-16 school year, whether the school achieved above the lowest 3% threshold based on the school accountability data and measures from the 2018-19 school year; or~~

~~[(ii) for a school identified based on school accountability results from the 2017-18 school year or later, whether the school achieved above the lowest 3% threshold based on the school accountability data and measures from a combination of two consecutive years;]~~

~~[(b)](a)~~ whether the school provides evidence of substantial progress and growth~~[in addition to the data described in Subsection (2)(a)]; and~~

~~[(c)](b)~~ whether the school has qualitative or quantitative data from the implementation of the school's ~~[turnaround]~~school improvement plan that also demonstrate substantial improvement.

(3) For a school whose data are impacted by statewide assessment system irregularities or a suspension of the administration of statewide assessments during one or more of the school's designated years in the ~~[turnaround]~~springboard school program:

(a) the Superintendent shall appoint a state review panel;

(b) the state ~~[exit]~~review panel shall review the data of the school whose data are impacted by the statewide assessment system irregularities or suspension of statewide assessment; and

(c) the state ~~[exit]~~review panel shall make a recommendation to the Board whether the school demonstrated substantial improvement.

(4) A state ~~[exit]~~review panel described in Subsection (3) shall review qualitative and quantitative data from the ~~[F]~~implementation of the school's ~~[turnaround]~~improvement plan.

(5) The qualitative and quantitative data described in Subsection (4) may include:

(a) local student performance data, including formative assessment data;

(b) for a springboard school that is a high school:

(i) credit earned;

(ii) graduation rate; and

(iii) other types of successful completion, such as earning a GED;

(c) increased attendance;

(d) student engagement or school climate;

(e) parent engagement;

(f) criteria presented by the school being reviewed;

(g) if the springboard school is a charter school, whether the charter school is meeting all minimum standards described in Section 53G-5-303 in the school's charter agreement with the authorizer, including:

(i) minimum financial standards for operating the charter school;

(ii) minimum standards for student achievement;

(iii) the mission statement and purpose of the charter school;

(iv) the grade levels served;

(v) the maximum number of students; and

(vi) the charter school governing board and structure; and

(h) additional criteria established by the Superintendent.

(6)(a) Notwithstanding other provisions in this Section R277-920-~~[42]~~14, for a school year where there are statewide assessment system irregularities or a suspension of the administration of statewide assessments, a school eligible to be considered for exit at the conclusion of the applicable year may elect to remain in the ~~[turnaround]~~springboard school program an additional year.

(b) For a school that elects to remain in the program an additional year as described in Subsection (6)(a), the Superintendent may provide a different standard of review of the school's data by the state review panel.

(7) For a school that elects to remain in the program an additional year as described in Subsection (6):

(a) the Superintendent may provide a different standard of review of the school's data by the state ~~[exit]~~review panel; and

(b) in addition to the information described in Subsection (5), the school shall provide a request for resources to the Superintendent, including the proposed uses of the resources, for the school's additional year in the ~~[turnaround]~~springboard school program.

[R277-920-13. School Recognition and Reward Program.

~~(1) The Superintendent shall distribute school recognition and reward program money to an LEA with an eligible school within 30 days of the Board's official release of school grades for the year the eligible school is eligible for an award of money.~~

~~(2) The Superintendent shall notify the LEA and principal of an eligible school within 15 days of the Board's official release of school grades;~~

~~(a) that the eligible school is eligible for an award of money; and~~

~~(b) of the amount of the award that the eligible school will receive.~~

~~(3) The LEA, in consultation with the principal of the eligible school shall distribute the money received under Subsection (4):~~

~~(a) to each educator assigned to the school for all of the years the school was identified as a low performing school; and~~

~~(b) in a pro-rated manner to each educator assigned to the school for less time than the school was identified as a low performing school.]~~

KEY: principals, school improvements, school leaders

Date of Last Change: 2022[August 12, 2021]

Notice of Continuation: June 4, 2021

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number: R277-931

Filing ID: 54807

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 persons:		
Name:	Phone:	Email:
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

General Information

2. Rule or section catchline:

R277-931. Required Provision of Period Products in Schools

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

Rule R277-931 is being enacted due to the passage of the Legislature, in the 2022 General Session, of H.B. 162, Period Products in Schools.

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):

There have been questions about whether bathrooms used exclusively by students in kindergarten or younger should be exempt from the requirement to install dispensers for period products. This new rule specifically states that, for purposes of making period products available to students in all female or unisex restrooms, the phrase "each female or unisex restroom within an elementary school facility" does not include a female or unisex restroom used exclusively by students in kindergarten or younger.

Fiscal Information

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

A) State budget:

This new rule is not expected to have fiscal impact on state government revenues or expenditures. This rule simply clarifies that period products are not needed in younger grades.

B) Local governments:

This new rule is not expected to have fiscal impact on local governments' revenues or expenditures. This rule simply clarifies that period products are not needed for kindergarten and younger bathrooms.

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

This new rule is not expected to have fiscal impact on small businesses' revenues or expenditures. This rule only affects the Utah State Board of Education (USBE) and Local Education Agencies (LEAs).

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

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

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

This new rule is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only affects USBE and LEAs.

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. There are no costs associated with the clarification that period products are not needed for kindergarten and younger.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

Citation Information**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-4-413
Section 53G-5-414		

Public Notice Information**8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)**

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:	10/10/2022
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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.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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R277. Education, Administration.**R277-931. Required Provision of Period Products in Schools.****R277-931-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

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

(c) Subsections 53G-4-413(4) and 53G-5-414(4), which require the Board to oversee the implementation of the requirements of LEAs providing period products in schools.

(2) The purpose of this rule is to clarify which female or unisex restrooms LEAs are required to install dispensers in to provide period products to students.

R277-931-2. Required Provision of Period Products in Certain Elementary School Settings.

For purposes of the requirements of Sections 53G-4-413 and 53G-5-414, "each female or unisex restroom within an

elementary school facility" does not include a female or unisex restroom used exclusively by students in Kindergarten or younger.

KEY: restrooms, period products, elementary school

Date of Last Change: 2022

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-4-413; 53G-5-414

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Rule or Section Number:	R432-30	Filing ID: 54790
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Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Licensing	
Building:	Martha Hughes Cannon Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state and zip:	Salt Lake City, UT 84114-1000	
Contact persons:		
Name:	Phone:	Email:
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:**

R432-30. Adjudicative Procedure

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

With the consolidation of the Department of Health and Human Services (Department), the Department is working to align the administrative hearing procedures. This repeal is to ensure the administrative hearing procedures are established and consolidated for the Department of Health and Human Services. With language changes in the amendment to Rule R497-100, this rule is no longer necessary.

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 repeal, along with the amendment to Rules R497-100, align and consolidate the administrative hearing

procedures for the Department of Health and Human Services. This rule is repealed entirely.

Fiscal Information

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

A) State budget:

There are no anticipated costs or savings because these changes will not impact existing operations. This repeal will not substantively impact existing operations.

B) Local governments:

There are no anticipated costs or savings because these changes do not impact local governments.

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

There are no anticipated costs or savings because these changes do not impact small businesses.

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

There are no anticipated costs or savings because these changes do not impact non-small businesses.

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

There are no anticipated costs or savings because these changes do not impact persons other than small businesses, non-small businesses, state, or local government entities.

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

There are no anticipated compliance costs for affected persons. These changes will not substantively impact existing operations.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 26-21-5	Title 26, Chapter 21	
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Public Notice Information

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

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:

10/10/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	07/24/2022
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R432. Health, Family Health and Preparedness, Licensing.**[R432-30. Adjudicative Procedure.****R432-30-1. Purpose.**

~~This rule is adopted pursuant to Title 26, Chapter 21.~~

R432-30-2. Definitions.

~~(1) "Department" means the Utah Department of Health, Bureau of Licensing and Certification.~~

~~(2) "Initial agency determination" means a decision by Department staff, without conducting adjudicative proceedings, of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63G-4-102.~~

~~(3) "Notice of agency action" means a written notice meeting the requirements of Subsection 63G-4-201(2) that the Department issues to commence an adjudicative proceeding.~~

~~(4) "Request for agency action" means a written request meeting the requirements of Subsection 63G-4-201(3) that requests the Department to commence an adjudicative proceeding.~~

R432-30-3. Commencement of Adjudicative Proceedings.

~~(1) All adjudicative proceedings under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act, and under R432, Health Facility Licensing Rules, are informal adjudicative proceedings.~~

~~(2) The Department may commence an adjudicative proceeding by sending a notice of agency action in accordance with Subsection 63G-4-201(2) when the Department's actions are of a nature that require an adjudicative proceeding before the Department makes a decision.~~

~~(3) A person affected by an initial agency determination may commence an adjudicative proceeding and meet the requirements of a request for agency action under Subsection 63G-4-201(3) by completing the "Request for Administrative Review" or the "Request for Agency Action" form and mailing or emailing the form to the Department. A Request for Administrative Review or Request for Agency Action shall be submitted within 25 calendar days of the mailing or emailing of the notice of agency action.~~

R432-30-4. Procedures for Informal Adjudicative Proceedings.

~~(1) No answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.~~

~~(2) The presiding officer shall promptly review a request for agency action and shall:~~

~~(a) notify the requesting party in writing that the request is granted and that the adjudicative proceeding is completed;~~

~~(b) notify the requesting party in writing that the request is denied; or~~

~~(c) notify the requesting party that further proceedings are required to determine the agency's response to the request.~~

~~(3) The agency shall email any notice required by Subsection R432-30-4(2) to all parties.~~

~~(a) The notice shall include all information required by Subsection R432-30-4(2), including:~~

~~(i) the agency's file number or other reference number;~~

~~(ii) the name of the proceeding;~~

~~(iii) designating the proceeding as informal, in accordance with the provisions of Section R432-30-3, enacted under Sections 63G-4-202 and 63G-4-203;~~

~~(iv) a statement of the parties; right to request a hearing;~~

~~(v) the deadline for requesting a hearing under the agency's rules; and~~

~~(vi) the name, title, email, mailing address, and telephone number of the presiding officer.~~

~~(b) In any hearing, the parties named in the notice of agency action or the request for agency action shall be permitted to testify, present evidence, and comment on the issues.~~

~~(c) Hearings will be held only after timely notice to all parties.~~

~~(d) Discovery is prohibited, but the Department may issue subpoenas or other orders to compel production of necessary evidence.~~

~~(e) All parties shall have access to information contained in the Department's files and to all materials and information gathered in any investigation, to the extent permitted by law.~~

~~(f) All hearings shall be open to all parties.~~

~~(g) The agency may record any hearing.~~

~~(h) Any party, at the party's own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.~~

~~(4) Nothing in Rule R432-30 restricts or precludes any investigative right or power given to an agency by statute.~~

R432-30-5. Decisions and Orders.

~~(1) Within a reasonable time, not to exceed 30 days, after the close of an informal adjudicative proceeding, the presiding officer shall issue a recommended order in writing to the agency head or their designee that states the following:~~

~~(a) the decision;~~

~~(b) the reasons for the decision;~~

~~(c) a notice of any right of administrative or judicial review available to the parties; and~~

~~(d) the time limits for filing an appeal or requesting a review.~~

~~(2) In all instances where an agency head has designated a person to serve as presiding officer in an adjudicative proceeding, the presiding officer's decision is a recommended decision to the agency head.~~

~~(3) The presiding officer's recommended decision and order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.~~

~~(4) The agency head may accept, reverse, or modify the presiding officer's order and may remand the order to the presiding officer for further proceedings.~~

~~(5) If the agency head reverses or modifies the presiding officer's order, the agency head's order shall contain a revised decision and reasons for the decision as needed, based on the record before the presiding officer and as may be supplemented before the agency head.~~

~~(6) A copy of the decision and order shall be promptly emailed to each of the parties at the email address provided to the Department.~~

~~(7) The decision and order shall be mailed to any party known to lack internet access or an email address, or who requests a paper copy.~~

R432-30-6. Witnesses and Subpoenas.

~~_____ (1) Each party is responsible for the presence of that party's witnesses at the hearing.~~

~~_____ (2) The presiding hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence, in accordance with the following:~~

~~_____ (a) the officer may issue the subpoena upon a party's motion supported by an affidavit showing sufficient need, or upon the officer's own motion;~~

~~_____ (b) the party to whom the presiding officer has issued a subpoena shall cause the subpoena and a copy of the affidavit, if any, to be served;~~

~~_____ (c) every subpoena shall be issued by the presiding officer under the seal of the Department, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at time and place specified in the subpoena; and~~

~~_____ (d) a supporting affidavit for a subpoena duces tecum for the production of books, accounts, memoranda, correspondence, photographs, papers, documents, records, or other tangible thing by a witness shall include the following:~~

~~_____ (i) the name and address of the entity upon whom the subpoena is to be served;~~

~~_____ (ii) a description of what the party seeks to have the witness bring;~~

~~_____ (iii) an explanation showing how the subpoenaed items are material to issues involved in the hearing; and~~

~~_____ (iv) a statement by the party that to the best of their knowledge the person or entity being subpoenaed has such items in their possession or under their control.~~

R432-30-7. Certificate of Service.

~~_____ All documents required to be served shall include a certificate of service dated and signed by the party or their agent in substantially the following form:~~

~~_____ I certify that I served the foregoing document upon all parties to this proceeding by delivering or mailing a copy with postage prepaid and properly addressed, which may include email to: provide the name of the person receiving the document).~~

R432-30-8. Stays and Temporary Remedy.

~~_____ (1) During the pendency of judicial review, a party may petition for a stay of the order or other temporary remedy by filing a written petition with the presiding officer within seven calendar days of the day the order is issued.~~

~~_____ (2) The presiding officer shall issue a written decision within ten working days of the filing date of the petition. The presiding officer may grant a stay or other temporary remedy if such an action is in the best interest of the patients or residents.~~

~~_____ (3) The request for a stay or temporary remedy shall be considered denied if the presiding officer does not issue a written decision within ten days of the filing of a written petition.~~

~~_____ (4) The presiding officer may grant a stay or other temporary remedy on the presiding officer's own motion.~~

R432-30-9. Declaratory Orders.

~~_____ (1) Any person or agency may petition for a Department declaratory ruling of rights, status, or legal relations under a specific statute or rule by following the procedure outlined in Rule R380-1.~~

~~_____ (2) Any person or agency may petition for a Department declaratory ruling on orders issued by the Bureau of Licensing and Certification in areas where the Health Facility Committee has~~

~~statutory authority to issue orders by following the procedures outlined in Rule R380-5.~~

KEY: health care facilities

Date of Last Change: August 12, 2021

Notice of Continuation: March 21, 2019

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-14 through 26-21-16]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R590-160-8

Filing ID: 54783

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	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 persons:		
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:

R590-160-8. Agency Review

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

This section is being amended to remove a reference to Section 63G-4-302, which allows an agency to reconsider an agency review. The availability of agency review reconsideration is at the agency's discretion, and the Department of Insurance (Department) has decided to no longer provide reconsideration.

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

This section removes a reference to Section 63G-4-302, and corrects a misspelling.

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. Reconsideration of an agency review is requested infrequently, so this rule change will not have any effect on the budget.

B) Local governments:

There is no anticipated cost or savings to local governments. The amendment applies to the relationship between the Department and its licensees, and does not involve 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. A small business will no longer have the option to request reconsideration of an agency review. This will have no impact on 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. A non-small business will no longer have the option to request reconsideration of an agency review. This will have no impact on non-small businesses.

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

There is no anticipated cost or savings to any other person. A person will no longer have the option to request reconsideration of an agency review. This will have no impact on other persons.

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

There are no compliance costs for any affected persons. This rule amendment merely removes the option to pursue action beyond an agency review.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.			

Citation Information**6. 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 63G-4-102	Section 63G-4-203
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Public Notice Information**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	10/03/2022
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9. 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.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	08/05/2022
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R590. Insurance, Administration.

R590-160. Adjudicative Proceedings.

R590-160-8. Agency Review.

(1)(a) Agency review of an adjudicative proceeding, except an informal adjudicative proceeding that becomes final without a request for a hearing under Subsection R590-160-7(1), is available to a party to a proceeding by filing a request for agency review with the commissioner within 30 days of the date of the order.

(b) Failure to seek agency review is a failure to exhaust administrative remedies.

(2) Agency review shall comply with Section[s] 63G-4-301[and 63G-4-302].

(3)(a) The commissioner or the commissioner's designee shall conduct the review.

(b) A designee may not be the presiding officer who issued the decision under review.

(c) If a designee conducts a review, the designee shall recommend a disposition to the commissioner.

(d) The commissioner will make the final decision and sign the order.

(4) Content of a request for agency review.

(a) A request for agency review shall comply with Subsection 63G-4-301(1)(b), and shall include the following:

(i) a copy of the order that is the subject of the request;

(ii) the factual basis for the request, including:

(A) citation to the record of the formal adjudicative proceeding; and

(B) clear reference to evidence or a proffer of evidence in an informal adjudicative proceeding;

(iii) the legal basis for the request, including citation to supporting authority;

(iv) for a challenge to a finding of fact in a formal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the entire record; and

(v) for a challenge to a finding of fact in an informal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the evidence received or proffered.

(b) A party challenging a finding of fact in a formal adjudicative proceeding shall:

(i) order a transcript of the recording relevant to the finding;

(ii) certify that a transcript is ordered;

(iii) file the transcript with the commissioner or the commissioner's designee;

(iv) serve a copy of the transcript on each party; and

(v) pay the cost of preparing the transcript.

(c) The commissioner or commissioner's designee may waive the transcript requirement on motion for good cause shown.

(5) Memoranda.

(a)(i) A party requesting agency review shall submit a supporting memorandum with the request.

(ii) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the service of the transcript on the opposing party.

(b) An opposing memorandum shall be filed no later than 15 days after the supporting memorandum is filed.

(c) A reply memorandum shall be filed no later than five days after [t]he opposing memorandum is filed.

(d) The commissioner or the commissioner's designee may order a party to submit additional memoranda to assist in conducting agency review.

(6) Request for a stay.

(a) On motion by a party and for good cause, the commissioner or commissioner's designee may stay the presiding officer's order during the pendency of agency review.

(b) A motion for a stay shall be made in writing and may be made at any time during the pendency of agency review.

(c) An opposition to a motion for a stay shall be made in writing within ten days from the date the motion is filed.

(7)(a) A party may request oral argument in the party's initial pleading.

(b) The commissioner or the commissioner's designee may grant oral argument if requested in a party's initial pleading.

(8) Failure to comply with Section R590-160-8 may result in the commissioner or the commissioner's designee dismissing the request for agency review.

KEY: insurance

Date of Last Change: [March 25,] 2022

Notice of Continuation: September 21, 2018

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 63G-4-102; 63G-4-203

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R850-23	Filing ID:
		54812

Agency Information

1. Department:	School and Institutional Trust Lands	
Agency:	Administration	
Room number:	Suite 500	
Street address:	675 E 500 S	
City, state and zip:	Salt Lake City, UT 84102-2818	
Contact persons:		
Name:	Phone:	Email:
Stephanie Barber	801-538-5156	sbarberrenteria@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 or section catchline:

R850-23. Sand, Gravel and Cinders Permits

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

The change in this rule is to include the listing of the Renewable Energy Lease application types in Subsection R850-23-500(2)(c). Renewable Energy Leases on Trust Lands have historically been reviewed and processed under differing rules and requirements based on their location. (i.e., as Surface Leases, Development Leases, or Mineral Leases). The proposed rule changes clarify and classify all Renewable Energy Projects (solar, wind, geothermal, and green hydrogen) into their own category for both continuity and clarification, that rule has been submitted as Rule R850-170 Renewable Energy Lease Agreements.

Further rule changes are to follow 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):

This change will add the reference to the new type of renewable energy lease prompted by the new Rule R850-170 Renewable Energy Lease Agreements, and will correct minor rulewriting errors.

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

The purpose of the rule amendment is to reference the new Rule R850-170 as related to competitive bid evaluation criteria. The changes are administrative only. Therefore, the state budget is not impacted by any cost or savings because of this rule change.

B) Local governments:

The purpose of the rule amendment is to reference the new Rule R850-170 as related to competitive bid evaluation criteria. The rule changes are administrative only. Therefore, local governments are not impacted by any cost or savings because of this rule change.

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

The purpose of the rule amendment is to reference the new Rule R850-170 as related to competitive bid evaluation criteria. Small businesses will not be affected by adding the reference to renewable energy rule practices related to competitive bid evaluation criteria. The changes are administrative only.

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

The purpose of the rule amendment is to reference the new Rule R850-170 as related to competitive bid evaluation criteria. The rule amendment will not impact non-small businesses because the changes are administrative only.

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

The purpose of the rule amendment is to reference the new Rule R850-170 as related to competitive bid evaluation criteria. Other persons will not see any changes with this clarification. The changes are administrative only. Therefore, individuals are not impacted by any cost or savings because of this rule change.

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

The purpose of the rule amendment is to reference the new Rule R850-170 as related to competitive bid evaluation criteria. Compliance costs are not impacted by this amendment as the changes do not require the additional purchase of any item or service by any entity.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
Renewable Energy leases have always been allowed on Trust Lands but were being tracked through differing lease types. These rule changes allow for Renewable Energy Leases (wind, solar, geothermal, and green hydrogen) to be tracked and processed as Renewable Energy leases, thus simplifying both the application and approval process, as well as tracking of renewable energy projects. Michelle McConkie, Director			

Citation Information

6. 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:		
28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12	Subsection 53C-1-302(1)(a)(ii)	Subsection 53C-4-101(1)
Article X	Article XX	Subsection 53C-2-201(1)(a)

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	10/03/2022
9. This rule change MAY become effective on:	10/10/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Michelle McConkie, Director	Date:	08/15/2022
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R850. School and Institutional Trust Lands, Administration. **R850-23. Sand, Gravel, and Cinders Permits.** **R850-23-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution,

Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe agency objectives, standards and conditions for the issuance of sand, gravel, and cinders permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on trust lands.

R850-23-125. Mineral Estate Distinctions.

Common varieties of sand and gravel and volcanic cinder are not considered part of the mineral estate on trust lands in Utah. These commodities may only be obtained through a materials permit approved by the director and in accordance with ~~these~~ this rule[s].

R850-23-150. Planning.

Pursuant to Subsection 53C-2-201(1)(a), the agency shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. to the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC) if the proposed action may have a significant impact upon natural or cultural resources of the state;
2. evaluation of and response to comments received through the RDCC process; and
3. evaluation of and response to any comments received through the solicitation process conducted pursuant to Subsection R850-23-500(2).

R850-23-175. Definitions.

1. Permit: a sand, gravel, or cinders permit.
2. Permittee: a person or entity holding a record title interest in a sand, gravel, or cinders permit.

R850-23-200. Sand, Gravel, and Cinders Permits Issued on Agency Lands.

1. The agency may issue permits or may convey profits a prendre or similar interests on all trust lands, and, when the agency deems it consistent with agency land use plans and trust responsibilities.
2. The agency may issue permits when the sale of the permitted materials would be exempt from sales tax under Subsection 59-12-104(2) or 59-12-104(28).
3. The agency may issue profits a prendre in all other instances according to the procedures and provisions of this chapter.

R850-23-300. Rentals and Royalties.

1. Rentals.
 - (a) Rental rates shall be \$10 per acre, or fractional part thereof, ~~per annum~~ each year.
 - (b) The minimum annual rental on permits shall be determined periodically by the agency pursuant to board policy.
2. Royalty Rates and Provisions.
 - (a) The agency shall charge full market value for ~~all~~ any permitted materials purchased under a sand, gravel, or cinders permit. Market value will be determined by the agency through analysis of the local market.
 - (b) The agency, pursuant to board policy, may annually establish minimum royalty rates for permits based on the type of permitted material being removed.

(c) Royalty payments shall be remitted to the agency on a quarterly basis or on such other basis as may be required by the terms and conditions of the permit and shall be accompanied by an agency approved "Production and Settlement Transmittal Form."

R850-23-400. Terms of Sand, Gravel, and Cinders Permits.

Permits issued under ~~[these]~~this rule[s] shall be issued for a term which allows for the most beneficial use of the resource, as specified in the terms and conditions of the permit, but no longer than necessary to accomplish the extraction and removal of the materials subject to the sale, and to accomplish any required reclamation work. In no event shall a permit continue for a period of longer than five years without readjustment in its terms and conditions, by the director, as may be determined to be in the best interest of the trust beneficiaries.

R850-23-500. Application Procedures.

1. Application Filing.

(a) Applications for permits may be submitted to any office of the agency during office hours pursuant to Rule R850-3.

(b) The director may approve applications for permits for common varieties of sand, gravel, or cinders in accordance with the bid solicitation process described in Subsection R850-23-500(2), subject to ~~[rule]~~Section R850-23-1400, Over-the-Counter Sales.

2. Bid Solicitation Processes.

(a) In the absence of any valid permit, or any valid lease for the same commodity upon the same land, the agency may offer for competitive bid permits when exposing the site to the market could reasonably be expected to produce permitted materials sales. A notice of lands available for competitive filing for permits shall be made in a manner to reasonably solicit competitive bid applications. Notices of competitive filing shall contain the procedure by which the agency shall award the permit.

(b) Upon acceptance of any permit application for common varieties of sand, gravel, or cinders the agency shall solicit competing applications through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit is offered. At least 30 days ~~[prior to]~~before bid opening, certified notification will be sent to permittees of record, adjacent permittees~~[f]~~or lessees, and adjacent landowners. Notices will also be posted in the local governmental administrative building or the county courthouse. Notification and advertising shall include the legal description of the parcel and any other information which may create interest in the parcel. The successful applicant shall bear the cost of the advertising.

(c) The agency shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt, ~~[(c)]~~Postal Service form 3800~~[y]~~, within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids shall be evaluated using the criteria found in Sections R850-30-500~~[(2)(g)]~~, R850-80-200, ~~[and]~~R850-90-200, and R850-170-900, for special use leases, sales, ~~[or]~~exchanges, or renewable energy leases, respectively.

(d) If no competing applications involving sale, lease, or exchanges are received by the deadline published pursuant to Subsection R850-23-500(2)(b), then the agency shall award the permit based on the following criteria:

- (i) amount of bonus bid;
- (ii) amount and rate of proposed materials extraction; and
- (iii) other criteria and assurances of performances as the agency shall require by permit or advertise ~~[prior to]~~before bidding.

R850-23-600. Permit Execution.

The permit shall be executed by the applicant and returned to the agency within 30 days from the date of applicant's receipt of the permit. Failure to execute and return the documents to the agency within the 30-day period may result in cancellation of the permit, the forfeiture of any fees, and the discharge of any obligation of the agency arising from the approval of the application.

R850-23-700. Sand, Gravel, and Cinders Permit Provisions.

Each permit shall contain provisions necessary to ensure responsible surface management including~~[-, but not limited to,]~~ the following provisions: The rights of the permittee; rights reserved to the permitter; the term of the permit; payment obligations; transfers of permit interest by permittee; permittee's responsibility for reclamation; terms and conditions of permit forfeiture; and protection of the agency from liability from ~~[all]~~any actions of the permittee.

R850-23-800. Bonding Provisions.

~~[Prior to]~~Before the issuance of a permit, or for good cause shown at any time during the term of the permit, and upon 30 days written notice, the applicant or permittee, as the case may be, may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with ~~[all]~~any terms and conditions of the permit.

1. All bonds posted on permits may be used for payment of all monies, rentals, and royalties due to the agency, also for costs of reclamation and for compliance with ~~[all]~~any other terms and conditions of the permit, and rules pertaining to the permit. The bond shall be in effect even if the permittee has conveyed all or part of the permit interest to a sub-lessee, assignee, or subsequent operator until~~[such time as]~~ the permittee fully satisfies the permit obligations, or until the bond is replaced with a new bond posted by the sub-lessee or assignee.

2. Bonds may be increased in reasonable amounts, at any time as the agency may decide, provided the agency first gives permittee 30 days written notice stating the increase and the reason~~[(c)]~~[s] for such increase.

3. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the agency will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "School and Institutional Trust Lands Administration and permittee, c/o permittee's address,"~~[-]~~ with an approved state or federally insured banking institution registered in Utah. Such certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency; the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee ~~[prior to]~~before acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

R850-23-900. Insurance Requirements.

~~[Prior to]~~Before the issuance of a permit for sand, gravel, and cinders, the applicant may be required to obtain insurance of a type and in an amount acceptable to the agency. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the agency that insurance provisions of the permit have been complied with.

1. Such insurance, if required, shall be placed with an insurer with a financial rating assigned by the Best Insurance Guide of A:X or higher, unless this requirement is waived in writing by the agency.

2. The agency shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require the permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice.

R850-23-1000. Plans of Operation.

1. ~~[Prior to]~~Before the commencement of any activity authorized by a permit the permittee shall submit, for the director's approval, a plan of operations which shall include the following:

(a) A map or plat showing:

(i) the location and sequence of areas from which material is to be excavated;

(ii) the location of any processing or stationary equipment or improvements which will be placed on the premises;

(iii) transportation and access routes across the premises and adjacent properties;

(iv) the location of any fuel storage tanks; and

(v) the location of stockpile areas.

(b) Elevation drawings of the premises before and after the excavation of materials.

(c) Reclamation plans acceptable to the director, upon review by the School and Institutional Trust Lands Administration.

(d) Copy of any required notification of the proposed operation to the Utah Division of Oil, Gas and Mining and ~~[all]~~any other government agencies.

(e) Copy of notification of the proposed operation to the owner of the surface estate, owners of the mineral estate, and to ~~[all]~~any other parties having any valid existing lease or permit upon the same lands.

2. Within 60 days of receiving such plan of operation, the agency shall review the plan and request any additional information necessary to complete the review. The permittee shall not commence any operations which may disturb the lands until the agency has reviewed the plan of operation submitted by the permittee and has given its written approval to the permittee for the commencement of such operations.

3. Each permittee holding a current permit shall within 30 days of each annual anniversary date of the issuance of the permit, submit to the agency a report of ~~[all]~~any activities under the permit for the previous year. Such report shall include a description of new excavations and surface disturbances, the type and quantity of the materials produced and sold or stockpiled, a description of mined land reclamation work completed or in progress, and any other information requested by the agency to reasonably monitor the permittee's operations under the permit.

R850-23-1050. Conduct of Operations and Compliance with Rules.

All exploration, mining or other operations performed under any permit, shall be performed in a good and workman like manner to ensure the conservation of the materials deposits, ~~[all]~~any other deposits of common and uncommon varieties of mineral resources, and other natural resources upon the lands. Each permittee of a permit shall at all times take whatever measures are necessary to be in compliance with all applicable rules of any federal or state agency pursuant to the activities and operations of the permittee or operator upon the lands.

R850-23-1100. Existing Lease and Permit Conversion.

Existing sand and gravel leases or permits issued ~~[prior to]~~before the effective date of these rules and in good standing on such date shall continue for the term specified in the lease or permit and shall be subject to the conditions and provisions contained in the lease or permit; provided, however, the agency may allow such lessees~~[/]~~ or permittees to convert such existing leases or permits to the new permit, providing such conversion will not conflict with the valid existing rights of any other lessee or permittee or owner upon the same lands.

R850-23-1200. Sand, Gravel, and Cinders Permit Assignments.

A permit may be assigned to any person, firm, association, or corporation qualified under Section R850-3-200, provided that the assignments are approved by the agency; and no assignment is effective until written approval is given. Any assignment made without such approval is void.

1. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the permit to the same extent as if such assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

2. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

3. An assignment shall be executed according to agency procedures.

R850-23-1300. Reclamation Requirements.

Following the completion of excavations, the agency shall require reclamation measures to stabilize and restore natural surface conditions. Reclamation measures will generally consist of~~[, but not necessarily be limited to,]~~ sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical or as otherwise specified by the agency, stabilization of access roads or the closure of access roads as determined by the agency, replacement of natural topsoils, revegetation using a seed mixture and rate of application as may be specified by the agency, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.

R850-23-1400. Over-the-Counter Sales.

Permits for common varieties of sand, gravel, or cinders may be issued on an "over-the-counter" basis in areas which have been designated by the director as open for such sales.

R850-23-1500. Termination of Sand, Gravel, and Cinders Permit.

Any permit issued by the agency on trust land may be terminated in whole or in part for failure to comply with any term or condition of the permit or applicable laws or rules. Upon determination by the director that a permit is subject to termination pursuant to the terms of the permit or applicable laws or rules, the director shall issue an appropriate instrument terminating the permit.

R850-23-1600. Collection of Sales Tax.

The agency shall require all permittees not exempt pursuant to Section 59-12-104 to remit sales taxes with the "Production and Settlement Transmittal Form" submitted pursuant to Subsection R850-23-300(2)(c).

KEY: sand, gravel, cinders, permit provisions

Date of Last Change: 2022[April 1, 2005]

Notice of Continuation: February 4, 2020

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R850-50	Filing ID: 54813
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Agency Information

1. Department:	School and Institutional Trust Lands	
Agency:	Administration	
Room number:	Suite 500	
Street address:	675 E 500 S	
City, state and zip:	Salt Lake City, UT 84102-2818	
Contact persons:		
Name:	Phone:	Email:
Stephanie Barber	801-538-5156	sbarberrenteria@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 or section catchline:
R850-50. Range Improvement
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The change in this rule is to include the listing of the Renewable Energy Lease application types in Subsection R850-50-1300(1). Renewable Energy Leases on Trust Lands have historically been reviewed and processed under differing rules and requirements based on their location (i.e., as Surface Leases, Development Leases, or Mineral Leases). The proposed rule changes clarify and classify all Renewable Energy Projects (solar, wind, geothermal, and green hydrogen) into their own category for both continuity and clarification, that rule has been submitted as R850-170 Renewable Energy Lease Agreements.
Further rule changes are to follow 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):

This change will add the reference to the new type of renewable energy lease prompted by the new Rule R850-170 Renewable Energy Lease Agreements, and will correct minor rulewriting errors.

Fiscal Information

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

A) State budget:

The purpose of the rule amendment gives the agency the right for grazing permit leased lands to also allot for renewable energy leases on the same land parcel. The changes are administrative only. Therefore, the state budget is not impacted by any cost or savings because of this rule change.

B) Local governments:

The purpose of the rule amendment gives the agency the right for grazing permit leased lands to also allot for renewable energy leases on the same land parcel. The changes are administrative only. Therefore, local governments are not impacted by any cost or savings because of this rule change.

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

The purpose of the rule amendment gives the agency the right for grazing permit leased lands to also allot for renewable energy leases on the same land parcel. Small businesses are not affected by the rule changes as to any cost or savings related to shared leasing areas involving grazing permits and renewable energy leases. The changes are administrative only.

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

The purpose of the rule amendment gives the agency the right for grazing permit leased lands to also allot for renewable energy leases on the same land parcel. The rule amendment will not impact non-small businesses because the changes are administrative only.

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

The purpose of the rule amendment gives the agency the right for grazing permit leased lands to also allot for renewable energy leases on the same land parcel. The changes are administrative only. Therefore, individuals are not impacted by any cost or savings because of this rule change.

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

The purpose of the rule amendment gives the agency the right for grazing permit leased lands to also allot for renewable energy leases on the same land parcel. Compliance costs are not impacted by this amendment as the changes do not require the additional purchase of any item or service by any entity.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

Renewable Energy leases have always been allowed on Trust Lands but were being tracked through differing lease types. These rule changes allow for Renewable Energy Leases (wind, solar, geothermal, and green hydrogen) to be tracked and processed as Renewable Energy leases, thus simplifying both the application and approval process,

as well as tracking of renewable energy projects. Michelle McConkie, Director

Citation Information

6. 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:

28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12	Subsection 53C-1-302(1)(a)(ii)	Subsection 53C-5-102
Article X	Article XX	Subsection 53C-2-201(1)(a)

Public Notice Information

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

A) Comments will be accepted until: 10/03/2022

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

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

Agency Authorization Information

Agency head or designee and title:	Michelle McConkie, Director	Date:	08/15/2022
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R850. School and Institutional Trust Lands, Administration.

R850-50. Range Management.

R850-50-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsection~~Sections~~ 53C-1-302(1)(a)(ii) and Section 53C-5-102 which authorize the Director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for the utilization of forage, the qualifications of a grazing permittee, and related improvement of range resources on trust lands.

R850-50-150. Planning.

1. Pursuant to Subsection~~Section~~ 53C-2-201(1)(a), the issuance of grazing permits carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

2. Range improvement projects authorized pursuant to this section carry the following planning obligations beyond existing rule-based analysis and approval processes:

(a) to the extent required by the Memorandum of Understanding with the State Planning Coordinator, the agency shall submit the proposal for review by the Resource Development Coordinating Committee (RDCC); and

(b) evaluate and respond to comments received through the RDCC process.

3. Applications for modified grazing permits which do not involve surface disturbing activities are governed by Subsection R850-150(1)[paragraph 1, above]. Applications for modified grazing permits which involve surface disturbing activities are subject to the planning obligations set forth in Subsection R850-150(2)[paragraph 2, above].

R850-50-200. Grazing Management.

1. Management of trust lands used for grazing purposes is based upon carrying capacity which permits optimum forage utilization and seeks to maintain or improve range conditions.

2. Carrying capacity shall be established after consideration of historical stocking rates, forage utilization, range condition, trend, and climatic conditions.

3. ~~[In order to]~~To fulfill its constitutional mandate to its beneficiaries, the agency may set, and change, at its discretion, season of use, duration ~~or~~ ~~[time]~~ of use, and intensity of use, as well as numbers, distribution, and kind of livestock which are allowed by a grazing permit.

R850-50-300. Applications.

1. Grazing permit applications may be accepted on ~~[at]~~any trust lands not otherwise subject to a grazing permit unless the land has been withdrawn from grazing or has been determined to be unsuitable for grazing.

2. Trust lands may be deemed unsuitable for grazing if it is determined that:

(a) range conditions ~~[render]~~make it incapable of supporting economic grazing practices;

(b) grazing would substantially interfere with another use that is better able to provide for the support of the beneficiaries; or

(c) the agency's management costs would be excessive.

3. The determination to accept grazing permit applications is at the sole discretion of the director.

R850-50-400. Permit Approval Process.

1. On trust lands that are unpermitted and which are available for grazing, applications may be solicited through any method the agency determines appropriate, including notification of adjacent landowners and other permittees in an allotment.

2. On trust lands subject to an expiring grazing permit, competing applications shall be accepted from April 1 to April 30, or the next working day if either of these days is a weekend or holiday, of the year in which the permit terminates.

(a) ~~[All]~~Any expiring and terminated grazing permits shall be posted on the agency's website by January 1 of the year in which the permit expires or the year after the permit was terminated, provided that the permitted property has been determined to be available for grazing by the agency. The website notice shall include any reimbursable investment made by an existing permittee on a range improvement. Notice that expiring grazing permits may be found on the agency's website may also be published.

(b) Grazing permits issued on trust lands acquired through an exchange with the federal government ~~[after]~~ ~~[the expiration of the federal permit]~~, shall not be subject to ~~[the provisions of]~~ this rule for two successive 15-year terms unless the permit has been sold or otherwise terminated.

3. A person holding an expiring grazing permit shall have the right to renew the permit, provided that no competing applications

are received, by submitting a completed application along with the first year's rent and other applicable fees.

4. Persons desiring to submit a competing application must do so on forms acceptable to the agency. Forms are available at the offices listed in Subsection R850-6-200(2)(b) or from the agency's website. Applications must include:

(a) a non-refundable application fee;

(b) a one-time bonus bid; and

(c) an amount determined by the agency pursuant to Subsection R850-50-1100(7), which will be required to reimburse the holder of an authorized range improvement project should the competing application be accepted.

5. Bonus bids and range improvement reimbursements shall be refunded to unsuccessful applicants. Upon establishment of the yearly rental rate, the successful applicant shall be required to submit the first year's rental and other required fees.

6. Applications shall be evaluated by the agency and may be accepted only if the agency determines that the applicant's grazing activity will not create unmanageable problems of trespass, range and resource management, or access.

(a) For purposes of this evaluation, adjoining permittees and lessees, adjoining property owners, and adjoining federal permittees may be considered acceptable as competing applicants unless specific problems are demonstrated.

(b) Applicants not meeting the requirements in Subsection R850-50-400(6)(a)[above], whose uses would not unreasonably conflict with the uses of other permittees in the area, may nevertheless be accepted if the size of the grazing area, the access to the grazing area, and other factors demonstrate that the applicant ~~[is able to]~~can utilize the area without adverse impact on the range resources, adjoining lands, or beneficiaries of affected trust lands.

(c) ~~[For purposes of]~~To evaluate~~[ing]~~ an applicant's acceptability as a grazing permittee, the agency may consider:

(i) the applicant's ability to maintain any water rights appurtenant to the lands described in the application;

(ii) the applicant's ownership of private land in the area;

(iii) the applicant's ownership of grazing privileges in the BLM or Forest Service allotment where the trust land is located;

(iv) the type and number of livestock owned by the applicant; and

(v) management costs to the agency should the application be approved.

7. The holder of a permit which is expiring, on which a competing application has been received, shall have a preference right to permit the property provided ~~[he]~~the permit holder agrees to pay an amount equal to the highest bonus bid submitted by a competing applicant.

(a) ~~[In the event that]~~If the existing permittee fails to match the highest bonus bid, the permittee may be refunded the value of the amount the permittee contributed to the cost of any approved range improvement project at the expense of the successful bonus bid applicant.

(b) ~~[In the event that]~~If all, or a portion of, the property on which a bonus bid was submitted is sold, exchanged, or otherwise made unavailable, the permittee shall receive the refund of a prorated amount of the bonus bid based on the AUMs lost to the use of the permittee.

R850-50-500. AUM Assessments and Annual Adjustments.

1. An annual assessment shall be charged for each AUM authorized by the agency. This assessment shall be established by the board and shall be reviewed annually and adjusted if appropriate.

2. The annual assessment for lands designated as "High Value Grazing Lands" will be at a higher amount than trust lands not so designated. High Value Grazing Lands are typically, but not necessarily, contained in a named land block. Blocked or scattered lands may be designated as High Value Grazing Land through a Director's Finding.

3. ~~[In the event that]~~If the agency acquires High Value Grazing Lands through an exchange with the federal government, the application of the agency's annual assessment to the holders of grazing privileges on the acquired land shall be phased in over a five-year period in equal increments after the term of the federal permit has expired.

4. The application of the agency's annual assessment on lands acquired through an exchange with the federal government, and not designated as High Value Grazing Lands, shall be phased in over a three-year period in equal increments after the term of the federal permit has expired.

5. Failure to pay the annual assessment within the time prescribed shall automatically work a forfeiture and termination of the permit and all rights thereunder.

R850-50-600. Grazing Permit Terms.

1. Grazing permits shall be issued for a maximum of 15 years and shall contain the following:

(a) terms, conditions, and provisions that shall protect the interests of the trust beneficiaries ~~[with reference to]~~for securing the payment to the agency of ~~[all]~~any amounts owed;

(b) terms, conditions, and provisions that shall protect the range resources from improper and unauthorized grazing uses; and

(c) other terms, conditions, and provisions that may be deemed necessary by the agency or board in effecting the purpose of ~~[these]~~this rule[s] and not inconsistent with any of its provisions.

2. The agency may terminate or suspend grazing permits, in whole or in part, after 30 days' notice by certified mail to the permittee when:

(a) a violation of the terms of the permit, or of ~~[these]~~this rule[s], including trespass as defined in Section R850-50-1400, has occurred;

(b) the agency, in its sole discretion, has identified a higher and better use for the permitted property;

(c) the agency intends to dispose of the permitted property; or

(d) any management problems arise as determined at the sole discretion of the agency.

R850-50-700. Reinstatements.

Trust land on which a grazing permit has been terminated and which is ineligible for reinstatement pursuant to Subsection R850-5-500(1)(c) may be advertised as available pursuant to Subsection R850-50-400(2). If the agency does not advertise the property, the person previously holding the permit may apply for a new permit by submitting an application and ~~[all]~~any applicable fees.

R850-50-800. Grazing Permits--Legal Effect.

1. A grazing permit transfers neither right, title, or interest in any lands or resources, nor any exclusive right of possession and grants only the authorized utilization of forage.

2. Locked gates on trust land, without written approval, are prohibited. If such approval is granted, keys shall be supplied to the agency and other appropriate parties requiring access to the area as approved by the agency, including those with fire and regulatory responsibilities.

R850-50-900. Non-Use Provisions.

1. The granting of non-use shall be at the discretion of the agency.

2. Applications for non-use must be submitted in advance or, if the trust land is within a federal grazing allotment, as soon as notification of non-use is received from the applicable federal agency.

3. Applications for non-use must be accompanied by the application fee and by any documentation which is the basis for the request. ~~[In the event]~~If the non-use application is approved, any annual assessment paid for the year shall be applied to the permittee's next year's annual assessment.

4. Non-use shall not be approved for periods of time exceeding one year except when the director finds that a longer period~~[of time]~~ would be in the best interests of the beneficiaries.

5. Non-use for personal convenience with no payment of the annual assessment shall not be approved.

R850-50-1000. Assignment and Subleasing of Grazing Permits.

1. Permittee shall not assign, or sublease, in whole or in part, or otherwise transfer, dispose of, or encumber any interest in a permit without the written consent of the agency. To do so shall automatically, and without notice, work the forfeiture and termination of the permit.

2. The approval of a sublease shall be subject to the following restrictions:

(a) An annual assessment equal to 50% of the difference between the base AUM assessment established under Section R850-50-500, and the AUM payment received by the permittee through the sublease, multiplied by the number of AUMs subleased, or a \$1~~[-00]~~ per AUM minimum assessment, whichever is greater, shall be charged for the approval of any sublease.

(b) Applications to sublease a grazing permit shall only be approved after a determination that the sub-lessee meets the requirements of Subsection R850-50-400(6).

(c) Sublease approvals are valid for a maximum period of five years.

3. The approval of an assignment shall be subject to the following restrictions:

(a) A determination that the assignee meets the requirements of Subsection R850-50-400(6).

(b) A payment, based on the number of AUMs transferred multiplied by \$10~~[-00]~~, shall be paid to the agency ~~[prior to]~~before the approval of any assignment or partial assignment. Assignments made for no consideration in money, services, or goods, to include inter vivos or testamentary assignments made to immediate family members such as ~~[&]~~parents, spouse, children, grandchildren, and full siblings~~[&]~~, and assignments from and to business entities wholly owned by an immediate family member or members, may be exempt from this additional payment. In such cases, a minimum assignment fee as listed on the Master Fee Schedule shall be assessed.

(c) For purposes of this rule, a shareholder or member of a grazing association or cooperative shall be deemed a permittee and subject to the requirements of Subsection R850-50-1000(3)(a). ~~[In order to]~~To facilitate the enforcement of this rule, each grazing association or cooperative shall submit a list of all members to the agency annually ~~[prior to]~~before June 30. This list shall include each member's contact information and the number of AUMs allowed.

4. The agency's consent to allow a mortgage agreement or collateral assignment is for the convenience of the permittee.

5. The mortgage agreement or collateral assignment shall:

(a) not exceed the remaining term of the permit; and

(b) contain an acknowledgment by the lender that the grazing permit is terminable pursuant to Subsections R850-50-600(2) and R850-50-1000(1) and that the agency assumes no liability in providing such consent.

R850-50-1100. Range Improvement Projects.

1. Applications for range improvement projects shall be submitted for approval on appropriate forms and shall be approved or denied by the agency based on a written finding.

2. A range improvement project must be approved by the agency in writing before construction begins. Line cabins and similar structures will not be authorized as range improvement projects. They may, however, be authorized by a special use lease pursuant to Rule R850-30.

3. Agency authorization for range improvement projects shall be valid for periods of time not to exceed two years from the date the applicant is notified of the authorization. Extensions of time may be granted only when the director finds that an extension of time would be in the best interests of the beneficiaries.

4. Range improvements constructed or placed upon trust land become the property of the agency.

5. Range improvements shall not be authorized if they would be:

(a) located on a parcel that the agency has determined has potential for sale, lease, or exchange and the possibility exists that improvements may encumber these actions;

(b) located on a parcel designated for disposal;

(c) unnecessary or uneconomical as determined by the agency; or

(d) determined by the agency to be ordinary maintenance.

6. Range improvements which are necessary to rehabilitate lands whose forage production has been diminished by poor grazing practices or poor stewardship of the permittee shall not be considered a reimbursable improvement but rather a requirement to keep the grazing permit in effect.

7. Authorized Range Improvement Projects:

(a) shall be depreciated using schedules consistent with typical schedules published by the USDA Natural Resources Conservation Service or any other depreciation schedules approved by the board; and

(b) do not grant any vested property interest to the permittee.

8. ~~[In the event that]~~ If the property, on which an approved range improvement is located is sold, exchanged, or withdrawn from use, the permittee shall receive no more than the amount the permittee contributed toward[s] the original cost of the range improvement project, minus the indicated depreciation amount; or in the alternative, may be allowed 90 days to remove improvements pursuant to Subsection~~[Section]~~ 53C-4-202(6).

9. If the range improvement project is designed to increase carrying capacity, the permittee shall agree to pay for the increase in AUMs annually starting no later than two years after project completion. The agency may allow any increase in fees to be phased in at 20% per year.

10. The agency may participate in the cost of designated range improvement projects, or maintenance of existing range improvement projects, by providing funding in amounts and at rates determined by the agency.

11. The agency's cost~~[f]~~ or share portion of the project may be in the form of project materials. In these instances, the permittee shall be required to provide ~~[all]~~any necessary equipment and

manpower to complete the project to specifications required by the agency.

R850-50-1200. Additional Leases.

If the agency determines that there is unused forage available on a parcel of trust land resulting from temporary conditions, it may issue an additional permit or permits. These permit~~[s]~~ shall be issued in accordance to Section R850-50-400. Existing permittees shall have a first right of refusal to unused forage.

R850-50-1300. Rights Reserved to the Agency.

In ~~[all]~~any grazing permits, the agency shall expressly reserve the right to:

1. issue mineral leases, special use leases, timber sales, materials permits, easements, rights-of-entry, renewable energy leases, and any other interest in the trust land;

2. issue permits for the harvesting of seed from plants on the trust land. If loss of use occurs from harvesting activities, a credit for the amount of loss shall be made to the following year's assessment;

3. enter upon and inspect the trust land or to allow scientific studies upon trust land at any reasonable time;

4. allow the public the right to use the trust land for purposes and periods of time permitted by policy and rules. However, nothing in ~~[these]~~this rule[s] purports to authorize trespass on private land to reach trust land;

5. require that all water rights on trust land be filed in the name of the agency and to require express written approval ~~[prior to]~~before the conveyance of water off trust land;

6. require a permittee, when an agency-owned water right is associated with the grazing permit, to ensure that the water right, to the extent allowed under the permit, is maintained in compliance with state law;

7. close roads for~~[the purpose of]~~ range or road protection, or other administrative purposes;

8. dispose of the property without compensation to the permittee, subject to Subsection R850-50-1100(7); and

9. terminate the grazing permit pursuant to Subsection R850-50-600(2).

R850-50-1400. Trespass.

1. Unauthorized activities which occur on trust land shall be considered trespass and damages shall be assessed pursuant to Section 53C-2-301. These activities include:

(a) the use of forage at times and at places not authorized by the permit;

(b) the use of forage in excess of that authorized by the permit;

(c) grazing or trailing livestock on or across trust land without a valid permit or right-of-entry;

(d) the dumping of garbage or any other material on the trust land; and

(e) allowing another person to graze or trail livestock on the permitted property without the express written consent of the agency.

2. The permittee shall cooperate with the agency in taking civil action against the owners of trespass livestock to recover damages for lost forage and other damages.

R850-50-1500. Trailing Livestock Across Trust Land.

1. The trailing of livestock across trust land by a person not holding a grazing permit may be authorized if no other reasonable means of access is available.

2. Written approval in the form of a right-of-entry shall be obtained in advance from the agency.

3. The authorization to trail livestock across trust land shall restrict and limit the route, the number and type of animals, and the time and duration, which shall not exceed two consecutive days, of the trailing.

R850-50-1600. Modified Grazing Permit.

1. At the discretion of the director, the agency may issue modified grazing permits in instances where the proposed use is grazing related but is more intensive than livestock grazing alone and when improvements, if any, are primarily temporary in nature. Such uses may include camps, corrals, feed yards, irrigated livestock pastures, or other related uses.

2. Modified grazing permits shall be subject to the following terms and conditions:

(a) The term of a modified grazing permit shall be no longer than 15 years and contain terms, conditions, and provisions the agency, in its discretion, deems necessary to protect the interest of the trust beneficiaries.

(b) A modified grazing permit is subject to termination pursuant to Subsection R850-50-600(2).

(c) The annual rental for a modified grazing permit shall be based on the fair market value of the permitted property. Fair market value of the permitted property and annual rental rates shall be determined by the agency pursuant to Section R850-30-400. Periodic rental reviews may be completed pursuant to Section R850-30-400[~~(5)~~].

(d) Upon termination of the modified grazing permit, the permittee shall be allowed 90 days to remove any personal property.

(e) [~~Prior to~~Before the issuance of a modified grazing permit, or for good cause shown at any time during the term of the modified grazing permit, the applicant or permittee may be required to post a bond with the agency in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the permit. Any bond posted pursuant to this rule is subject to Section R850-30-800[~~(2)~~ through ~~(4)~~].

R850-50-1700. Supplemental Feeding.

1. Supplemental livestock feeding may be permitted subject to:

(a) written authorization by the agency;

(b) the designation of a specific area, length of time, number, and class of livestock; and

(c) a determination that this shall not inflict long term damage upon the property.

2. The agency may assess an additional fee for authorized supplemental feeding or may require the permittee to obtain a modified grazing permit.

3. Emergency supplemental feeding shall be allowed for ten days [~~prior to~~before notification.

4. The forage used for supplemental feeding shall be certified weed free.

KEY: administrative procedures, range management

Date of Last Change: 2022[May 8, 2018]

Notice of Continuation: May 26, 2022

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-5-102

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R850-140

Filing ID: 54814

Agency Information

1. Department: School and Institutional Trust Lands

Agency: Administration

Room number: Suite 500

Street address: 675 E 500 S

City, state and zip: Salt Lake City, UT 84102-2818

Contact persons:

Name: **Phone:** **Email:**

Stephanie Barber 801-538-5156 sbarberreneria@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 or section catchline:**

R850-140. Development Property

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

The change in this rule is to include the listing of the Renewable Energy Lease application types in Section R850-140-1000. Renewable Energy Leases on Trust Lands have historically been reviewed and processed under differing rules and requirements based on their location. (ie: as Surface Leases, Development Leases, or Mineral Leases). The proposed rule changes clarify and classify all Renewable Energy Projects (solar, wind, geothermal, and green hydrogen) into their own category for both continuity and clarification, that rule has been submitted as R850-170 Renewable Energy Lease Agreements.

Further rule changes are to follow 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):

This change will add the reference to the new type of renewable energy lease prompted by the new Rule R850-

170, Renewable Energy Lease Agreements, and will correct minor rulewriting errors.

Fiscal Information

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

A) State budget:

The purpose of the rule amendment is to reference the exemption of the new Rule R850-170 as applied to development property activities. Rule 850-170 surface related business practices are not affected by the Rule R850-140 practices. The changes are administrative only. Therefore, the state budget is not impacted by any cost or savings because of this rule change.

B) Local governments:

The purpose of the rule amendment is to reference the exemption of the new Rule R850-170 as applied to development property activities. The rule changes are neutral for local governments. Rule R850-170 surface related business practices are not affected by the Rule R850-140 practices. The changes are administrative only. Therefore, local governments are not impacted by any cost or savings because of this rule change.

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

The purpose of the rule amendment is to reference the exemption of the new Rule R850-170 as applied to development property activities. Small businesses are not affected by the rule changes as to any cost or savings on managing and conveying development property under Rule R850-140. The changes are administrative only.

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

The purpose of the rule amendment is to reference the exemption of the new Rule R850-170 as applied to development property activities. The rule changes have no cost or savings on managing and conveying development property under Rule R850-140. The rule amendment will not impact non-small businesses because the changes are administrative only.

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

The purpose of the rule amendment is to reference the exemption of the new Rule R850-170 as applied to development property activities. Rule 850-170 surface related business practices are not affected by the Rule R850-140 practices. The changes are administrative only. Therefore, individuals are not impacted by any cost or savings because of this rule change.

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

The purpose of the rule amendment is to reference the exemption of the new Rule R850-170 as applied to development property activities. Compliance costs are not impacted by this amendment as the changes do not require the additional purchase of any item or service by any entity.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

Renewable Energy leases have always been allowed on Trust Lands but were being tracked through differing lease types. These rule changes allow for Renewable Energy Leases (wind, solar, geothermal, and green hydrogen) to be tracked and processed as Renewable Energy leases, thus simplifying both the application and approval process,

as well as tracking of renewable energy projects. Michelle McConkie, Director

Citation Information

6. 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:

28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12	Section 53C-2-201	Section 53C-4-103
Article X	Article XX	Subsection 53C-4-101(1)

Public Notice Information

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

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:	10/10/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Michelle McConkie, Director	Date:	08/15/2022
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R850. School and Institutional Trust Lands, Administration.

R850-140. Development Property.

R850-140-100. Authorities.

This rule implements Sections 6, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Subsection 53C-1-302(1)(a) and Section 53C-4-101, which authorize the director of the School and Institutional Trust Lands Administration to establish rules and criteria for the disposition of trust lands.

R850-140-200. Purpose of Development Property Rules.

This rule permits the agency to designate trust land as development property and thereby

1. subject agency activities in connection with such properties to this rule; and
2. exempt agency activities in connection with such properties from the rules listed in Section R850-140-1000.

R850-140-250. Definitions.

For the purposes of this rule:

1. Development Property: a parcel of trust land that has been designated a development property pursuant to the director's

determination that the parcel meets the criteria established in Subsection R850-140-300(1).

2. Development Transaction: a transaction entered into by the agency to ~~generate~~~~[for the purpose of generating]~~ financial returns to the trust from real estate development of a particular development property. Development transactions include sales, exchanges, ground leases, development leases, build-to-suit leases, joint ventures, and Other Business Arrangements with respect to development properties.

3. Joint Venture: a transaction in which the agency contributes trust assets to a joint undertaking in which such assets may be subject to risk of loss, including without limitation a transaction in which the agency becomes a member of a limited liability company in exchange for the commitment of trust assets.

4. Other Business Arrangement: a transaction other than a joint venture which involves similar risk of loss of trust assets as a joint venture and which involves material reliance on the economic performance of a third party or other contingent events to generate expected returns. The non-subordinated lease of trust property for development purposes, with the trust's returns based upon a percentage of final property sales, is not an Other Business Arrangement.

5. Supporting Transaction: a transaction entered into by the agency to ~~prepare~~~~[for the purpose of preparing]~~ for or support~~ing~~ real estate development on trust lands, but not directly conveying trust lands for real estate development purposes. Supporting transactions include without limitation: exchange, acquisition, or conveyance of lands for assemblage or configuration of development projects; agreements with local government entities with respect to development entitlements and provision of infrastructure; rights-of-entry, dedications and easements for development improvements and amenities on trust lands; and leasing or conveyance of trust lands for necessary development infrastructure and amenities.

R850-140-300. Designation of Development Property.

1. The director may designate a property as a development property upon the director's determination that the following criteria are met:

- (a) The property is located in or near an urban area of the State or, in more rural locations, the property is of a character suitable for current or future commercial, industrial, resort, residential or other real estate development activities; or
- (b) The agency has received inquiry from private parties concerning the potential for development of the property or the agency, after preliminary analysis, has determined that the probable highest and best use for the property is for development purposes.

2. The director shall maintain a database of each property designated as a development property. The director may remove property from development designation ~~[in his]~~at the discretion as deemed appropriate for the best interests of the trust beneficiaries.

R850-140-350. Planning.

1. ~~[Prior to]~~Before designating a property as a development property, the agency shall submit the proposed designation to the Resource Development Coordinating Committee (RDCC), and evaluate and respond to comments received through the RDCC process. Participation in the RDCC process shall constitute compliance with Subsection 53C-2-201(1).

2. If the agency chooses to participate in local government planning and entitlement processes, such participation constitutes an

additional degree of planning supplemental to the RDCC process, but is not required under Subsection 53C-2-201(1).

R850-140-400. Development Transactions - General Provisions.

1. Subject to the board notice and approval provisions contained in Sections R850-140-500 and R850-140-600, the agency may solicit and reject proposals, make offers, counter offers and otherwise negotiate freely with interested parties in its efforts to arrange development transactions that are in the best interests of the trust. Development transactions will be structured according to the circumstances of the market and the attributes of the particular development property.

2. ~~[Prior to]~~Before entering a development transaction, the agency shall initiate an appropriate advertising program designed to effectively solicit interested parties. Advertising may be implemented through print media, internet, signage, direct mail, or other appropriate marketing methods.

3. In negotiating development transactions, the agency shall undertake appropriate due diligence with respect to the proposed transaction, including consideration of the following criteria:

(a) The ownership, character, reputation, financial status, credit, and litigation history and prior real estate development experience of the party with whom the development transaction is proposed.

(b) The financial attributes of the proposed development transaction.

(c) The legal structure of the proposed development transaction.

(d) The potential effects of the proposed development transaction upon nearby trust lands; and

(e) Whether the proposed transaction will bring the highest long-term return to the trust compared to other reasonably foreseeable alternatives.

4. Development transactions shall result in the trust receiving not less than fair market value for the sale, use, or exchange of the development property in question.

5. The purchase, sale or exchange of land in connection with a development transaction shall be supported by either an appraisal or a detailed internal analysis of value.

6. Formal contract documentation of any development transaction shall be subject to approval by a representative of the attorney general's office. No party to a proposed development transaction shall have any vested rights in the transaction until the formal contract documents have been approved by the agency representative of the attorney general's office, approved by the board if required by rule or statute, approved and executed by the director, and delivered.

R850-140-500. Development Transactions -- Approval of Minor Development Transactions.

1. For purposes of this rule, a minor development transaction is a proposed development transaction that:

(a) involves a projected commitment of trust lands or assets of less than \$5 million; or

(b) if the proposed development transaction is a joint venture or Other Business Arrangement, involves a projected commitment of trust lands or assets of less than \$2 million.

2. The agency shall provide the board with the following information with respect to a proposed minor development transaction:

(a) a description of the parties to and terms of the proposed transaction;

(b) an economic analysis of the proposed transaction;

(c) a description of the competitive or ~~[and]~~ advertising process used in soliciting offers for the transaction;

(d) a declaration of staff conflicts of interest, if any;

(e) if the transaction will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets; and

(f) other relevant information derived from the agency's due diligence activities.

3. The board must approve any proposed minor development transaction that is a joint venture or Other Business Arrangement in accordance with Subsection 53C-1-303(4)(e).

4. The director may approve any proposed minor development transaction that is not a joint venture or Other Business Arrangement after compliance with Subsection R850-140-500(2).

5. The board or director, as appropriate, may approve, conditionally approve, or reject any proposed minor development transaction consistent with their fiduciary obligations.

R850-140-600. Development Transactions -- Approval of Major Development Transactions.

1. For purposes of this rule, a major development transaction is a proposed development transaction that:

(a) involves a projected commitment of trust lands or assets of \$5 million or more; or

(b) involves a projected commitment of trust lands or assets of \$2 million or more if the proposed development transaction is a joint venture or Other Business Arrangement.

2. ~~[Prior to]~~Before entering negotiations for a major development transaction, the agency shall provide the board with the following information:

(a) relevant information concerning the property and the financial aspects of a possible transaction, including:

(i) property value;

(ii) financial goals for a proposed transaction;

(iii) timeliness of a proposed transaction; and

(iv) type of transaction contemplated;

(b) a summary of the anticipated competitive process and advertising program to be utilized in soliciting proposals; and

(c) other information requested by the board to assist it in evaluating the proposed transaction.

3. ~~[Prior to]~~Before seeking final board approval of a major development transaction, the agency shall provide the board with the following information:

(a) a statement of the key terms of the transaction;

(b) the results of the agency's due diligence activities under Subsection R850-140-400(3)(a);

(c) a projected financial pro forma for the transaction;

(d) the results of the competitive process and advertising process utilized to select the proposed transaction; ~~[and]~~

(e) a declaration of staff conflicts of interest, if any;

(f) a description of legal risks assumed by the trust;

(g) an analysis of the financial strength and commitment of the parties to the transaction; and

(h) if the transactions will involve the subordination of trust assets in connection with a joint venture or Other Business Arrangement, a description of the assets and an analysis of relevant risks to those assets.

4. The board must approve any proposed major development transaction ~~[prior to]~~before the director's execution of the transaction.

5. The board or director, as appropriate, may approve, conditionally approve, or reject proposed major development transactions consistent with their fiduciary obligations.

R850-140-700. Amendments to Development Transactions.

1. The agency may amend development transactions subject to the conditions contained in Subsections R850-140-700(2) through (4).

2. No amendment to a development transaction shall result in the trust receiving less than fair market value for the sale, use, or exchange of the property in question.

3. The director shall deliver a summary description of the terms of proposed material amendments to minor or major development transactions to the board with sufficient detail to permit the board to review the proposed amendment consistent with its statutory duties.

4. ~~[All]~~Any amendments that will materially ~~[modify]~~change the financial terms of a joint venture, Other Business Arrangement, or major development transaction must be approved by the board.

R850-140-800. Supporting Transactions.

1. The agency may enter into supporting transactions as necessary to promote prudent and profitable development of trust lands designated as development properties.

2. The purchase, sale or exchange of land in connection with a supporting transaction shall be supported by either an appraisal or a detailed internal analysis of value.

3. The board must approve any proposed supporting transaction that involves the purchase, sale or exchange of land having a value in excess of \$500,000~~[-60]~~.

R850-140-900. Deviation from Rules.

In situations where the board determines that an economic opportunity favorable to the trust beneficiaries may otherwise be lost, or other good cause exists that is in furtherance of the statutory obligations of the board, the board may authorize the agency to deviate from the transactional approval processes set forth in this rule, so long as the board and agency's actions are otherwise in compliance with law.

R850-140-1000. Exemption From Rules.

The agency, in connection with its activities in managing and conveying development property, shall be subject to all rules applicable to the agency, except the following, which shall not be applicable:

1. ~~[(a)]~~ Section R850-3-300. Application Forms.
2. ~~[(b)]~~ Section R850-3-400. Application Processing.
3. ~~[(c)]~~ Rule R850-4. Application Fees and Assessments.
4. ~~[(d)]~~ Rule R850-30. Special Use Leases.
5. ~~[(e)]~~ Rule R850-40. Easements.
6. ~~[(f)]~~ Rule R850-41. Rights-of-Entry.
7. ~~[(g)]~~ Rule R850-80. Sale of Trust Lands~~[-(E)]~~, except Section R850-80-250.~~[(j)]~~
8. ~~[(h)]~~ Rule R850-90. Land Exchanges.
9. Rule R850-170. Renewable Energy Lease Agreements.

KEY: development, land sale, real estate

Date of Last Change: 2022~~(October 22, 2009)~~

Notice of Continuation: September 9, 2021

Authorizing, and Implemented or Interpreted Law: 53C-2-201; 53C-4-101(1); 53C-4-103

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R909-19	Filing ID: 54809
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Agency Information

1. Department:	Transportation	
Agency:	Motor Carrier	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

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

General Information

2. Rule or section catchline:

R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification

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

The Utah Department of Transportation (UDOT) is proposing changes to this rule for two reasons:

First: According to the U.S. Energy Information Administration Rocky Mountain, PADD4, website accessed on 07/20/2022, average retail prices for regular gasoline prices increased by more than 31% from \$3.434 on 07/05/2021, to \$5.001 on 07/04/2022. Section R909-

19-14, Non-consent Fuel Surcharge Fee, allows tow truck motor carriers to charge a fuel surcharge when the daily Rocky Mountain Average reaches \$3.25 per gallon. Under the current rule, a tow truck motor carrier may charge a surcharge of 5% of the base tow rate, and an additional 5% is allowed for each \$0.25 per gallon increase. With gasoline prices hovering at or above \$5 per gallon, tow truck motor carriers can overcharge for non-consent tows.

The Motor Carrier Advisory Board reviewed this situation and recommended changing this rule to lower the surcharge rate tow truck motor carriers may charge for non-consent tows. This proposed change reduces that rate from 5% to 3%.

Second: In the 2022 General Session, the Utah Legislature passed S.B. 109, Towing Amendments, that will be effective 10/22/2022. S.B. 109 changes are:

- a) requires submission of a certain form to the Motor Carrier Division (Division) and notification of the owner of a vehicle if the vehicle is removed;
- b) amends provisions related to the sale or transfer of a vehicle, vessel, or outboard motor that has been impounded that has not been claimed or recovered by the owner or lienholder;
- c) grants rulemaking authority to prescribe the format and contents of the form to be submitted to the Division;
- d) allows a tow truck motor carrier to charge an after-hour fee if an owner requests the release of a vehicle after normal business hours; and
- e) prohibits a tow truck motor carrier or tow truck operator from sharing personal information of or referring other services to a person for whom the tow truck motor carrier or tow truck operator has performed a tow service; among other things.

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 proposed change reduces the non-consent fuel surcharge fee rate tow truck motor carriers may charge when the daily Rocky Mountain Average reaches \$3.25 per gallon from 5% to 3%. This proposed rule change also makes changes required by S.B. 109 (2022) that will be effective 10/15/2022.

Fiscal Information

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

A) State budget:

Changes to the Utah Code the Legislature made with S.B. 109 (2022) require the Department to regulate tow truck motor carriers. These changes will not conceivably

increase the annual cost of regulating this industry, as Section R909-19-8 required the Division to complete a biennial audit of each tow truck motor carrier. The biennial audits are currently completed by the tow truck investigator with the Division.

B) Local governments:

Changes to the Utah Code the Legislature made with S.B. 109 (2022) require local governments and UDOT/Motor Carrier Division to coordinate with tow truck motor carriers. These changes will not conceivably increase the cost to local governments. Section R909-19-8 requires that every tow truck motor carrier receive a biennial certification (audit) that includes a review of invoices from tows. Additionally, the tow truck motor carrier engaged in or transacting business for tow truck services is audited for insurance, tow truck operators, tow vehicles, office postings, certified letter notification, background checks of drivers, and MCS-150.

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

Reducing the surcharge rate tow truck motor carriers may charge for non-consent tows from 5% to 3% may affect some small tow truck motor carriers. There are too many variables with the fluctuation of gas prices, how many tows may occur, and the mileage of each tow completed by a tow truck motor carrier. The many variables make it difficult to quantify the reduction in income for a small tow truck motor carrier. Rule R909-14 calculates the fuel surcharge by using the average per gallon of gasoline or diesel costs found on the U.S. Energy Information Administration's website at <https://www.eia.gov/>. For example: In July 2022, the cost of a non-consent tow of one hour for one day includes: Tow fee - \$179, Storage - \$40, Admin Fee - \$37.50, and Fuel Surcharge - \$89.50. The total cost for a one-day tow is \$345. As fuel costs per gallon dropped in August 2022, the cost for the Fuel Surcharge has been reduced to \$62.65 for a total tow charge of \$318.65. The loss to a small business (tow truck motor carrier) could be calculated as \$26.85 per tow for the week of August 22, 2022. As fuel prices continue to decrease or increase, it is very difficult to quantify how much the small business motor carrier will lose or gain in revenue.

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

There are no "non-small business" tow truck businesses in Utah. The largest tow truck motor carrier in the state of Utah does not employ 50 or more persons.

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**):

Reducing the surcharge rate tow truck motor carriers may charge for non-consent tows from 5% to 3% likely will affect other persons who own vehicles towed, but there are too many variables to quantify the reduction in cost because of ever-changing gas prices. The part of S.B. 109 (2022) that allows a truck motor carrier to charge an after-hour fee if an owner requests the release of a vehicle after normal business hours will affect the vehicle owner. This rate has been set at \$75 per tow. It is difficult to accurately quantify the costs these changes will lead to for vehicle owners. A vehicle owner who wants a vehicle released after hours has a choice. A vehicle owner can avoid the after-hours release cost by asking for the vehicle's release during regular hours rather than paying this allowed fee.

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

There are approximately 1,200 non-consent tows performed each month that include police tows, or private property impounds, such as from an apartment complex, or from private property. Tow truck motor carriers will be limited to charging a 3% fuel surcharge rather than 5%.

G) 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 the 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Bracerias, PE, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 72-9-601	Section 72-9-602	Section 72-9-603
Section 72-9-604	Section 53-1-106	Section 41-6a-1405

Public Notice Information

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

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:	10/10/2022
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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.

Agency Authorization Information

Agency head or designee and title:	Carlos M. Bracerias, PE, Executive Director	Date:	08/12/2022
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R909. Transportation, Motor Carrier.

R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification.

R909-19-1. Authority.

[This rule is enacted under the authority of] Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, and 41-6a-1405 [Utah Code] authorize the Department to make this rule.

R909-19-2. Applicability.

[All-] Tow truck motor carriers and employees must comply with and observe [all] administrative rules, including Rule R909-1, federal regulations, state and local traffic laws and guidelines as prescribed by [State] Law, including Sections 41-6a-401.9, 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, and 72-9-703.

R909-19-3. Definitions.

(1) "Consent tow" means any tow truck service ~~[that is]~~ done at the vehicle, vessel, or outboard motor owner's~~[-]~~ or its legal operator's~~[-]~~ knowledge or approval.

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

(3) "Division" means the Motor Carrier Division.

(4) "Emergency moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

(5) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination~~[-]~~ articulated motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit, and any load thereon.

(6) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(7) "Life-essential personal property" includes those items essential to sustain life or health, including~~[-]~~ prescription medication, medical equipment, essential clothing, ~~[e.g.]such as~~ shoes, coat, food and water, child safety seats, and government-issued photo~~[-]~~ identification.

(8) "Non-consent police generated tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or ~~[a-]~~highway authority, as defined in Section 72-1-102.

(9) "Non-consent non-police generated tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(10) "Normal office hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

(11) "Recovery operation" means a towing service that may require charges in addition to the normal one-truck one-operator towing service requirements. The additional charges may include charges for manpower, extra equipment, and supplies necessary for the recovery operation.

(12) "State impound yard" means a yard for the storage of a vehicle, vessel, or outboard motor that meets the requirements of rules made by the commission ~~[pursuant to]~~under Subsection 41-1a-1101(5).

(13) "Tow truck" means a commercial vehicle constructed, designed, altered, or equipped primarily ~~[for the purpose of towing]~~to tow or ~~[removing]~~remove damaged, disabled, abandoned, seized, repossessed, or impounded vehicles from a highway or other place ~~[by means of]~~using a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(14) "Tow truck certification program" means a program to authorize and approve tow truck motor carriers, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(15) "Tow truck motor carrier" means a motor carrier ~~[that is-]~~engaged in or transacting business for tow truck services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervising, assigning,

or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment or accessories.

(16) "Tow truck operator" means an individual that performs operations related to a tow truck service as an employee or as an independent contractor on behalf of a tow truck motor carrier.

(17) "Tow truck service" means the functions and ~~[any]~~ ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place ~~[by means of]~~using a tow truck.

(a) Tow truck service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed vehicle~~[-]~~ classifications will be used when determining authorized fees. Information regarding the GVWR to determine the classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium duty" means any towed vehicle with a GVWR between 10,001 to 26,000 pounds;

(iii) "Heavy duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(18) "Tow truck motor carrier steering committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives, and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and, in cooperation with the Department of Public Safety, Utah Highway Patrol Division, as specified under Section 53-8-105, shall administer~~[-]~~ and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, and equipment for inspection and examination. ~~[and shall]~~It must submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

(1) Tow truck motor carriers performing emergency moves shall maintain liability insurance coverage of at least \$750,000 per occurrence. Tow truck motor carriers performing non-emergency moves shall maintain liability insurance coverage of at least \$1,000,000 per occurrence.

(2) All tow truck motor carriers performing consent or non-consent tows are required to obtain an MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance ~~[shall]~~must be maintained at the principal place of business and made available to the Department ~~[and]~~or Investigator upon request and ~~[prior to]~~before issuance of the tow truck motor carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates ~~[either-]~~by reference ~~[or attachment]~~, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Sections 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier, operator, or tow truck certification, suspension, or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603;

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission ~~[pursuant to]~~ under Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) All non-consent police generated, and non-consent non-police generated tows conducted by tow truck motor carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "<https://secure.utah.gov/ivs/ivs>" as required by ~~[Utah Code]~~ Subsection 41-6a-1406(11).

(2) Tow truck motor carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a tow truck motor carrier has met this requirement if they can provide proof that a letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) The tow truck motor carrier or the tow truck operator must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or outboard motor that was towed.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(4) The Utah Consumer Bill of Rights Regarding Towing shall contain the language and information as published at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/utah-bill-of-rights-regarding-towing/>.

(a) The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(b) A consumer has the right to file a complaint alleging:

(i) Overcharges;

(ii) inadequate certification for the operator, truck or company, and;

(iii) violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated, or Utah Administrative Code.

(c) Complaints may be filed online with the Utah Department of Transportation at <https://app.udot.utah.gov/public/mcs/?p=345:3:::3> or by contacting the Motor Carrier Division at (801) 965-4892.

R909-19-8. Certification.

There are three ~~[(3)]~~ certifications required by the Department.

(1) Tow Truck Operator Certification.

(a) Effective July 1, 2004, all tow truck operators will be tested and certified in accordance with Towing and Recovery Association of America Inc (TRAA) standards and carry evidence of

certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

(b) Information on qualified certification programs may be obtained at the UDOT Motor Carrier Division website at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/tow-truck-certification/> or by contacting the Motor Carrier Division at (801) 965-4892.

(c) Tow truck motor carriers shall ensure that all tow truck operators:

(i) are properly trained and certified to operate tow truck equipment;

(ii) are licensed, as required under ~~[Utah Code]~~ Sections 53-3-101, through 53-3-909 Uniform Driver License Act;

(iii) are complying with the requirements under ~~[Utah Code]~~ Sections 41-6a-1406 and 72-9-603;

(iv) have cleared the criminal background check required in Subsections 72-9-602(2) and (3). In addition, a tow truck motor carrier must notify the ~~[(d)]~~ Department of a tow truck operator ~~[whom]~~ who is not in compliance with Subsection 72-9-602(3) within two business days of obtaining knowledge from the Bureau of Criminal Identification.

(v) obtain and maintain a valid medical examiner's certificate under 49 C[?]F[?]R Sec 391.45.

(2) Tow Truck Vehicle Certification.

(a) All tow trucks shall receive and pass a tow truck certification inspection biannually.

(b) All tow trucks must be equipped with the required safety equipment. Safety Equipment List can be found at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/tow-truck-certification/> or by calling 801-965-4892.

(c) Upon vehicle certification, a UDOT certification sticker will be issued and shall be affixed ~~[on]~~ to the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle certification shall be retained and available upon request by Department personnel.

(3) Tow truck motor carrier Certification.

(a) Tow truck motor carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, Utah Administrative Code, and local laws where applicable.

R909-19-9. Certification Fees.

The Department may charge tow truck motor carriers a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-10. Information Required on Towing Receipt.

(1) Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation, administration, fuel surcharge, ~~[and]~~ storage fees, and after-hours fees charged;

(e) name of company driver;

(f) unit number;

(g) the license plate of the towed vehicle;

(h) make, model, Vehicle Identification Number, and year of the towed vehicle;

- (i) start and end time with total hours for services provided; and
- (j) the date vehicle was retrieved from tow yard or other storage area.

R909-19-11. Non-Consent Towing Fee.

(1) A tow truck motor carrier may charge up to but not exceed the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/>.

(a) An additional 15% of the fee for tow truck service may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of and in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck motor carrier shall be considered in possession of the vehicle.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle is attempting to retrieve said vehicle before the tow truck motor carrier is in possession of the vehicle, no fee~~(s)~~ shall be charged to the vehicle owner.

(d) If the owner, authorized operator, or authorized agent of the owner of the vehicle is attempting to retrieve the vehicle after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(e) Charges for recovery operations, as defined by Section R909-19-3, shall be coordinated with the towed vehicle owner, or directed by law enforcement ~~[prior to]~~ before initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the towed vehicle owner and tow truck motor carrier.

(i) If attempts to coordinate the recovery operation charges with the towed vehicle owner fail, law enforcement personnel may authorize the recovery operation.

(ii) At least two attempts must be made to contact the towed vehicle owner.

(iii) Record of owner coordination or law enforcement authorization shall be maintained by a tow truck motor carrier for each recovery operation. The record shall include a contact name, entity, contact time and date, and agreement made.

(iv) Uncoordinated or unauthorized recovery operation fees may be subject to penalty and reimbursement of recovery operation fees.

R909-19-12. Police Generated Towing Fee Calculation.

(1) Tows dispatched during business hours: Tow time shall be calculated from dispatch time to completion of tow service.

(2) Tows dispatched after business hours: Tow time shall be calculated from dispatch time to completion of tow service and return to dispatch location. Time to return to the dispatch location shall not exceed the allowed rotation response time.

(3) Time charged shall be to the nearest fifteen-minute increment.

(4) Charges may not extend to include the towing notice requirement period pursuant to ~~[Utah Code]~~ Subsections 72-9-603(1)(a)(i) ~~[or]~~ and 41-6a-1406(4)(a)(ii).

R909-19-13. Non-consent Towing Storage Fee.

(1) Daily storage fees for ~~[N]~~non-consent Police generated tow service may not exceed:

(a) Outside storage: light duty \$40, medium duty \$60, heavy duty \$60

(b) Inside Storage: light duty \$45, medium duty \$85, heavy duty \$85

(c) Outside hazardous materials: medium duty \$115, heavy duty \$115

(d) Inside hazardous materials: medium duty \$165, heavy duty \$165

(2) Daily storage fees for ~~[N]~~non-consent non-police generated tow service may not exceed:

(a) Outside storage: light duty \$40, medium duty \$60, heavy duty \$60

(b) Inside Storage: light duty \$45, medium duty \$85, heavy duty \$85

(c) Outside hazardous materials: medium duty \$115, heavy duty \$115

(d) Inside hazardous materials: medium duty \$165, heavy duty \$165.

(3) A tow truck motor carrier may charge up to but not exceeding the amount for storage per day for the type of non-consent tow.

(a) A tow truck motor carrier may charge a higher fee for inside storage per day per unit only if requested by the ~~[owner(s)]~~ owners, or a law enforcement agency or highway authority.

(b) Vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F may be charged a higher storage fee rate.

(c) ~~[For the purpose of]~~ To [calculating] calculate storage rates, if the first six hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-14. Non-consent Fuel Surcharge Fee.

(1) A tow truck motor carrier may charge a fuel surcharge when the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel reaches \$3.25 per gallon, a tow truck motor carrier may charge a surcharge equal to ~~[5%]~~ 3% of the base tow rate. An additional ~~[5%]~~ 3% shall be allowed for each \$0.25 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.

(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to the U~~[S]~~S Energy Information Administration's website at <https://www.eia.gov/>.

(b) The fuel surcharge may be charged on non-consent police generated tow when the vehicle is being used in the function of a tow vehicle ~~[i.e.]~~ such as travel to and from the scene and during the operation of equipment for the recovery operation. Non-consent non-police tows may charge a one-time fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

R909-19-15. Non-consent Administrative Fee.

A tow truck motor carrier may charge an administrative fee for reporting the removal of up to but not exceeding the amount indicated in the Towing Fee Schedule as published online at, <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/> per vehicle notification for reporting non-consent tows to the

Department of Motor Vehicles and for sending notifications to the owner and lien-holder, ~~[if applicable]~~.

R909-19-16. Non-consent After-Hours Fee.

(1) A tow truck motor carrier may charge for the after-hours release of a vehicle, vessel, or outboard motor stored in response to:

- (a) a peace officer dispatch call;
- (b) a motor vehicle division call; and
- (c) any other call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal.

(2) A tow truck motor carrier may charge up to but not exceed the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/> and the Utah Consumer Bill of Rights Regarding Towing published at <https://site.utah.gov/connect/wp-content/uploads/sites/50/2021/12/Tow-Truck-Bill-of-Rights-Combined-2022-1.pdf>.

(3) The After-hours fee shall be listed as a separate fee on the tow bill.

R909-19-17. Tow Truck Service and Administrative Fee Adjustment.

(1) The Motor Carrier Division ~~[is required to]~~ will establish the allowable maximum fee for a tow truck service and administrative fee for reporting the removal, as per ~~[Utah State Code]~~ Section 72-9-603.

The Towing Fees Schedule is published on the Division's website at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/>.

(2) The allowable maximum fee for tow truck service and the maximum allowable administrative fee for reporting the removal shall be tied to the Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W) in the West Urban Region of the U.S. The CPI-W is calculated by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables every month on its web~~[—]~~site at <https://www.bls.gov/cpi/tables/home.htm>.

(3) The Motor Carrier Division shall adjust the allowable maximum fees once annually as follows:

(a) The base fee schedule for each calendar year after a year in which the ~~[the]~~ Motor Carrier Division determines the allowable maximum fees pursuant to Subsection R909-19-11(1) shall be adjusted effective January 1 of each such calendar year, ~~[the~~ "Adjustment Date"]~~]~~.

(b) The adjustment amount of the allowable maximum fees shall be equal to the change in the CPI-W for the twelve-month period ~~[prior to]~~ before the October CPI-W figure reported by the BLS immediately preceding the Adjustment Date in question.

(c) If the twelve-month change in the CPI-W from October to October is negative, the allowable maximum fees shall remain unchanged until the next Adjustment Date.

(d) The Division of Motor Carriers shall round the allowable maximum fees to the nearest whole number.

R909-19-18. Public Consent Towing and Storage Rates.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services ~~[rendered]~~ provided and are not regulated by the Department.

R909-19-19. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle at all locations at which vehicles are retrieved, or payment is accepted.

R909-19-20. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-21. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, including a list of tow truck motor carriers that are currently certified by the Department, the public can access this information online at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/>, or by calling the Motor Carrier Division at (801) 965-4892.

R909-19-22. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-23. Review of Rates, Fees, and Certification Process.

(1) During a regularly scheduled Motor Carrier Advisory Board meeting, the board may review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2)(a) Interested parties must notify the ~~[the]~~ Department of their desire to appear and be heard at a regularly scheduled Motor Carrier Advisory Board meeting. To ensure placement on the agenda, notify the Motor Carrier Division at 801-965-4892, by the first day of the month of the scheduled meeting.

(b) Interested parties must be present at the Motor Carrier Advisory Board meeting to submit evidence supporting or challenging proposed rate or fee adjustments, or issues related to procedures regarding the certification process.

R909-19-24. Ability to Petition for Review.

Any tow truck motor carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code Rule R907-1, Administrative Procedures.

R909-19-25. Record Retention.

Tow truck motor carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-~~25~~26. Life-Essential Property.

Property ~~[which]~~that is deemed as life-essential shall be given to the vehicle owner regardless of payment for ~~[rendered]~~services provided.

KEY: safety regulations, tow trucks, towing, certifications

Date of Last Change: ~~2022~~November 12, 2020

Notice of Continuation: May 10, 2021

Authorizing, and Implemented or Interpreted Law: 41-6a-1404; 41-6a-1405; 41-6a-1406; 53-1-106; 53-8-105; 72-9-601; 72-9-602; 72-9-603; 72-9-604; 72-9-301; 72-9-303; 72-9-701; 72-9-702; 72-9-703

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R920-50	Filing ID: 54810
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Agency Information

1. Department:	Transportation	
Agency:	Operations, Traffic and Safety	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, Utah 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R920-50. Ropeway Operation Safety
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

A new ANSI B77.2 standard has been published and an inconsistency between the traditional registration practices and the registration process in Title 72, Chapter 11, has been identified. These proposed changes account for the new ANSI standard and eliminate the inconsistency.

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):

Adopts the latest ANSI B77.2 standard as the governing standard for funiculars.

Adjusts the registration submittals to better comply with the registration information in Title 72, Chapter 11, and improve the effectiveness of the inspections.

Brings all ropeways in the state up to the same level requirement for start warning alarms. The start warning alarm provides maintenance workers a warning that the machinery is about to start moving.

Fiscal Information

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

A) State budget:

The Department of Transportation (Department) does not anticipate that this proposed rule change will affect the state's budget. These proposed changes do not require changes to the actions by the Committee or Department staff to regulate ropeway safety in Utah

B) Local governments:

The Department does not anticipate that this proposed rule change will affect local governments because it does not apply to local governments unless they operate a passenger ropeway.

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

These proposed changes may affect small businesses operating passenger ropeways' budgets. However, any effect the proposed changes might have will be negligible and impossible to estimate.

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

These proposed changes may affect non-small businesses operating passenger ropeways' budgets. However, any effect the proposed changes might have will be negligible and impossible to estimate.

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 proposed changes will not affect persons other than small businesses, non-small businesses, state, or local government entities because this rule does not apply to other persons or entities.

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

These proposed changes will not change compliance costs for those already affected by this rule.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Braceras, PE, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 72-11-210		
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Incorporations by Reference Information

7. Incorporations by Reference :	
A) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	ANSI B77.2 Funiculars – Safety Requirements
Publisher	American National Standards Institute, Inc. (ANSI)
Issue Date	September 30, 2020
Issue or Version	ANSI B77.2-2020

Public Notice Information

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

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:	10/10/2022
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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.

Agency Authorization Information

Agency head or designee and title:	Carlos M. Braceras, PE, Executive Director	Date:	08/15/2022
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R920. Transportation, Operations, Traffic and Safety.

R920-50. Ropeway Operation Safety.

~~R920-50-1. Purpose:~~

~~This rule establishes regulations, requirements, and provides standards for the design, construction, and operation of a passenger ropeway, except private residence passenger ropeways as defined in Section 72-11-102(11) and establishes the procedures necessary to implement the powers and duties of the Utah Passenger Ropeway Safety Committee (Committee). Previously the Committee was known as the Utah Passenger Tramway Safety Committee. The Committee has also been referred to as the Tramway Board.~~

~~R920-50-2. Authority:~~

~~This rule is authorized by Section 72-11-210 to implement Title 72, Chapter 11, Passenger Ropeway Systems Act.]~~

R920-50-1. Purpose and Authority.

(1) Purpose. This rule regulates passenger ropeways in Utah, other than private residence ropeways defined in Subsection 72-11-102(11). This rule also defines the duties, responsibilities, and authority of the Utah Passenger Ropeway Safety Committee created by Section 72-11-202 (the Committee).

(2) Authority. Section 72-11-210 authorizes the Department to make this rule.

R920-50-32. Definitions.

In addition to terms defined ~~at~~ in Section 72-11-102, the following terms are defined:

(1) "Aerial lift specialist" as used in American National Standards Institute (ANSI) B77.1 ~~S[s]~~ections 3.3.4.1 and 4.3.4.1, means a Ropeway Inspector as defined in Subsection R920-50-3(32).

(2) "Aerial tramway specialist" as used in ANSI B77.1 ~~S[s]~~ection 2.3.4.1 means a Ropeway Inspector as defined in Subsection R920-50-3(32).

(3) "Air Space" means the area bounded by vertical planes commencing at a point ~~thirty-five (35)~~ 35 feet from the intersection of the vertical planes of the ropes and ground surface.

(4) "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with this rule.

(5) "Audible warning devices" means an audible warning device that signals an impending start of the aerial lift.

(6) "Auxiliary Power Unit" is a generic term to describe a gas or diesel engine generally used as a backup to the prime mover.

(7) "Bullwheel" means a large grooved wheel at a terminal that rotates continuously when the haul rope is moving and deflects the haul rope by an angle of ~~10~~ ten degrees or more.

(8) "Carrier" means the structural and mechanical assemblage in or on which ~~the passenger(s)~~ passengers or freight of a ropeway system are transported. Unless qualified, the carrier includes, for example, the carriage, grip or clip, hanger, and cabin or chair.

(9) "Conveyor specialist" as used in ANSI B77.1 ~~S[s]~~ection 7.3.4 means a Ropeway Inspector as defined in Subsection R920-50-3(32).

(10) "Dynamic Testing Logs" means a record of the data collected during the dynamic test.

(11) "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.

(12) "Existing ropeway" means any passenger ropeway that ~~shall have~~ has been operated for passengers for more than one calendar year.

(13) "Funicular specialist" as used in American National Standards Institute (ANSI) B77.2 Section 2.3.4.1 means a Ropeway Inspector as defined in Subsection R920-50-3(32).

~~(13)~~ (14) "Grip" means the device by which carriers are attached to the haul rope.

~~(14)~~ (15) "Governing Standard" means the ANSI B77 standard that is incorporated by reference as part of Section [this rule by rule] R920-50-3[4 Governing Standards].

~~(15)~~ (16) "Haul rope" means a wire rope used on a ropeway that provides motion to carrier~~(s)~~ and is powered by the drive bullwheel.

~~(16)~~ (17) "Incident inspection" means an inspection of a

passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

~~(17)~~ (18) "Land surveyor" means an individual licensed under Section 58-22-102 as a professional land surveyor.

~~(18)~~ (19) "Modification" means any change as defined in ANSI B77.1 Section 1.2.4.4, ANSI B77.2 Section 1.2.4.4, and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

~~(19)~~ (20) "New ropeway" means any passenger ropeway ~~that is~~ registered for the first time for passenger operation during its first calendar year of operation.

~~(20)~~ (21) "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with this rule.

~~(21)~~ (22) "Operating personnel" means persons employed by the operator to supervise the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when on duty for such purposes on that ropeway.

~~(22)~~ (23) "Passenger" means any person riding a ropeway, other than "operating personnel."

~~(23)~~ (24) "Passenger Ropeway Incident" means:

(a) ~~Any~~ a structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

(b) ~~Any~~ a deropement regardless of whether the passenger ropeway is evacuated;

(c) ~~Any~~ an evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

(d) ~~Any~~ a fire involving a passenger ropeway component or adjacent structure;

(e) ~~Any~~ a structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a ropeway that will not SLOW DOWN when given the command to do so, will not STOP when given the command to do so, OVERSPEEDS beyond control settings ~~or both~~ ~~and/or~~ maximum design speed, ACCELERATES faster than normal design acceleration, SELF-STARTS or SELF-ACCELERATES without the command to do so, REVERSES direction unintentionally and without the command to do so, or a loss of control of the passenger ropeway as defined in ANSI B77.2 Section 2.2.3.1;

(f) ~~Any~~ a wire rope damage which exceeds the requirement in ANSI B77.1 Section A.4.1.3 or ANSI B77.2 Section A.4.1; and

(g) ~~Any~~ a structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including ~~but not limited to,~~ the following:

(i) Terminal Structure;

(ii) Bullwheel;

(iii) Brake System;

(iv) Tower Structure;

(v) Sheave, Axle, or Sheave Assembly;

(vi) Carrier; ~~and~~ or

(vii) Grip.

~~(24)~~ (25) "Portable Ropeway" means a ropeway expressly designed to be portable, operated without a permanent foundation, and that has a design range of maximum grade.

~~(25)~~ (26) "Pre-operational inspection" means an inspection made by a Ropeway Inspector ~~prior to~~ before the

operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

~~(26)~~(27) "Qualified engineer" means any engineer who is licensed to practice engineering in ~~[the state of]~~Utah and who has been approved by the Committee.

~~(27)~~(28) "Prime Mover" means the power unit utilized for the continuous operation of a passenger ropeway.

~~(28)~~(29) "Qualified personnel" as used in ANSI B77.1 Sections 2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, and 7.1.1.11 means a qualified engineer as defined by Subsection R920-50-3~~(26)~~(27).

~~(29)~~(30) "Relocated ropeway" means any passenger ropeway moved to a new location.

~~(30)~~(31) "Responsible charge" means effective control and direction of the installation or modification of a passenger ropeway.

~~(31)~~(32) "Ropeway Inspector" means an engineer licensed to practice engineering in ~~[the state of]~~Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

~~(32)~~(33) "Sheave" means pulley or wheel grooved for haul rope.

~~(33)~~(34) "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not structures.

~~(34)~~(35) "Surface lift specialist" as used in ANSI B77.1 Section 5.3.4.1, means a Ropeway Inspector as defined in Subsection R920-50-3~~(31)~~(32).

~~(35)~~(36) "Tow specialist" as used in ANSI B77.1 Section 6.3.4 means a Ropeway Inspector as defined by Subsection R920-50-3~~(31)~~(32).

R920-50-~~(4)~~3. Governing Standards.

(1) Passenger ropeways operating in ~~[the State of]~~Utah ~~[shall] must~~ conform to the requirements of ANSI B77.1-2017, ~~[ANSI B77.2-2014]~~ANSI B77.2-2020, which are incorporated by reference as part of this rule ~~[R920-50-]~~and to the revised and additional provision listed in Subsection R920-50-11. Use of these standards is authorized by ~~[Utah Code]~~Section 72-11-201.

(2) The Utah Passenger Ropeway Safety Committee reserves the right to add, alter, or delete provisions included in the Governing Standard for use in ~~[the State of]~~Utah.

(3) Existing installations need not comply with the new or revised requirements of the Governing Standard ~~in~~and this rule except as set forth in Section R920-50-12 "Applicable Provisions."

R920-50-~~(5)~~4. General Requirements for Passenger Ropeways.

(1) Passenger ropeways operating in ~~[the State of]~~Utah ~~[shall] must~~ be registered annually with the Committee, and no passenger ropeway ~~[shall] must~~ be operated for passengers without a valid ~~[certificate of registration]~~Certificate of Registration.

(2) Ropeways require a qualified engineer to certify the design, ~~[manufacturing]~~and construction of the ropeway. A Qualified Engineer or Land Surveyor ~~[is required to]~~must complete the "as-built" profile and certification.

(3) Existing ropeways, when removed and reinstalled, ~~[shall] must~~ be classified as new installations.

(4) Ropeway operators ~~[shall] must~~ be covered by a liability insurance of a minimum of \$300,000. The Utah Passenger Ropeway Safety Committee ~~[shall] must~~ be notified of a lapse or

termination of insurance coverage ~~[pursuant to]~~under the terms of the policy.

R920-50-~~(6)~~5. Application to Register a Passenger Ropeway.

(1) Each year ~~[prior to]~~before operating a passenger ropeway the ropeway operator ~~[shall] must~~ apply to the Committee, for a Certificate of Registration. In the event a new operator is assigned, the operator ~~[shall] must~~ notify the Committee of such action and ~~[shall] must~~ apply for a Certificate of Registration.

(2) Term~~[-]~~ Passenger ropeways ~~[shall] must~~ be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue.

(3) Application for Certificate of Registration for existing ropeways ~~[shall] will~~ include the following:

- ~~(a) [Annual General Inspection Report;~~
- ~~(b)]a[A]nnual registration fee; and~~
- ~~(c)]Approved request for exception, if applicable;~~
- ~~(d)]b[C]ertification of Compliance[; and~~
- ~~(e)]Certificate of Insurance[.~~

(4) Application for Certificate of Registration for new ropeways ~~[shall] must~~ include the following:

- ~~(a) a[A]nnual registration fee;~~
- ~~(b)]Approved request for exception, if applicable;~~
- ~~(c)]c[C]ertification of Compliance;~~
- ~~(d)]Certificate of Insurance[.~~
- ~~(e)](c) c[C]ertifications required in R920-50-7;~~
- ~~(f)](d) d[D]ocuments required in R920-50-8[; and~~
- ~~(g)]Preoperational Inspection Report[.~~

(5) Submittal of an application ~~[for registration of]~~ropeway[s] - An~~[All]~~ application[s] ~~[for registration of]~~to register a new or existing ropeway[s] ~~[shall] must~~ be submitted in such form as the Committee ~~[shall] will~~ designate and ~~[in accordance with]~~under the requirements of this rule~~[these rules]~~. Applications ~~[shall] must~~ be made in writing and addressed to:

Utah Department of Transportation
Passenger Ropeway Safety Committee
Traffic and Safety Division
4501 South 2700 West
Salt Lake City, Utah 84119

R920-50-~~(7)~~6. Certifications Required for Ropeways.

(1) The Certifications listed ~~[below]~~in this section must include the following information:

- ~~(a) n[N]ame, address, and telephone number of the operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway;~~
- ~~(b) d[D]esignated certifying statement;~~
- ~~(c) a[A] certification of design[;] and construction must also include the name, address, seal, and Utah license of the qualified engineer making the certification; and~~
- ~~(d) a[A] certification of "[a]As-[b]Built" profile must also include the name, address, seal, and Utah license of the [qualified engineer or land surveyor]Qualified Engineer or Land Surveyor making the certification.~~

(2) A Certification of Compliance for Passenger Ropeway ~~[shall] must~~ be made on the Application for Certificate of Registration for the Ropeway.

- ~~(a) The certification [shall] must be signed and dated by the ropeway owner or area operator.~~
- ~~(b) The certification [shall] must include the following statement: "I certify that the reports, requests, and certificates attached hereto were provided and signed by the persons required by~~

law to provide them. ~~and the~~ The required ropeway inspection was completed and deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Ropeway."

(3) A Certification of Ropeway Design for New or Modified Passenger Ropeways must be submitted.

(a) The Qualified Engineer in responsible charge of the design ~~shall~~ must certify to the Committee that the design, plans, and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard, and ~~this rule~~ ~~the Utah Ropeway Operation Safety Rule~~.

(b) The Certification must be submitted ~~prior to~~ before the performance of the Acceptance Inspection and Test.

(c) The certification must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard, and the Utah Ropeway Operation Safety Rule."

(d) This statement ~~shall~~ must be placed on the top of the drawing packet and signed and sealed by the qualified engineer. Each additional sheet of this drawing packet ~~shall~~ must be sealed by the qualified engineer.

(e) The drawings and specifications ~~shall~~ must include the quality assurance methods used for the evaluation of the re-used components and ~~shall~~ must be submitted for review a minimum of 30 days ~~prior to~~ before installation. Any component on the Utah Passenger Ropeway Safety Committee Lift Data Form must be addressed.

(4) A Certification of Construction for ~~P~~ passenger ~~R~~ ropeways must be submitted by a ~~Q~~ qualified ~~E~~ engineer directly responsible for the construction for the ropeway.

(a) The Certification must be submitted ~~prior to~~ before the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

(5) A Certification of ~~"~~as-built~~"~~ profile for the Passenger Ropeway must be submitted by a Qualified Engineer or Land Surveyor licensed in ~~the State of~~ Utah.

(a) The ~~"~~as-built~~"~~ profile must be submitted ~~prior to~~ before the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the attached ~~"~~as-built~~"~~ profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

R920-50-[8]7. Documents Required for Ropeways.

(1) A Utah Passenger Ropeway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted ~~prior to~~ before the performance of the ~~A~~ acceptance ~~T~~ test.

(2) A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to the Committee for review at least fourteen ~~(14)~~ days before acceptance testing begins. The qualified engineer determines the acceptance test requirements.

(3) The owner or area operator ~~shall~~ must notify the Committee in writing before the acceptance test that the continuous

operation requirements of ANSI B77.1 ~~S~~ section X.1.1.11 or ANSI B77.2 ~~S~~ section 2.1.1.11 have been completed.

(4) A final acceptance test report must be submitted to the Committee ~~prior to~~ before opening the lift to the public. The qualified engineer ~~shall~~ must approve any changes to the acceptance test procedure.

(5) ~~"~~As-built~~"~~ drawings for each passenger ropeway ~~shall~~ must be submitted no later than 60 days after the project is completed and the ~~A~~ acceptance ~~T~~ test is finished. Any variation from the design drawings ~~shall~~ must be noted in the as-built drawings and approved by the Qualified Design Engineer.

(6) The area operator ~~shall~~ must send a "letter of intent" to the Committee at least 45 days ~~prior to~~ before beginning the construction of a new lift. The letter of intent must include the name of the qualified engineer, the design standard, the anticipated dates to begin and complete construction, and the available lift manufacturing data.

R920-50-[9]8. Certificate of Registration.

(1) If the application for Certificate of Registration and supporting documentation attest that the ropeway complies with the Governing Standard and this rule, the Committee, if satisfied with the facts stated in the application, ~~shall~~ will issue a Certificate of Registration to the operator.

(2) Identification number - For each ropeway, upon receipt of the first application for a Certificate of Registration, the Committee ~~shall~~ will assign an identification number to the ropeway, which ~~shall~~ will remain as a permanent identification number for the life of the ropeway. ~~All e~~ Correspondence with the Committee pertaining to a ~~ny~~ ropeway ~~shall~~ must refer to the identification number assigned to that ropeway.

R920-50-[10]9. Revised and Additional Provisions.

The revised and additional provisions of this section shall only apply when referenced in Section R920-50-11 ~~"~~Applicable Provisions~~"~~.

(1) "New installations and relocated installations." ANSI B77.1 Section 1.2.4.3 is modified by the following requirement: New ropeways and relocated ropeways ~~shall~~ must comply with the new or revised requirements of the Governing Standard and with ~~these~~ this rule~~s~~ at the time of the acceptance test.

(2) "Auxiliary power unit." Installations ~~prior to~~ before November 1, 1994 ~~shall~~ must meet the requirements for auxiliary power units, as set forth in ANSI B77.1-1992, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1.

(3) "Electronic speed-regulated drives." Installations ~~prior to~~ before November 1, 1994 ~~shall~~ must meet the requirements for electronic speed-regulated drives as set forth in ANSI B77.1-1992, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2.

(4) "Rope position monitoring." Installations ~~prior to~~ before November 1, 1994 ~~shall~~ must meet the requirements for rope position monitoring, as set forth in ANSI B77.1-1992, 3.1.3.3.2, paragraph 6.

(5) "Friction type brakes." Installations ~~prior to~~ before November 1, 1995 ~~shall~~ must meet the requirements for friction type brakes, as set forth in ANSI B77.1-1992, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5.

(6) "Wire rope inspection." Inspections ~~shall~~ must be performed according to ANSI B77.1 Annex A.4.1 and ANSI B77.2 Annex A.4.1 and ~~shall~~ must be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector ~~shall~~ must certify to the owner

or area operator whether the wire rope in its present condition meets requirements for continued operation.

(7) "Audible warning devices." Requirements for audible warning devices on installations ~~[prior to April 17, 2007]~~.

(a) Installations ~~before April 17, 2007~~ [shall] must meet the requirements for audible warning devices as specified by ANSI B77.1-1999, 2.1.1.12, 3.1.1.12.

(b) Installations ~~[prior to] before April 17, 2007~~, ANSI B77.1-1999 Section 4.1.1.12 is modified by the following requirement: The aerial lift ~~[shall] must~~ incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the aerial lift begins to move. The audible device ~~[shall] must~~ be loud enough to be heard inside and outside ~~[all]~~ terminals and machine rooms above the ambient noise level.

(c) Surface lifts, tows, and conveyors must have audible warning devices meeting the requirements of ANSI B77.1-2017 Section 5.2.9, 6.2.9, or 7.2.9.

(d) Funiculars must have audible warning devices meeting the requirements of ANSI B77.2-2020 Section 2.2.9.

(8) "Conveyor Standards." Requirements for installations ~~[prior to] before May 11, 2018~~.

(a) Loading and unloading area requirements of ANSI B77.1 ~~S[s]ection 7.1.1.9~~ [shall] must also accommodate the use of adaptive devices.

(b) Power units referred to in ANSI B77.1 ~~S[s]ection 7.1.2.1~~ may not have reverse capability.

(c) "Power supply cords" referred to in ANSI B77.1 ~~S[s]ection 7.2.1.5.6~~ [shall] must be protected from snow grooming, skiers, and other equipment and ~~[shall] must~~ be ground fault protected.

(d) For installations ~~[prior to] before May 11, 2018~~ the belt transition entry stop device referred to in ANSI B77.1 ~~S[s]ection 7.2.3.3~~ [shall] must include redundant, or double~~[-(double)]~~ sensors or an equivalent system submitted by a qualified engineer to prevent operation in the faulted condition. Each sensor ~~[shall] must~~ be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device ~~[shall] must~~ be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device ~~[shall] may~~ not be remotely resettable and ~~[shall] must~~ require the operator to reset the device ~~[prior to] before~~ restarting the conveyor.

(9) "Air Space Requirements." ANSI B77.1, ~~S[s]ection 2.1.1.4, 3.1.1.4, 4.1.1.4, 5.1.1.4, and 6.1.1.4~~ and ANSI B77.2 ~~S[s]ection 2.1.1.4~~ [shall] must also include the following: No structure ~~[(temporary or permanent) shall] may~~ be permitted to encroach into the air space of the ropeway. Ropeways and Structures that were both constructed ~~[prior to] before November 1, 2006~~ do not need to comply with this requirement.

(10) "Portable Ropeways." Portable ropeways ~~[shall] will~~ not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

(11) "Tows Requirements."

Handle Tows ~~[shall] must~~ have stop gates above and below the rope.

R920-50-~~[44]~~10. Applicable Provisions.

Installations ~~[shall] must~~ comply with the "Revised and Additional Provisions" of Section R920-50-10 in the categories listed ~~[below] in this section~~, on or before the date specified. These provisions establish the minimum requirement.

(1) The following apply to ~~[all]~~ ropeways:

(a) New installations and relocated installations Subsection R920-50-10(1);

(b) Wire rope inspection Subsection R920-50-10(6); and

(2) The following provisions apply to an Aerial Tramway:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Audible warning devices R920-50-10(7); effective November 1, 2001; and

(e) Air space requirements R920-50-10(9); effective November 1, 2006.

(3) The following provisions apply to a Detachable Grip Aerial Lift:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Rope position monitoring R920-50-10(4); effective November 1, 1994;

(d) Friction type brakes R920-50-10(5); effective November 1, 1995;

(f) Audible warning devices R920-50-10(7); and

(h) Air space requirements R920-50-10(9); effective November 1, 2006.

(4) The following provisions apply to a Fixed Grip Aerial Lift:

(a) Auxiliary Drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(e) Audible warning devices R920-50-10(7); and

(g) Air space requirements R920-50-10(9); effective November 1, 2006.

(5) The following provisions apply to a Surface Lift:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995;~~[-and]~~

(c) Air space requirements R920-50-10(9); effective November 1, 2006~~[-]; and~~

(d) Audible Warning Devices R920-50-10(7)(c); effective November 1, 2022.

(6) The following provisions apply to a Rope Tow:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995;

(c) Air space requirements R920-50-10(9); effective November 1, 2006;

(d) Tow requirements R920-50-10(11);~~[-and]~~

(e) Portable Ropeways R920-50-10(10)~~[-]; and~~

(f) Audible Warning Devices R920-50-10(7)(c); effective November 1, 2022.

(7) The following provisions apply to a ~~[C]~~ conveyor:

(a) Conveyor standards R920-50-10(8);~~[-and]~~

(b) Portable Ropeways R920-50-10(10)~~[-]; and~~

(c) Audible Warning Devices R920-50-10(7)(c); effective November 1, 2022.

(8) The following provisions apply to a Funicular:

(a) Audible Warning Devices R920-50-10(7)(d); effective November 1, 2022.

R920-50-[12]11. Exceptions to Standards.

(1) In the event that the ropeway does not conform with the [g]Governing [s]Standards and the Ropeway Operation Safety Rule, the Committee may issue a [e]Certificate of [f]Registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted.

(a) Annual Exception - This type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the Committee that a change is necessary.

(b) Limited Exception - This type of exception is granted only for a fixed time period to be determined by the Committee.

(2) The nature of the exception [shall]must be stated in the Request for Exception from Standards.

(3) The Committee shall, as expeditiously as possible, and within thirty [(30)]days of receipt of a Request for Exception from Standards, notify the operator in writing of its action on the Request.

(4) The Request for Exception from Standards [shall]must include the following information:

(a) Reasons for requesting an exception;

(b) Identification of the way the ropeway does not conform to the [g]Governing [s]Standards or this rule; and

(c) Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance.

(5) Except as required in Subsection R920-50-12(7), the Committee [shall]will issue a Certification of Registration with an exception if the operator satisfies the requirements stated in Subsection R920-50-12(4) and supplies the following for new or existing ropeways:

(a) New Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in the Governing Standard and this rule.

(ii) Any known items that require a Request for Exception from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

(b) Existing Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that it[']s devices or methods provide features that are comparable in performance and safety to the requirements of the Governing Standard and this rule.

(ii) A statement by the operator certifying that the ropeway feature for which the exception is requested has been operated safely and without any passenger ropeway incident, as defined in Subsection R920-50-3[(23)](24) item (a) or (g), for at least 2 years prior to the date of the Request for Exception from Standards.

(6) In exceptional circumstances, the Committee may issue a [e]Certificate of [f]Registration with an exception even if the operator does not satisfy the requirements defined in the Governing Standard or this rule if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety.

(7) Where doubt exists as to the safety of a ropeway, the Committee may require an inspection to ascertain that the ropeway is

so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those of the [g]Governing [s]Standards and this rule.

(8) The issuance of a [e]Certificate of [f]Registration with an annual exception [shall]will not bind the Committee to issue such a certificate for the ropeway involved in subsequent years, nor to issue such a certificate for another ropeway of same or similar design.

R920-50-[13]12. Operation of Ropeways.

(1) Each[Every] passenger ropeway incident [shall]must be reported to the Committee regardless of the time of year in which it occurs and regardless of whether the ropeway was open to the public at the time of the incident. The operator [shall]must meet the requirements stated in Section R920-50-14.

(2) [When]If a ropeway is modified the ropeway operator [shall]must notify the Committee, or its appointed representative. The operator [shall]must meet the requirements stated in Section R920-50-15.

R920-50-[14]13. Incidents.

(1) Reporting of Incidents.

(a) A[Every] passenger ropeway incident, as defined in Subsection R920-50-[3(23)]2(24) [shall]must be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four [(24)]hours after the time of the incident. A written report [shall]must be delivered to the Committee within five [(5)]days of the incident.

(b) The reports required by this section are to be maintained for administrative enforcement, licensing, and certification purposes only. [The reports are "protected" records under the Government Records Management Act, Section 63G-2-305 and are also governed by Section 63G-2-207.]

(2) Suspension of Operations. When a passenger ropeway incident, as defined in Subsection R920-50-[3(23)]2(24) (a) or (g), occurs, the owner or area operator of the ropeway [shall]must suspend operation of the ropeway and [shall]notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, [shall]must perform a joint incident inspection of the ropeway. The inspection [shall]must precede any authorization to resume public operation of the passenger ropeway.

R920-50-[15]14. Modification of a Ropeway.

(1) The Committee, or its appointed representative [shall]will determine the certifications that will be required.

(2) Depending on the nature and extent of the modification the Committee, or its appointed representative may require an Acceptance Inspection and Test.

(3) The following certifications may be required: design; construction, and [As-Built]an as-built profile.

(4) The certifications must be submitted by a qualified engineer and attached to the cover of the modification documents. The modification documents [shall]must include the drawings, descriptions, or specifications pertaining to the affected systems and their connections with existing systems.

(5) A revised lift data form [shall]must be submitted.

(6) The ropeway [shall]must not resume operating until authorized by the Committee, or its appointed representative.

R920-50-[16]15. Inspections and Testing.

(1) Inspections [shall]must verify that the intent of the design and operational requirements imposed by the Governing

Standard and this rule are met. The Committee may order other inspections ~~in accordance with~~ under Section 72-11-211. Ropeway inspectors may inspect spot check a ropeway[s] at any time during the operation of the ropeway[~~(spot check)~~]. Each ~~All~~ report[s], log[s], ~~etc.~~ or other document related to a ropeway must ~~shall~~ be made available to them upon request.

(2) Acceptance Inspection and Test.

(a) The Committee, or its appointed representative, will schedule ~~a~~ Acceptance ~~i~~ Inspection and ~~i~~ Test as the procedures are received.

(3) Annual General Inspection.

~~All~~ existing ropeway ~~shall~~ must have an annual general inspection.

(a) A ~~R~~ Ropeway ~~i~~ Inspector ~~shall~~ must make the inspection.

(b) The inspection ~~shall~~ must occur ~~prior to~~ before the approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance ~~shall~~ must be filed with the owner.

(d) The report ~~shall~~ must include the name and address of the inspector and the date of the inspection.

(e) The area operator ~~shall~~ must notify the Committee[~~7~~] or its appointed representative of the annual general inspection. The area operator should give a ~~7~~ seven-day notice of the inspection.

(f) The owner ~~shall~~ must correct ~~all~~ deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(4) Incident Inspection.

Incident inspections ~~shall~~ must occur as required in Section R920-50-14.

(5) Operational Inspection.

An operational inspection may be made periodically during each season of use.

(a) A ropeway inspector ~~shall~~ must make the inspection.

(b) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance ~~shall~~ must be filed with the owner.

(c) The report ~~shall~~ must include the name and address of the inspector and the date of the inspection.

(d) The owner ~~shall~~ must correct ~~all~~ deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(6) Pre-operational Inspection.

A pre-operational inspection is required for new and modified lifts.

(a) A ropeway inspector ~~shall~~ must make the inspection.

(b) The inspection ~~shall~~ must occur ~~prior to~~ before approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance ~~shall~~ must be filed with the owner.

(d) The report ~~shall~~ must include the name and address of the inspector and the date of the inspection.

(e) If the pre-operational inspection does not take place at time of the acceptance inspection and testing, the area operator ~~shall~~ must notify the Committee, or its appointed representative, of the deficient inspection. The area operator should give a ~~7~~ seven-day notice of the inspection.

(f) The owner ~~shall~~ must correct ~~all~~ deficiencies and noncompliance items listed in the Ropeway Inspector's report.

R920-50-~~147~~16. Ropeway Inspector and Qualified Engineer.

(1) General.

(a) Any person performing inspection services must be a ~~[a]~~ ropeway inspector~~[a]~~ as required by this rule, and any person performing design services must be a ~~[a]~~ qualified engineer~~[a]~~, as required by this rule.

(b) The Committee ~~shall~~ must maintain up-to-date lists of qualified engineers and ropeway inspectors,~~[which]~~ These lists ~~shall~~ must be open to inspection by the public.

(c) Any person desiring to be approved by the Committee as a ropeway inspector or qualified engineer ~~shall~~ must submit a written request to the Committee enumerating ~~his or her~~ the person's professional experience and attesting ~~as far as possible~~ to meeting the requirements stated in Subsection R920-50-17(2).

(2) Requirements.

(a) ~~An~~ ~~A~~ applicant ~~shall~~ must satisfy the Committee that by the applicant's ~~his or her~~ education, training, and experience gained by participation in ropeway inspections or designs as a principal or an assistant to a recognized ropeway inspector or ropeway designer, ~~he or she~~ the applicant is qualified to be, respectively, an approved inspector or designer or both.

(b) ~~An~~ ~~A~~ applicant ~~shall~~ must satisfy the Committee that ~~he~~ the applicant has a working familiarity and understanding of drawings and design data ~~such~~ as are furnished to design, construct, test, and inspect passenger ropeways, and that ~~he or she~~ the applicant has an understanding and working knowledge of the ~~g~~ Governing ~~s~~ Standard and this rule.

(c) The Committee may approve qualifications based on experience gained by an applicant through work under the direct supervision of a qualified ropeway inspector or qualified ropeway designer.

(d) The Committee may approve employees of the state or individuals retained by the state as qualified ropeway inspectors. ~~Such~~ State employed engineers or retained engineers may be given certain assignments where time is of the essence, or a private engineer is not available or willing to undertake the inspection or investigation. It ~~shall~~ will be the policy of the Committee to use the services and talents of qualified private engineers wherever possible.

(3) Revocation or suspension of approval as ropeway inspector or qualified engineer.

The ~~e~~ Committee may revoke or suspend the approval of any qualified engineer or ropeway inspector who is found by the ~~e~~ Committee to have:

(a) practiced any fraud, misrepresentation, or deceit in applying for approval;

(b) caused damage to another by gross negligence in the practice of passenger ropeway designing, construction, or inspection; or

(c) been engaged in acts of unlawful or unprofessional conduct.

R920-50-~~148~~17. Violations.

The Committee may address violations of this rule pursuant to ~~Utah Code~~ Sections 72-11-212 and 72-11-213.

R920-50-~~149~~18. Administrative Procedures.

Appeals from orders issued ~~pursuant to~~ under ~~any provision of~~ this rule ~~shall~~ will be governed by Rule R907-1.

KEY: transportation safety, tramways, ropeways, tramway permits
Date of Last Change: ~~2022~~^{February 7, 2019}
Notice of Continuation: June 22, 2022
Authorizing, and Implemented or Interpreted Law: 72-11-201 through 72-11-216

NOTICE OF PROPOSED RULE**TYPE OF RULE:** Amendment

Rule or Section Number:	R926-16	Filing ID: 54808
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Agency Information

1. Department:	Transportation	
Agency:	Program Development	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R926-16. Unsolicited Proposals for Transportation Infrastructure Public-Private Partnerships
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The updates and revisions are being made to the current rule to align it with the Department of Transportation's (Department) updated processes.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Since the Department promulgated this rule, it received two unsolicited proposals. With these changes, the Department is implementing lessons learned based upon those two experiences. In some parts, this rule was too detailed, and in other areas, this rule was not sufficiently precise and unclear. As a result, this proposed amendment makes several substantive changes and many grammatical changes for consistency. Changes include clarifying the timelines for reviewing proposals, clarifying the fee structure, and revising the Stage One Screening review criteria to be more consistent with the industry. Language is also incorporated based upon concurrent changes the Transportation Commission makes to Rule R940-5, Approval of Highway Facilities on Sovereign Lands. Those changes will eliminate conflicts between these two rules.

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

The Department does not anticipate this proposed rule change will impact the state's budget because it changes an existing rule to make it more concise, practical, and straightforward for the Department to enforce.

B) Local governments:

The Department does not anticipate this proposed rule change will impact local governments because it changes an existing rule to make it more concise, practical, and straightforward for the Department to enforce, and this rule does not apply to local governments.

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

These proposed changes will not impact the budgets of small businesses. The fee component of this rule will not increase or decrease due to these proposed changes.

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

These proposed changes will not impact the budgets of non-small businesses. The fee component of this rule will not increase or decrease due to these proposed changes.

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

These proposed changes will not impact the budgets of persons other than small businesses, non-small businesses, state, or local government entities. The fee component of this rule will not increase or decrease due to these proposed changes.

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

Compliance costs for affected persons will not change because of these proposed rule changes. The fee component of this rule will not increase or decrease due to these proposed changes.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Bracerias, PE, has reviewed and approved this fiscal analysis.

Citation Information

6. 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 72-1-201(1)(h)	Section 63G-6a-712.	
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Public Notice Information

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

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:	10/10/2022
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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.

Agency Authorization Information

Agency head or designee and title:	Carlos M. Bracerias, PE, Executive Director	Date:	08/12/222
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R926. Transportation, Program Development.

R926-16. Unsolicited Proposals for Transportation Infrastructure Public-Private Partnerships.

R926-16-1. Purpose and Authority.

(1) Purpose. This rule provides a procedure for submitting, screening, evaluating, and implementing an unsolicited proposal[s] to form Transportation Infrastructure [public]Public-private [p]Partnerships (TIPPPs); soliciting a proposal[s] to compete with an unsolicited proposal based on concepts within the unsolicited proposal; and excluding an unsolicited proposal[s] covered specifically by other rules or that are the responsibility of another state [entities]entity.

(2) Authority. [The provisions of this rule are]This rule is authorized by [Utah Code Sections]Subsection 72-1-201(1)(h) and Section 63G-6a-712.

R926-16-2. Definitions.

Except as otherwise stated in this rule, terms used in this rule are as defined in [the applicable Statutes]Sections 72-1-102 and 63G-6a-712. The following additional terms are defined for this rule:

(1) "Contractor" means a Proposer who is awarded a contract with the Department.

(2) "Days" means calendar days.

[(2)](3) The "Department" means the Department of Transportation.

[(3)](4) "Proposer" means [private entities]a person that [submit letters]submits a letter of interest, qualifications, or a proposal[s] under a solicitation for the purposes of entering into a [public]Public-private partnership agreement with the Department, and may include a person[or persons], a firm[s], a partnership[s or], a company[ies], a public corporation, quasi-public corporation, or any legal combination or consortium thereof.

[(4)](5) "Submitter" means a [private entity]person that submits an unsolicited proposal that complies with the requirements of [Utah Code]Section 63G-6a-712.

~~[(5)](6)~~ "Transportation Infrastructure" means any infrastructure element that is associated with the state transportation system and is the responsibility of the Department.

(7) "Public-private partnership" means, in addition to the definition of a PPP included in Subsection 63G-6a-103(66), a PPP involving UDOT as a government service or private business venture, funded and operated through a partnership including government and one or more Contractor. A PPP involving UDOT requires a contract between it and a Contractor, in which the Contractor provides a public service or product and assumes a substantial financial, technical, and operational risk in a project.

R926-16-3. Unsolicited Proposal Requirements.

(1) The Department is not required to accept, review, or evaluate an unsolicited proposal.

(2) If the unsolicited proposal is related to construction of a highway facility over sovereign lakebed lands, it will be subject to the requirements outlined in Section 72-6-303 and administrative Rule R940-5 Approval of Highway Facilities on Sovereign Lands.

~~[(2)](3)~~ Should the Department accept delivery of an unsolicited proposal it will provide an acknowledgement of receipt to the ~~[submitter]~~ Submitter, but is not obligated ~~[has no obligation]~~ to consider, evaluate, or advance an unsolicited proposal.

~~[(3)](4)~~ The Department is not required to accept, review, or evaluate an unsolicited proposal that directly competes with or substantially impacts an ongoing project such as an active environmental study or active construction project.

(5) The Department is not required to accept, review, or evaluate an unsolicited proposal that appears to circumvent existing Department processes used to prioritize projects.

(6) ~~[Unsolicited Proposals for]~~ TIPPPs must ~~[be]~~ submit~~ted~~ Unsolicited Proposals to the Department using the system the Department has established to accept solicited proposals. An unsolicited proposal submittal must, at a minimum, include:

(a) a statement establishing the period during which the unsolicited proposal will remain valid, which may be not less than 12 months following initial delivery. A renewal statement may be required as determined solely by the Department;

(b) information required for unsolicited proposals set forth in ~~[Utah Code]~~ Section 63G-6a-712;

(c) a map indicating the location of the proposed facility, when applicable;

(d) a description of the organizations representing the ~~[submitter]~~ Submitter and the organizations who would develop, finance, construct, operate and maintain the facility;

(e) a description of the ~~[submitter's]~~ Submitter's plan ~~to~~~~[for]~~ develop~~[ing]~~, finance~~[ing]~~, construct~~[ing]~~, operate~~[ing]~~, maintain~~[ing]~~, or any combination of these elements, including identifying~~[ation of]~~ any revenue needed to support the project and proposed debt or equity investment proposed by the ~~[submitter]~~ Submitter;

(f) a description of how the unsolicited proposal is consistent with the goals of the Department and addresses a demonstrated need for the ~~[S]~~state;

(g) an estimate of the amount of funding, if any, ~~[to be provided by]~~ the State must invest;

(h) a list of the major permits and approvals required by state and local governments, ~~[-state]~~, and federal agencies to develop or operate a project or facility resulting from an unsolicited proposal along with a projected schedule for obtaining the permits and approvals;

(i) a statement acknowledging that the Department has no obligation to advance or compensate a ~~[submitter]~~ Submitter for any environmental studies needed, including ~~[but not limited to]~~ the National Environmental Policy Act (NEPA), and other work associated with an unsolicited proposal;

(j) a description of the types of public utility facility~~ies~~, if any, that may be impacted by a project originating from the unsolicited proposal and a statement of the plans to accommodate the impact;

(k) identification of any elements of an unsolicited proposal or associated documentation that the Submitter ~~[are being claimed as]~~ claims as trade secrets or confidential information that meet the requirements of ~~[Utah Code]~~ Subsection 63G-2-309(1)(a)(i), together with justification of the same and a properly completed Claim of Business Confidentiality as described by Section 63G-2-309; and

(l) any additional information the Department determines is necessary to evaluate an unsolicited proposal. The Department will ~~will be notified by the Department~~ notify the ~~[submitter]~~ Submitter [of any such additional information needed].

R926-16-4. Unsolicited Proposal Initial Threshold Review, Stage One -- Screening, and Stage Two -- Detailed Evaluation.

(1) Evaluation. The Department may appoint an individual or an evaluation committee, as it deems appropriate and after any required fee is paid, to conduct reviews of unsolicited proposals to determine whether to request competing proposals and qualifications, request additional information to facilitate further evaluation, or reject the unsolicited proposal.

(2)(a) Review Procedure. The review procedure for unsolicited proposals includes the initial threshold review followed by two additional stages of evaluation, Stage One -- Screening, and Stage Two -- Detailed Evaluation.

(b) The Department will make the decision to review or reject an unsolicited proposal and decisions regarding proceeding through the review procedure unilaterally, however, the Department will consult with the ~~[submitter]~~ Submitter ~~[prior to]~~ before deciding to reject a proposal or move to the next stage in the review procedure.

(c) The Department will ~~[decide to]~~ reject a proposal or continue to the next stage in the review procedure within a reasonable time, but not more than ~~[-60 days after the date the proposal is received or the day an evaluation stage begins-]~~;

(i) 60 days after the date the initial unsolicited proposal is received;

(ii) 60 days after the date of notification to the Submitter of the Department's intent to advance to Stage One -- Screening; or

(iii) 90 days after the date an unsolicited proposal is received for Stage Two -- Detailed Review in response to the Department's instructions.

(d) The Department and the ~~[submitter]~~ Submitter may agree to extend a review period beyond ~~[60]~~ the defined days after a consultation. Review periods may be temporarily suspended to allow the Department to request clarifications from a Submitter and for the Submitter to respond to such a request.

(e) The Department and the ~~[submitter]~~ Submitter must cooperate and proceed through the review procedure as expeditiously as practicable.

(3) Initial Threshold Review. The initial threshold review will consider whether the unsolicited proposal meets the minimum statutory and regulatory requirements, includes the required minimum content, and satisfies the definition of an unsolicited proposal. If the Department determines it will consider the

unsolicited proposal further following the initial threshold review, the further review will be conducted in two stages, Stage One -- Screening, and Stage Two -- Detailed Evaluation.

(4) Stage One -- Screening. The Stage One -- Screening will be a summary review to determine whether the unsolicited proposal merits proceeding to Stage Two -- Detailed Evaluation.

(a) The Stage One -- Screening ~~[shall determine if]~~ may consider whether the unsolicited proposal sufficiently addresses the following criteria:

(i) the proposal offers direct or anticipated benefits to the [S]state;

(ii) is consistent with the Department's objectives and goals;

(iii) satisfies a need for the [S]state that can be reasonably accommodated in annual long-term capital and operating budgets without displacing other planned expenditures, and without placing other committed projects at risk;

(iv) ~~[is not substantially duplicative of other projects that have been fully funded by the State, the Department, or any other public entity as of the date of the unsolicited proposal;~~

~~(v) would materially advance or accelerate the implementation of projects identified on the Statewide Transportation Improvement Program, Statewide Long Range Transportation Plan or other strategic plan maintained by the Department;~~

~~(vi) is a project that advances the goals or objectives of a project identified in the Statewide Long Range Transportation Plan;~~

~~(vii) offers goods or services that the Department may not have intended to procure or provide through the normal contract process;~~

~~(viii) is within the Department's jurisdiction and authority;~~ ~~and]~~

~~(ix)]~~ (v) effectively leverages private sector innovation or expertise;

(vi) allows for the strategic transfer of project risk;

(vii) provides a cost savings to the Department or provides an opportunity to raise capital or provides revenue generation or revenue sharing with the Department; and

(viii) has other benefits specific to the unsolicited proposal.

(b) The Department may reject proposals that do not ~~[meet]~~ sufficiently address the Stage One -- Screening criteria or generally fail to meet the minimum requirements established under statute and this rule or that the Department otherwise determines do not merit further review.

(c) The Department will complete the Stage One -- Screening and notify the ~~[submitter]~~ Submitter of its conclusions as follows:

(i) the unsolicited proposal fails to meet Stage One screening requirements, and in the sole discretion of the Department, it cannot be revised so that compliance is possible, or

(ii) further information is needed before the Department can determine whether to proceed with Stage Two -- Detailed Evaluation, or

(iii) the unsolicited proposal will be subject to Stage Two -- Detailed Evaluation, subject to the satisfactory receipt by the Department of additional information and receipt of the ~~[evaluation]~~ fee described in Section R926-16-7.

(5) Stage Two -- Detailed Evaluation. The purpose of the Stage Two -- Detailed Evaluation of the unsolicited proposal is to allow the Department to determine whether to issue a request for competing proposals and qualifications related to the unsolicited proposal.

(a) The Department will begin the Stage Two -- Detailed Evaluation upon the later of (i) the date of the receipt of any additional detailed information requested to supplement the unsolicited proposal, or (ii) the date of receipt of the ~~[evaluation]~~ fee described in Section R926-16-7.

(b) Where an unsolicited proposal is selected to proceed to Stage Two -- Detailed Evaluation, the Department may request from the ~~[submitter]~~ Submitter more detailed information regarding the unsolicited proposal. Additional detailed information requested for the unsolicited proposal may include:

(i) the types of support required from the [S]state including facilities, equipment, property and personnel;

(ii) a sufficiently detailed description of the scope of work and commercial terms the ~~[submitter]~~ Submitter anticipates in the ~~[public]~~ Public-private partnership to allow the Department to assess the value provided;

(iii) a cash flow ~~[cashflow]~~ analysis showing capital, maintenance and operating costs and revenues;

(iv) conceptual finance plan; and

(v) the availability of payment or form of a TIPPP (e.g., availability payment) and a schedule for implementation showing the dates for property or services to be provided by the [S]state.

(c) The ~~[submitter]~~ Submitter must provide information to assist the Department to incorporate any concepts the ~~[submitter]~~ Submitter considers to be proprietary, confidential, or trade secret within the solicited procurement in a manner that will be acceptable to the ~~[submitter]~~ Submitter.

(d) The Stage Two -- Detailed Evaluation will consider the overall costs for delivery of the project over the term of the proposed agreement described in the unsolicited proposal and the proposed approach~~ed~~ to financing and funding the project described in the unsolicited proposal, including potential revenue streams. Additionally, the Stage Two -- Detailed Evaluation will consider the potential risks and reasonableness of assumptions associated with implementing the proposal and modifications to project scope, risk allocation, and commercial terms that would need to be incorporated within a solicited proposal.

(e) The Department will complete the Stage Two -- Detailed Evaluation, make its decision, and notify the ~~[submitter]~~ Submitter as follows:

(i) the unsolicited proposal, ~~[c]or certain concepts included therein~~ [i]s suitable to form the basis of a competitive solicitation. The Department intends to provide the ~~[submitter]~~ Submitter with the opportunity to discuss a potential solicitation. Subject to a satisfactory conclusion of this discussion, the ~~[submitter]~~ Submitter will be waived from certain fees and requirements with respect to its response to a forthcoming competitive solicitation; or

(ii) the unsolicited proposal is not suitable to form the basis of a competitive solicitation. The Department does not intend to issue a competitive solicitation at this time. The ~~[submitter]~~ Submitter will not be excluded from participating in any future solicitation, and the Department will not waive any fees or requirements in response to a future solicitation.

(6) The Department may, in its sole discretion, adopt or reject concepts contained within an unsolicited proposal.

(7) The Department may, in its sole discretion, make significant modifications to the concepts in an original or updated unsolicited proposal.

(8) The Department will notify the ~~[submitter]~~ Submitter of the original or updated unsolicited proposal of the concepts it intends to adopt within a solicitation and will provide the ~~[submitter]~~ Submitter with a reasonable opportunity to object to the

way such concepts are incorporated and to suggest modifications to avoid disclosure of content that the ~~[submitter]~~ Submitter considers proprietary, confidential, or trade secret.

R926-16-5. Solicitation of Competing Proposals.

(1) The Department may, at any time, rather than rejecting the unsolicited proposal and terminating the process, elect to issue a request for competing proposals based on the unsolicited proposal, including modifications made consistent with ~~[subsection]~~ Section R926-16-4. If the Department issues a request for competing proposals, the ~~[submitter]~~ Submitter will be offered the opportunity to participate in the competition provided the ~~[submitter]~~ Submitter agrees in writing to continue participating throughout the entirety of the competition process. The process for soliciting competing proposals and qualifications must meet ~~[all]~~ the requirements of applicable Utah law ~~[including Utah Code Section 63G-6a-1402 and Sections 63G-6a-701-712]~~.

(2) If the Department elects to move forward and issue a request for competing proposals, the Department will provide public notice of the proposed project according to ~~[subsection]~~ Section R926-16-6.

R926-16-6. Public Notice.

(1) Public notice regarding solicitations originating from Section R926-16-5 must be posted on the Department's website and must also be published ~~[in accordance with]~~ following the requirements of ~~[Utah Code]~~ Section 63G-6a-112.

(2) Notice of a solicitation will indicate where, when, and how to obtain the solicitation documents~~[,]~~ when responses are due and will generally describe the project scope or service desired and may contain other information such as the desired schedule or financial model.

(3) Where the executive director or a deputy director determines appropriate, the Department may require payment of a fee or a deposit for the supplying of the solicitation package.

(4) A copy of the solicitation documents will be made available for public inspection at the Department's primary offices in the Calvin Rampton Building.

R926-16-7. Fees Related to Unsolicited Proposals.

(1) As authorized by Subsection 63G-6a-712(5), the Department will assess fees to cover the actual costs of processing, considering, and evaluating unsolicited proposals as follows:

(a) ~~a~~ a ~~[screening]~~ fee for every unsolicited proposal the Department receives to perform the ~~[that passes the]~~ initial threshold review to determine if it may ~~[and]~~ enter[s] the Stage One -- Screening process, and to perform the Stage One -- Screening process.

(b) ~~[an evaluation]~~ a fee for every unsolicited proposal that is subject to the Stage Two -- Detailed Evaluation.

(2)(a) The unsolicited proposal must be accompanied by a check~~[for the screening fee]~~, which must be a cashier's, certified, or official check drawn by a federally insured financial institution in the amount of \$20,000~~[for the screening fee associated with the Stage One -- Screening]~~. This ~~[check]~~ fee will be ~~[returned]~~ refunded to the ~~[submitter]~~ Submitter if the unsolicited proposal does not pass the initial threshold review~~[and will be drawn upon no earlier than 30 days after the Department responds to the submitter that it intends to proceed with the Stage One -- Screening]~~.

(b) The Department will assess an ~~[evaluation]~~ additional fee for every unsolicited proposal that is subject to the Stage Two -- Detailed Evaluation. ~~[Evaluation fees]~~ Fees must be paid by a

cashier's, certified, or official check drawn by a federally insured financial institution in an initial amount of \$20,000 plus .01% of the total estimated cost of design and construction of the project.

(c) The Department will provide the ~~[submitter]~~ Submitter with periodic updates of expenses and will request additional funds to cover the actual costs of processing, considering, and evaluating the unsolicited proposal if additional funds are needed.

(d) ~~[The submitter]~~ Unused funds from the fee for Stage One -- Screening may be carried over and used for Stage Two -- Detailed Review if the Submitter advances to Stage Two -- Detailed Review. The fee associated with Stage Two -- Detailed Review will be reduced by any amount carried over from Stage One -- Screening. Any unused funds at the conclusion of Stage Two -- Detailed Review will be refunded to the Submitter.

(e) The Submitter may elect to discontinue its pursuit of the unsolicited proposal at any time and avoid paying the additional funds. No refund will be issued for expenses already incurred.

(3) The executive director or a deputy director may waive or modify the fee structure for an unsolicited proposal, in whole or in part, if ~~[he or she]~~ the executive director or a deputy director determines ~~[that]~~ the Department's costs have been substantially covered by a portion of the fee or if it is otherwise determined a waiver or modification is reasonable and in the best interests of the ~~[S]~~ state.

(4) When the Department solicits competing proposals, the Department may require each ~~[proposer]~~ Proposer that submits a competing proposal to submit a fee with the competing proposal. The amount of the fee will be identified in the solicitation documents and will not exceed the amount of the ~~[evaluation fee]~~ fees for the original unsolicited proposal stated in Subsection R926-16-7(2).

(5) The ~~[submitter]~~ Submitter that submitted the original unsolicited proposal triggering the solicitation will be exempt from this fee provided that, in the sole discretion of the Department, the requirements of the solicitation are sufficiently similar to the content of the original unsolicited proposal.

R926-16-8. Predevelopment Agreements.

(1) An unsolicited proposal may be used to establish a predevelopment agreement that may become a TIPPP. The first phase of a predevelopment agreement will result in a determination of feasibility and ultimately result in a project development plan and financing plan.

(2) An unsolicited proposal for the first phase of a predevelopment agreement shall include applicable elements from Section R926-16-3 and ~~[all of]~~ the following:

(a) overall approach to the predevelopment agreement process and a demonstration of how the project can be effectively and efficiently developed, financed and completed;

(b) proposed initial scope of work to advance and define a feasible project that can be ultimately scoped, priced and financing secured;

(c) relative responsibilities between the Department and the Proposer during the predevelopment agreement phase;

(d) the payment structure, terms and conditions under which the Proposer will be compensated for undertaking the predevelopment agreement scope of work; and

(e) schedule and milestones applicable to the predevelopment agreement scope activities.

(3) The subsequent phase or phases may be for ~~any~~ all or a portion of the remaining services necessary to deliver the proposed project and may include, design services, construction services, operation or maintenance services, traffic, ridership and revenue

estimates, financing and toll or user fee collection services, or any other requirement the Department deems necessary. Each subsequent phase will commence after the preceding phase has been completed.

(4) Award of the first phase will be based on the Department's competitive solicitation in accordance with Section R926-16-5, subject to Section R926-16-7.

(5) The entity awarded the first phase may have the first opportunity to submit a proposal for the subsequent phase or phases, as set forth in the predevelopment agreement. The entity awarded the first phase must provide ~~[all]~~any supporting documentation used to determine the scope, schedule, and cost in its proposal for each subsequent phase to the Department for review, along with any other information and requirements set forth in the predevelopment agreement.

(6) The Department may accept or reject the proposal. If the Department rejects the proposal, the Department may provide a counteroffer ~~[and]~~or negotiate with the entity awarded the first or prior phase, or in lieu of providing a counteroffer or if the negotiations are unsuccessful, choose to solicit competitive proposals for the subsequent phase or phases.

R926-16-9. Rights Related to Proposals; Release of Rights and Indemnification.

(1) A ~~[submitter]~~Submitter of an unsolicited proposal will not obtain any claim or have any right or expectation to use any route, corridor, rights of way, public property, or public facility by virtue of having submitted a proposal that proposes to use such route, corridor, rights of way, public property or public facility or otherwise, involves or affects such. By submitting an unsolicited proposal, a ~~[submitter]~~Submitter thereby waives and relinquishes any claim, right, or expectation to occupy, use, profit from, or otherwise exercise any prerogative with respect to any route, corridor, rights of way, public property or public facility identified in the proposal as being necessary for or part of the proposed project.

(2) By submitting such a proposal, a ~~[submitter]~~Submitter thereby waives and relinquishes any right, claim, copyright, proprietary interest or other right in any proposed location, site, route, corridor, rights of way, alignment, or transportation mode or configuration identified in the proposal as being involved in or related to the proposed project, and ~~[submitter]~~Submitter must include in the proposal an indemnity that holds the state harmless against any such claim made by any entity that is a member of the ~~[proposer's]~~Submitter's proposal team, including their agents, employees, and assigns.

(3) The waiver and release of rights in this section do not apply to a ~~[submitter's]~~Submitter's rights in any documents, designs and other information and records that are otherwise classified as protected records under ~~[Utah Code]~~Sections 63G-2-305 ~~[or]~~and 63G-2-309.

R926-16-10. ~~[Participation of]~~Negotiating with Public Entities.

~~[In order to ensure that the procurement process for TIPPPs originating from an unsolicited proposal remains fair and competitive, public entities will not be permitted to submit proposals or to participate as a member of proposer teams with respect to solicitations issued by the Department under this rule R926-16. Furthermore, so long as an active solicitation is outstanding for a transportation infrastructure public]~~So long as an active solicitation for a Transportation Infrastructure Public-private partnership agreement is pending, the Department will not separately negotiate with a public entity for the project that is the subject of that solicitation.

KEY: transportation, highways, public-private partnerships, unsolicited proposals, sovereign lands, lakebed
Date of Last Change: 2022~~[May 8, 2019]~~
Authorizing, and Implemented or Interpreted Law: 72-1-201; 63G-6a-712

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R990-300	Filing ID: 54811
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Agency Information

1. Department:	Workforce Services	
Agency:	Housing and Community Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact persons:		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

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

General Information

2. Rule or section catchline:

R990-300. Evaluation Process for Plan for Moderate Income Housing Reports

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

The passage of H.B. 462, Utah Housing Affordability Amendments, during the 2022 General Session modified the requirements for political subdivisions' annual moderate income housing report to the Housing and Community Development Division (Division) within the Department of Workforce Services (Department) and required to Department to make rules describing the review process for the reports.

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 change describes the revised rule process for moderate income housing reports and makes other changes in conformance with the modifications to the reports found in H.B. 462 (2022).

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

The rule change is not expected to have any fiscal impact on state government revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 462 (2022).

B) Local governments:

The rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 462 (2022).

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

The rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 462 (2022).

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

The rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 462 (2022).

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

The rule change is not expected to have any fiscal impact on other persons revenues or expenditures because any fiscal impact would have been addressed in the fiscal note of H.B. 462 (2022).

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 requires no action or compliance by any persons beyond that required in H.B. 462 (2022).

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

After conducting a thorough analysis, it was determined that this new rule will not result in a fiscal impact beyond what was addressed in the fiscal note of H.B. 462 (2022). The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this regulatory impact analysis.

Citation Information**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 35A-8-803	Section 10-9a-408	Section 17-27a-408
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Public Notice Information**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	10/03/2022
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9. This rule change MAY become effective on:	10/10/2022
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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.

Agency Authorization Information

Agency head or designee and title:	Casey Cameron, Executive Director	Date:	08/11/2022
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R990. Workforce Services, Housing and Community Development.

R990-300. ~~[Evaluation]~~Review Process for Plan for Moderate Income Housing Reports.

R990-300-1. Authority.

This rule is authorized under Subsection 35A-8-803(3), which directs the Utah Department of Workforce Services, Housing and Community Development Division (HCDD) to make rules describing the ~~[evaluation]~~review process for moderate income housing reports.

R990-300-2. Purpose.

(1) Pursuant to Subsection 35A-8-803(1), HCDD will:

(a) advise political subdivisions of serious housing problems existing within their jurisdiction that require concerted public action for solution;

(b) assist political subdivisions in defining housing objectives and preparing for adoption of a five-year action plan designed to accomplish housing objectives within their jurisdiction;

(c) ~~[and,]~~for entities required to submit an annual moderate income housing report to the Department as described in Sections 10-9a-408 and 17-27a-408[+];

(i) assist in the creation of the reports; and

(ii) ~~[evaluate]~~review the reports for compliance with~~[the purposes of]~~ Sections ~~[72-2-124(5) and (6)]~~10-9a-408 and 17-27a-408[+];

(d) establish and maintain a database of moderate income housing units located within the state; and

(e) on or before December 2, 2022, develop and submit to the Commission on Housing Affordability a methodology for determining whether a municipality or county is taking sufficient measures to protect and promote moderate income housing in accordance with Sections 10-9a-403 and 17-27a-403.

R990-300-3. Definitions.

Terms used in ~~[these rules]~~this rule are defined in Sections 10-9a-103, 10-9a-408, ~~[and]~~17-27a-103, and 17-27a-408. In addition:

(1) "Annual moderate income housing report~~[ing form]~~" means a report, in a form approved by the Department, for annually reporting progress of the moderate~~[-]~~income housing element of the general plan.

(2) "Plan for moderate income housing" means a written document adopted by an entity's legislative body that includes:

(a) an estimate of the existing supply of moderate~~[-]~~income housing located within the entity's jurisdiction;

(b) an estimate of the need for moderate income housing in the entity's jurisdiction for the next five years;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the entity's program to encourage an adequate supply of moderate income housing.

R990-300-4. Entities Required to Report.

Entities required to submit an annual moderate income housing report are described in Sections 10-9a-408[+] and 17-27a-408[+].

R990-300-5. ~~[Evaluation]~~Review Process for Plan for Moderate Income Housing.

~~[— (1) On or before December 1, 2019, an entity identified in Section 10-9a-401(3)(b) or Section 17-27a-401(3)(b) shall amend the general plan to comply with the respective Section and submit the plan for moderate income housing to HCDD as provided in Sections 10-9a-408 and 17-27a-408. A plan submitted to HCDD will be reviewed to ensure the following are included in the plan:~~

~~— (a) Updated 5-year estimates of moderate income housing needs.~~

~~— (b) The moderate income housing element and its implementation, based on three strategic affordable housing development policies that address the following:~~

~~— (i) The strategic policy goal the entity selected for inclusion in the moderate income housing element of its general plan, as described in Sections 10-9a-403(2)(b) and 17-27a-403(2)(b).~~

~~— (ii) The specific outcomes the goal intends to accomplish.~~

~~— (iii) A description of how the entity will monitor its annual progress toward achieving the goal.~~

~~— (iv) A description of the resources the entity must allocate to complete this goal.~~

~~— (v) A description of the barriers, if any, the entity is encountering in working toward the goal.~~

~~— (e) For an entity that has a fixed guideway public transit station, in addition to the three strategies in R990-300-5(1)(b), the implementation either:~~

~~— (i) encourages higher density or moderate income residential development near major transit investment corridors, or~~

~~— (ii) eliminates or reduces parking requirements for residential development where a resident is less likely to rely on the resident's own vehicle, such as residential development near major transit investment corridors or senior living facilities.]~~

(1[2]) Beginning ~~[December 1, 2020 and annually thereafter]~~in 2022, on or before October 1 of each calendar year, the legislative body of each entity described in Sections 10-9a-408[+] and 17-27a-408[+] shall complete an annual moderate income housing report~~[ing form]~~ and submit the completed ~~[form]~~report to HCDD.[

~~— (a) HCDD will review the plan's effectiveness in achieving the entity's strategic policy goal, based on the parameters the entity has selected to define success.]~~

(2[b]) HCDD will review each annual moderate income housing report~~[ing form]~~ for completeness and compliance with Sections 10-9a-403, 10-9a-408, 17-27a-403, and 17-27a-408.

(3) After reviewing a report~~[plan]~~, HCDD will provide notice as provided in Sections 10-9a-408 and 17-27a-408.~~[the entity a copy of the review.]~~

(4) Additional planning requirements are detailed in [Section]Title 10, [Part]Chapter 9a, Municipal Land Use, Development, and Management Act, and [Section]Title 17, [part]Chapter 27a, County Land Use, Development, and Management Act. Certain planning requirements are not part of the plan for moderate income housing and are not subject to annual reporting to HCDD.[

R990-300-6. Evaluation Process for Plan for Moderate Income Housing.

~~In accordance with Section 72-2-124, HCDD will communicate compliance with the annual report requirements as described in Sections 10-9a-408 or 17-27a-408 to the Department of Transportation in conjunction with the prioritization process timeline.]~~

KEY: moderate income housing reports

Date of Last Change: ~~2022~~ August 21, 2019]

Authorizing, and Implemented or Interpreted Law: 35A-8-803; 10-9a-408; 17-27a-408

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Rule or Section Number:	R990-400	Filing ID:	54792
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Agency Information

1. Department:	Workforce Services	
Agency:	Housing and Community Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact persons:		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R990-400. Pandemic Housing Assistance
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
During the 2020 Third Special Session, the Legislature passed S.B. 3006, which, among other things, established the COVID-19 Residential Housing Assistance program and authorized the Department of Workforce Services (Department) to make rules for the program. S.B. 3006 (2020) contained a repeal date and by its terms was repealed 05/31/2021. Because this rule is obsolete and no longer necessary, the Department proposes to repeal this rule.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the

substantive differences between the repealed rule and the reenacted rule):

This rule is repealed in its entirety.

Fiscal Information

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

A) State budget:

There are no aggregate anticipated costs or savings to the state budget that were not already accounted for by the fiscal note to S.B. 3006 (2020 Third Special Session).

B) Local governments:

There are no aggregate anticipated costs or savings to local governments that were not already accounted for by the fiscal note to S.B. 3006 (2020 Third Special Session).

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

There are no aggregate anticipated costs or savings to small businesses that were not already accounted for by the fiscal note to S.B. 3006 (2020 Third Special Session).

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

There are no aggregate anticipated costs or savings to non-small businesses that were not already accounted for by the fiscal note to S.B. 3006 (2020 Third Special Session).

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

There are no aggregate anticipated costs or savings to persons other than small businesses, non-small businesses, state, or local government entities that were not already accounted for by the fiscal note to S.B. 3006 (2020 Third Special Session).

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

There are no anticipated compliance costs for affected persons. The repeal of this rule requires no action or compliance by any person.

G) 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	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 Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this regulatory impact analysis.			

Citation Information

6. 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 35A-8-2302(3)		

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	10/03/2022

9. This rule change MAY become effective on:	10/10/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Casey Cameron, Executive Director	Date:	08/10/2022
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R990. Workforce Services, Housing and Community Development.

~~R990 400. Pandemic Housing Assistance~~

~~R990 400 1. Purpose.~~

~~The purpose of this rule is to establish criteria to administer funds the state receives from the Coronavirus Relief Fund described in the CARES Act for housing assistance.~~

~~R990 400 2. Authority. Duties of Divisions within the Department.~~

~~Section 35A-8-2302 requires HCDD to assist state residents financially harmed on or after March 1, 2020 to retain or obtain housing by using funds the state receives from the Coronavirus Relief Fund described in the CARES Act.~~

~~R990 400 3. Definitions.~~

~~Terms used in these rules are defined in Section 35A-8-2301. In addition:~~

- ~~(1) "CARES Act" means Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136.~~
- ~~(2) "HCDD" means Department of Workforce Services, Housing and Community Development Division.~~
- ~~(3) "Unemployment benefits" means regular compensation or extended benefits under State or Federal law, pandemic emergency unemployment compensation, or pandemic unemployment assistance.~~

~~R990 400 4. Applicant Qualifications.~~

~~(1) An individual shall submit an application to the eligible agency for the individual's county of residence to be considered for assistance. A list of eligible entities for each county is available on the Department of Workforce Services website.~~

~~(2) An individual may be eligible for assistance if that person meets one of the following:~~

- ~~(a) the individual does not qualify for unemployment benefits;~~
- ~~(b) the individual is working, has experienced a reduction in regular pay, and is not eligible for unemployment benefits;~~
- ~~(c) the individual has applied for unemployment benefits and has not yet received an approval or denial; or~~
- ~~(d) the individual meets any other eligibility requirement published by HCDD on the Department of Workforce Services website.~~

~~R990 400 5. Eligible Agency.~~

~~(1) HCDD shall select an eligible entity for each county to operate the housing assistance program for residents of the county.~~

~~(2) An eligible agency may be:~~

~~_____ (a) a non-profit organization; or~~
~~_____ (b) an association of governments.~~
~~_____ (3) An eligible entity may choose to subcontract any~~
~~program operations with advance written approval from HCDD.~~

~~R990-400-6. Use of Funds.~~

~~_____ (1) Pandemic Housing Assistance funds shall be~~
~~distributed to an eligible agency.~~
~~_____ (2) An eligible agency shall pay Pandemic Housing~~
~~Assistance funds directly to the landlord of an eligible applicant.~~
~~_____ (3) Pandemic Housing Assistance may be used to pay:~~
~~_____ (a) rent;~~
~~_____ (b) mortgage;~~
~~_____ (c) a utility payment;~~
~~_____ (d) a security deposit; or~~

~~_____ (e) arrears.~~

~~R990-400-7. Determination of Funding Amounts.~~

~~_____ (1) HCDD shall allocate the available funding based on the~~
~~percentage of renters by county compared to the state's total housing~~
~~population.~~

~~_____ (2) An eligible agency will receive the funding amount for~~
~~each county the agency serves.~~

~~KEY: pandemic housing assistance, antipoverty programs~~

~~Date of Last Change: August 26, 2020~~

~~Authorizing, and Implemented or Interpreted Law: 35A-8-2302]~~

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([~~example~~]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Rule or Section Number:	R501-1	Filing ID: 54781
Effective Date:	08/03/2022	

Agency Information

1. Department:	Health and Human Services	
Agency:	Administration, Administrative Services, Licensing	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
Janice Weinman	385-321-5586	jweinman@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:
R501-1. General Provisions for Licensing
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The reason for this change is to comply with requirements of providers outlined in S.B. 239 passed in the 2022 General Session.
4. Summary of the new rule or change (What does this filing do?):
This filing updates congregate care weekly voice to voice communication requirements to allow a modification plan to be submitted to the office; adds requirement for congregate care programs to only accept transport of youth to Utah if registered with Utah; and amends language that was deemed confusing from the previous rule update.
5A) The agency finds that regular rulemaking would:
<input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or
<input checked="" type="checkbox"/> place the agency in violation of federal or state law.

B) Specific reasons and justifications for this finding:

S.B. 239 became effective on 05/04/2022. In Subsection 62A-2-126(4), it requires the Office of Licensing within the Department of Health and Human Services (DHHS) to make rules to adhere to the requirements of that section.

Fiscal Information**6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no aggregate anticipated cost or savings to state budget, as the legislature built collection of fees into the statute to pass on to the registrants which will allow the Office of Licensing (Office) to recover the costs associated with setting up a transportation company registry. The Office cannot proceed with standard rulemaking to enforce this as it is effective and is required for operations now.

B) Local governments:

There is no aggregate anticipated cost or savings to local governments because this rule does not impose any additional requirements upon them.

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

The Office has determined that small business transportation companies will be impacted by this rule change. The Office has no idea how many transportation companies exist or how many employees each may have, which prevents the Office from providing an aggregate anticipated cost for them.

These entities will be required to submit an application, pay a registration fee, and complete the Utah DHHS background clearances for all individuals transporting youth to Utah congregate care programs. The fees assessed will cover the following added tasks to the staff: creating applications and posting publicly, messaging to programs regarding the new requirement and registry process, manually processing applications, collecting proof of insurance and business licenses, entering applications and background clearances (via two databases), developing and monitoring databases, and managing public inquiries and educating the registrants.

An additional manual task will be enlisting the Management Information Center (MIC) to develop a means to collect data to inform the legislator of the outcome of this registry. Cost to each company during this first year of registrations will be \$500 per agency application (as approved by the Executive Director's office of DHHS). Individual background clearances will already be covered by the already built-in \$9 per application fee.

D) Persons other than small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity,

or public or private organization of any character other than an **agency**):

Persons who may incur a cost would be employees of the transportation companies if the company does not pay for their background clearance. The Office does not have any data to reference to estimate how many companies exist or how many may absorb or pass on their fee costs to their employees. All clearances for employees and associates of licensees in Utah incur a \$42.50 per application cost to cover Department of Public Safety (\$33.50) and Office processing (\$9).

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

Flat registration one-time fee of \$500 per company (which could be an individual or a grouping of individuals) with \$42.50 per employee for background clearances.

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

As determined in Sections (C) through (F) of this analysis, the DHHS cannot effectively estimate the impact on these providers, but the DHHS acknowledges that there will be costs associated with these rule changes. Tracy Gruber, Executive Director

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

Section 62A-2-123		
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Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	08/02/2022
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R501. Human Services, Administration, Administrative Services, Licensing.**R501-1. General Provisions for Licensing.****R501-1-1. Authority and Purpose.**

(1) This rule is authorized by Title 62A, Chapter 2, Licensure of Programs and Facilities.

(2) This rule clarifies the standard for:

(a) rules applicable to programs licensed under Title R501; and

(b) licensing procedures to be followed by the office in the enforcement of rules under Title R501.

(3) This rule provides definitions for Title R501.

R501-1-2. Scope.

(1) Except as specifically stated in categorical rule, Rule R501-1 applies to any program subject to licensure.

(2) Each licensee and person associated with the licensee shall comply with:

- (a) Rule R501-14;
- (b) any applicable categorical rule in Title R501; and
- (c) any federal, state, or local law, rule, or ordinance.

R501-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-2-101.

(2) "Abuse" means the same as defined in Sections 62A-3-301, 62A-4a-101, 80-1-102, and R512-80-2.

(3) "Body cavity search" means a visual or manual inspection of the body cavity in search of prohibited material. An inspection of a client's mouth after taking medication is not considered a body cavity search.

(4) "Category" means the type of human service license described in Section 62A-2-101.

(5) "Chemical Restraint" means any drug that is used to restrict an individual's freedom of movement for discipline, convenience, or imminent safety and not required to treat the individual's medical symptoms.

(6) "Clinical" means treatment or services delivered by a mental health or medical professional that is licensed by the Division of Occupational and Professional Licensing.

(7) "Compliant" means adherence to governing rule and statute or only minor violations that do not rise to the level of a ~~corrective action~~ plan of correction or penalty.

(8) "Confidential communication" means communication between only the individuals referenced in Subsection 62A-2-123(6). Confidential communication does not allow for outside entities to have access to information contained in the confidential exchange.

(9) "Conflict of Interest" means a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.

(10) "Critical Incident" means an incident that occurs while the program is providing a service or treatment and involves:

- (a) abuse or suspected abuse;
- (b) neglect or suspected neglect;
- (c) exploitation or suspected exploitation;
- (d) unexpected death;
- (e) any client injury, including self-harm, requiring medical attention beyond basic first aid;
- (f) any client injury that is a result of staff or client assault, restraint, or intervention;
- (g) any prohibited practice as described in Section 62A-2-123;

(h) any restraint in a congregate care setting;

(i) any seclusion in a congregate care setting;

(j) any body cavity search;

(k) any strip search;

(l) except for a minor infraction, any illegal activity including significant criminal activity as defined in this section

(m) significant medical emergency as defined in this section, or any other protective service intervention;

(n) the unlawful or unauthorized presence or use of alcohol, substances, or harmful contraband items;

(o) the unauthorized presence or misuse of dangerous weapons;

(p) attempted self-directed violence;

(q) any on duty or client-involved staff sexual misconduct, any client unlawful sexual misconduct, or any consensual client sexual conduct between clients under the age of 16;

(r) client rights violations;

(s) department code of conduct violations;

(t) medication errors impacting client well-being, medical status, or functioning;

(u) the unauthorized departure of a client from a program;

(v) a contagious illness or situation requiring notification of or consultation with the local health department;

(w) any change to a client's environment compromising the immediate health or safety of the client including roof collapse, fire, flood, weather events, natural disasters, and infestations; or

(x) any other incident that compromises a client's immediate health or safety.

(11) "Direct Care Staff" means staff working directly with clients.

(12) "Direct Supervision" means in close physical proximity and actively supervising clients with the ability to immediately respond as necessary.

(13) "Director" means the same as defined in Section 62A-2-101 and does not mean a program director.

(14) "Emotional Mistreatment" means verbal or non-verbal conduct that results in a client suffering significant mental anguish, emotional distress, fear, humiliation, or degradation. Emotional mistreatment includes demeaning, threatening, terrorizing, alienating, isolating, intimidating, or harassing a client.

(15) "Exploitation" includes:

(a) the use of a client's property, labor, or resources without the client's consent or in a manner that is contrary to the client's best interests, or for the gain of some person other than the client; such as expending a client's funds for the benefit of another;

(b) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, where such use is inconsistent with therapeutic practices;

(c) engaging or involving a client in any sexual conduct; or

(d) sexual abuse of a minor or vulnerable adult as described in Sections 76-5b-201, 76-5b-202 and Subsection 76-5-111(4).

(16) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or for personal or licensee gain. Fraud includes the offenses identified as fraud in Title 76, Chapter 6, Offenses Against Property.

(17) "Harm" means financial, physical, or emotional pain, damage, or injury.

(18) "Initial license" means the license issued to operate a human services program during the licensee's first year of licensure. This license is considered provisional and allows for the licensee to demonstrate sustained compliance with licensing rules before renewal. An initial license following a lapse in license is not considered provisional.

(19) "Inspection" means an announced or unannounced visit of the licensed site as described in Section 62A-2-118.

(20) "Medication-Assisted Treatment" means the use of medications with counseling and behavioral therapies to treat substance use disorders or prevent opioid overdose.

(21) "Mistreatment" means emotional or physical mistreatment.

(22) "Neglect" means abandonment or the failure to provide necessary care, including nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, or protection from harm. Neglect also means the same as defined in Sections 62A-3-301; 62A-4a-101; 76-5-110; and 80-1-102.

NOTICES OF 120-DAY (EMERGENCY) RULES

(23) "On duty" means individuals counted in supervision ratios and charged with supervising clients as a primary job requirement.

(24) "Owner" means any licensee, person, or entity that:

(a) is defined as a member in Section 62A-2-108;

(b) is listed on a foster home license;

(c) possesses the exclusive right to hold, use benefit from, enjoy, convey, transfer, and otherwise dispose of a program;

(d) retains the rights, participates in, or is ultimately responsible for operations and business decisions of a program; or

(e) operates or has engaged the services of others to operate the program.

(25) "Parent program" means an applicant or licensee owning or directing multiple sites under the same general administrative organization.

(26) "Penalty" means an action taken by the office to deny, place a condition on, suspend, or revoke a human services license due to the licensee's non-compliance with statute or administrative rule. Penalty includes penalties as described in Section 62A-2-112. A penalty does not include ~~[corrective action]~~ plans of correction.

(27) "Person" means an individual, agency, association, partnership, corporation, business entity, or governmental entity.

(28) "Physical mistreatment" means conduct that results in pain, injury, or death.

(29) "Program" means human services program as defined in 62A-2-101 and may also be referred to as "Provider" in rules under this title.

(30) "Program director" means an individual responsible for day-to-day operations of a program.

(31) "Regular business hours" are the hours that the program is available to the public or providing services to clients.

(32) "Renewal license" means a license issued to a continuing program based upon the program's compliance with administrative rule and statute.

(33) "Residential program" means a program providing overnight care and includes the following license categories:

(a) recovery residence;

(b) residential support;

(c) residential treatment;

(d) outdoor youth;

(e) therapeutic school; and

(f) social detoxification.

(34) "Restraint" means physically restricting a person's freedom of movement, physical activity, or normal access to their body; and includes passive, chemical and mechanical restraint used as a last resort as a means to prevent harm to self or others. Restraint does not mean an escort used to lead, guide, or direct a client.

(35) "Seclusion" means the same as defined in Section 62A-2-101 and includes social isolation. Seclusion is not a voluntary time-out or medical quarantine and isolation when approved by a medical professional.

(36) "Significant criminal activity" means any unlawful activity by or against one of the program's clients or by or against an on duty staff member that poses a serious threat to client or staff health, safety, or well-being that includes:

(a) possession of an illegal substance or weapon;

(b) illegal physical or sexual misconduct or assault;

(c) riot;

(d) suspected fraud;

(e) suspected exploitation; and

(f) any significant criminal activity relevant to a program's population as described in the program's policy and procedure manual.

(37) "Significant medical emergency" means an acute injury or illness posing an immediate risk to a person's life or health or requires emergency medical care.

(38) "Site" means a human services program identified by a single geographic location and must be linked to the parent program, if one exists.

(39) "Staff" means an individual who is associated with a licensee.

(40) "Strip search" means requiring a client to undress down to undergarments or complete nudity in view of another person.

(41) "Telehealth" means the use of digital information and communication technologies, such as computers and mobile devices, to remotely access behavioral or health care services.

(42) "Trauma informed" means overall practices that promote environments of healing and recovery rather than practices and services that may inadvertently re-traumatize.

(43) "Variance" means any authorized deviation from administrative rule as described in Section R501-1-8.

(44) "Violation" means an act or omission by a licensee, or any person associated with the licensee that is contrary to any administrative regulation, local, state, or federal law applicable to the program.

R501-1-4. Licensing Application Procedures.

(1) Initial and Renewal Application

(a) An applicant may not accept any fee, enter into any agreement to provide a client service, or provide any client service until licensed by the office.

(b) The office shall issue a license for a program only after verifying compliance with any applicable administrative rule or statute.

(c) An applicant or a licensee shall permit the office to have immediate, unrestricted access to:

(i) each site subject to licensing;

(ii) any on and off-site program and client records; and

(iii) each staff and client.

(d) An applicant may withdraw an application for a license at any time during the application process. The applicant must notify the office in writing.

(e) An applicant seeking an initial or renewal license to operate a human services program shall submit:

(i) an application as provided by the office;

(ii) except as described in Subsection R501-1-7(2), the fee required for each category of human service program license applied for;

(iii) except as described in Subsection 62A-2-120(13), a background clearance for each person associated with the licensee as described in Section 62A-2-120 and Rule R501-14;

(iv) any required policy and procedure;

(v) for renewal purposes, rather than submitting each program policy and procedure, the applicant may choose to only submit each policy and procedure that has been modified;

(vi) name and contact information for each responsible decision-maker, including any owner or program director; and

(vii) documentation that verifies the applicant's compliance with, or exemption from, any local government zoning, health, fire, safety, and business license requirement.

(f) A program may not change an approved policy without a new office approval as described in Section R501-1-9.

(g) If a program fails to submit a renewal application at least 30-days before the expiration date of the current license, the license may expire.

(h) A residential treatment program applying for an initial license shall submit proof that the program served notice of intent to operate as described in Section 62A-2-108.2.

(2) Application Expiration

(a) Except for a foster home application, an initial application that remains incomplete shall expire one year from the date of application.

(b) An initial application for a foster home that remains incomplete shall expire 90 days after the date of application unless extended by the office.

(c) An expired initial application is void. The program must submit a new initial application and applicable fees for each category of license requested.

(3) The office may deny the initial application or place a penalty on a renewal license if:

(a) the program failed to achieve or maintain compliance with each statute, rule, or ordinance related to the program;

(b) the office reasonably determines that the program is not likely to operate in compliance with any statute, rule, or ordinance;

(c) the office finds a program director, owner, or any individual involved in the program's billing process on the office of Inspector General's List of Excluded Individuals and Entities; or

(d) the office finds that a program maintains association with any individual with a license revoked by the office within the five-year period before to the date on the program's application.

(4) The office shall consider rule violation history when determining whether a program is likely to comply with any statute, rule, or ordinance.

(5) The office shall consider misleading information that has been presented by the program to the office, program clients, prospective clients, or public when determining whether a program is likely to comply with statute, rule, or ordinance.

(6) A denied applicant may not reapply for a minimum of a three-month period beginning on the date of denial.

R501-1-5. Licensing Determinations.

(1) The office may place an individualized parameter on a program license to promote the health, safety, and welfare of any client. Such parameters may include:

(a) an age restriction;

(b) an admission or placement restriction; or

(c) any other parameter specific to an individual site or program.

(2) A license certificate shall state the name, the site address, the license category, the maximum client capacity, any specific parameter, and the effective date of the license.

(3) The office may not issue an initial license to a site associated with a parent program if any other license associated with the parent program is under penalty or has a pending appeal.

(4) A program may apply for a two-year license if:

(a) the program is not a residential or foster care program;

(b) the program is in good standing with the office for the two consecutive licenses issued by the office immediately before the date of application;

(c) the office reasonably determines that the program is likely to maintain good standing for a two-year period; and

(d) the program submits twice the annual fee required for each category of license sought.

(5) License Expiration

(a) An expired license is void and may not be renewed unless an application and fees are submitted for an initial license. The program must be granted an initial license before providing any services, except as allowed in Subsection R501-1-~~4(5)(e)~~5(5)(c).

(b) A license expires at midnight on the last day of the same month the license was issued, one year after the effective date on the license, except when:

(i) the office revokes the license before expiration;

(ii) the office extends the license beyond the date of expiration;

(iii) the licensee relinquished the license;

(iv) the licensee requested a shortened license expiration time frame; or

(v) the license is issued as a two-year license. A two-year license expires at midnight on the last day of the same month the license was issued, two years after the effective date on the license.

(c) Except for an action necessary to maintain the health and safety of a client while transitioning out of the program or obtaining a new license to operate, a program with an expired license may not accept any client, fee, enter any agreement to provide a client service, or provide any client service.

(6) Except as described in Subsection R501-1-5(6)(c), the office may extend a current license for a maximum 90-day period after the license expiration date.

(a) A program must submit a renewal application and applicable fee before the expiration date on the license.

(b) Except as noted in Subsection R501-1-5(6)(c) [F]the office may extend a license only once.

(c) The office may extend a current or extended license that is not in good standing with a penalty.

(d) The office shall grant a renewal license if the program remedies any non-compliance to the satisfaction of the office.

(e) The office shall reduce the license period for any renewal license granted immediately after an extension equal to the time period of the extension.

(7) A licensee wishing to voluntarily relinquish a license shall submit a written notice to the office. Voluntary relinquishment of a license may not be accepted by the office if a notice of agency action revoking the license has been initiated.

R501-1-6. Program Changes.

(1) Name Change

(a) A licensee may not change the name of a program or site without a renewal application submitted to the office. A name change with no impact on clients, programming or daily operations will not require a renewal fee.

(b) The licensee shall submit updated program documentation reflecting the new name to the office before making the name change public.

(c) The office may link the former name of the program to the new name on the licensing database, on each license certificate, and public website, for a two-year period after the name change.

(2) Relocation

(a) A licensee may change the location of a program.

(b) The licensee may not serve a client at any new program location without a license.

(c) Before moving any program to a new location, the licensee shall submit a renewal application as described in Subsection R501-1-4(1) at least 30 days before moving and an updated license for the new site must be issued. The application shall also include proof of:

(i) a business license at the new site; and

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- (ii) insurance coverage at the new site.
- (d) A foster home may transfer a current license a new site only after:
 - (i) submitting a request to relocate to the office at least 30 days before moving to the new site; and
 - (ii) the office inspects and approves licensure at the new site; which approval shall occur within two weeks if a foster child is placed in a foster home or within 30 days if there are no current foster placements.
- (e) a program moving only an administrative site that does not serve clients shall only be required to submit a renewal application with no fees unless the office finds they meet requirements outlined in Subsection R501-1-6(7).
- (f) If a foster child is placed in a foster home, it is the responsibility of the licensed foster parent to ensure the health and safety of the foster child during the transfer to the new site.
- (f)g Except as described in Subsection R501-1-6(2), moving from a licensed site voids that site's license.
- (3) Capacity Change
 - (a) A licensee seeking to increase the maximum client capacity of a program shall submit a renewal application requesting the new capacity.
 - (b) The program may not serve additional clients until the program pays ~~the~~any additional capacity-based fees required in the renewal fee for a license renewal as required by the rules of the human service program category and the office issues an updated license.
- (4) Add New License Category
 - (a) A program may request to add a new license category to an existing licensed site by submitting an initial application for the additional license and fees for an initial license.
 - (b) Each requirement for initial licensure must be verified.
- (5) Add New Location
 - (a) A program may add an additional site of service by submitting an application and fees and receiving an initial license.
 - (b) Each requirement for initial licensure must be verified.
- (6) Ownership Changes
 - (a) A program anticipating, or undergoing a change of ownership, shall submit in writing, before the change:
 - (i) any change to programming or service;
 - (ii) a declaration regarding responsibility for records and records retention to include an agreement, signed by both current and prospective owners and program directors, detailing how records will be retained and remain available to the office in accordance with licensing rules regardless of whether the program remains licensed;
 - (iii) names and contact information of any new directors or owners;
 - (iv) documentation of continuous insurance coverage; and
 - (v) an updated business license.
 - (b) The status of a license at the time of a change of ownership shall continue.
- (7) The office may require a new initial application and fees for each license category for any substantial change under this section, which may include:
 - (a) a substantial change resulting in direct client impact;
 - (b) any change to programming;
 - (c) any change in the population served;
 - (d) any severed tie with a previous owner;~~[-or]~~
 - (e) any disruption in the continuity of record retention; or
 - (f) requirement of the office to perform an onsite inspection and complete a comprehensive compliance review.

R501-1-7. License Fees.

- (1) The office shall collect licensing fees as described in Section 62A-2-106, and Title 63J, Chapter 5, Federal Funds Procedures Act.
- (2) No licensing fee shall be required from a foster home or a division or office of the department.
- (3) The office is not required to perform any on-site visit or document review until the person applying for a license pays the licensing fee.
- (4) If a license is not granted by the office, a license application fee expires 12 months after the date of application.
- (5) A fee paid by a licensee may not be transferred, prorated, reduced, waived, or refunded. Any cost incurred by the applicant in preparation for, or maintenance of licensure is the sole responsibility of the applicant.
- (6) An applicant must pay an initial license fee for each category of human services program offered at each program site.
- (7) An applicant must pay a renewal license fee and any capacity fee for each license that is renewed at each program site.
- (8) A capacity fee is calculated based on the maximum licensed client capacity of the human service program.
- (9) A license with more than one building, unit, or suite located at a single site may choose between the following methods of assessing a fee and issuing a license:
 - (a) each category of license includes each on-site building, unit, or suite; or
 - (b) each category of license is issued separately for each individual on-site building, unit, or suite.

R501-1-8. Variances.

- (1) A licensee may not deviate from any administrative rule before receiving written approval signed by the director, or the director's designee.
- (2) The director, or the director's designee, may grant a variance after determining that a variance is not likely:
 - (a) to compromise client health and safety; or
 - (b) provide an opportunity for abuse, neglect, exploitation, harm, mistreatment, or fraud.
- (3) A licensee seeking a variance must submit a written request to their licensing specialist that includes:
 - (a) the rule for which the variance is requested;
 - (b) the reason for the request;
 - (c) how the variance provides for the best interest of the client;
 - (d) any procedures that will be implemented to ensure the health and safety of each client; and
 - (e) the proposed start date and end date of the variance.
- (4) The written request described in Subsection R501-1-8(3) must be submitted at least 30 days before the proposed start date unless the licensee documents a need to expedite the request.
- (5) The office shall review the variance and notify the licensee of the approval, approval with conditions, or denial of the variance, in writing, within 30 days from receipt of the request.
- (6) The licensee shall comply with the terms of a written variance, including any conditions or modifications contained within the approved written variance.
- (7) A variance expires on the end date specified in the approval notice. Terms of the variance are no longer permitted by the office after the end date.
- (8) The office may renew a variance if the program justifies the request and ensures the ongoing health and safety of each client.

R501-1-9. Required Approvals.

(1) As described in Subsection 62A-2-106(1), the office shall review and approve the following policies and procedures before program implementation by each licensee:

(a) any sex and gender discrimination policy as described in Section 62A-2-124; and

(b) any behavior management, suicide prevention, restraint, or seclusion policy or procedure used in a congregate care program as described in Section 62A-2-123 and Rule R501-1.

(2) Each sex and gender discrimination policy must include the required content and language as described in Subsection R501-1-24(3)(s) as it pertains to both staff and client protections.

(3) The office shall:

(a) provide written approval or denial of any policy and curriculum within 30 days of the date of submission;

(b) provide written feedback on any denied policy;

(c) re-review any denied policy or curriculum within 14 days of re-submission; and

(d) issue a written approval for any policy requiring approval by this section.

(4) The licensee shall submit any change to a policy or curriculum that has been approved by the office to the office for approval before implementing the proposed change.

(5) The office may withdraw approval and deny any previously approved policy or curriculum at any time or by providing written feedback to the program as described in Subsection R501-1-9(3).

R501-1-10. Monitoring.

(1) Except as described in Section 62A-2-123 for a congregate care program, the office shall conduct at least one annual on-site inspection in each program.

(2) The office may conduct as many inspections, announced or unannounced, as necessary to monitor compliance, investigate alleged violations, monitor ~~[corrective action]~~ plans of correction or penalty compliance, or to gather information for license renewal.

(3) An on-site inspection shall take place during regular business hours.

(4) An applicant or licensee may not restrict the office's access to the site, client, staff, or any program records.

(5) A licensee and licensee's staff may not compromise the integrity of the office's information gathering process by withholding or manipulating information or influencing any specific response of staff or clients.

(6) The office shall consider each on-site inspection during the renewal or denial of the license application at the end of the license period.

(a) Pursuant to Subsection 62A-2-118(1), the office may accept another government entity's inspection results completed for a program during the effective license period or within the preceding quarter to the current license period to identify compliance or non-compliance with relevant rules.

(b) The office may review and consider any report from an accreditation agency or any other entity for each inspection conducted during or before the effective license period to determine compliance or violation of licensing rule.

(c) If a conflict arises between an oversight entity's requirement and rule, the program shall request a rule variance from the office.

(7) Except for a foster home, the licensee shall make a copy of any inspection report available to the public upon request as described in Subsection 62A-2-118(5).

(8) The office may adopt a written inspection report from a local government, certifying entity, contracting entity, or accrediting entity if the report offers information about the licensee's compliance with a licensing requirement.

(9) The licensee shall allow the office to access any program record or staff at an administrative location that is not located at the licensed site.

R501-1-11. Investigations of Alleged Violations.

(1) Unlicensed Programs

(a) The office shall investigate each report of an unlicensed human service program.

(b) Investigation of an unlicensed human service program may include interviewing any individual or neighbor at the site or gathering information from any source that will aid the office in determining whether the site should be licensed.

(c) If an unlicensed human services program that requires licensure fails to become licensed within 30 days or other office approved time-frame and continues to operate, the office shall ~~[be]~~ refer the program to the office of the Attorney General, and the County Attorney.

(d) The office may penalize each site operated by a licensed program if the program adds or operates an unlicensed site that requires licensure.

(2) Licensed Program Complaints and Critical Incidents

(a) The office may investigate any critical incident or complaint that alleges a licensing violation regarding a licensed human services program.

(b) The office accepts a complaint about a licensee from any source, including the office website or complaint email address.

(c) The office may decline to investigate a complaint that is anonymous; unrelated to a current condition of the program; or not an alleged violation of a rule or statute.

(d) A critical incident that involves a client or on duty staff that occurs in a licensed setting or under the direct responsibility and supervision of the program shall be reported by the licensee as follows:

(i) a report shall be made to the office within one business day;

(ii) a notification shall be made to legal guardian of the involved client within a 24-hour period that begins at the time of the incident; and

(iii) if the critical incident involves a client or service to a youth currently in the custody of the department, the licensee shall make an immediate live-person verbal notification to the involved division.

(e) An initial critical incident report shall be made in writing and include the following:

(i) name of provider and names or unique initials of each involved staff, witnesses and clients with the ability to identify each set of unique initials upon request by the office;

(ii) date, time, and location of the incident, and date and time of incident discovery, if different from time of incident;

(iii) descriptive summary of incident;

(iv) any action taken;

(v) any action that the program plans to take at the time of the report; and

(vi) identification of department contract status.

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(f) Upon request by the office, the licensee shall collect, maintain, and submit original witness statements and supporting documentation, including video footage if available, regarding each critical incident.

(3) Investigative Process

(a) An in-person or electronic investigation may include:

- (i) a review of any on or off-site record;
- (ii) interview of each licensee, witness, client, or staff;
- (iii) gathering information from any collateral party; and
- (iv) a site inspection.

(b) The office shall prioritize an unlicensed program, a complaint regarding a licensed program, and a critical incident following an assessment of risk to client health and safety as follows:

(i) an allegation identified by the office as a potential imminent risk to the health and safety of a client requires an initial on-site contact by the office within three business days of the report date; or

(ii) any other allegations that require the office initiate an investigation within ten business days of the report date.

(c) The office may use law enforcement, Child or Adult Protective services, or any other protection agency to meet a priority on-site response.

(d) A licensee and staff shall cooperate in any investigation.

(e) The office may report any allegation or evidence of abuse, neglect, exploitation, mistreatment, illegal activity or fraud to a client, clients' legal guardian, or any entity determined necessary by the office.

(f) If a program sells or arranges for client insurance coverage, the program must:

- (i) inform the client in writing of the program's role and responsibility;
- (ii) provide the insurer with any program provider record;
- (iii) contact and cooperate with the insurance department during any dispute regarding a service or supply billed; and
- (iv) not provide unlawful substance abuse patient brokering as described in Subsection 62A-2-116(5).

R501-1-12. License Violations.

(1) When the office finds evidence of a violation of statute or rule, the office shall do one of the following:

(a) provide written notification of each violation requiring the licensee to correct each violation with a dated request for remediation, if applicable;

(b) provide written notification of each violation and request a licensee to submit a ~~[corrective action]~~ plan of correction in response to a written notification of a violation or pattern of similar violations over time; or

(c) issue a penalty if the office determines that a violation is serious enough to merit a penalty without first issuing a request for a ~~[corrective action]~~ plan of correction.

(2) The office may consider the chronicity, severity, and pervasiveness of a violation when determining one of the following agency actions:

- (a) notification of a violation;
- (b) request for a ~~[corrective action]~~ plan of correction; or
- (c) issue a formal penalty.

(3) A repeated violation of rule or statute or failure to comply with a condition of a notice of agency action may elevate the penalty level assessed.

(4) When the office issues a request for a ~~[corrective action]~~ plan of correction, a licensee shall submit a written ~~[corrective action]~~

plan of correction to the office within ten business days from the date of the request and the ~~[corrective action]~~ plan of correction shall include:

(a) a statement of each violation identified by the office;

(b) a detailed description of how the licensee will correct each violation and prevent an additional violation;

(c) the date by which the licensee will achieve compliance with administrative rule and statute; and

(d) describe the involvement of each program owner and director, including each foster parent, if involving a licensed or certified foster home.

(5) The office shall review ~~[corrective action]~~ plans of correction submitted to the office and either inform the licensee that the ~~[corrective action]~~ plan of correction is approved or inform the licensee that the ~~[corrective action]~~ plan of correction is not approved and provide explanation.

(6) If a ~~[corrective action]~~ plan of correction is not approved, the office may permit a licensee to amend and resubmit its ~~[corrective action]~~ plan of correction within five additional business days.

(7) A notification of violation or a request for a ~~[corrective action]~~ plan of correction is not a penalty.

(8) A program may choose to refuse the notification of violation or ~~[corrective action]~~ plan of correction process and preserve the program's appeal rights by instead requesting a penalty.

(9) The office may issue a penalty for a violation if the licensee fails to submit and comply with an approved ~~[corrective action]~~ plan of correction.

(10) The office may provide a written notice of agency action issuing the following penalties:

- (a) a conditional license;
- (b) a suspended license for up to a three-year period; or
- (c) a revoked license.

(11) A conditional license allows a program that is in the process of correcting a violation to continue operation, subject to each condition established by the office. Failure to meet each term, condition, and time frame outlined in the notice may result in further penalty action or denial of the renewal license application.

(12) When a license has been suspended, Subsection R501-1-12(14) applies, except as described in Subsection R501-1-12(13).

(13) If the placing department entity approves and elects to allow the foster child to remain in the placement, a suspended foster care provider may continue caring for a foster child currently placed at the time of suspension.

(14) A program that has had its license suspended or revoked shall:

(a) not accept new clients;

(b) only provide any service necessary to maintain client health and safety during the client's transition out of the program;

(c) subject to Subsection R501-1-12(13), develop and comply with a plan to transition each client out of the program and into an equivalent, safe, currently licensed programs or into the custody of the client's legal guardian; and

(d) maintain program staffing and health and safety needs of each client while an appeal of the suspension or revocation is pending.

(15) The office shall maintain a record of each licensee with a revoked license for a five-year period. An individual identified in the record shall not associate with any other department licensed program during that five-year period.

(16) When a child placing agency's license is suspended or revoked, care and control of placed children shall be arranged in accordance with Subsection 62A-4a-602(2)(b).

(1[6]7) A licensee shall not employ, contract with, or in any way associate with a person identified on the record created in Subsection R501-1-12(15). A program in violation of this provision shall be subject to immediate penalty.

(1[7]8) The office may place a condition in the notice of agency action to protect the health and safety of clients. A condition included in the notice of agency action takes effect on the date of notice.

(1[8]9) Except when instructed by the office, a licensee shall post the notice of agency action on-site, and on the homepage of each of each program website, where it can be easily reviewed by each client, guardian of a client, and visitor within five business days, and shall remain posted until the resolution of the penalty.

(1[9]20) A licensee shall notify each client, guardian, and prospective client of a notice of agency action issued by the office within five business days of receiving notice. Any prospective client must be notified for as long as the notice of agency action is in effect.

(2[0]1) If an appeal of a revocation, suspension or conditional license that restricts admission is pending, a licensee shall not accept any new client as outlined on the notice of agency action without prior written authorization from the office.

R501-1-13. Program Administrative and Direct Service Requirements.

(1) A program shall transparently identify services to the office, public, potential client, parent, or guardian regarding:

- (a) current and accurate contact information;
- (b) the complaint reporting and resolution process;
- (c) a description of each service provided;
- (e) each program requirement and expectation;
- (f) eligibility criteria outlining behavior, diagnosis, situation, population, and age that can be safely served, including: [?]
- (i) an outline of which behaviors and presenting issues would be reason for discharge or exclusion from the program; and
- (ii) the program shall not take placement of a child whose needs exceed the scope or ability of the program to reasonably manage;

(g) each cost, fee, and expense for a service and refund policy; and

(h) identification of each non-clinical, extracurricular, or supplemental service offered or referred.

(2) The following shall be posted in conspicuous places where each visitor, staff, and client may view:

- (a) abuse reporting laws as described in Sections 62A-4a-403 and 62A-3-305;
- (b) civil rights notice;
- (c) Americans with Disabilities Act notice;
- (d) the program license;
- (e) any office notice of agency action; and
- (f) a client rights poster.

(3) Program administration shall maintain compliance with or documentation of an exemption from any of the following requirements:

- (a) a food handler permits for any person preparing meals for any other person;
- (b) business licenses;
- (c) capacity determinations, which capacity shall include each staff and client on premises and may not exceed the capacity limits placed by local authorities;

(d) fire clearance, if conducted separately from a business license;

(e) licensure and registration of any vehicles used to transport clients.

(4) The office may not issue a license in good standing to a program whose local clearances are under dispute.

(5) Program administration shall maintain:

(a) proof of financial viability of the program as verified by a financial professional;

(b) general liability insurance;

(c) professional liability insurance;

(d) vehicle insurance;

(e) fire insurance; and

(f) additional insurance as required to cover each program activity.

(6) Program administration shall ensure:

(a) each entity associated with the licensee read, understand, sign, and follow the current department code of conduct;

(b) current staff and client lists are available at each licensed site;

(c) the organizational and governance structure of the program, this includes:

(i) line of authority and responsibility;

(ii) a job description, including each duty and qualification for each job title; and

(iii) notification to the office of any program changes as described in Section R501-1-6;

(d) the program implements and follows a quality improvement plan that incorporates, at a minimum, client and staff grievances, feedback, and trends in licensing violations and incident reports;

(e) the program provides an interpreter or refers each client to appropriate resources as necessary to communicate with the client;

(f) at least one CPR and First Aid trained or certified staff member is available when staff and clients are present together;

(g) the program maintains an opioid overdose reversal kit on-site with on duty staff trained in its use if the program is serving, or is likely to serve, a client with a substance use disorder; and

(h) the program provides trainings and monitors staff to ensure compliance regarding program policy and procedures including:

(i) the needs of each client;

(ii) licensing rule;

(iii) client rights as described in Section R501-1-27;

(iv) department code of conduct;

(v) incident reporting;

(vi) program emergency response plan; and

(vii) CPR and first aid.

(7) A program serving education entitled children, as that term is defined in Section 62A-2-108.1, shall comply with Section 62A-2-108.1 regarding coordination of educational services to include completion of youth education forms at initial and renewal licensure.

(8) A program providing school on-site shall:

(a) maintain the established staff to client ratio with behavioral intervention trained staff in the school setting;

(b) be recognized as in good standing by an educational accreditation organization such as the State Board of Education or the National School Accreditation Board; and

(c) ensure each youth is taught at grade level.

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(9) Clinical and medical staff are licensed or certified in good standing and any unlicensed staff are appropriately supervised as described in Title 58, Occupations and Professions.

(10) A program that utilizes telehealth for treatment shall do so within the scope of their professional licensure in accordance with 26-60 for health and 58-60 and 58-60a for mental health and comply with each applicable rule.

(11) A non-residential program offering community-based services shall comply with each applicable rule, as determined by the office.

R501-1-14. Residential Program Additional Administration and Direct Services Requirements.

(1) A program providing residential service shall:

(a) demonstrate compliance with Section 62A-2-125;

(b) ensure each staff shift list remains current and available to the office upon request;

(c) ensure access to a medical clinic or a medical professional familiar with the program and population served; and

(d) provide a separate space for clients who are sick.

(2) A program providing residential service to youth who have been placed in Utah from outside of Utah shall demonstrate compliance with Title 62A, Chapter 4a, Part 7, Interstate Compact on Placement of Children.

(3) A congregate care program serving youth may allow an individual turning 18 to remain in the program as described in Subsection 62A-2-106(1) if:

(a) the individual remains in the custody of a State entity or the individual was admitted and continuously resided in the program for at least 30 days before the individual's 18th birthday;

(b) the program has a documented need for the individual to remain in the program;

(c) the program maintains responsibility for discharge to an appropriate setting when clinically appropriate and no later than the day an individual reaches 19 years of age;

(d) the program outlines a policy regarding the protection of younger clients by supervising or separating 18-year-old individuals from youth who are more than two years younger; and

(e) the individual signs a consent document outlining:

(i) the individual is consenting to remain in the program voluntarily and understands the individual is not required to remain against their will;

(ii) that any criminal offenses committed may result in being charged as an adult; and

(iii) that if the individual is involved in any critical incidents posing a risk to the health and safety of other program residents they may be discharged from the program.

(4) A congregate care program shall ensure weekly confidential communication with family in accordance with Section 62A-2-123.

(a) A congregate care program may only modify the frequency or form of the confidential communication requirement if the program submits a modification request that demonstrates the following to the Office:

(i) the program operates in an area of limited or unreliable phone accessibility or coverage;

(ii) there is significant risk of harm or danger to client safety by providing youth with unsupervised telephone access;

(iii) the program offers an alternative that satisfies the requirement of weekly confidential two-way communication;

(iv) parent or guardian authorization is obtained to receive alternate means of communication when voice to voice is unavailable; and

(v) as soon as it can safely be arranged, voice to voice confidential communication will be offered; or

(vi) extenuating circumstances exist outside the individual treatment plans that are prohibitive to offering voice to voice communication.

(b) A modification to voice to voice communication is a program license-specific approval. Individual modifications may only be made in accordance with Section 62A-2-123 and require individualized documentation, or individualized client treatment plan. Individualized documentation is not permissible if it is a blanket statement or practice applied to all treatment plans.

(c) A modification plan for confidential communication is only permitted with written approval from the director of the office.

(d) If any of the provisions of the approved modification change, this modification must be re-approved.

(5) Before allowing a direct care staff to work unsupervised they must have an approved background clearance and be trained in the following:

(a) behavior management policy and curriculum including crisis intervention, appropriate use of restraint and seclusion, and de-escalation techniques;

(b) which practices are prohibited for congregate care programs by Section 62A-2-123;

(c) the clinical needs of each of the clientele;

(d) client rights;

(e) department code of conduct; and

(f) incident reporting.

(6) Direct care staff must be trained in the following within six months of hire:

(a) CPR; and

(b) first aid.

R501-1-15. Program Physical Facilities and Safety.

(1) Each program shall ensure the appearance and cleanliness of the building and grounds are maintained and free from health and fire hazards.

(2) Each program shall ensure that all appliances, plumbing, electrical, HVAC, and furnishings are maintained in operating order and in a clean and safe condition.

(3) Each program shall accommodate clients with disabilities as needed or appropriately refer to comparable services.

(4) Each program shall ensure that fire drills in non-outpatient programs shall be conducted and documented at least quarterly and program administration shall provide and document feedback regarding response time and process.

(5) Each program shall ensure that a 911 recognizable phone is always on-site with clients.

(6) Each program shall ensure that bathroom facilities for staff and clients allow for individual privacy and afford reasonable accommodation based on gender identity.

(7) Each program shall ensure that each bathroom shall be properly equipped with toilet paper, paper towels or a dryer, and soap.

(8) Each program shall ensure that each bathroom is ventilated by mechanical means or equipped with a window that opens.

(9) Each program shall maintain medications and potentially hazardous items on-site lawfully, responsibly, and with consideration of the safety and risk level of the population served.

This shall include locked storage for each medication and hazardous chemical.

(10) Each program shall ensure that non-prescription medications, if stored on-site, are stored in original manufacturer's packaging together with the manufacturer's directions and warnings.

(11) Each program shall ensure that prescription medications, if stored on-site, are stored in original pharmacy packaging or individual pharmacy bubble pack together with the pharmacy label, directions, and warnings.

(12) Each program shall maintain a fully supplied first aid kit as recommended by the American Red Cross.

R501-1-16. Residential Program Additional Facilities and Safety Requirements.

(1) Each residential program shall ensure designated space is available for records, administrative work, and confidential phone calls for clients.

(2) Each residential program shall ensure bedroom assignments shall be made in accordance with each agency policy and individualized assessment described in Section 62A-2-124.

(3) Each residential program shall ensure that live-in staff have separate living spaces with a bathroom that is separate from client bathrooms.

(4) Each residential program shall ensure that each bedroom designated for clients shall be comparable to other similarly utilized bedrooms with similar access, location, space, finishings, and furnishings.

(5) Dormitory space is only allowed in an emergency homeless shelter or a program serving only adults.

(6) Each residential program shall ensure that each client is not locked in a bedroom.

(7) Each residential program shall ensure that each mirror or safety mirror is secured to the bathroom wall at a convenient height.

(8) Each residential program shall ensure that each bathroom is placed to allow access to each client without disturbing any other client during sleeping hours.

(9) Each residential program shall ensure that each bath or shower allows for individual privacy.

(10) Each residential program shall ensure that each client is supplied with hygiene supplies.

(11) Each residential program shall ensure that each sleeping area has a source of natural light and is ventilated by mechanical means or is equipped with a window that opens.

(12) Each residential program shall ensure that each bed is solidly constructed and non-portable.

(13) Each residential program shall ensure that each client is permitted to decorate and personalize the client's bedroom, while maintaining respect for each other resident and property.

(14) Each residential program that provides common laundry for towels, bedding, or clothing shall provide separate containers for soiled and clean laundry.

(15) Each residential program shall ensure that bedding and towels shall be laundered weekly and after each client is discharged.

(16) Each residential program permitting clients to do the client's own laundry shall provide equipment and supplies for washing and drying.

(17) Each residential program shall ensure that each individual is provided with at least 60 square feet in a multiple occupant bedroom and 80 square feet in a single occupant bedroom.

(18) Each residential program serving individuals with disabilities shall house no more than two persons in each bedroom.

(19) Each program utilizing seclusion rooms shall ensure the following:

(a) seclusion rooms measure a minimum of 75 square feet and have a minimum ceiling height of seven feet with no equipment, hardware or furnishings that obstruct staff's view of the client or present a hazard;

(b) seclusion rooms shall have either natural or mechanical ventilation with break resistant windows and either a break resistant two-way mirror or camera that allows for observation of the entire room;

(c) seclusion rooms shall not have locking capability and shall not be located in closets, bathrooms, unfurnished areas or other areas not designated as part of residential living space; and

(d) bedrooms shall not be utilized as a seclusion room and a seclusion room shall not be utilized as a bedroom.

R501-1-17. Food Service Requirements.

(1) Each residential program that provides meals for four or more, but less than 16, clients shall comply with a local health inspection as described in Rule R392-110, Food Service and Sanitation in Residential Facilities.

(2) Each program that provides meals shall ensure that meals are not used as incentive or punishment.

(3) Each program that provides meals shall provide nutritional counseling to staff and clients and designate staff responsible for food service. As part of these responsibilities, each program shall ensure that designated staff:

(a) maintain a current list of each client with special nutritional needs;

(b) ensure that each client with special nutritional needs has food storage and a preparation area that is not exposed to any identified allergen or contaminant; and

(c) except in a day treatment program serving clients for less than ten hours a day, or outpatient programs serving clients for less than six consecutive hours a day, provide a variety of three nutritious meals a day that is:

(i) served from dietician or nutritionist approved menus; or

(ii) for programs serving individuals experiencing homelessness, serve meals as required by USDA standard homeless settings.

(4) Each program that provides meals shall establish and post kitchen rules and privileges in a kitchen according to client needs and safe food handling practices.

(5) Each program that provides meals shall provide adequate dining space for each client that is maintained in a clean and safe condition.

(6) Each program that provides self-serve meals shall ensure that self-serve kitchen users are supervised, directed, and trained by a staff that has a Department of Health food handler's permit or is trained by Serv-Safe, USDA, or a comparable program.

R501-1-18. Program Staffing.

(1) Each program shall ensure adequate staffing such that the current population can be safely supervised including, where necessary, more staff than required by the usual staffing ratio.

(2) Each program shall identify a manager or qualified designee who shall be immediately available when the program is in operation or there shall be a qualified and trained substitute when the manager is absent or unavailable.

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(3) Each program that offers clinical services shall employ or consult with licensed professional staff that include an individual who is familiar with the program and the needs of each client.

(4) Each program serving substance use disorder shall ensure each staff and client is screened for tuberculosis.

(5) Each program managing, storing, or administering client medication shall identify a medical professional to be responsible for the medication management policy, medication oversight, and staff training regarding medication management.

(6) Each program or person involved with the prescription, administration, or dispensing of controlled substances shall maintain appropriate medical or pharmacy licenses and DEA registration numbers as described in 21 CFR 1301.21.

R501-1-19. Program Personnel Record Requirements.

(1) Each program shall create and maintain personnel information for each staff member, contracted employee, and volunteer.

(2) Personnel information shall include:

(a) any applicable qualification, experience, certification, or license;

(b) any approved and current office background clearance, except as excluded in Section R501-14-17;

(c) a department code of conduct that is signed by the staff member, contracted employee, or volunteer;

(d) any training records with the date completed, topic, and the individual's signed acknowledgment of training completion to include:

(i) current CPR and First Aid certification;

(ii) current policy and procedure training; and

(iii) proof of annual department code of conduct and behavior management training;

(e) any grievances or complaints made by or against the individual and actions taken by the program; and

(f) each crisis intervention or critical incident report involving the individual.

R501-1-20. Program Client Record Requirements.

(1) A program shall maintain client information to include the following:

(a) client name, address, email address, phone numbers, date of birth and identified gender;

(b) emergency contact names, including legal guardian where applicable, and at minimum, the emergency contact's physical address, current email address or current phone numbers;

(c) a program serving substance use disorder clients shall maintain compliance with an initial and annual client tuberculosis screening results in each client record;

(d) any information that could affect health safety or well-being of the client including each medication, allergy, chronic condition or communicable disease;

(e) intake screening and assessment;

(f) discharge documentation;

(g) treatment or service plan;

(h) progress notes and services provided with date and signature of staff completing each entry;

(i) individualized assessment for restriction of access to on-site items that could be used as weapons for self-directed violence or as an intoxicant;

(j) any referral arrangements made by the program;

(k) client or guardian signed consent or court order of commitment to services in lieu of signed consent for each treatment and non-clinical service;

(l) summary of attendance and absences;

(m) any grievances or complaints made by or against the client and actions taken by the program;

(n) each crisis intervention or critical incident report involving the client; and

(o) any signed agreements and consent forms.

(2) A program shall document a plan detailing how each program staff and client file shall be maintained and remain available to the office and other agencies legally authorized to access the files for seven years regardless of whether the program remains licensed.

R501-1-21. Program Intake and Discharge Requirements.

(1) A program shall complete an intake screening before accepting a client into the program. Intake screening shall assess at minimum:

(a) verification that the client meets the eligibility requirements of the program;

(b) verification that the client does not meet any of the exclusionary criteria that the program identified in policy as unable to serve;

(c) description of presenting needs;

(d) suicide risk screening;

(e) a program serving substance use disorder clients may not admit anyone who is unresponsive or unable to consent to care because the individual is experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious; and

(2) A program serving incarcerated or court mandated justice involved clients shall:

(a) conduct a criminogenic risk assessment;

(b) comply with Justice Reinvestment Initiative certification requirements in accordance with Title R523; and

(c) separate high and low criminogenic risk populations.

(3) Following determination of eligibility, the client or parent or guardian shall sign and receive copies of the following agreements to be maintained as client records:

(a) fee agreement outlining costs of services including program, client, parent, or guardian responsibility for payment; and

(b) signed consent for treatment that outlines:

(i) rules of the program;

(ii) expectations of clients, parents, and guardians;

(iii) services to be provided;

(iv) Medicaid number, insurance information, and identification of any other entities that are billed for the client's services;

(v) client rights; and

(vi) licensing contact information.

(4) A discharge plan shall identify resources available to a client and include:

(a) reason for discharge or transfer;

(b) aftercare plan;

(c) summary of services provided; and

(d) progress evaluation.

R501-1-22. Residential Additional Program Intake and Discharge Requirements.

(1) An intake assessment shall be completed following an approved intake screening and no later than seven days from the admission date. The assessment shall consider and contain:

- (a) gender identity and individualized assessment for bedroom and bathroom assignments;
- (b) cultural background;
- (c) dominant language and mode of communication;
- (d) family history and dynamics;
- (e) current and past health and medical history;
- (f) social, psychological, developmental, vocational, and, as appropriate, educational factors;
- (g) suicide risk screening; and
- (h) authorization to serve and obtain emergency care.

(2) A residential program serving children shall inform the parent or guardian and obtain signed verification of understanding that their children may be interviewed by a licensing representative in accordance with Subsection 62A-2-106-1(k).

(3) A program may not serve youth from out of state without a disruption plan as described in Section 62A-2-125 and, as applicable, Title 62A, Chapter 4a, Part 7, Interstate Compact Placement of Children.

(4) Each congregate care disruption plan must contain the following:

- (a) program must retain jurisdiction and responsibility for the youth while the youth remains in Utah;
- (b) a program must complete an individualized disruption plan at the time of intake for each out of state client to include:
 - (i) who is responsible for the child's return if placement at the facility disrupts;
 - (ii) current emergency contact information to include the name, address, phone and email address of the parent or responsible party;
 - (iii) a signed statement from parent or responsible party outlining the plan for the youth in the event of an unplanned disruption in care; and
 - (iv) a plan for safe transportation either to the state of origin, the responsible party identified in Subsection R501-1-22(3)(a) or to another licensed congregate care program.

(5) Each congregate care program may demonstrate compliance with Subsections R501-1-22(2) and R501-1-22(3) by producing the 100A and 100B forms and disruption plan as required by the Interstate Compact for the Placement of Children (ICPC).

(6) Each congregate Care program shall report private placements to the office as described in Section 62A-2-125 by completing the congregate care out of state placement survey on the office website no later than ~~by~~ the fifth business day of each month.

(7) Each congregate care program shall report each critical and non-critical restraint or seclusion to the office within one business day.

(8) Each congregate care program that fails to comply with Section 62A-2-125 shall be fined the actual cost of care incurred by entities maintaining the youth for purposes of locating, housing, and transporting the youth.

R501-1-23. Program Clinical Services.

(1) Each program providing clinical treatment shall assign a clinical director to ensure that assessment, treatment, and service planning practices are:

- (a) regularly reviewed and updated;
- (b) individualized; and
- (c) designed to involve the participation of each client or each client's parent or guardian.

(2) Each program providing clinical treatment shall ensure that each person working directly with a client shall be informed of

the client's individual treatment needs and advised of the best approach to working with that client.

(3) Each program providing clinical treatment shall ensure that client treatment plans are developed and signed by a licensed clinical professional within 30 days of admission.

(4) Each program providing clinical treatment shall ensure that discharge goals are identified in the initial treatment plan and treatment goals are structured around the identified discharge goals and objectives.

(5) Each program providing clinical treatment shall ensure that each client identified for treatment receives individual treatment at least weekly. A non-residential program providing clinical treatment may alter the weekly therapy requirement as designated in the client treatment plan.

(6) Each program providing group counseling, family counseling, skills development, or other treatment shall ensure the treatment is offered and documented as prescribed in the treatment plan.

R501-1-24. Program Policy and Procedure Requirements.

(1) A program shall develop, implement, and comply with policies and procedures sufficient to ensure client health and safety and meet the needs of the client population served.

(2) Before initial licensure and as updates are made, policies and procedures shall be:

- (a) submitted electronically to the office;
 - (b) approved by the office as required; and
 - (c) trained to each staff.
- (3) Policy and procedures shall address:
- (a) client eligibility as outlined in Subsection R501-1-13(1)(f);

(b) intake and discharge processes;

(c) client rights as outlined in Rule R495-876 [and] to include client responsibilities;

- (d) staff and client grievance procedures;
- (e) behavior management, addressing:
 - (i) appropriate and inappropriate behaviors of clients;
 - (ii) appropriate and inappropriate staff responses to client behaviors; and

(iii) staff response to a client leaving a program without permission;

- (f) if applicable, seclusion policy;
- (g) if applicable, restraint policy outlining that restraint is:
 - (i) only used as a temporary means to prevent harm to the client or in protection of others;
 - (ii) only to be completed by an individual with documented training in nonviolent crisis intervention and de-escalation techniques; and

(iii) is a last resort emergency safety measure only;

(h) instructions to staff regarding how to report and respond to significant criminal activity and significant medical emergencies;

(i) program plan for the prevention or control of infectious and communicable disease to include coordination with and following any guidance of the state or local health authorities, Center for Disease Control, and the department;

(j) critical incident reporting in accordance with Subsection R501-1-11(2);

(k) emergency procedures to instruct staff how to address incident reporting, continuity of care, transport, relocation, and client health and safety during natural disasters, extreme weather events,

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fire, utility or structural failures, or other unexpected disruptions to the program service;

(l) if transportation of clients is provided, the program shall meet the following requirements:

- (i) insurance;
- (ii) valid driver license;
- (iii) adherence to Title 41, Motor Vehicles;
- (iv) the driver to have a cell phone for immediate contact;
- (v) vehicle maintenance;
- (vi) emergency contact postings in the vehicle to include program name, address, and phone number to be called by first responders if needed;

(vii) vehicles to be equipped with a first aid kit as recommended by the American Red Cross; and

(viii) a policy to ensure that all clients exit the vehicle upon arriving at the destination unless directly supervised by a staff member;

(m) firearm policy that does not restrict constitutional or statutory rights regarding concealed weapons permits as described in Title 53, Chapter 5, Part 7, Concealed Firearms Act;

(n) smoking policy in accordance with Title 26, Chapter 38, Utah Indoor Clean Air Act;

(o) policies and procedures if clients are present in the program for six or more consecutive hours to address:

(i) provision of client meals and whether meals will be program-prepared, catered, or self-provided; and

(ii) administration of required medication if a program manages, stores or administers medication;

(p) description of any supplemental or contracted services that may be provided unrelated to the treatment or service plan or outside the scope of the license to include:

- (i) summer camp;
- (ii) wilderness excursion;
- (iii) transportation;
- (iv) extended outing;
- (v) travel out of the state or country;

(vi) any supplemental machines or equipment, including training on their utilization and maintenance;

(vii) gaining informed consent from each client or client's parent or guardian for voluntary participation in these supplemental services; and

(viii) securing each necessary license, certification, or state and local permission before offering these services or operating with clients in a temporary or satellite location;

(q) unplanned discharge policy;

(r) suicide prevention policy addressing how to manage clients who screen with elevated risk levels;

(s) non-discrimination policy that includes:

(i) a prohibition of abuse, discrimination, and harassment based on ~~[race, color,]~~sex, gender identity, or sexual orientation~~], religion, or national origin~~;

(ii) policy and procedure described in Section 62a-2-124;

(iii) a program requiring uniforms shall only permit gender neutral selection;

(iv) assurance that treatment practices and staff training are trauma informed to identify and eliminate triggers for re-traumatization;

(v) outline the consequences for staff or client ~~[intolerance]~~abuse, or harassment, ~~[or bullying]~~of staff or clients on the basis of gender identification or sexual orientation; and

~~[(vi) required policy approval in accordance with Section R501-1-9;~~

] (t) consequences for staff acting outside their training or policy and procedure; and

(u) record retention.

(4) Program-specific policies shall address any unique circumstances regarding physical facility, supervision, community safety and mixing populations.

(5) Record retention policy shall describe the program's plan and responsibility for retaining each client record for seven years or until a client turns 21 years of age, whichever comes later.

(6) Record retention policy shall describe the program's plan and responsibility for retaining each staff records for seven years.

(7) In accordance with Section 63G-2-309, a program may submit a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality for records the program submits to the office that the program believes should be protected under Subsection 63G-2-305(1) or 63G-2-305(2), including program policies and procedures.

R501-1-25. Additional Policy and Procedure Requirements for Residential Programs.

(1) A program that provides meals for clients shall have and follow a food service policy. The food service policy must include:

(a) staff and client training on the policy;

(b) procedures for identifying and accommodating clients with special dietary needs;

(c) allowances for nutritious snacks to be available during restricted hours if the program restricts access to food and kitchen equipment;

(d) if serving parents and their children, requirements for consenting adult clients to maintain full responsibility for their, and their children's, special dietary needs;

(e) a written policy for when meals are prepared by clients to include the following:

(i) rules and privileges of kitchen use;

(ii) menu planning and procedures;

(iii) sharing self-prepared food;

(iv) nutrition and sanitation requirements;

(v) schedule of responsibilities; and

(vi) shopping and storage responsibilities;

(f) a residential program, excluding residential treatment program, may allow for client independence and responsibility for their own supplies, food, laundry or transportation with policies that outline resources and responsibility for the provision of these items; a program shall assist clients on a limited basis if they are temporarily unable to provide these items or services for themselves.

(2) A program managing, storing, or administering client medications shall have and follow a medication management policy to require:

(a) program and client responsibility for medication including storage and administration of medications on-site and, as applicable, when staff and clients are off-site in program related activities;

(b) if applicable, medication self-administration policy;

(c) if storing and administering medications, training required to administer medication and the process to be followed;

(d) recording medication dosages according to prescriptions;

(e) monitoring and recording effects and side effects of medications; and

(f) Logging doses and recording and reporting medication errors.

(3) Policy to train staff to identify and address:

- (a) clients who pose a risk of violence;
- (b) clients in possession of contraband;
- (c) clients who are at risk for suicide;
- (d) managing clients with mental health concerns;
- (e) identifying the signs and symptoms of clients presenting under the influence of substances or alcohol; and

(f) prescribed staff responses to any of the circumstances listed in Subsection R501-1-25(3), including ongoing monitoring and assessment for remaining in the program.

(4) Policy regarding the care, vaccination, licensure, and maintenance of any animals on-site to include:

- (a) assessment of pet allergies for any clients interacting with animals in the program;
- (b) maintenance of required examinations, registrations, and vaccinations; and

(c) supervision of clients in the presence of animals.

(5) Client belongings policy that addresses:

- (a) initial and updated inventory signed by the client;
- (b) storage and return of each client belonging to the client or client's guardian at the time of discharge; and

(c) program shall replace any lost or stolen items for which the program is responsible.

(6) A program managing funds for client allowances must document each expense.

(7) A residential program shall develop and follow a policy for providing separate space for sick clients

(8) A ratio of one staff to one client during transports is only permissible when the program has conducted a safety assessment that indicates that client and staff safety is reasonably assured.

R501-1-26. Congregate Care Program Additional Policy and Procedure Requirement.

(1) A Congregate Care Program may not utilize any behavior management technique, restraint, seclusion or curriculum unless it has been approved by the office.

(2) The program's licensed clinical professional shall conduct regular reviews of client restraints, seclusions, behavioral interventions, and time outs to inform processing discussions with clients and training for direct care staff.

(3) A congregate care program shall have a contraband policy including what constitutes contraband and how the program ensures restriction of client access to contraband and dangerous weapons or materials.

(a) Strip searches and body cavity searches are prohibited by Section 62A-2-123 without documented, individualized justification for protection of an individual's health and safety.

(b) Strip search and body cavity search policies may not allow for strip searches to be performed as a universal practice and may only allow these searches to be conducted with individualized justification, documentation, and in accordance with a detailed policy approved by the office.

(c) Strip searches and body cavity searches may only be performed in congregate care by a medical professional outside of the line of sight of direct care staff.

(4) A congregate care suicide prevention policy may only be approved by the office if it complies with Subsection 62A-2-123(5). A suicide prevention policy may not allow a blanket practice of placing beds in hallways or common areas for staff convenience,

client dignity must be preserved and therapist or client authorization is required for displacing a child from normal sleeping arrangements.

(5) A congregate care behavior management policy may only be approved by the office if, in addition to complying with Section 62A-2-123, the policy reflects the following:

(a) each program staff shall employ behavior management techniques that are trauma informed and appropriate for the client's age, behavior, needs, developmental level, and past experiences and shall defer to the least restrictive method of behavior management available to control a situation;

~~[(b) each program will ensure compliance with Section 62A-2-123 in each aspect of the program, including for a client who is under a contracted caregiver's supervision for transportation, outing, retreat, or similar activity;~~

~~[(e)]~~(b) each program staff shall only use behavior management techniques that emphasize de-escalation and promote self-control, self-esteem, and independence; and

~~[(f)]~~(c) each program shall identify a behavior management curriculum that emphasizes de-escalation and is compliant with Section 62A-2-123;

~~[(g)]~~(d) only direct care staff familiar with the child and the child's needs shall conduct passive physical restraint;

~~[(h)]~~(e) restraint will only be used if it will not cause undue physical discomfort, harm, or pain to the client;

~~[(i)]~~(f) interventions that use painful stimuli are prohibited as a general practice;

~~[(j)]~~(g) passive physical restraint shall be used only as an emergency, temporary means of physical containment to protect the consumer, other persons, or property from immediate harm;

~~[(k)]~~(h) restraint may only continue as long as the client presents an immediate danger to self or others;

~~[(l)]~~(i) passive physical restraint may not be used as a convenience to staff, a substitute for programming or associated with punishment in any way;

~~[(m)]~~(j) clients, non-direct care staff, or other unauthorized individuals may not use any form of restraint;

~~[(n)]~~(k) staff may not use physical work assignments or activities that inflict pain as behavior management techniques;

~~[(o)]~~(l) appropriate de-escalation techniques and alternatives to restraint or seclusion;

~~[(p)]~~(m) thresholds for restraints;

~~[(q)]~~(n) the physiological and psychological impact of restraint;

~~[(r)]~~(o) appropriate monitoring;

~~[(s)]~~(p) staff ~~[shall be trained]~~training to recognize the physical signs of distress, positional asphyxia, and obtaining medical assistance;

~~[(t)]~~(q) staff ~~[shall be trained]~~training on how to intervene if another staff member fails to follow correct procedures when using a restraint;

~~[(u)]~~(r) staff ~~[shall be trained]~~training on time limits for restraints;

~~[(v)]~~(s) the process for obtaining clinical approval for continued restraints;

~~[(w)]~~(t) the procedure for documenting and reporting restraints;

~~[(x)]~~(u) the procedure for processing restraints with clients;

~~[(y)]~~(v) the procedure for following up with staff after a restraint;

~~[(z)]~~(w) how staff shall address injuries and complaints;

~~[(aa)]~~(x) department code of conduct; and

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~~([z])~~ client rights listed in the provider code of conduct.
~~Section R501-1-27.]~~

(6) A congregate care seclusion policy may only be approved by the office if it reflects the following:

(a) seclusion is only used to ensure the immediate safety of the child or others and must be terminated as soon as the risks have been mitigated, not to exceed four hours without clinical justification;

(b) staff who are familiar to the child must directly supervise the child dur[~~f~~]ing the seclusion;

(c) staff supervising seclusion shall ensure that any potentially harmful items or objects are removed from the seclusion environment;

(d) seclusion rooms shall measure a minimum of 75 square feet and have a minimum ceiling height of seven feet with no equipment, hardware or furnishings that obstruct staff's view of the client or present a hazard;

(e) seclusion rooms shall have either natural or mechanical ventilation with break resistant windows and either a break resistant two-way mirror or camera that allows for observation of the entire room;

(f) seclusion rooms may not have locking capability and may not be located in closets, bathrooms, unfurnished areas or other areas not designated as part of residential living space;

(g) bedrooms may not be utilized as a seclusion room and seclusion rooms may not be utilized as bedrooms;

(h) seclusion shall be documented in detail by the staff involved in initiating and supervising the seclusion episode;

(i) seclusion episodes of more than two in a 24-hour period require clinical review and documentation regarding client suitability for remaining in the program; and

(j) client time-out may be used when addressing behavioral issues if:

(i) a client in time-out is never physically prevented from leaving the time-out area;

(ii) it takes place away from the area of activity or from other clients, such as in the client's bedroom;

(iii) staff monitors the client while in time-out; and

(iv) the reason for and duration of time-out is documented by staff on duty when it occurs.

(7) Before a congregate care program may accept a client or send a discharging client who is transported by a youth transportation company as defined in Subsection 62A-2-101(50), the program must:

(a) ensure that the transport company is registered with the office;

(b) ensure that the transporter has an Office approved background clearance; and

(c) identify all out of state means of transport in the congregate care out of state monthly placement survey outlined in Subsection R501-1-22(5).

~~[R501-1-27. Client Rights.~~

~~(1) Clients have the right to:~~

~~(a) be treated with dignity;~~

~~(b) be free from potential harm or acts of violence;~~

~~(c) be free from discrimination;~~

~~(d) be free from abuse, neglect, mistreatment, exploitation, unusual or unnecessary consequences, and fraud;~~

~~(e) privacy of current and closed records;~~

~~(f) communicate and visit privately with family, attorney, clergy, physician, counselor, or case manager, unless therapeutically contraindicated or court restricted; and~~

~~(g) be informed of program policies and procedures that affect client or guardian's ability to make informed decisions regarding client care, to include:~~

~~(i) program expectations, requirements, mandatory or voluntary aspects of the program;~~

~~(ii) consequences for non-compliance;~~

~~(iii) reasons for involuntary termination from the program and criteria for re-admission;~~

~~(iv) program service fees and billing; and~~

~~(v) safety and characteristics of the physical environment where services will be provided.~~

~~(2) Clients shall be informed of these rights and an acknowledgment by the client or guardian shall be maintained in the client file.~~

~~]~~

R501-1-28. Compliance.

(1) A licensee that is in operation on the effective date of this rule shall be ~~[given 60 days to achieve compliance]~~immediately compliant with this rule.

KEY: licensing, human services

Date of Last Change: August 3, 2022

Notice of Continuation: October 4, 2017

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at adminrules.utah.gov. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R70-540	Filing ID: 50168
Effective Date:	08/02/2022	

Agency Information

1. Department:	Agriculture and Food	
Agency:	Regulatory Services	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Travis Waller	801-982-2250	twaller@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 catchline:
R70-540. Food Establishment Registration

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized under Subsection 4-5-301(1)(a) which requires the Department of Agriculture and Food to establish rules related to registration of food establishments to protect public health and ensure a safe food supply.

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 because it sets guidelines related to the registration of food establishments in Utah that will help protect public health and ensure a safe food supply for consumers in the state. These guidelines include: registration categories, registration requirements, and conditions under which a registration can be denied, suspended, or revoked. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Craig W. Butters, Commissioner	Date:	08/02/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R105-1	Filing ID: 50203
Effective Date:	08/04/2022	

Agency Information

1. Department:	Attorney General	
Agency:	Administration	
Room number:	Suite 230	
Building:	Capitol Complex	
Street address:	350 N State Street	
City, state and zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 142320	
City, state and zip:	Salt Lake City, UT 84114-2320	
Contact persons:		
Name:	Phone:	Email:
Ric Cantrell	801-538-9600	rcantrell@agutah.gov
David Sonnenreich	801-845-6862	dsonnenreich@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R105-1. Attorney General's Selection of Outside Counsel, Expert Witnesses, and Other Litigation Support Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The Attorney General's Office is an Independent Procurement Unit for purposes of retaining outside counsel and procuring litigation support services, including retaining expert witnesses, pursuant to Subsection 63G-6a-106(4). Rulemaking is necessary in order to supplement the Utah Procurement Code and other statutory authority due to the unique needs of procurements in litigation, such as hiring confidential experts or paying for routine but expensive items such as court reporters. Explicit rulemaking authority includes Subsection 63G-6a-506(2) and Section 67-5-32.
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 allow for the efficient management of complex and expensive litigation. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Ric Cantrell, Chief of Staff	Date:	08/03/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-120	Filing ID: 53396
Effective Date:	08/14/2022	

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 persons:		
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:
R277-120. Licensing of Material Developed with Public Education Funds
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53E-3-501(1)(e)(i), which directs the Board to encourage school productivity and cost effectiveness measures.

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 written 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 staff has reviewed this rule and determined that it is important to continue the requirements for licensing of courseware and materials produced with public education funds; and to promote a policy that education materials produced with public funds be openly, publicly, and freely accessible for use by others. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-121	Filing ID:	52556
Effective Date:	08/14/2022		

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 persons:		
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:
R277-121. Board Waiver of Administrative Rules

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (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 Section 53G-7-202, which allows the Board to grant an LEA's request for a waiver from a Board rule.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no written 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 staff has reviewed this rule and determined that it is important to continue to establish procedures for an LEA to request a waiver from a Board rule. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	08/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R317-1	Filing ID:	53968
Effective Date:	08/15/2022		

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Building:	Multi-Agency State Office Building	
Street address:	195 N 1950 W, DEQ, 3rd floor	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144870	
City, state and zip:	Salt Lake City, UT 84114-4870	
Contact persons:		
Name:	Phone:	Email:
Jake VanderLaan	801-536-4350	jvander@utah.gov

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Judy Etherington	801-536-4344	jetherington@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R317-1. Definitions and General 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 19-5-104(1) authorizes the Board to make rules which implement or effectuate the powers and duties of the Board. Subsection 19-5-104(3)(e) authorizes the Utah Water Quality Board to establish and conduct a continuing planning process for control of water pollution, including the specification and implementation of maximum daily loads of pollutants. Section 19-5-105.3 provides a pathway for a permittee to challenge a decision by the Water Quality Division (Division) through an Independent Peer Review process and outlines a process for the Division to conduct an Independent Scientific when the Director determines that a Division decision may have a significant financial impact on stakeholders or when an action may be precedent-setting or controversial.
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 six times since the last five-year review. All amendments were subject to public comment. Public comments received during those rulemaking actions since the last five-year review addressed technical issues specific to those amendments. The Division has not received written comments since the last five-year review specifically supporting or opposing this rule on the whole. Comments received during hearings and the public comment period for rule changes have been addressed through preparation of responsiveness summaries by Division and have been presented to the Water Quality Board for their consideration during the rulemaking process.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule provides definitions and general requirements necessary for implementation of the Utah Water Quality Act (Act). It is central to the implementation of the Act, in that it provides the general framework for control of water pollution, including the requirements for construction permits, compliance with state Water Quality Standards, and requirements for waste discharges. Section R317-1-7 defines which waterbodies have TMDL determinations completed for them and adopts by reference the limits and recommendations contained therein. Incorporating

TMDLs into this rule by reference is important for implementing pollution controls and attaining water quality standards including the regulatory requirements set forth in stormwater and wastewater discharge permits and voluntary implementation of best management practices for nonpoint sources of pollution. Section R317-1-10 is required by Section 19-5-105.3 and provides a clear and consistent process for the Division to engage in independent scientific review. The Division has not received written comments since the last five-year review opposing this rule. This rule is essential to the implementation of water quality protection programs under the Utah Water Quality Act and compliance with the federal Clean Water Act. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	John Mackey, Director	Date:	08/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R410-14	Filing ID:	50947
Effective Date:	08/12/2022		

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing	
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 persons:		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@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 catchline:
R410-14. Administrative Hearing 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:

Section 26B-1-213 authorizes the Department of Health and Human Services (Department) to hold hearings and administer the hearing process in conjunction with other state agencies. In addition, 42 CFR 431 Subpart E sets forth notice requirements and hearing procedures for the Department to implement.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department did not receive any written comments regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Department has determined that this rule is necessary because it implements procedures for notification, reinstatement, continuation, availability, review, orders, interpretation, recordings, telephonic hearings, grievances, travel costs, forms, witnesses, and subpoenas. Therefore, this rule should be continued.

The Department has identified necessary changes to this rule, and additional amendments to entity names and provisions for superior agency review will be forthcoming due to the recent consolidation of the Department of Health and Human Services.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	08/12/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R765-134	Filing ID:	53422
Effective Date:	08/11/2022		

Agency Information

1. Department:	Higher Education (Utah Board of)
Agency:	Administration
Building:	Utah Board of Higher Education Building, The Gateway
Street address:	60 S 400 W
City, state and zip:	Salt Lake City, UT 84101

Contact persons:

Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu

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

General Information**2. Rule catchline:**

R765-134. Informal Adjudicative Procedures Under the Administrative Procedures Act

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 Subsection 63G-4-102(6). This subsection permits an agency to enact a rule that affects or governs an adjudicative proceeding.

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 to summarize.

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 justified because there is a continuing need for the Utah Board of Higher Education to provide rules and procedures for the application of Title 63G, Chapter 4, Administrative Procedures Act, and associated regulations by the institutions in the state's system of higher education. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	08/19/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R765-993	Filing ID:	53431
Effective Date:	08/11/2022		

Agency Information

1. Department:	Higher Education (Utah Board of)	
Agency:	Administration	
Building:	Utah Board of Higher Education Building, The Gateway	
Street address:	60 S 400 W	
City, state and zip:	Salt Lake City, UT 84101	
Contact persons:		
Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R765-993. Records Access and Management
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 Subsection 63G-2-204(3). This subsection permits an agency to make rules specifying where and to whom requests for access shall be directed.
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 to summarize.
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 justified because there is a continuing need for the Utah Board of Higher Education to provide rules and procedures relating to records access and management matters pursuant to Title 63G, Chapter 2, Government Record Access and Management Act. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	08/19/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R850-100	Filing ID: 53408
Effective Date:	08/08/2022	

Agency Information

1. Department:	School and Institutional Trust Lands	
Agency:	Administration	
Room number:	Suite 500	
Street address:	675 E 500 S	
City, state and zip:	Salt Lake City, UT 84102-2818	
Contact persons:		
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:
R850-100. Trust Land Management Planning
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 53C-2-20 I requires the Director of the School and Institutional Trust Lands Administration to develop rules that describe the planning and opportunity for public participation prior to conducting any agency actions. This rule provides the guidelines for that planning.
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 regarding this rule since the last five-year notice of 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 statute requires that the agency develop rules setting forth planning procedures to be undertaken regarding trust lands. This rule provides the necessary planning guidelines to ensure that the agency is in compliance with its fiduciary responsibilities and that interested parties are given an opportunity to participate in that planning. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Michelle McConkie, Director	Date:	08/03/2022
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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		
Rule Number:	R307-214	Filing ID: 53314
New Deadline Date:	01/06/2023	

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

General Information

2. Rule catchline:
R307-214. National Emission Standards for Hazardous Air Pollutants
3. Reason for requesting the extension:
The Air Quality Board was unable to meet in August. This extension will allow time for Board consideration of the five-year review at the September meeting, which will occur after the 09/09/2022 deadline.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	08/09/2022
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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.

Agriculture and Food

Marketing and Development

No. 54637 (Repeal) R65-12: Utah Small Grains and Oilseeds Marketing Order
Published: 06/15/2022
Effective: 08/01/2022

Plant Industry

No. 54596 (Amendment) R68-4: Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products
Published: 06/01/2022
Effective: 08/01/2022

No. 54609 (Amendment) R68-23: Utah Firewood Quarantine
Published: 06/01/2022
Effective: 08/01/2022

No. 54706 (Amendment) R68-25: Industrial Hemp Program for Processors
Published: 07/15/2022
Effective: 08/23/2022

No. 54705 (Amendment) R68-26: Industrial Hemp Product Registration and Labeling
Published: 07/15/2022
Effective: 08/23/2022

No. 54700 (Amendment) R68-29: Quality Assurance Testing on Cannabis
Published: 07/15/2022
Effective: 08/23/2022

Regulatory Services

No. 54640 (Amendment) R70-201: Compliance Procedures
Published: 06/15/2022
Effective: 08/01/2022

No. 54646 (Amendment) R70-310: Grade A Pasteurized Milk

Published: 06/15/2022
Effective: 08/01/2022

No. 54676 (Amendment) R70-320: Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing
Published: 07/01/2022
Effective: 08/08/2022

No. 54677 (Amendment) R70-410: Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes
Published: 07/01/2022
Effective: 08/08/2022

Education

Administration

No. 54716 (New Rule) R277-125: Small School District Capital Projects
Published: 07/15/2022
Effective: 08/22/2022

No. 54710 (Amendment) R277-309: Appropriate Licensing and Assignment of Teachers
Published: 07/15/2022
Effective: 08/22/2022

No. 54711 (Amendment) R277-415: School Nurses Matching Funds
Published: 07/15/2022
Effective: 08/22/2022

No. 54722 (Amendment) R277-726: Statewide Online Education Program
Published: 07/15/2022
Effective: 08/22/2022

No. 54713 (New Rule) R277-918: Education Innovation Program
Published: 07/15/2022
Effective: 08/22/2022

No. 54714 (Amendment) R277-922: Digital Teaching and Learning Grant Program
Published: 07/15/2022
Effective: 08/22/2022

Government Operations

Fleet Operations

No. 54618 (Amendment) R27-1: Definitions
Published: 06/15/2022
Effective: 08/15/2022

Health and Human Services

Administration (Health)

No. 54662 (New Rule) R380-65: Public Health Emergency Protocols
Published: 06/15/2022
Effective: 08/24/2022

No. 54664 (New Rule) R380-66: Medical Rationing Procedures
Published: 06/15/2022
Effective: 08/24/2022

Health Care Financing, Coverage and Reimbursement Policy
No. 54619 (Amendment) R414-40: Private Duty Nursing Services
Published: 06/01/2022
Effective: 08/24/2022

Higher Education (Utah Board of)

Administration

No. 54661 (New Rule) R765-119: Utah Board of Higher Education Qualifications
Published: 06/15/2022
Effective: 08/19/2022

Insurance

Administration

No. 54692 (Repeal and Reenact) R590-93: Replacement of Life Insurance and Annuities
Published: 07/01/2022
Effective: 08/08/2022

No. 54701 (Amendment) R590-131: Accident and Health Coordination of Benefits Rule
Published: 07/15/2022
Effective: 08/22/2022

No. 54693 (Amendment) R590-162: Actuarial Opinion and Memorandum Rule
Published: 07/01/2022
Effective: 08/08/2022

No. 54694 (Amendment) R590-178: Securities Custody
Published: 07/01/2022
Effective: 08/08/2022

No. 54695 (Amendment) R590-207: Health Producer Commissions for Small Employer Groups
Published: 07/01/2022
Effective: 08/08/2022

No. 54702 (Amendment) R590-219: Credit Scoring
Published: 07/15/2022
Effective: 08/22/2022

No. 54696 (Amendment) R590-247: Universal Health Insurance Application Rule
Published: 07/01/2022
Effective: 08/08/2022

Money Management Council

Administration

No. 54723 (Amendment) R628-17: Limitations on Commercial Paper and Corporate Notes
Published: 07/15/2022
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Natural Resources

Oil, Gas and Mining; Oil and Gas

No. 54721 (Amendment) R649-1: Tar Sands Change
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State Parks

No. 54736 (New Rule) R651-104: State Park Designations
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No. 54708 (Amendment) R651-601: Definitions as Used in These Rules
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No. 54707 (Amendment) R651-603: Animals
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No. 54734 (Amendment) R651-606: Camping
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No. 54678 (Amendment) R651-612: Veteran's with Disabilities Honor Pass
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No. 54729 (Amendment) R651-633: Special Closures or Restrictions
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Wildlife Resources

No. 54689 (Amendment) R657-54: Season Dates, Bag and Possession Limits, and Areas Open
Published: 07/01/2022
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School and Institutional Trust Lands

Administration

No. 54687 (Amendment) R850-3: Applicant Qualifications, Application Forms, and Application Processing
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No. 54686 (Amendment) R850-5: Payments, Royalties, Audits, and Reinstatements
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No. 54685 (Repeal) R850-27: Geothermal Steam
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No. 54683 (Repeal and Reenact) R850-30: Special Use Leases
Published: 07/01/2022
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No. 54684 (New Rule) R850-170: Renewable Energy Lease Agreements
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Transportation

Administration

No. 54704 (Repeal and Reenact) R907-1: Administrative Procedures
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Workforce Services

Homeless Services

No. 54724 (Repeal) R988-200: Homeless Shelter Cities Mitigation Restricted Account
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No. 54725 (New Rule) R988-400: Homeless Shelter Cities Mitigation Restricted Account
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No. 54726 (New Rule) R988-500: Overflow Plan Requirements
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No. 54727 (New Rule) R988-600: Administration of COVID-19 Homeless Housing and Services Grant Program
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End of the Notices of Rule Effective Dates Section

