

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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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 September 02, 2022, 12:00 a.m., and September 15, 2022, 11:59 p.m. are included in this, the October 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 31, 2022. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through January 29, 2023, 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: Repeal		
Rule or Section Number:	R23-4	Filing ID: 54830

Agency Information

1. Department:	Government Operations	
Agency:	Facilities Construction and Management	
Room number:	3626	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W, Floor 3	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 141160	
City, state and zip:	Salt Lake City, UT 84114-1160	
Contact persons:		
Name:	Phone:	Email:
Mike Kelley	801-957-7239	mkelley@agutah.gov
Michelle Adams	801-957-7240	michelledadams@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R23-4. Suspension/Debarment
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Executive Order No. 2021-12, Section 5(c)(i) requires each agency head to repeal rules that are no longer necessary. Rule R23-4 was last substantively amended 03/15/2005. Rule R23-4 cites Sections 63A-5-103, 63A-5-201, 63G-6-103, 63G-6-208, and 63G-6-804 through 63G-6-806, all of which have been superseded. Rule R23-4 is redundant of Sections 63A-5b-606 and 63G-6a-904.
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 rulemaking action repeals Rule R23-4 in its entirety to conform to Executive Order No. 2021-12.

Fiscal Information

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

A) State budget:

None--Rule R23-4 is redundant of Sections 63A-5b-606 and 63G-6a-904.

B) Local governments:

None--Rule R23-4 is redundant of Sections 63A-5b-606 and 63G-6a-904.

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

None--Rule R23-4 is redundant of Sections 63A-5b-606 and 63G-6a-904.

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

None--Rule R23-4 is redundant of Sections 63A-5b-606 and 63G-6a-904.

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

None--Rule R23-4 is redundant of Sections 63A-5b-606 and 63G-6a-904.

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

None--Rule R23-4 is redundant of Sections 63A-5b-606 and 63G-6a-904.

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 Government Operations, Jenney Rees, 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 63A-5b-305(2)(c)	Subsection 63G-6a-904(6)	
-----------------------------	--------------------------	--

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:	10/31/2022
--	------------

9. This rule change MAY become effective on:

11/07/2022

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

Agency Authorization Information

Agency head or designee and title:	James R. Russell, Director	Date:	08/22/2022
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R23. Government Operations, Facilities Construction and Management.

[R23-4. Suspension/Debarment.

R23-4.1. Purpose and Authority.

~~(1) This rule sets forth the the basis and guidelines for suspension or debarment from consideration for award of contracts by the division.~~

~~(2) This rule is authorized under Subsection 63A-5-103(1), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, and Subsection 63G-6-208(2), which authorizes the Building Board to make rules regarding the procurement of construction, architect-engineering services, and leases.~~

R23-4.2. Definitions.

~~(1) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.~~

~~(2) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.~~

~~(3) "Person" shall have the meaning provided in Section 63G-6-103.~~

R23-4.3. Suspended and Debarred Persons Not Eligible for Consideration of Award.

~~No person who has been suspended or debarred by the division, will be allowed to bid or otherwise solicit work on division contracts until they have successfully completed the suspension or debarment period.~~

R23-4.4. Causes for Suspension/Debarment and Procedure.

~~(1)(a) The causes for debarment and procedures for suspension/debarment are found in Sections 63G-6-804 through 63G-6-806, as well as Section 63A-5-208(8).~~

~~(b) Pursuant to subsection 63G-6-804(2)(e), a pattern and practice by a state contractor to not properly pay its subcontractors may be determined by the Director to be so serious and compelling as to affect responsibility as a state contractor and therefore may be a cause for debarment.~~

~~(c) A pattern and practice by a subcontractor to not honor its bids or proposals may be a cause for debarment.~~

~~(2) The procedures for suspension/debarment are as follows:~~

~~(a) The director, after consultation with the using agency and the Attorney General, may suspend a person from consideration for award of contracts for a period not to exceed three months if there is probable cause to believe that the person has engaged in any activity which may lead to debarment. If an indictment has been issued for an offense which would be a cause for debarment, the suspension, at the request of the Attorney General, shall remain in effect until after the trial of the suspended person.~~

~~(b) The person involved in the suspension and possible debarment shall be given written notice of the division's intention to initiate a debarment proceeding. The using agency and the Attorney General will be consulted by the director and may attend any hearing.~~

~~(c) The person involved in the suspension and debarment will be provided the opportunity for a hearing where he may present relevant evidence and testimony. The director may establish a reasonable time limit for the hearing.~~

~~(d) The director, following the hearing on suspension and debarment shall promptly issue a written decision, if it is not settled by written agreement.~~

~~(e) The written decision shall state the specific reasons for the action taken, inform the person of his right to judicial or administrative review, and shall be mailed or delivered to the suspended or debarred person.~~

~~(f) The debarment shall be for a period as set by the Director, but shall not exceed three years.~~

~~(g) Notwithstanding any part of this rule, the Director may appoint a person or person(s) to review the issues regarding the suspension or debarment as a recommending authority to the Director.~~

KEY: contracts, construction, construction disputes

Date of Last Change: March 15, 2005

Notice of Continuation: September 7, 2017

Authorizing, and Implemented or Interpreted Law: 63A-5-103 et seq.; 63G-6-103; 63G-6-804]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Rule or Section Number:	R23-9	Filing ID:	54834
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Agency Information

1. Department:	Government Operations		
Agency:	Facilities	Construction	and Management
Room number:	3626		
Building:	Taylorsville State Office Building		
Street address:	4315 S 2700 W, Floor 3		
City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box 141160		
City, state and zip:	Salt Lake City, UT 84114-1160		
Contact persons:			
Name:	Phone:	Email:	
Mike Kelley	801-957-7239	mkelley@agutah.gov	
Michelle Adams	801-957-7240	michelledadams@agutah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule or section catchline:
R23-9. Cooperation with Local Government Planning
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Executive Order No. 2021-12, Section 5(c)(i) requires each agency head to repeal rules that are no longer

necessary. Rule R23-9 cites Sections 63A-5-103 and 63A-5-206 which have been superseded. Rule R23-9 is redundant of Sections 63A-5b-604; 63A-5b-1104, 10-9a-304, and 17-27a-304.

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 rulemaking action repeals Rule R23-9 to in its entirety to conform to Executive Order No. 2021-12.

Fiscal Information

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

A) State budget:

None--Rule R23-9 is redundant of Sections 63A-5b-604; 63A-5b-1104, 10-9a-304, and 17-27a-304.

B) Local governments:

None--Rule R23-9 is redundant of Sections 63A-5b-604; 63A-5b-1104, 10-9a-304, and 17-27a-304.

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

None--Rule R23-9 is redundant of Sections 63A-5b-604; 63A-5b-1104, 10-9a-304, and 17-27a-304.

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

None--Rule R23-9 is redundant of Sections 63A-5b-604; 63A-5b-1104, 10-9a-304, and 17-27a-304.

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

None--Rule R23-9 is redundant of Sections 63A-5b-604; 63A-5b-1104, 10-9a-304, and 17-27a-304.

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

None--Rule R23-9 is redundant of Sections 63A-5b-604; 63A-5b-1104, 10-9a-304, and 17-27a-304.

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 Government Operations, Jenney Rees, 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 63A-5b-305(2)(c)		

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:	10/31/2022

9. This rule change MAY become effective on:	11/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	James R. Russell, Director	Date:	08/22/2022
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R23. Government Operations, Facilities Construction and Management.**[R23-9. Cooperation with Local Government Planning.****~~R23-9-1. Purpose and Authority.~~**

~~(1) This rule provides for cooperation with local government planning efforts when siting, designing, and constructing facilities on state property.~~

~~(2) This rule is authorized under Section 63A-5-103 which directs the Building Board to make rules necessary for the discharge of its duties and those of the division.~~

~~(3) The statutory provisions that set forth the relationship between the planning and zoning authority of local governments and the construction of facilities on state property are contained in Section 63A-5-206.~~

~~R23-9-2. Definitions.~~

~~(1) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.~~

~~(2) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.~~

~~(3) "Local government" means a "municipality" as defined in Section 10-1-104 or a "county" as defined in Section 17-50-101.~~

~~(4) "State property" means land owned by the State of Utah and any department, division, agency, institution, commission, board, or other administrative unit of the State of Utah; including but not limited to, the division, the State Building Ownership Authority, and state institutions of higher education.~~

~~R23-9-3. Exemption from Local Government Planning and Zoning Authority.~~

~~As provided for in Section 63A-5-206, Section 10-9a-304, and Section 17-27a-304, construction on state property is not subject to the planning and zoning authority of local governments regardless of what entity will own or occupy the resulting facility. Construction on state property is not subject to local government building permit requirements, or plan reviews.~~

~~R23-9-4. Consideration of Local Government Planning.~~

~~(1) When determining the location and design of facilities to be constructed on state property, the division shall consider input received from local governments and, as appropriate, local government planning and zoning requirements that would apply if the property were not owned by the state. This may include discussions with local government planning officials and/or a review of some or all of the following local government documents:~~

- ~~(a) master plan;~~
- ~~(b) zoning ordinance; and~~
- ~~(c) requirements for ingress, egress, parking, landscaping, fencing, buffering, traffic circulation, and pedestrian circulation.~~

~~(2) In any dispute regarding departures from local government requirements, the final determination shall be made by the director.~~

~~R23-9-5. Additional Requirements for Secured Facilities.~~

~~In addition to the requirements of this rule, the director shall comply with the requirements of Subsection 63A-5-206(12) regarding notice and hearings for projects involving diagnostic, treatment, parole, probation, or other secured facilities.]~~

~~KEY: construction, planning, zoning~~

~~Date of Last Change: January 23, 2018~~

~~Notice of Continuation: September 7, 2017~~

~~Authorizing, and Implemented or Interpreted Law: 63A-5-103; 63A-5-206]~~

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Rule or Section Number:	R58-17	Filing ID: 54866
--------------------------------	---------------	-----------------------------------

Agency Information

1. Department:	Agriculture and Food	
Agency:	Animal Industry	
Building:	4315 S 2700 W, TSOB, South Bldg, Floor 2	
Mailing address:	PO Box 146500	
City, state and zip:	Taylorsville, UT 84129-2128	
Contact persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Dean Taylor	385-290-9462	djtaylor@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov

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

General Information

2. Rule or section catchline:
R58-17. Aquaculture and Aquatic Animal Health
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Utah statute provides specific rulemaking authority over the aquatic animal health program to both the Department of Agriculture and Food (Department) (under Section 4-37-109) and the Fish Health Policy Board (Board) (under Section 4-37-503). Currently, the authority of both entities

is addressed in this single rule which can be confusing and makes this rule more difficult to amend when changes are needed because the Board is required to approve changes that address their specific authority only. Accordingly, a repeal and reenact is necessary to reorganize this rule to more clearly divide the authority over the program between the Board (whose authority will be included in Rule R58-17) and the Department (whose will be included in a new rule, Rule R58-27, to be filed concurrently with these changes).

(EDITOR'S NOTE: The proposed new Rule R58-27 is under ID 54868 in this issue, October 1, 2022, of the Bulletin.)

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

Sections of the existing rule that address licensing and licensing renewal have been removed from this rule to be added to a new rule, R58-27.. Sections addressing inspection requirements, health approval, pathogens, and protocols to respond to pathogen detection will remain in this rule. This reorganization will help ensure that producers, the Department, and the Division of Wildlife Resources understands their roles and the required procedures they must follow when responding to a health emergency. Additionally, the rewrite has removed the list of pathogens and inspection requirements in favor of including those in the Aquatic Animal Inspection Policy. This enables the Board to respond to emerging disease threats or changes in pathogen distribution more efficiently. The Board is required to evaluate and update the policy as necessary or as a minimum every even numbered year. The changes also re-classify pathogens to prohibited, restricted, and reportable, and create restricted health approval for facilities to stay in operation while treating affected animals. Finally, nonsubstantive and formatting changes have been made to the text to make it more consistent with the requirements of the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

This rule is clarifying only and does not add additional program requirements. There should be no fiscal impact to the state.

B) Local governments:

This rule does not add additional program requirements and is clarifying only. There should be no fiscal impact to local governments.

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

This rule does not add additional program requirements and includes clarifications only. There should be no fiscal impact to small businesses.

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

This rule does not add additional program requirements and includes clarifications only. There should be no fiscal impact to non-small businesses.

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

This rule does not add additional program requirements and includes clarifications only. There should be no fiscal impact to other persons.

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

The general cost of participating in the aquaculture program will not change so there should be no change in compliance costs for affected persons.

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 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:

Section 4-37-503		
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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)	U.S. Fish and Wildlife Service and American Fisheries Society-Fish Health Section, Blue Book
Publisher	American Fisheries Society
Issue Date	2020
Issue or Version	2020 edition

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

Official Title of Materials Incorporated (from title page)	Manual of Diagnostic Tests for Aquatic Animals (Aquatic Manual)
Publisher	Office International des Epizooties (OIE), World Organization for Animal Health (WOAH, founded as OIE)
Issue Date	2021
Issue or Version	8th Edition

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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Craig W Butters, Commissioner	Date:	09/21/2022
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R58. Agriculture and Food, Animal Industry. [R58-17. Aquaculture and Aquatic Animal Health. R58-17-1. Authority and Purpose.

(A) This rule is promulgated under the authority of Section 4-37-101, Subsection 4-2-103(1)(i), and Section 4-37-503.

(B) This rule establishes a program for the registration and aquatic animal health monitoring of aquaculture facilities, fee fishing facilities, aquatic animal brokering, public aquaculture facilities, public fishery resources, private fish ponds, institutional facilities, private stocking, short term fishing events and displays. This rule also addresses the importation of aquatic animals into Utah and establishes requirements for health approval of aquatic animals and their sources. The program is based on the monitoring of facility operations and aquatic animal movements to prevent the exposure to and spread of pathogens or diseases which adversely affect both cultured and wild aquatic animal stocks.

(C) Persons engaged in operations listed in Rule R58-17-1(B) must comply with the rules for site selection and species control under the Utah Department of Agriculture and Food, pursuant to Subsections 4-37-201(3) and 4-37-301(3), and Department of Natural Resources Rules R657-3 and R657-16.

(D) This rule is part of a statewide aquaculture disease control effort that includes procedures and policies established and adopted by the Fish Health Policy Board.

R58-17-2. Definitions.

(A) The following terms are defined for this rule:

(1) "Aquaculture" means the controlled cultivation of aquatic animals. In this rule, the word "aquaculture" refers to commercial aquaculture.

(2)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off stream reservoir, aquatic animal processing plant or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility, private fish pond or fee fishing facility, as defined in this rule.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate aquaculture facilities regardless of ownership.

(3)(a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete or egg of any species listed in definitions under Subsection R58-17-2(3)(a).

(4) "Blue Book" means a set of the most current standard procedures approved by the American Fisheries Society for inspecting the health of aquatic animals.

(5) "Brokers or aquatic animal brokering" refers to the activities of dealers, entities, individuals or companies that are in the business of buying, selling, exchanging or transferring live aquatic animals between approved or licensed facilities pursuant to Subsection R58-17-13(C) and Section R58-17-14 without being actively involved in the culture, rearing or growth of the animals. This includes a person or company who rears aquatic animals, but also buys and sells (brokers) additional aquatic animals without rearing them.

(6) "Certificate of Registration (COR)" means an official document which licenses facilities with the Department of Agriculture and Food or which licenses facilities and events with the Division of Wildlife Resources pursuant to Section R58-17-4. The purpose of the COR is to establish the legal description of the facility, the species of aquatic animals reared and to grant the authority to engage in the described activity.

(7) "Department" means the Department of Agriculture and Food with appropriate regulatory responsibility pursuant to Subsection R58-17-4(A)(1) in accordance with the provisions of Sections 4-2-103 and 4-37-104.

(8) "Disease History" means a record of all known pathogens that have historically affected aquatic animals reared at a facility that seeks health approval pursuant to Subsection R58-17-15(C)(2)(b).

(9) "Division" means the Division of Wildlife Resources in the Department of Natural Resources with the appropriate regulatory responsibility pursuant to Subsection R58-17-4(A)(2), Rule R657-3, Rule R657-16 in accordance with the provisions of Sections 23-14-1 and 4-37-105.

(10) "Egg only sources" refers to a separate category of salmonid fish health approval that allows for the purchase of "fish eggs only" from a facility pursuant to Subsection R58-17-15(B)(5) and (D)(1). This category makes the distinction between those pathogens that are vertically transmitted (from parent to offspring through the egg, i.e., Renibacterium salmoninarum ((BKD), IHNV, IPNV, OMV, VHSV, SVCV, EHN) and those horizontally transmitted from one aquatic animal to another by contact or association, i.e., Aeromonas salmonicida, Asian tapeworm, Ceratomyxa shasta, Tetracapsuloides bryosalmonae (PKX), Myxobolus cerebralis (whirling disease), and Yersinia ruckeri.

(11) "Emergency prohibited pathogen" is a pathogen that causes high morbidity and high mortality, is exotic to Utah, and requires immediate action. These pathogens generally cannot be treated and shall be controlled through avoidance, eradication, and disinfection pursuant to Section R58-17-20.

(12) "Emergency Response Procedures" are procedures established by the Fish Health Policy Board to be activated any time an emergency prohibited or prohibited pathogen is reported pursuant to Section R58-17-9 and Subsection R58-17-15(D)(6).

(13) "Emergency response team" means teams as defined by the Fish Health Policy Board responsible for developing and executing action plans to respond to and report findings of emergency prohibited or prohibited pathogens pursuant to Section R58-17-9, and Subsections R58-17-10(A)(1) and R58-17-10(B)(1).

(14) "Entry Permit" means an official document issued by the Department which grants permission to the permit holder to import aquatic animals into Utah pursuant to Section R58-17-13. An entry permit is issued for up to 30 days and stipulates the species, size or age, weight and source of aquatic animals to be imported.

(15) "Facility disease history report" means a report of all known pathogens that have historically affected aquatic animals

reared at a facility seeking approval pursuant to R58-17-15, Subsections (B)(6), (C)(1)(a), and (C)(2)(b) and (d).

(16) "Fee fishing facility" means a body of water used for holding or rearing aquatic animals for the purpose of providing fishing for a fee or for pecuniary consideration or advantage pursuant to Sections 4-37-103 and R58-17-18.

(17) "Aquatic animal health approved/health approval" means a system of procedures which allows an assessment of the disease history of a facility or population of aquatic animals and which grants a statistical assurance that neither "emergency prohibited" nor "prohibited" pathogens are present. The Department's and Division's responsibilities for granting health approval are delineated in Section R58-17-15. Health Approval status is granted to qualified COR holders in Utah and to aquatic animal sources inside and outside of Utah, all of which have satisfactorily completed health approval requirements pursuant to Section R58-17-15, and placed on the aquatic animal health approval list under Subsection R58-17-13(C). Health approval of the source facility is necessary before a purchase may be made from the source facility or before the source facility may sell, transfer, or broker aquatic animals in or into Utah pursuant to Section R58-17-14.

(18) "Fish Health Policy Board" means the board created pursuant to Section 4-37-503 and referred to in Section R58-17 as the "Board".

(19) "Aquatic animal processing plant" means a facility pursuant to Subsection R58-17-13(G) and (H), and Section R58-17-17 used for receiving whole dead, eviscerated fresh or frozen salmonids, or other live and dead aquatic animals as approved on the COR for processing.

(20) "Five year disease history" means a report of all known pathogens affecting each stock native to, propagated at, or imported to the originating facility. These stocks or the offspring of these stocks are subsequently moved to another facility that seeks health approval pursuant to Subsections R58-17-15 (B)(6), (C)(1)(a), and (C)(2)(b) and (d). The report shall cover up to the previous five years.

(21) "Import/importation" means to bring live aquatic animals, by any means into the State of Utah from any location outside the state and to subsequently possess and use them for any purpose.

(22) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program.

(23)(a) "Marine aquatic animal" means a member of any species of fish, mollusk or crustacean that spends its entire life cycle in a marine environment.

(b) "Marine aquatic animal" does not include:

(i) anadromous aquatic animal species;

(ii) species that temporarily or permanently reside in brackish water; and

(iii) species classified as invasive or nuisance by state or federal law.

(24) "OIE" means the Office International des Epizooties of the World Organization for Animal Health, an intergovernmental organization that was established in 1924 to promote world animal health. The OIE provides guidelines and standards for health regulations and diagnostic tests. The most recent manual of health standards for aquatic animals is used to inspect for aquatic animal pathogens, for which the Bluebook has not developed standards. Such pathogens include EHN, WSSV, YHV, TSV, and IHNV covered in Section R58-17-20.

(25) "Ornamental fish" means any species of aquatic animals that are reared or marketed for their beauty or exotic characteristics, rather than for consumptive or recreational use. Tropical fish, goldfish and koi are included in the category of ornamental fish. This does not include those species of aquatic animals listed as prohibited or controlled in Department of Natural Resources Rule R657-3. Ornamental fish are not regulated under Rules R58-17 or R657-3. If the Department or Division determines that an introduction of ornamental fish poses a disease risk for aquatic animals, then all requirements under this rule apply.

(26)(a) "Private fish pond" means a body of water where privately owned aquatic animals are propagated or kept for a private, non-commercial purpose.

(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.

(27) "Procedures for the Timely Reporting of Pathogens" means procedures established by the Board for the timely reporting of emergency prohibited, prohibited, or reportable pathogens from any source in Utah or from any out of state health approved source pursuant to Section R58-17-9 and Subsection R58-17-15(D)(5).

(28) "Prohibited pathogen" is a pathogen that can cause high morbidity or high mortality, may be endemic to Utah, and requires action in a reasonable time. Prohibited pathogens are generally very difficult or impossible to treat and can only be controlled through avoidance, eradication, and disinfection, etc under Section R58-17-20.

(29)(a) "Public aquaculture facility" means a tank, canal, raceway, pond, off stream reservoir, or other structure used for the controlled cultivation of aquatic animals by the Division, the U.S. Fish and Wildlife Service, or an institution of higher education.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate public aquaculture facilities.

(30) "Public fishery resource" means aquatic animals produced in public aquaculture facilities, purchased or acquired for public fishery waters and sustained as wild and free-ranging populations in the surface waters of the state.

(31) "Quarantine" means the restriction of movement of live or dead aquatic animals regardless of age and of all equipment and hauling trucks into or from an area designated by the Commissioner of Agriculture or State Veterinarian pursuant to Sections R58-17-10 and 4-31-115 and 4-31-116.

(32) "Reportable pathogen" is a pathogen that generally is prevented using good management practices. Reportable pathogens are not prohibited in Utah but may be prohibited in some other states or countries pursuant to Section R58-17-20. Inspections are not required for reportable pathogens, but positive findings must be reported to the Board.

(33) "Salmonid and non-salmonid" designate aquatic animals based on the range of optimal growth temperatures used in their culture. "Salmonid" means any species of aquatic animal that is of the order Salmoniformes and optimally lives in coldwater conditions. "Non-salmonid" means any species of aquatic animal that is not of the order Salmoniformes nor cultured in coldwater conditions. For purposes of Rule R58-17, aquatic animals such as cool water fish, warm water fish, and crustaceans such as shrimp, crayfish, and prawns are classified as non-salmonids.

(34) "Source" means all rearing or holding locations during all of the life stages of an aquatic animal.

~~(35) "Unregulated pathogen" is a pathogen that is not regulated in Utah. Unregulated pathogens include all pathogens not classified as either emergency prohibited, prohibited, or reportable. Reporting of these pathogens to the Fish Health Policy Board is not required, pursuant to Section R58-17-20.~~

R58-17-3. Penalties.

~~Any violation of or failure to comply with any provision of this Rule, R657-59 or R657-16 or any specific requirement contained in a certificate of registration or entry permit issued pursuant to this Rule, R657-59 or R657-16 may be grounds for issuance of citations, levying of fines, revocation of the certificate of registration, or denial of future certificates of registration pursuant to Subsections 4-2-103(1)(f) and 4-2-304(1), as determined by the Commissioner of Agriculture and Food and pursuant to Sections 23-19-9, 23-20-4, and 23-13-11, as determined by the Director of the Division of Wildlife Resources.~~

R58-17-4. Certificate of Registration (COR) Required.

~~(A) Activities requiring a COR:~~

~~(1) A COR, issued by the Department, is required before a person may engage in any of the following activities within Utah:~~

~~(a) operate an aquaculture facility;~~

~~(b) operate a fee fishing facility;~~

~~(c) operate an aquatic animal processing plant; or~~

~~(d) broker aquatic animals.~~

~~(2) A certificate of registration or health approval is not required to import, possess, or transfer a live marine aquatic animal, provided it is:~~

~~(a) imported and possessed for the singular purposes of immediate human consumption;~~

~~(b) possessed no longer than 30 days from the date of importation;~~

~~(c) acquired from a lawful source and documentation of purchase is retained;~~

~~(d) not released in any water source, including sewer systems; and~~

~~(e) imported and possessed in compliance with applicable state and federal laws, including the importation and possession requirements in Subsection R657-3-11(8).~~

~~(3) A COR, issued by the Division, is required for operation of the following activities within the State of Utah:~~

~~(a) public aquaculture facilities;~~

~~(b) private fish ponds unless otherwise exempt from COR requirements under Sections R657-59-3 and R657-59-7;~~

~~(c) institutional aquaculture facilities under Section R657-16-13;~~

~~(d) short term fishing events under Section R657-16-11;~~

~~(e) private stocking under Section R657-16-12; and~~

~~(f) displays under Section R657-16-14.~~

~~(4) Entry permits shall be issued to holders of current CORs for the activities named in this subsection and to private fish pond owners pursuant to Subsection R58-17-13 (J) and Rule R657-59.~~

R58-17-5. Species Allowed.

~~(A)(1) Pursuant to Division of Wildlife Resources Rules R657-3, R657-59, R657-16, and Sections 23-15-10 and 23-13-5, only those species authorized by the Division or the Wildlife Board may be imported, possessed, or transported in conjunction with the authorized activity.~~

~~(2) The species, strains, and reproductive capabilities of aquaculture product that may be stocked in fee fishing facilities are generally described in Subsections R657-59-16(3) and (4).~~

~~(B)(1) Pursuant to Subsections 4-37-105(1), 4-37-201(3)(B) and 4-37-301(3)(B) the Department shall coordinate with the Division to determine which species the holder of a COR may propagate, possess, transport or sell.~~

~~(2) Notwithstanding the site restrictions described in Subsections R657-59-16(3) and (4), the Department may authorize stocking in fee fishing facilities after formally coordinating with the Division on a site suitability for areas generally closed to stocking aquaculture product.~~

~~(C) The Department will monitor sales receipts to ensure that the species described on CORs, sales receipts, and entry permits issued by the Department are those authorized by the Division.~~

R58-17-6. Qualifying Waters.

~~(A) A private or public aquaculture facility, fee fishing facility or private fish pond may not be developed on natural lakes, natural flowing streams, or reservoirs constructed on natural stream channels. Offstream reservoirs, and excavated ponds or raceways may be considered for use as an aquaculture or fee fishing facility.~~

~~(B) During the COR application process, the Department shall coordinate with the Division to determine the suitability of the proposed site pursuant to Subsections R58-17-6(A), Section 4-37-111, and Subsections 4-37-201(3) and 4-37-301(3).~~

R58-17-7. Screens Required.

~~(A) Screens or other devices that are designed to prevent the movement of aquatic animals into or out of an aquaculture facility, fee fishing facility, public aquaculture facility, private fish pond, institutional aquaculture facility, short term fishing event or display must be placed at the inflow and outflow. The presence of adequate screening or other devices is a precondition to issuance or renewal of CORs pursuant to Section R58-17-4 and a precondition to delivery of aquatic animals to private fish ponds from health approved sources as provided in Section 23-15-10 and R657-59-15.~~

~~(B) As part of the COR issuance process, the Department or the Division shall make site visits and determine the adequacy of screening.~~

~~(C) The Department or Division may inspect screening or other devices in their respective areas of responsibility to assure compliance with Subsections R58-17-7(A) and (B) and Section 23-15-10 and R657-59-15 during reasonable hours.~~

~~(D) It is the responsibility of the private fish pond owner or COR holder to report to the Department or Division, depending on which agency has jurisdictional authority, all escapements of aquatic animals from facilities. This is to be done within 72 hours of the loss or knowledge of the loss. The report shall include facility names, date of loss, estimate of number of aquatic animals lost, names of the public water the aquatic animals escaped into, remedial actions taken, and plans for future remedial action. The COR holder or facility operator or private fish pond owner will bear all costs for remedial actions. The Department or Division shall notify all affected agencies and parties within two working days. The agency having responsibility may suspend all activities at the facility, including aquatic animal imports, transfers, sales, fishing, etc., until the investigation and remedial actions are completed.~~

R58-17-8. Application and Renewal of Certificates of Registration (CORs).

~~(A) Application process.~~

~~(1) For application procedures pursuant to Section R58-17-4, contact the Fish Health Program of the Department at 350 N. Redwood Road, Box 146500, Salt Lake City, UT 84114-6500 for activities listed in Subsection R58-17-4(A)(1) or the Wildlife Registration Office of the Division at 1594 West North Temple, Suite 2110, Salt Lake City, UT 84114-6301 for activities listed in Subsection R58-17-4(A)(2).~~

~~(2) The application form must be completed and sent to the appropriate address with the required fee. Forms that are incomplete, incorrect or not accompanied by the required fee may be returned.~~

~~(3)(a) Department or Division authorization of the site and species will be done at the earliest possible date. The Department will make every effort to process applications submitted to it within 14 work days pursuant to Sections R58-17-5 and R58-17-6. Pursuant to Section R657-16-4, applications submitted under the jurisdiction of the Division require up to 45 days for processing, except for short-term fishing events, which require up to 10 days.~~

~~(b) The Division will review COR applications to ensure site suitability, allowable species, and potential impact to adjacent aquatic wildlife populations, consistent with this rule and state code.~~

~~(4) If the application is granted, a written COR and COR number will be issued. The COR holder shall keep a copy of the COR on file for 2 years pursuant to Section 4-37-110.~~

~~(5) If the application is denied, a written explanation will be sent to the applicant.~~

~~(B) Renewal process.~~

~~(1) All CORs are valid until December 31 for the calendar year issued unless specified otherwise on the COR or unless renewed sooner.~~

~~(2) CORs must be renewed annually by submitting a completed application and the required fee to the Department or Division, and by complying with all other applicable renewal criteria.~~

~~(3) Failure to timely renew the COR annually may result in the loss of health approval, denial of future CORs, and the removal or destruction pursuant to Subsection R58-17-13(G) of the live or dead aquatic animals at the facility. Removal or disposal of live or dead aquatic animals is the responsibility of the owner and shall be done by means acceptable to the agency having responsibility.~~

~~(C) CORs are not transferable.~~

R58-17-9. Reporting Aquatic Animal Diseases.

~~Persons involved in aquaculture and being regulated by this Rule, R657-59, or R657-16, having knowledge of the existence in the state of any of the diseases currently on the pathogen list, Subsection R58-17-15(D)(2), (3), and (4), shall report it to the Department, Fish Health Program or the Division, Aquatics Section. The Department or Division will follow the Procedures for the Timely Reporting of Pathogens and the Emergency Response Procedures established by the Board. All confirmed findings of pathogens pursuant to Subsections R58-17-15(D)(2), (3), and (4), determined from such incidents or from inspections or diagnostic work initiated by the Department or the Division, will be reported to the Board.~~

R58-17-10. Quarantine of Aquatic Animals and Premises.

~~(A) If evidence exists that the aquatic animals in any facility are infected with or have been exposed to pathogens listed in Subsections R58-17-15(D)(2) and (3), then either quarantine or removal from the approval list under Subsection R58-17-2 (17), depending on the pathogen, may be imposed by the Commissioner of Agriculture or the State Veterinarian. Any action other than a quarantine must be approved by the Board.~~

~~(1) Lifting of the quarantine imposed on a facility infected with or exposed to emergency or prohibited pathogens requires the creation and implementation of a biosecurity plan that specifies action to control the pathogen and includes testing requirements of all lots of aquatic animals to verify the absence of the pathogen. In addition, the Department may require decontamination of the facilities and equipment in accordance with current medical knowledge of the organism, the Blue Book, and guidelines set forth by the Emergency Response Team.~~

~~(2) If the Department has reasonable evidence that the contagion is still present pursuant to Section R58-17-11, then quarantine, closure, or other measures such as decontamination of the facility and equipment, destruction of aquatic animals, etc. may be imposed. Such measures will be in accordance with current medical knowledge of the organism, the Blue Book, and guidelines set forth by the Emergency Response Team.~~

~~(B) A quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian where aquatic animals are possessed, transported or transferred in violation of this rule, wildlife rules, or statute and consequently pose a possible disease threat; or where a quarantine is reasonably necessary to protect aquatic animals within the state. This action may be reviewed by the Board for recommendations to the Department.~~

~~(1) Quarantines imposed on facilities for rule or statute violations or for purposes of protecting aquatic animals may be lifted once sufficient evidence is presented to the State Veterinarian's satisfaction that infection is not present at the facility or that biosecurity control measures are being followed which will control further spread of the pathogen, and that removal of the quarantine does not create a risk to other aquatic animal populations. In addition, the Department may require decontamination of the facilities and equipment in accordance with current medical knowledge of the organism, Blue Book procedures, and guidelines set forth by the Emergency Response Team.~~

~~(2) If the Department has reasonable evidence that the contagion is present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed pursuant to Subsection R58-17-10(A)(2).~~

~~(C) Any person, licensed pursuant to Rule R58-17 and affiliated with a facility under quarantine, who delivers aquatic animals from health approved sources for other public or private aquaculture facilities may, with written permission from the Department, use their hauling trucks if the operator either houses the truck off the quarantined facility, or sanitizes the truck according to Department recommendations each time it leaves the quarantined facility.~~

R58-17-11. Handling of Aquatic Animals and Premises Confirmed to Be Infected With a Listed Pathogen in Subsection R58-17-15(D).

~~(A) Where any facility or group of aquatic animals is confirmed to be infected with one or more of the pathogens listed in Subsection R58-17-15(D), the Commissioner of Agriculture and Food or State Veterinarian may either quarantine or remove the facility from the health approval list pursuant to Section R58-17-10 and take steps to prevent the spread of the pathogen and to eliminate it. These actions may be reviewed by the Board for recommendations to the Department. The Department or Division, in their respective areas of responsibility, may take one or more of the following actions as listed below in this subsection, depending on the pathogen involved and the potential effects of the pathogen on the receiving~~

~~water, neighboring aquaculture facilities or the public fishery resource.~~

~~(1) Destruction and disposal of all infected and exposed aquatic animals.~~

~~(2) Cleaning and decontamination or disposal of all handling equipment and holding facilities.~~

~~(3) Testing is required of all lots of aquatic animals, which may be at the owner's expense, to detect the presence or spread of the pathogen. This may include the use of sentinel aquatic animals. After two negative tests, six months apart, the quarantine shall be reassessed, possibly released, and/or other measures may be imposed pursuant to Subsection R58-17-10(A)(2). Once sufficient evidence shows that the pathogen is not present at a facility, full restocking may begin.~~

~~(4) The infected aquatic animals may be allowed to remain on the premises through the production cycle depending on the pathogen involved and its potential effects on adjacent animals. All stocks within the facility shall be tested according to provisions outlined in the biosecurity plan to determine if the pathogen persists. At the end of the production cycle, then testing should be done at least annually. If the pathogen is not found after two consecutive annual inspections, then testing may revert to the original requirements for the facility. If biosecurity of the facility cannot or is not being maintained, immediate destruction of the stocks may be required. The biosecurity plan for the facility shall remain in effect if the COR holder sells or goes out of business.~~

R58-17-12. Statement of Variances.

~~Circumstances may arise which cannot be adequately addressed or resolved with this rule. The Board may grant specific variances to the rule if the following conditions are met:~~

~~(A) the variance is based on scientifically sound information and rationale;~~

~~(B) the variance will cause no significant threat to other aquaculture operations, state or private, or to public fishery resources; and~~

~~(C) the variance is documented appropriately.~~

R58-17-13. Importation of Aquatic Animals or Aquaculture Products Into Utah.

~~(A) Except as provided in Subsection (L), an official ENTRY PERMIT is required to import live aquatic animals or their gametes into Utah. This permit is in addition to the COR for operation of the facility or as otherwise specified in Section R58-17-4. The entry permit can be obtained at no charge by contacting the Department, Fish Health Program and providing the following information:~~

~~(1) name, address, phone number and COR number of importer;~~

~~(2) species, size, or number of aquatic animals to be imported; and~~

~~(3) name and health approval number of sources, origin of aquatic animals, transfer history, and approximate date of shipment.~~

~~(4) For international shipments or an animal with international origins, a certificate of veterinary inspection from the source must be obtained by the importer indicating a negative record of testing by OIE reference labs for prohibited pathogens pursuant to Subsections R58-17-15(D)(2) and (3), a negative record of other OIE listed pathogens affecting the aquatic animals to be imported, and that known nuisance species are not found in the water source. In addition, written authorization from the US Department of~~

~~Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) for the importation must be included.~~

~~(B) Each shipment of live aquatic animals must be authorized. A copy of the entry permit will be sent to the requesting party and a copy must accompany the shipment. The permit holder shall allow up to two weeks for the Department to verify the health approval status of the source and to verify authorized species status pursuant to R58-17-5.~~

~~(C) All import shipments of live aquatic animals must originate from sources that have been health approved by the Department pursuant to Subsections R58-17-15(A)(2) and (B). A list of approved sources is maintained by the Department, but the list is not published due to frequent updates. Information on currently approved sources may be obtained by contacting the Department Fish Health Program.~~

~~(D) All importations must be species that have been authorized by the Wildlife Board and the Division pursuant to Rule R657-3, Section R657-59-16, and Subsection 4-37-105(1).~~

~~(E) To import or sell live grass carp (*Ctenopharyngodon idella*), the fish must be verified as being triploid (sterile) by the National Triploid Grass Carp Inspection and Certification Program. A U.S. Fish and Wildlife Service triploid verification form must be obtained from the supplier as required in Section R657-16-7. Both this form and the Department's statement verifying treatment or testing for Asian tapeworm must be on file with the Department prior to shipment or stocking of the fish. Copies of the entry permit, treatment or testing statement for Asian tapeworm, and triploid verification forms must accompany the fish during transit. The statement verifying treatment or testing is also required for all aquatic animal species that are known or reported hosts or carriers of the Asian tapeworm.~~

~~(F) The State Veterinarian may require inspection, treatment or testing of any aquatic animal and plant species, including aquatic invasive species, water, vehicle, or container, in accordance with current scientific knowledge before importation.~~

~~(G) Whole dead and eviscerated fresh or frozen salmonid fish or live aquatic animals may be imported into Utah for processing at a aquatic animal processing plant without an Entry Permit. Live salmonid fish may be imported into and transported within Utah for processing at a aquatic animal processing plant without an Entry Permit, but they must be killed upon release from the transport vehicle and may not be held live at the aquatic animal processing plant. Waste products, i.e., brine shrimp cysts, carcasses, viscera and waste water, must be incinerated, buried with "quick lime" (Calcium oxide), composted, digested, or disposed of by means acceptable to the Department to deter the spread of pathogens and non-native species pursuant to Rule R657-3 by water or animals. The Department may apply the requirements in this subsection to other species of aquatic animals and pathogens if future needs arise.~~

~~(H) Placement of dead aquatic animals, parts, or waste products from an aquatic animal processing plant, or live or dead aquatic animals from any facility into public waters is illegal. Proper disposal is the responsibility of the processor, owner, broker pursuant to Subsection R58-17-13(G).~~

~~(I) All transport vehicles, importing aquatic animals imported into Utah or transporting them through Utah pursuant to Subsection R58-17-14(C), must have proper documentation and are subject to inspection. The lack of proper documentation and/or the findings of an inspection may result in entry denial, fines, or other Department actions. All inspection costs will be born by the importer.~~

~~(J) Aquatic animals may be imported and transported to a private fish pond by an out of state source, approved by the Department, or by an aquaculture facility representative with a current COR by following requirements in Section 4-37-204. The approved or licensed facility representative and the private fish pond representative shall sign and forward receipts pursuant to Subsection R58-17-17(D).~~

~~(L) An import permit or certificate of veterinary inspection is not required to import a live marine aquatic animal into the state, provided it is:~~

~~(1) imported and possessed for the singular purposes of immediate human consumption;~~

~~(2) possessed no longer than 30 days from the date of importation;~~

~~(3) acquired from a lawful source and documentation of purchase is retained;~~

~~(4) not released in any water source, including sewer systems; and~~

~~(5) imported and possessed in compliance with applicable state and federal laws, including the importation and possession requirements in Subsection R657-3-11(8).~~

R58-17-14. Buying, Selling, and Transporting Aquatic Animals.

~~(A) Buying aquatic animals:~~

~~Live aquatic animals, except ornamental fish and marine aquatic animals as provided in Subsection R58-17-4(2), unless the ornamental fish are determined a risk pursuant to Subsection R58-17-2(A)(24), may be purchased or acquired only by persons or entities who possess a valid COR that authorizes the animals or as otherwise specified in Section R58-17-4. This applies to separate facilities owned by the same individual. Live aquatic animals must be purchased only from sources that either are located in state and have a valid COR for aquaculture or are located outside of Utah. In both cases, the sources must also be on the current aquatic animal health approval list.~~

~~(B) Selling aquatic animals:~~

~~Live aquatic animals, except ornamental fish and marine aquatic animals as provided in Subsection R58-17-4(2), unless the ornamental fish are determined a risk pursuant to Subsection R58-17-2(A)(24), may be sold only by a person or entity located in state who possesses a valid COR for aquaculture or by a person or entity located outside of Utah. Current listing for each source and species on the health approval list is also required. Within Utah, an aquaculture facility operator may only sell or transfer live aquatic animals to a person or entity, which has been issued a valid COR to possess such animals or as otherwise specified in R58-17-4.~~

~~(C) Transporting aquatic animals:~~

~~(1) Any person possessing a valid COR may transport the live aquatic animals specified on the COR to the facility named on the COR.~~

~~(2) All transfers or shipments of live aquatic animals within Utah, except ornamental fish and marine aquatic animals as provided in Subsection R58-17-4(2), unless the ornamental fish are determined a risk pursuant to Subsection R58-17-2(A)(24), must be accompanied by documentation of the source and destination, including:~~

~~(a) name, address, phone number, COR number and COR expiration date, aquatic animal health approval number and expiration date of source and transfer history;~~

~~(b) species, size, number or weight being shipped;~~

~~(c) name, address, phone number, COR number and COR expiration date of the destination or as specified in R58-17-4; and~~

~~(d) date of transaction.~~

~~(3) Live aquatic animals may be shipped through Utah without a COR, provided that the animals will not be sold, released or transferred, the products remain in the original container, water from the out of state source is not exchanged or released, and the shipment is in Utah no longer than 72 hours. Proof of legal ownership, origin of aquatic animals and destination must accompany the shipment.~~

~~(4) Any person who hauls aquatic animals may transport a species other than those listed on their COR provided the source facility and destination both have a valid COR to possess that species. Transportation of aquatic animals to a private fish pond may not require a COR pursuant to Section R657-59-3, but movement and delivery of the aquatic animals is subject to the species restrictions in Section R657-59-16.~~

~~(5) No person may move or cause to be moved aquatic animals from a facility known to be exposed to or infected with any of the pathogens on the pathogen list, pursuant to Subsections R58-17-15(D)(2) through R58-17-15(D)(4), without first reporting it to the appropriate regulating agency pursuant to Section R58-17-9 and receiving written authorization to move the aquatic animals.~~

~~(D) Brokers:~~

~~(1) Brokers shall follow the same requirements that other producers follow as to importation, health approval of their facility and their source facilities and assuring that live sales are only made to those with valid CORs.~~

~~(2) To qualify for health approval of their aquatic animals, brokers shall obtain health approval for all source facilities from which they broker aquatic animals.~~

R58-17-15. Aquatic Animal Health Approval.

~~(A) Live aquatic animals, except ornamental fish and marine aquatic animals as provided in Subsection R58-17-4(2), unless the ornamental fish are determined a risk pursuant to Subsection R58-17-2(A)(24), may be acquired, purchased, sold, or transferred only from sources which have been granted health approval by the Department pursuant to this Section. This applies to separate facilities owned by the same individual and to both in state and out of state facilities.~~

~~(1) The Department shall be responsible for granting health approval and assigning a health approval number to aquaculture facilities in Utah, and to any out of state sources pursuant to Subsection 4-37-501(1). The Division shall be responsible for granting health approval and assigning a health approval number to public aquaculture facilities within the state, and for the movement of live aquatic animals from wild populations in waters of the state pursuant to Subsection 4-37-501(1).~~

~~(2) The Department is responsible for granting health approval for the importation into or transportation through Utah of aquatic animals.~~

~~(3) The Board may review health approval actions of the Department or the Division.~~

~~(B) Basis for Health Approval.~~

~~(1) Health approval for salmonid aquatic animals is based on the statistical attribute sampling of each lot of aquatic animals at the facility in accordance with current Blue Book procedures. This shall require minimum sampling at the 95% confidence level, assuming a 5% carrier prevalence for the prohibited pathogens, pursuant to Subsections R58-17-15(D)(2) and (3). Health approval is applied to the entire facility, not individual lots of aquatic animal.~~

~~(2) All lots of aquatic animals shall be sampled.~~

~~(3) For brood facilities, lethal sampling may be required on~~

~~the brood aquatic animals if the following conditions exist:~~

~~(a) progeny are not available at the facility for lethal sampling; or~~

~~(b) a statistically valid sample of ovarian fluids from ripe females is not tested.~~

~~(4) Collection, transportation, and laboratory testing of the samples will follow standard procedures specified by the Department, the Division and the Board. Inspections will be conducted under the direction of an individual certified by the American Fisheries Society as a fish health inspector.~~

~~(5) EGG ONLY sources—A facility which cannot gain full health approval because of a horizontally transmitted pathogen, may be approved to sell eggs provided the eggs are free of the listed vertically transmitted pathogens pursuant to Subsection R58-17-15(D)(1) and are properly disinfected using approved methods prior to shipment. Eggs may be required to be from incubation units isolated from hatchery and open water supplies and to be from aquatic animal free water sources.~~

~~(6) Health approval for non-salmonid aquatic animals is based on specific pathogen testing for that identified aquatic animal as per Subsection R58-17-15(D). This shall require minimum sampling at the 95% confidence level, assuming a 5% carrier prevalence for the prohibited pathogens, pursuant to Subsections R58-17-15(D)(2) and (3). In addition, the agency having responsibility pursuant to Subsections R58-17-15(A)(1) and (2) will discuss the disease history of the facility with the producer, and then contact acceptable fish health professionals to identify other existing or potential disease problems.~~

~~(a) An exemption for a statistical attribute sampling of each lot of fish may be granted for non-salmonid species that reside in the same water source throughout their life history and are of equal pathogen susceptibility. In which case, a representative composite sample of 60 fish.~~

~~(7) Under no circumstances shall health approval be granted to a facility if any lots test positive for pathogens listed in Subsections R58-17-15(D)(2) or (3) or if any of the same pathogens contaminate the facility's production waters or water source.~~

~~(C) Approval Procedures.~~

~~(1) Applicable to all aquatic animals.~~

~~(a) To receive initial health approval, inspection reports or other evidence of the disease status of an aquaculture facility or public aquaculture facility must be submitted to the appropriate agency pursuant to Subsections R58-17-15(A)(1) and (2). Applicants seeking initial approval and annual renewal for non-salmonid aquatic animals shall complete and submit forms provided by the Department or Division. Initial approval also requires the applicant to include information on origins of the aquatic animals at the facility, available disease histories by means of a facility disease history report and a five-year disease history report, and aquatic animal transfer histories. The same application materials shall be required annually for renewal of health approval for activities occurring between applications.~~

~~(b) Inspections are conducted pursuant to Section 4-37-502 and this rule to detect the presence of any prohibited pathogens listed under Subsection R58-17-15(D)(2) and (3). Overt disease need not be evident to disqualify a facility. To qualify for initial and renewal of health approval, evidence must be available verifying that prohibited pathogens listed under Subsections R58-17-15(D)(2) and (3) are not present.~~

~~(c) Once requirements for health approval have been met, the facility shall be added to the health approval list of the responsible~~

~~agency and assigned a health approval number for the current year. Health approval of each facility shall be reviewed annually for continuance on the lists maintained by the Department and the Division pursuant to Subsection R58-17-15(A)(1).~~

~~(d) The Department will report all confirmed results of pathogens pursuant to Subsection R58-17-15(D) for sources under its jurisdiction at each meeting of the Board.~~

~~(e) Public aquaculture facilities and wild brood stocks are included on the health approval list maintained by the Division. The Division will report all confirmed results of pathogens pursuant to Subsection R58-17-15(D) for sources under its jurisdiction at each meeting of the Board.~~

~~(f) If all aquatic animals are removed from an approved facility for a period of three months or more, or if health approval is canceled or denied, then subsequent health approval may be granted only after the facility owner has satisfactorily reapplied pursuant to Subsection R58-17-15(C).~~

~~(2) Applicable to salmonid aquatic animals:~~

~~(a) For initial approval of new facilities, two inspections of the same lot, at least four months apart and negative for any prohibited pathogen listed in Subsections R58-17-15(D)(2) and (3), are required. The aquatic animals must have been at the facility at least six months prior to the first inspection. During the inspections, the aquatic animals shall be reared for appropriate periods in waters from one source, and lots from all source waters at a facility shall be inspected.~~

~~(b) For initial approval of existing facilities, health inspection reports for a minimum of the previous two years, and facility disease history reports for up to the previous five years and five-year disease histories for all stocks transferred to the facility are required.~~

~~(c) All lots of aquatic animals at the facility as well as any outside sources of these aquatic animals must be inspected for initial approval and for renewals pursuant to Subsection R58-17-15(B)(4).~~

~~(d) After initial approval, annual inspections shall be conducted to renew health approval. A two-month grace period is granted at the completion of the annual inspection for laboratory testing of samples and reporting of test results. This is to allow the facility to conduct business while awaiting test results. Health inspection reports, the facility disease history for at least the previous year, and disease histories for at least the previous year for all stocks imported to the facility shall be required before each renewal.~~

~~(3) Applicable to non-salmonid aquatic animals:~~

~~(a) For approval of facilities, one inspection of aquatic animals to be approved from the pond, reservoir, or holding facility and negative testing of an appropriate attribute sample for any applicable prohibited pathogen pursuant to Subsection R58-17-15(D)(2) and (3) is required. A composite sample of 60 aquatic animals of the same lot from all ponds in the shipment from the same water source may be accepted in lieu of a full attribute sample.~~

~~(b) In addition, a written report is required from an acceptable fish health professional stating that no clinical signs of any infectious aquatic animal disease are ongoing and that certain pathogens are not infecting the species to be imported at the time of importation.~~

~~(D) Prohibited and reportable pathogen list.~~

~~(1) Pathogens requiring control are classified as emergency prohibited, prohibited, or reportable. Those pathogens denoted by an asterisk (*) preceding the name will only be tested for if the aquatic animals or eggs originate from an area where the pathogen is found. Pathogens denoted by a double asterisk (**) after the name can only be transmitted in aquatic animals and not in the~~

eggs, therefore permitting the special provisions for egg only sources provided in Subsections R58-17-2(A)(10) and R58-17-15(B)(5). Excluding *Artemia* cysts, aquatic shrimp and prawns are not marketed as eggs, thus exempting shrimp and prawns from the egg-only provisions. However, the egg-only provision may be applied should shrimp or prawns be marketed as eggs and the Department or Division determines a vertically transmissible, emergency-prohibited pathogen is present. Pathogens of aquatic shrimp and prawns are denoted with a triple asterisk (***) after the name. Pathogens that are inspected using the most current OIE Manual of Diagnostic Tests for Aquatic Animals are denoted with the pound sign (#) after the name.

- _____ (2) Emergency prohibited pathogens.
 - _____ (a) Infectious hematopoietic necrosis virus (IHNV).
 - _____ (b) Infectious pancreatic necrosis virus (IPNV).
 - _____ (c) Viral hemorrhagic septicemia virus (VHSV).
 - _____ (d) **Oncorhynchus masou* virus (OMV).
 - _____ (e) Spring viremia of carp virus (SVCV).
 - _____ (f) *Epizootic hematopoietic necrosis virus (EHNV)#.
 - _____ (g) White spot syndrome virus (WSSV)***#.
 - _____ (h) Yellow head virus (YHV)***#.
 - _____ (i) Taura syndrome virus (TSV)***#.
 - _____ (j) Infectious hypodermal and hematopoietic necrosis virus (IHHNV)***#.
- _____ (3) Prohibited pathogens.
 - _____ (a) *Myxobolus cerebralis* (whirling disease)**.
 - _____ (b) *Renibacterium salmoninarum* (bacterial kidney disease (BKD)).
 - _____ (c) **Ceratomyxa shasta* (ceratomyxosis disease)**.
 - _____ (d) *Bothriocephalus* (Asian tapeworm disease bothriocephalosis)**.
 - _____ (e) **Tetracapsuloides bryosalmonae* or PKX (proliferative kidney disease (PKD))**.
 - _____ (f) Emerging aquatic animal pathogens the State Veterinarian considers a threat to state aquatic resources, including any filterable agent or agent of clinical significance as determined by the Board.
 - _____ (4) Reportable pathogens.
 - _____ (a) *Yersinia ruckeri* (enteric redmouth disease)**.
 - _____ (b) *Aeromonas salmonicida* (furunculosis disease)**.
 - _____ (c) *Centrocestus formosanus***.
 - _____ (d) Any emerging aquatic animal pathogens the State Veterinarian considers a threat to the state aquatic resources including any filterable agent or agent of clinical significance as determined by the Board.
 - _____ (5) The Procedures for the Timely Reporting of Pathogens shall be followed if any emergency prohibited, prohibited, or reportable pathogen is found. Inspection for reportable pathogens is optional, but positive findings of these pathogens must be reported to the Board. Reporting of unregulated pathogens to the Board is not required.
 - _____ (6) The Emergency Response Procedures shall be activated any time a confirmed finding or unconfirmed evidence of an emergency prohibited or prohibited pathogen is reported.

R58-17-16. Inspection of Records and Facilities:

_____ (A) Except as otherwise provided in Sections R657-16-9 and R657-59-12, the following records shall be maintained for a period of up to five years and be available for inspection during reasonable hours by the appropriate agency pursuant to Section R58-17-4.

- _____ (1) Purchase, acquisition, distribution, and production histories of live aquatic animals.
- _____ (2) CORs and entry permits.
- _____ (3) Valid identification of stocks, including origin of stocks.
- _____ (B) The appropriate agency representatives pursuant to Sections R58-17-4, 4-1-105, 4-31-115, and 23-15-10 and under appropriate regulatory responsibility may conduct pathological or physical investigations at any registered facility, private fish ponds and aquatic animals being imported or transported in vehicles, during reasonable hours if there is cause to believe that a disease condition exists or as otherwise authorized in Section R58-17-7, Subsection R58-17-17 (D), and Rule R657-59 and R657-16. Any laboratory testing as a result of this investigation will be at the owner's expense if evidence indicates that Rule R58-17 has been violated pursuant to the investigation.

R58-17-17. Aquaculture Facilities, Aquatic Animal Processing Plants, Brokers:

- _____ (A) COR required.
 - _____ A COR is required to operate an aquaculture facility or an aquatic animal processing plant and to act as a broker. A separate COR and fee are required for each facility defined under "aquaculture facility", Subsection 4-37-103(2), regardless of ownership.
 - _____ (B) Live aquatic animals may be sold or transferred.
 - _____ The operator of an aquaculture facility with health approval may take the aquatic animals as authorized on the COR from the facility at any time and offer them for sale. Within Utah, live aquatic animals can only be sold to other facilities which have a valid COR for that species. Aquatic animal processing plants dealing with salmonids shall neither hold nor sell live salmonids.
 - _____ (C) Fee fishing facility and/or aquatic animal processing plant allowed. The operator of an aquaculture facility may also operate a fee fishing facility pursuant to Section R58-17-18 or an aquatic animal processing plant pursuant to Section R58-17-17 and Subsection R58-17-13(G) and (H), provided the fee fishing facility or the aquatic animal processing plant is within one half mile distance from the aquaculture facility, contains only those species authorized on the COR for the aquaculture facility, and this activity is listed on the COR for the aquaculture facility.
 - _____ (D) Receipts required. Any sale, shipment, or transfer of live aquatic animals from an in-state approved source, aquaculture facility or a broker must be accompanied by a receipt. A receipt book or the electronic equivalent will be provided by the Department upon request. Copies of all receipts will be submitted to the Department with the annual report. The receipt will contain:
 - _____ (1) names, addresses, phone numbers, COR numbers, COR expiration dates, aquatic animal health approval numbers and expiration dates of sources;
 - _____ (2) number, strain name, species name, age and size, reproductive capability and weight being shipped;
 - _____ (3) names, addresses and phone numbers of destinations;
 - _____ (4) COR numbers and COR expiration dates for destinations excluding private fish pond owners that qualify to operate without a COR;
 - _____ (5) dates of transactions; and
 - _____ (6) signatures of seller and buyer or as otherwise required in Rule R657-59.
 - _____ (E) Annual reports required.
 - _____ Aquaculture facility owners, aquatic animal processing plant owners, and brokers shall submit annual reports of all sales, transfers, and purchases to the Department at the time of the COR

renewal, pursuant to Subsection R58-17-8(B)(2). Report forms will be provided by the Department.

~~(1) The report will contain:~~

~~(a) names, addresses, phone numbers, COR numbers and health approval numbers of sources;~~

~~(b) number, size and weight by species;~~

~~(c) names, addresses, phone numbers, COR numbers of the destinations; and~~

~~(d) dates of transactions.~~

~~(2) Copies of receipts pursuant to Subsection R58-17-17(D), shall be submitted as part of the annual report to the Department.~~

~~(3) Reports shall be submitted to the Department by December 31 each year and must be received before a COR will be renewed. If the report, application, receipts and fee are not received by December 31 pursuant to Subsection R58-17-8(B), the COR will no longer be valid and regulatory action may be initiated pursuant to Subsection R58-17-8(B)(3). For sales made after submittal of the annual report and before January 1, the facility owner shall submit an addendum report that is due by January 31.~~

~~(4) The report made by operators of aquatic animal processing plants shall also contain all purchases and transfers to and from the facility and shall address proper methods of disposal with dates and locations pursuant to R58-17-13(G) and (H).~~

~~(F) Fees assessed:~~

~~The initial and annual renewal COR fee for aquaculture facilities, brokers, and aquatic animal processing plants is \$150.00, pursuant to Section 4-37-301.~~

~~(G) The COR holder shall keep a copy of CORs, reports, and records on file for two years pursuant to Section 4-37-110.~~

R58-17-18. Fee Fishing Facilities.

~~(A) COR required:~~

~~A COR is required to operate a fee fishing facility. A separate COR is necessary for separate fee fishing facilities as defined under "aquaculture facility", Subsection 4-37-103(2), regardless of ownership.~~

~~(B) Live sales or transfers prohibited.~~

~~The operator of a fee fishing facility may not sell, donate, or otherwise transfer live aquatic animals, except when the approved species may be transferred into the same facility from an approved source.~~

~~(C) Fishing licenses not required.~~

~~A fishing license is not required to take aquatic animals at a fee fishing facility.~~

~~(D) Receipts required.~~

~~To transport dead aquatic animals from a fee fishing facility, the customer, with the exception of owner associations and catch and release operations, shall receive from the operator a receipt which includes:~~

~~(1) name, address, COR number, COR expiration date and phone number of the facility;~~

~~(2) date caught; and~~

~~(3) species and number of fish.~~

~~(E) Annual report required.~~

~~The operator of a fee fishing facility shall submit to the Department an annual report of all live aquatic animals purchased or acquired during the year. A report form will be provided by the Department. This report must contain:~~

~~(1) names, addresses, phone numbers, health approval numbers, COR numbers, and COR expiration dates of any sources;~~

~~(2) number, size and weight by species; and~~

~~(3) dates of purchase and acquisition of aquatic animals.~~

~~(F) Fees assessed and annual report deadline.~~

~~(1) The initial and annual renewal fee for a fee fishing COR is \$30.00, pursuant to Section 4-37-301.~~

~~(2) Holders of CORs, who renew applications including report, receipts, and fee after December 31 pursuant to R58-17-17(E)(3), shall be assessed a \$25.00 late fee. If the application, report, receipts and fee are not received by December 31 pursuant to Subsection R58-17-8(B)(1), the COR will be no longer valid and regulatory action may be initiated pursuant to Subsection R58-17-8(B)(3).~~

~~(G) The COR holder shall keep a copy of CORs, reports, logs, and records on file for two years pursuant to Section 4-37-110.~~

R58-17-19. Public Aquaculture, Private Fish Ponds, Institutional Aquaculture Facilities, Short Term Fishing Events, Private Stocking and Displays.

~~Details on the COR and regulatory requirements pursuant to Section R58-17-4 for operating public aquaculture, private fish ponds, institutional aquaculture facilities, short term fishing events, private stocking and displays are found in Division of Wildlife Resources' Rules R657-16 and R657-59.~~

R58-17-20. Classification of Pathogens.

TABLE

~~I. Emergency prohibited pathogens are pathogens that cause high morbidity and high mortality, are exotic to Utah, and require immediate action. These pathogens generally cannot be treated and shall be controlled through avoidance, eradication, and disinfection.~~

Pathogen	Classification	Species	Inspection Requirement/Comment
Infectious Hematopoietic Necrosis Virus (IHNV)	Emergency Prohibited	Salmonids	
Infectious Pancreatic Necrosis Virus (IPNV)	Emergency Prohibited	All susceptible hosts of aquatic organisms	May be isolated from many species of aquatic organisms
Viral Hemorrhagic Septicemia Virus (VHSV)	Emergency Prohibited	Salmonids, pike, herring, turbot, perch, etc.	
Onchirhynchus Masou Virus (OMV)	Emergency Prohibited	Salmonids	
Spring Viremia of Carp Virus (SVCV)	Emergency Prohibited	All cyprinids, esocids, Shrimp	Required use of Bluebook designated cell lines; inspection requirement shall be applied as needed to koi and ornamental fish
Epizootic Hematopoietic Necrosis Virus (EHNV)	Emergency Prohibited	Salmonids, percids, ictalurids, silurids, Gambusia, etc.	Required only for fish from endemic areas; use OIE Manual for test protocol

White Spot Syndrome Virus (WSSV)	Emergency Prohibited	Freshwater or marine shrimp	Protocol for testing in OIE Manual
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Yellow Head Virus (YHV)	Emergency Prohibited	Freshwater or marine shrimp	Protocol for testing in OIE Manual
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Taura Syndrome Virus (TSV)	Emergency Prohibited	Freshwater or marine Shrimp	Protocol for testing in OIE Manual
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Infectious Hypodermal and Hematopoietic Necrosis Virus (IHHNV)	Emergency Prohibited	Freshwater or marine shrimp	Protocol for testing in OIE Manual
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II. Prohibited pathogens are pathogens that can cause high morbidity or high mortality, may be endemic to Utah, and require action in a reasonable time. Prohibited pathogens are generally very difficult or impossible to treat and can only be controlled through avoidance, eradication, and disinfection, etc.

Myxobolus cerebralis (Whirling Disease)	Prohibited	Salmonids	Focus on more susceptible species as per Bluebook
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Renibacterium salmoninarum (Bacterial Kidney Disease, BKD)	Prohibited	Salmonids	Required for salmonid species with more frequently reported clinical disease, such as Pacific salmon, brook trout, lake trout, Atlantic salmon, grayling, etc.
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Ceratomyxa shasta	Prohibited	Salmonids	Inspect fish only from reported endemic areas
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Bothriocephalus acheilognathi (Asian tapeworm)	Prohibited	All cyprinids, one Poeciliid	Mosquito fish (Gambusia affinis) is the poeciliid regulated under this section
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Tetracapsuloides bryosalmonae (proliferative kidney disease, PKD)	Prohibited	Salmonids	Inspect fish only from reported endemic areas
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III. Reportable pathogens are pathogens that are generally prevented using good management practices. Reportable pathogens are not prohibited in Utah, but may be prohibited in some other states or countries (see R58-17-20). Inspections are not required for reportable pathogens, but all positive findings must be reported to the Board.

Yersinia ruckeri (Enteric redmouth Disease)	Reportable	Any fresh water fish	No inspection requirement in Utah
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Aeromonas salmonicida (furunculosis disease)	Reportable	Any fresh water fish	No inspection requirement in Utah
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Centrocestus Formosanus	Reportable	Any fresh water fish	No inspection requirement in Utah
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R58-17-21. Fish Health Policy Board Electronic Meetings.

(A) Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Fish Health Policy Board meetings by electronic means.

(B) The following provisions govern any meeting at which one or more Fish Health Policy Board members appear telephonically or electronically pursuant to Section 52-4-207.

(1) If one or more board members participate in a public meeting electronically or telephonically, public notices of the meeting shall specify:

(a) the board members participating in the meeting electronically and how they will be connected to the meeting;

(b) the anchor location where interested persons and the public may attend, monitor, and participate in the open portions of the meeting;

(c) the meeting agenda; and

(d) the date and time of the meeting.

(2) Written or electronic notice of the meeting and the agenda shall be posted or provided no less than 24 hours prior to the meeting:

(a) at the anchor location;

(b) on the Utah Public Notice Website; and

(c) to at least one newspaper of general circulation within the state or to a local media correspondent.

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

(4) When notice is given of the possibility of a board member appearing electronically or telephonically, any board member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the board.

(a) At the commencement of the meeting, or at such time as any board member initially appears electronically or telephonically, the chair should identify for the record all those who are appearing telephonically or electronically.

(b) Votes by members of the board who are not at the physical location of the meeting shall be confirmed by the chair.

(5) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Utah Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, Utah.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(b) The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R58-17-22. Fish Health Policy Board Emergency Meetings.

(A) There are times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Subsection 52-4-202(1) cannot be met. Pursuant to Subsection 52-4-202(5), the notice requirements in Subsection 52-4-202(1) may be set aside when unforeseen circumstances require the Fish Health Policy Board to meet and consider matters of an emergency or urgent nature.

~~(B) The following procedure shall govern any emergency meeting.~~

~~(1) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the board of the proposed meeting and a majority of the convened members vote in the affirmative to hold the emergency meeting.~~

~~(2) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:~~

~~(a) Posting of the date, time, and place of the meeting and the topics to be considered:~~

~~(i) at the offices of the department;~~

~~(ii) on the department's web page;~~

~~(iii) on the Utah Public Notice Website; and~~

~~(iv) at the location where the emergency meeting will be held.~~

~~(b) If members of the board appear electronically or telephonically, notice shall comply with the requirements of Subsection R58-17-21(B) to the extent practicable.~~

~~(3) In convening the emergency meeting and voting in the affirmative to hold the meeting, the board shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice provisions of Section 52-4-202 could not be followed.]~~

R58-17. Aquatic Animal Health Rule.

R58-17-1. Authority and Purpose.

(1) This rule is promulgated under the authority of Sections 4-37-101 and 4-37-503 and Subsection 4-2-2(i). This rule establishes a statewide aquatic animal health program.

(a) The Fish Health Policy Board establishes this rule regulating the importation of aquatic animals into Utah and establishes requirements for health approval of aquatic animals and their sources. The aquatic animal health program is based on the monitoring of facility operations and aquatic animal movements to prevent the exposure to and spread of pathogens or diseases that adversely affect both cultured and free range aquatic animals.

(b) Aquatic animals that enter the waters of the state or are used in aquaculture facilities, fee-fishing facilities, aquaponics, aquatic animal brokering, aquatic animal reselling, public aquaculture facilities, public fishery resources, private fish ponds, institutional facilities, private stocking, short-term fishing events, displays, or for other activities permitted by the Utah Division of Wildlife, shall comply with this rule.

(c) The Department of Agriculture and Food shall be responsible for granting health approval and assigning a health approval number to private aquaculture facilities in Utah, and to any out-of-state sources pursuant to Subsection 4-37-501(1).

(d) The Division of Wildlife Resources shall be responsible for granting health approval and assigning a health approval number to public aquaculture facilities within the state, and for the movement of live aquatic animals from free range populations in waters of the state pursuant to Subsection 4-37-501(1).

R58-17-2. Definitions.

For the purposes of this rule:

(1) "Aquaculture" means the controlled cultivation of aquatic animals. In this rule, the word "aquaculture" refers to commercial aquaculture.

(2) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, aquatic animal processing plant, or other

structure used for aquaculture or to display live aquaculture products before sale.

(a) "Aquaculture facility" does not include any public aquaculture facility, private fish pond, or fee fishing facility, as defined in this rule.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate aquaculture facilities regardless of ownership.

(3) "Aquatic animal" means an individual or gamete of any species of fish, mollusk, crustacean, or amphibian.

(4) "Aquatic Animal Health Inspection Policy" is a policy adopted and approved by the Board that establishes guidelines for pathogen testing.

(5) "Aquatic animal processing plant" means a facility, grocery store, processing plant, or other facility pursuant to Rule R58-27 that receives live or dead aquatic animals to produce food products that are manufactured, canned, processed, packaged, stored, transported, prepared, sold, or offered for sale.

(a) Aquatic animal processing plants that hold live fish, amphibians, freshwater mollusks, freshwater crustaceans, shrimp, or controlled or prohibited species listed in Rule R657-3 must be licensed by the department as an aquaculture facility and are subject to this rule.

(6) "Aquatic reselling" is an activity permitted by a Board issued variance. The aquatic reselling variance permits a health approved aquaculture facility to acquire and culture aquatic animals from another health approved source and to sell the aquatic animals live without obtaining a facility health approval for that aquatic animal.

(7) "Blue Book" means the procedures approved by the American Fisheries Society for inspecting the health of aquatic animals, specifically: U.S. Fish and Wildlife Service and American Fisheries Society-Fish Health Section, Blue Book: Suggested Procedures for the Detection and Identification of Certain Finfish and Shellfish Pathogens, 2020 edition, which is incorporated by reference.

(8) "Brokers or aquatic animal brokering" means the practice where an aquaculture facility with health approval facilitates the buying, selling, exchanging, or transferring live aquatic animals between a health approved facility and a stocking destination pursuant to Section R58-17-10. Brokered animals are directly transferred from the source to the destination and do not enter the waters of the brokers facility.

(9) "Certificate of Registration (COR)" means an official document that licenses facilities and events with the division. The purpose of the COR is to establish the legal description of the facility, the species of aquatic animals reared, and to grant the authority to engage in the described activity.

(10) "Confirmed finding" means the presumptive evidence for a pathogen has been validated by required procedures in the Aquatic Animal Health Inspection Policy.

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

(12) "Disease History" means a record of any known pathogens that have historically affected aquatic animals reared at a facility that seeks health approval pursuant to Section R58-17-5.

(13) "Division" means the Division of Wildlife Resources in the Utah Department of Natural Resources.

(14) "Emergency Response Procedures" are included in Section R58-17-7 and are to be activated any time prohibited or restricted pathogen is reported pursuant to Section R58-17-4.

(15) "Emergency Response Team" means teams defined by Section R58-17-7. Teams are responsible for developing and executing action plans to respond to and report confirmed findings of prohibited or restricted pathogens pursuant to Section R58-17-4.

(16) "Endemic area" means a location where a pathogen has been detected and is considered to be established in an area.

(17) "Entry Permit" means an official document issued by the department that grants permission to the permit holder to import aquatic animals into Utah pursuant to Section R58-17-12. An entry permit is issued for up to 30 days and stipulates the species, size or age, weight, and source of aquatic animals to be imported.

(18) "Fee fishing facility" means a body of water used for holding or rearing aquatic animals for providing fishing for a fee or for pecuniary consideration or advantage pursuant to Section 4-37-103.

(19) "Fish Health Policy Board" or "Board" means the board created pursuant to Section 4-37-503.

(20) "Free range" means naturally born or hatchery-raised aquatic animals that reside in natural or developed waters such as a lake, reservoir or stream, and are managed by state and federal agencies.

(21) "Health approved" or "Health approval" means a system that provides statistical assurance that prohibited or restricted pathogens are not present in a facility or population of aquatic animals.

(22) "Health inspection" means an on-site inspection by a certified inspector for each facility, brood stock location, or free range location in accordance with Section R58-17-5 and the Aquatic Animal Health Inspection Policy.

(23) "Import" or "importation" means to bring live aquatic animals, by any means, into Utah from any location outside the state and to subsequently possess and use them for any purpose.

(24) "License" means an official document issued by the department pursuant to Rule R58-27 authorizing the use of aquatic animals at fee fishing and aquaculture facilities.

(25)(a) "Live Marine Seafood" means a member of any species of mollusk or crustacean that spends its entire life cycle in a marine environment and is marketed as live animals for human consumption such as lobster, crab, or oyster.

(b) "Live Marine Seafood" does not include:

(i) fresh water or marine shrimp, including Mantis Shrimp;

(ii) anadromous aquatic animal species;

(iii) species that temporarily or permanently reside in brackish water; and

(iv) species classified as controlled or prohibited by Rule R657-3 or Rule R657-53.

(26) "Lot" means fish of the same species that are subject to a health inspection. The Aquatic Animal Health Inspection Policy establishes guidelines for lot designation for salmonid and non-salmonid fish.

(27) "Non-salmonid" means any species of aquatic animal that is not of the order Salmoniformes.

(28) "OIE" means the Office International des Epizooties of the World Organization for Animal Health, an intergovernmental organization that was established in 1924 to promote world animal health. The OIE Aquatic Manual, 2021 edition, which provides guidelines and standards for aquatic animal health testing that may be included in the Aquatic Animal Health Inspection Policy, is incorporated by reference.

(29) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is sold in the United States aquarium industry for display.

(a) "Ornamental aquatic animal species" does not include:

(i) sport fish -- aquatic animal species commonly angled or harvested for recreation or sport;

(ii) baitfish -- aquatic animal species authorized for use as bait in Section R657-13-12, and any other species commonly used by anglers as bait in sport fishing;

(iii) food fish -- aquatic animal species cultured or harvested from the wild for human consumption;

(iv) native species;

(v) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or

(vi) aquatic animal species listed as prohibited or controlled in Rule R657-3 or Rule R657-53.

(30) "Private fish pond" means a body of water where privately owned aquatic animals are propagated or kept for a private, non-commercial purpose. "Private fish pond" does not include any aquaculture facility or fee fishing facility.

(31) "Procedures for Timely Reporting and the Emergency Response to Pathogens" means the procedures described in Section R58-17-7 for reporting detections of prohibited, restricted or reportable pathogens in Utah or from any out-of-state health approved sources and the initial response to the detection.

(32) "Prohibited pathogen" means a pathogen that is listed in the Aquatic Animal Health Inspection Policy. These pathogens can cause high morbidity or high mortality and require action in a reasonable time. Prohibited pathogens are difficult or impossible to treat.

(33) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture by the division, the U.S. Fish and Wildlife Service, a mosquito abatement district, or an institution of higher education. Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate public aquaculture facilities.

(34) "Public fishery resource" means aquatic animals produced in public aquaculture facilities, or, purchased or acquired for public fishery waters and sustained as free range populations in the surface waters of the state.

(35) "Quarantine" means the restriction of movement of live or dead aquatic animals regardless of age and of all equipment and hauling vehicles into or from a quarantine area designated by the Commissioner of Agriculture or State Veterinarian pursuant to Section R58-17-8 and Agricultural code 4-31-16 and 17.

(36) "Reportable pathogen" means a pathogen that is listed in the Aquatic Animal Health Inspection Policy and includes pathogens in the National Reportable Animal Disease List.

(37) "Restricted Pathogen" means a pathogen that is listed in the Aquatic Animal Health Inspection Policy. These pathogens are capable of causing fish losses, but they are treatable or manageable through existing technology or effective management practices.

(38) "Restricted Health Approval" means a limited health approval granted by the department or the division to facilities or waters that have tested negative for prohibited pathogens but positive for restricted pathogens.

(39) "Salmonid" means any species of aquatic animal that is of the order Salmoniformes and optimally lives in coldwater conditions.

(40) "Source" means the origin of an aquatic animal including all rearing or holding locations during all life stages.

(41) "Surrogate species" means an aquatic animal that is known to exhibit similar pathogen susceptibility to an aquatic animal of interest.

(42) "Water source" means a separate spring, lake, river, stream, creek, well, or aquifer. A facility or location that combines multiple water sources within the facility or location will be considered to have a single water source.

R58-17-3. Penalties.

Any violation of or failure to comply with this rule, or any specific requirement contained in a license, certificate of registration, or entry permit issued pursuant to this rule, Rule R657-3, Rule R657-53, or Rule R657-59 may be grounds for issuance of citations, levying of fines, revocation of the certificate of registration, or denial of future certificates of registration pursuant to Subsections 4-2-2(1)(f) and 4-2-15(1), as determined by the department and pursuant to Sections 23-19-9, 23-20-4, and 23-13-11, as determined by the division

R58-17-4. Aquatic Animal Health Pathogens and Inspection.

(1) The Board will maintain a list of restricted, prohibited, and reportable aquatic animal pathogens and accepted inspection requirements in the Aquatic Animal Health Inspection Policy.

(2) The Board shall promulgate the Aquatic Animal Health Inspection Policy.

(3) The policy shall be reviewed and updated as necessary or at minimum every even numbered calendar year.

R58-17-5. Aquatic Animal Health Approval.

(1) Except as provided in Section R58-17-15, live aquatic animals or their gametes may only be acquired, purchased, sold, or transferred from sources that have been granted health approval by the department or the division.

(a) The department shall be responsible for granting health approval and assigning a health approval number to aquaculture facilities in Utah, and to any out-of-state sources pursuant to Subsection 4-37-501(1).

(b) The department is responsible for granting health approval for the importation into or transportation through Utah of aquatic animals.

(c) The division shall be responsible for granting health approval and assigning a health approval number to public aquaculture facilities within the state, and for the movement of live aquatic animals from free range populations in waters of the state pursuant to Subsection 4-37-501(1).

(d) The division may waive the health approval requirements for aquatic animals pursuant to Section 4-37-501 and the Aquatic Animal Health Waiver Policy for the division approved by the Board.

(e) The Board may review health approvals of the department or the division and advise the department or division on appropriate action to be taken pursuant to Subsection 4-37-503(2).

(2) Inspections.

(a) Inspections are conducted pursuant to Section 4-37-502 and this rule to detect the presence of any prohibited and restricted pathogens listed in the Aquatic Animal Inspection Policy.

(b) Inspections shall be conducted under the direction of an individual certified by the American Fisheries Society (AFS) as an Aquatic Animal Health Inspector or as a Fish Pathologist, or by a licensed veterinarian under the guidance of an AFS certified inspector or fish pathologist.

(i) Collection, transportation, and laboratory testing of the samples shall follow standard procedures specified by the AFS for inspecting the health of aquatic animals, or the OIE Manual of Diagnostic Tests for Aquatic Animals. Testing requirements and

procedures in the AFS-FHS Blue Book Inspection Manual, and OIE testing requirements will only be superseded by provisions identified in this rule and corresponding policies.

(c) Inspections for the United States Department of Agriculture (USDA) or OIE listed pathogens are required for imports from international origins or from known endemic areas.

(d) The State Veterinarian may require inspection, treatment, or testing for emerging aquatic animal pathogens or pathogens suspected to be a threat to state aquaculture and aquatic resources.

(3) Requirements for Health Approval.

(a) Applicable to each source of aquatic animals.

(i) Facilities shall submit the following to the department or division for health approval:

(A) current inspection reports-a five year inspection history for established facilities may be required;

(B) origin and transfer of aquatic animals or gametes into the facility after the last inspection;

(C) outbreaks of disease and use of therapeutic agents since last inspection;

(D) identification of water sources; and

(E) any other information required by the department or the division.

(ii) Health Approval may be granted following the statistical attribute sampling of aquatic animals at the facility for prohibited and restricted pathogens listed in the Aquatic Animal Inspection Policy in accordance with the Blue Book or OIE procedures as incorporated in Subsections R58-17-2(7) and R58-17-2(28).

(A) This shall require minimum sampling at the 95% confidence level, assuming a 5% pathogen carrier prevalence.

(B) Board approved exceptions to the sampling protocols in the Blue Book are detailed in the Aquatic Animal Inspection Policy.

(iii) The division may use sampling or testing procedures that are more thorough or sensitive in detecting prohibited pathogens than the procedures required by rule.

(iv) Under no circumstances shall health approval be granted to a facility if any lots test positive for prohibited pathogens listed in the Aquatic Animal Inspection Policy or if any of the same pathogens contaminate the facility's production waters or water sources that have not been treated to eliminate the organism.

(v) Health approval is granted for one year from the date of sample collection.

(vi) After initial approval, annual inspections shall be conducted to renew health approval.

(A) The information required in Subsection R58-17-5(3)(a)(i) for the previous year shall be provided to renew health approval.

(B) A two-month grace period may be granted to allow a facility to conduct business while waiting for annual health inspection samples to be processed and for reporting of test results.

(vii) If aquatic animals are removed from an approved facility for a period of three months or more or if health approval is canceled or denied, then subsequent health approval may be granted after the facility completes the requirements listed in Subsection R58-17-5-3(a) listed for initial approval.

(viii) Pursuant to Subsection R58-17-10(2), restricted health approval may be granted to facilities that test positive for restricted pathogens or have restricted pathogens in the facilities' water source.

(b) Applicable to salmonid facilities.

(i) For initial approval of a new facility or location, two inspections of the same lot, at least four months apart, is required.

(A) Aquatic animals shall reside in the water source for at least six months before the first inspection.

(B) Lots from each water source at a facility shall be inspected.

(C) Annual inspections are required to maintain health approval.

(ii) For existing facilities, any lots of salmonids on site during the annual inspection shall be sampled. Salmonid fish health approval is applied to the entire facility, not individual lots of fish.

(iii) Facilities shall contact the appropriate regulating agency if any salmonid species, not included in the annual health inspection, is imported into the facility.

(A) Facilities shall provide current health approval documentation for the source facility and salmonid species before offering the new species for sale or transfer. This requirement applies to salmonids transferred from both in-state and out-of-state sources.

(B) The department or division will review the documentation and may add the species to the facility's health approval list if:

(I) the species is listed on the facility's COR; and

(II) the health testing of the salmonid species and source facility meets health approval requirements.

(iv) Facilities that transfer salmonids that do not meet the requirements listed in Subsection R58-17-5(3)(b) may be subject to quarantine and fish health testing.

(v) Each lot of aquatic animals at the facility as well as any outside sources of these aquatic animals shall be inspected for initial approval and for renewals.

(c) Applicable to non-salmonids, both facility and free range locations.

(i) For initial approval one inspection is required. Health approval is applied to individual lots of fish.

(ii) Animals shall reside in the facility water source for at least one month before the first inspection.

(A) Non-salmonid lots for purposes of inspection are defined as fish of the same species that have continuously shared a common water source.

(B) For facilities where a lot of fish is composed of the same species distributed into multiple ponds or rearing units, a composite sample of 60 aquatic animals collected from across ponds may be used.

(C) Health Approval is applied to individual lots and not the entire facility.

(I) Health approval is required for all species that are sold or transferred as live animals.

(II) Annual health inspections are not required.

R58-17-6. Inspection of Records and Facilities.

(1) Except as otherwise provided in Rule R657-59, the following records shall be maintained for a period of up to five years and be available for inspection during reasonable hours by the appropriate agency pursuant to Subsection R58-17-5(1):

(a) purchase, acquisition, distribution, and production histories of live aquatic animals;

(b) licenses, CORs and entry permits; and

(c) valid identification of stocks, including origin of stocks.

(2) The appropriate agency representatives pursuant to Sections 4-1-4, 4-31-16, 4-37-104, 4-37-105, and 23-15-10 and under appropriate regulatory responsibility may conduct pathological or physical investigations at any registered facility, private fish

ponds, and on aquatic animals being imported or transported in vehicles, during reasonable hours, if there is cause to believe that a disease condition exists or as otherwise authorized in Rules R58-27, R657-3, R657-53, and R657-59. Any laboratory testing resulting from this investigation shall be at the owner's expense if evidence indicates that Rule R58-17 has been violated pursuant to the investigation.

R58-17-7. Timely Reporting of Aquatic Animal Pathogens and Emergency Response Procedures.

(1) Persons involved in aquaculture, fee fishing, public aquaculture or engaged in activities permitted by Rule R58-27, R657-3, R657-53, or R657-59, shall report having knowledge of the existence of any of the diseases in the Aquatic Animal Health Inspection Policy, to the department, or the division pursuant to Subsection 4-37-503(2)(b).

(2) A presumptive pathogen finding of a prohibited, restricted, or reportable pathogen as listed in Aquatic Animal Health Inspection Policy shall be reported to either the department or the division, whichever is the responsible agency according to the location where evidence of a pathogen was found. These agencies will report the presumptive evidence to each other. "Presumptive evidence" is when laboratory testing has demonstrated preliminary evidence of a pathogen, but the presence or identity of the pathogen has not yet been confirmed by other required procedures.

(3) Any records documenting the reporting or investigation of presumptive evidence of a prohibited, restricted, or reportable pathogen in a public or private aquatic animal population are classified as protected records under Section 63-2-304. The records shall retain the protected classification until the pathogen is confirmed and they will be classified as public records under Section 63-2-301.

(4) A confirmed finding is when the presumptive evidence for a pathogen has been validated by required procedures in the Aquatic Animal Health Inspection Policy. A confirmed finding of a prohibited, restricted, or reportable pathogen from any source shall be immediately reported to the State Veterinarian and the Director of the division. The agency that governs the facility will report the finding to the Chair of the Board in writing within five calendar days and provide a report to the Board at the next regularly scheduled meeting. The written report shall contain the following information:

(a) agency involved in detecting the pathogen;

(b) owner or operator of the aquatic facility;

(c) laboratory involved in the testing;

(d) geographic location of the finding;

(e) information on the affected aquatic animal population, such as species and age group;

(f) pathogen found;

(g) dates of sample collection and testing;

(h) laboratory method used;

(i) preliminary plan of action from the agency emergency response team; and

(j) confirmatory test used.

(5) The department and the division will each maintain a standing emergency response team headed by a fish specialist or pathologist.

(a) For the department, the standing emergency response team will consist of a Department fish health specialist or pathologist, the state veterinarian or that person's designee, a division fish health staff member, and the operator of the affected facility. The Department Emergency Response team is charged with responding

to situations involving pathogens at aquaculture facilities, fee fishing facilities, and any out-of-state source.

(b) For the division, the standing emergency response team will consist of a division fish pathologist, the chief of aquatics or that person's designee, a member of the department such as the State Veterinarian or fish health specialist, and the operator of the affected facility manager or owner. The division emergency response team is charged with responding to situations involving pathogens at public aquaculture facilities, private ponds, and free range populations of aquatic animals in waters of the state.

(c) Emergency response teams may be enlarged at the discretion of the agency.

(6) The standing emergency response team from the agency in charge will initiate further testing procedures and will manage and monitor the episode until the pathogen has been confirmed or negated. Emergency response teams are responsible for developing and executing action plans to respond to presumptive or confirmed findings of prohibited or restricted pathogens. They will develop plans and initiate actions to:

(a) identify suggested sources of personnel and funds for responding to a particular situation;

(b) assess the need for and feasibility of various courses of action;

(c) evaluate the need for, and the extent and details of a quarantine or other constraining action;

(d) investigate the history of aquatic animal or water movement to and from the affected site and consider other methods or routes of pathogen transfer;

(e) evaluate laboratory findings;

(f) determine disposition of the affected aquatic animal population;

(g) establish appropriate sanitation and disinfection of the site, as needed;

(h) evaluate the need for a laboratory surveys of other populations in the quarantine zone and determine disposition;

(i) recommend when, if, and under what conditions a quarantine may be lifted and if any restrictions remain in effect;

(j) implement a follow-up inspection plan; and

(k) evaluate the need for involvement of law enforcement personnel.

(7) If a confirmatory test negates the presence of a prohibited or restricted pathogen, the emergency response team will be dissolved, any team initiated actions terminated, and any quarantine released upon agency receipt of the confirmatory test report.

(8) In the event of a confirmed finding of prohibited or restricted pathogens:

(a) the Board may become involved in overseeing response procedures;

(b) the Board may consider enlarging the emergency response team as needed to possibly include representatives from other government agencies, representatives from various constituent groups, law enforcement personnel, or outside experts;

(c) the emergency response team will submit a follow-up report to the Board after initial response procedures have been completed but before a quarantine is lifted and before a follow-up inspection plan is implemented; and

(d) the Board will report on emergency response procedures and Board decisions to the commissioner of the department and the Director of the division.

R58-17-8. Quarantine of Aquatic Animals and Premises.

(1) Quarantine may be imposed by the commissioner of the department or the State Veterinarian where evidence exists that the aquatic animals have been exposed to or harbor prohibited or restricted pathogens and consequently pose a possible disease threat. This may occur when:

(a) a prohibited or restricted pathogen listed in the Aquatic Animal Health Inspection Policy is detected at a facility or location;

(b) transfers occur from health approved sources that were later determined to be positive for prohibited or restricted pathogens through annual testing or diagnostic work; or

(c) aquatic animals from non-health approved sources are transferred or possessed in violation of this rule, division rules, or statute.

(2) If prohibited or restricted pathogens are detected at the facility or location, then the procedures for timely reporting and the emergency response procedures under Section R58-17-7 shall be followed.

(3) Any person affiliated with a facility under quarantine, who delivers aquatic animals from health approved sources for other public or private aquaculture facilities may, with written permission from the department, use their hauling vehicles, if the operator sanitizes the vehicles according to the decontamination protocol developed by the emergency response team each time the vehicle leaves the quarantine facility.

R58-17-9. Handling of Aquatic Animals and Premises Confirmed to Be Infected With a Prohibited Pathogen Listed in the Aquatic Animal Health Inspection Policy.

(1) The commissioner of the department or the State Veterinarian shall quarantine facilities and locations with confirmed detections of prohibited pathogens and remove them from the health approval list.

(2) The emergency response team and Board shall make recommendations to the department or division regarding the:

(a) potential effects of prohibited pathogens on receiving waters, neighboring aquaculture facilities, or the public fishery resource;

(b) course of action needed to prevent the spread of the prohibited pathogen and methods to eliminate it; and

(c) development and implementation of a biosecurity plan.

(3) The department or division, in their respective areas of responsibility, shall take action to control and eliminate prohibited pathogens. The course of action shall include:

(a) destruction and disposal of infected and exposed aquatic animals;

(b) cleaning and decontamination or disposal of all handling equipment;

(c) cleaning and decontamination of the facility or location; or

(d) the department or division will provide a report to the Board detailing the action taken to eliminate the pathogen and the follow-up inspection plan.

(4) If biosecurity at the facility or location cannot or is not being maintained, immediate destruction of the stocks may be required.

(5) The biosecurity plan shall be held until released by the State Veterinarian.

(6) The State Veterinarian shall reassess the quarantine and may recommend release after each lot tests negative for the prohibited pathogens in two tests that are performed at least six months apart.

(i) Tests shall be at the owner's expense.

(ii) Tests may include the use of surrogate aquatic animals as specified in the biosecurity plan.

R58-17-10. Handling of Aquatic Animals and Premises Confirmed to Be or Previously Identified to Be Infected With a Restricted Pathogen Listed in the Aquatic Animal Health Inspection Policy.

(1) The commissioner of the department or the State Veterinarian shall quarantine facilities and locations with a confirmed detection of a restricted pathogen and remove the facility from the health approval list. Facilities shall remain under quarantine until a biosecurity plan and course of action to treat or eliminate the pathogen is approved by the department or the Board and implemented.

(2) A facility or location may be granted restricted health approval provided that specific actions are taken:

(a) as detailed in this section; or

(b) as developed by the emergency response team and approved by the Board.

(3) Renibacterium salmoninarum -Bacterial Kidney Disease (BKD)-- Confirmed detections.

(a) Lots confirmed to be infected with Renibacterium salmoninarum shall be identified as positive on the fish health inspection report.

(b) The inspection report will show complete hatchery or location testing and status of each lot.

(c) A restricted health approval may be granted to a facility or location allowing the transfer of an uninfected lot after development and implementation of a biosecurity plan to eliminate or reduce pathogen dissemination. The transfer of a Renibacterium salmoninarum (BKD) infected lots and gametes from an infected lot is prohibited.

(d) A facility or location will implement one of the following strategies:

(i) retain infected lots via:

(A) developing and implementing a biosecurity and management plan to reduce further spread using treatment and disinfection procedure; or

(B) retesting each lot of susceptible species and appropriate age classes six months of age or older following implementation of the biosecurity plan;

(I) the restricted health approval will be removed when two tests are performed at least six months apart on appropriate age classes of any susceptible species and results are negative; and

(II) the second test shall be part of an annual salmonid inspection; or

(ii) depopulate infected lots via:

(A) developing and implementing a biosecurity and management plan to reduce further spread using disinfection procedures; or

(B) retesting each lot of susceptible species and appropriate age classes six months of age or older following implementation of the biosecurity plan.

(iii) The restricted health approval shall be removed when two tests are performed at least six months apart on appropriate age classes of any susceptible species are negative. The second test shall be part of an annual salmonid inspection.

(4) Myxozoan pathogens (Myxobolus cerebralis, Ceratomyxa shasta and Tetracapsuloides bryosalmonae) - Confirmed detections.

(a) If a group of aquatic animals is confirmed to be infected with Myxobolus cerebralis, Ceratomyxa shasta or Tetracapsuloides bryosalmonae, then each salmonid that are reared on the shared water source at a facility or location are considered positive for the pathogen.

(b) Facilities or locations will be identified as positive for Myxobolus cerebralis, Ceratomyxa shasta or Tetracapsuloides bryosalmonae on the annual fish health inspection report and will retain a positive status until the facility or location completes health approval reinstatement procedures.

(i) Annual testing for Myxobolus cerebralis, Ceratomyxa shasta, or Tetracapsuloides bryosalmonae is not required, as the facility or location shall retain its positive status for the parasite.

(ii) A restricted health approval may be granted to facilities or locations with a biosecurity plan that specifies the water treatment conditions required for uninfected transfer of gametes and non-salmonid species.

(c) Reinstatement of full health approval allowing for the transfer and stocking of live salmonids requires:

(i) decontamination and development of a clean water supply;

(ii) depopulation of any salmonids that exist on the shared infected water source; and

(iii) two inspections of the same lot, at least four months apart, that are negative for prohibited and restricted pathogens.

(A) Test groups shall be exposed to the facility or location water supply for at least six months before the first inspection.

(B) Lots from each water source at a facility shall be inspected.

(5) Schyzocotyle acheilognathi (Asian Tapeworm).

(a) If a group of aquatic animals is confirmed to be infected with Asian tapeworm then each group of Cyprinids such as carp or minnows and Gambusia species that are reared on the shared water source at a facility or location are considered positive for the pathogen.

(b) A restricted health approval may be granted to facilities or locations with a biosecurity plan that specifies treatment to eliminate Asian tapeworm from infected fish, intermediate hosts, and contaminated water.

(c) Documentation of each treatment shall be retained and made available to the fish health team associated with the responsible agency.

(d) Reinstatement of full health approval requires that each susceptible lot tests negative in an annual inspection performed at least six months after the implementation of the biosecurity plan.

R58-17-11. Statement of Variances.

Circumstances may arise that cannot be adequately addressed or resolved with this rule. The Board may grant specific variances to the rule if the following conditions are met:

(1) the variance is based on scientifically sound information and rationale;

(2) the variance will cause no significant threat to other public or private aquaculture operations, or to public fishery resources; or

(3) the variance is approved by majority vote of a quorum of the Board.

R58-17-12. Importation of Aquatic Animals or Gametes into Utah.

(1) Except as provided in Section R58-17-15, aquatic animals or their gamete shall:

(a) originate from a list of health approved sources maintained by the department;

(b) receive an official free entry permit issued by the department that contains an aquatic animal health approval number;

(i) an entry permit application shall contain the following information:

(A) originating facility information, including name, address, phone number, and health approval number;

(B) description of the aquatic animal being transferred, which includes:

(I) species, including common or scientific names; and

(II) number or weight being shipped;

(C) destination information, including:

(I) name, address, phone number; and

(II) license number or COR number or otherwise be permitted to possess the aquatic animal by Rule R657-59;

(D) method of transportation; and

(E) purpose for which it was shipped; and

(c) be species that are listed on a license or COR or have been authorized by the Wildlife Board and the division pursuant to Rules R657-3, R657-59, and Subsection 4-37-105(1).

(2) To import or sell live grass carp (*Ctenopharyngodon idella*), the fish shall be verified:

(a) as being triploid (sterile) by the National Triploid Grass Carp Inspection and Certification Program, and

(b) copies of the entry permit, treatment, or testing statement for Asian tapeworm, and triploid verification forms shall accompany the fish during transit.

(3) Non-salmonid fish species require a fish health statement to be completed by a fish health professional or veterinarian.

(a) The fish health statement certifies that a fish health professional or veterinarian:

(i) examined at least ten fish from each lot being shipped and there are no signs of clinical disease and are free from glochidia; and

(ii) any aquatic animal species that are known or reported hosts or carriers of the Asian tapeworm have been treated or inspected for Asian tapeworm before shipment.

(b) Fish health statements are valid for 30 days from the examination or inspection.

(4) Before importation, the State Veterinarian may require inspection, treatment, or testing of any aquatic animal and plant species, including aquatic invasive species under Rule R657-60, water, vehicle, or container, in accordance with current scientific knowledge.

(5) Transport vehicles, importing aquatic animals into Utah or transporting them through Utah pursuant to Subsection R58-17-12(1)(b), shall have proper documentation and are subject to inspection.

(6) The lack of proper documentation or the findings of an inspection may result in entry denial, fines, or other department actions.

R58-17-13. Buying, Selling, or Transferring Aquatic Animals.

(1) Except as provided in Section R58-17-15, live aquatic animals or their gametes may only be sold or transferred from sources that have been granted health approval by the department or the division.

(2) Current listing for each source and species on the health approval list is required pursuant to Subsection R58-17-13(3).

(3) Buying aquatic animals. A person or entity that has a valid license or COR to possess the animals or is otherwise permitted to possess the aquatic animals by Rule R657-3 and R657-59, may only purchase live aquatic animals or their gametes.

(4) Selling or transferring aquatic animals.

(a) Aquatic animals may only be sold or transferred from facilities with a valid license or COR.

(i) In-state facilities that produce and sell aquatic animals shall be licensed as an aquaculture facility by the department or licensed as a public aquaculture facility by the division.

(ii) Facilities that sell or transfer live aquatic animals must be health approved by the department under Section 4-37-204 or the division under Subsection 4-37-501(1)(b)(ii).

(b) Each species offered for sale must be health approved.

(c) An aquatic animal sold or transferred by the owner or operator of an aquaculture facility shall be accompanied by the seller's receipt that contains the following information:

(i) date of transaction;

(ii) name, address, certificate of registration number, health approval number, and signature of seller;

(iii) number and weight of aquatic animal by species, and reproductive capability; and

(iv) name and address of the receiver.

(5) Brokers.

(a) Persons or entities that broker aquatic animals shall have an aquaculture license and health approval issued by the department.

(b) Aquatic animals that are brokered shall originate from facilities that are health approved by the department.

(c) Brokers shall follow these requirements:

(i) buying under Subsection R58-17-13(2);

(ii) selling under Subsection R58-17-13(3);

(iii) importing under Section R58-17-12; and

(iv) transporting under Section R58-17-14.

(6) Aquatic Reselling:

(a) Person or entities that resell aquatic animals shall have an aquaculture license and health approval issued by the department.

(b) For non-salmonids:

(i) to resell health certified aquatic animals a facility must receive a variance from the Board;

(A) the variance for a facility will include:

(I) authorized species to resell;

(II) the time frame established for aquatic reselling; and

(III) any additional requirements established by the Board;

(IV) to receive a variance to resell a species, the species shall be listed on the facility's license or COR before variance approval.

(c) For salmonids, see Subsection R58-17-15(3)(b).

R58-17-14. Transporting Aquatic Animals.

(1) Any person may transport live aquatic animals from a health approved facility provided the destination has a valid license or COR to possess the aquatic animal, or possession is otherwise permitted by Rule R657-3, R657-53, and R657-59.

(2) Any transfers or shipments of live aquatic animals within Utah, unless exempted by Section R58-17-15, shall be accompanied by documentation of the source and destination, including:

(a) date of transaction;

(b) source information, including:

(i) name;

(ii) address;

(iii) phone number;
 (iv) aquatic animal health approval number; and
 (v) license or COR number for instate facilities;
 (c) description of the aquatic animal being transferred, including:

(i) species;
 (ii) number;
 (iii) size or weight being shipped; and
 (iv) reproductive capacity;
 (d) destination information, including:
 (i) name;
 (ii) address;
 (iii) phone number; and
 (iv) license or COR number. Geographic location including latitude, longitude or UTM coordinates may be provided in lieu of COR if the facility is exempted from COR requirements by Rules R657-3, R657-53, and R657-59.

(3) Live aquatic animals may be shipped through Utah without a COR or health approval, when:

(a) the animals will not be sold, released, or transferred;
 (b) the products remain in the original container and water from the out-of-state source is not exchanged or released;
 (c) the shipment is in Utah no longer than 72 hours; and
 (d) an entry permit or proof of legal ownership, origin of aquatic animals and destination must accompany the shipment.

(4) No person may move or cause to be moved live aquatic animals from a location known to be exposed to or infected with any restricted or prohibited pathogen listed in the Aquatic Animal Inspection Policy, without first reporting to the appropriate regulating agency pursuant to Section R58-17-4 and receiving written authorization to move the aquatic animals.

(5) Any transport vehicles may be subject to inspection by the department or the division under Subsection R58-17-12(5).

R58-17-15. Exemptions.

(1) Aquatic animals that meet the following criteria are exempt from health approval regulation under this rule, licensing under Rule R58-27, COR under Rule R657-3, and entry permit under Section R58-17-12 requirements:

(a) ornamental species that are used for display aquariums and not regulated by Rule R657-3 or R657-53, although the exemption does not apply to ornamental species used for aquaculture, including food production or stocking, or that are placed into the waters of the state;

(b) live marine seafood imported and possessed for the singular purposes of immediate human consumption that shall be:

(i) possessed no longer than 30 days from the date of importation;
 (ii) acquired from a lawful source and documentation of purchase is retained;

(iii) not released in any water source, including sewer systems; and

(iv) imported and possessed in compliance with applicable state and federal laws, including the importation and possession requirements in Rule R657-3 or R657-53;

(c) live aquatic animals transported to aquatic animal processing plants, provided the animals are killed upon release from the transport vehicle and are not held live; or

(d) commercial aquariums or zoos with a valid COR from the division that may transfer species to other aquariums or zoos with a Certificate of Veterinary Inspection.

(2) The department reserves the right to allow exemptions and require health approval or licenses or entry permits on a case by case basis.

R58-17-16. Disposal of Aquatic Animals and Waste Products.

(1) Disposal of aquatic animals, dead or alive, their parts, or waste products from any facility or location in a manner that may result in the discharge of any pollution or contamination into waters of the state is illegal under the Water Quality Act, Section 19-5-101 and Division of Water Quality rules.

(2) Pursuant to Subsection R58-17-16(3), waste products such as brine shrimp cysts, carcasses, viscera, and wastewater, shall be disposed of in a manner that limits the spread of pathogens and will prevent scavenger infiltration.

(3) Waste products may be:

(a) incinerated, in accordance with federal, state, and local air quality guidelines;

(b) buried with "quicklime" (calcium oxide);

(c) composted;

(d) digested; or

(e) bagged and transported to a local municipal or county landfill.

(4) Proper disposal is the responsibility of the processor, owner, or broker.

R58-17-17. Fish Health Policy Board Electronic Meetings.

(1) Section 52-4-207 authorizes a public body to convene or conduct an electronic meeting provided written procedures are established for such meetings. This rule establishes procedures for conducting Board meetings by electronic means.

(2) The following provisions govern any meeting at which one or more Board members appear telephonically or electronically pursuant to Section 52-4-207:

(a) If one or more Board members participate in a public meeting electronically or telephonically, public notices of the meeting shall specify:

(i) the Board members participating in the meeting electronically and how they will be connected to the meeting;

(ii) the anchor location where interested persons and the public may attend, monitor, and participate in the open portions of the meeting;

(iii) the meeting agenda; and

(iv) the date and time of the meeting.

(b) Written or electronic notice of the meeting and the agenda shall be posted or provided no less than 24 hours before the meeting:

(i) at the anchor location;

(ii) on the Utah Public Notice Website; and

(iii) to at least one newspaper of general circulation within the state or to a local media correspondent.

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

(d) When notice is given of the possibility of a Board member appearing electronically or telephonically, any Board member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Board.

(i) At the commencement of the meeting, or at the time that any Board member initially appears electronically or telephonically,

the chair should identify for the record those who are appearing telephonically or electronically.

(ii) Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Utah Department of Agriculture and Food, 4315 South 2700 West, Taylorsville State Office Building (TSOB) South, Taylorsville, UT 84129.

(i) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(ii) The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R58-17-18. Fish Health Policy Board Emergency Meetings.

(1) There are times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Subsection 52-4-202(1) cannot be met. Pursuant to Subsection 52-4-202(5), the notice requirements in Subsection 52-4-202(1) may be set aside when unforeseen circumstances require the Board to meet and consider matters of an emergency or urgent nature.

(2) The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify each of the members of the Board of the proposed meeting and a majority of the convened members vote in the affirmative to hold the emergency meeting.

(b) In convening the emergency meeting and voting in the affirmative to hold the meeting, the Board shall affirmatively state and find what unforeseen circumstances have made it necessary for the Board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice provisions of Section 52-4-202 could not be followed.

(c) Public notice of the emergency meeting shall be provided as soon as practicable and shall include the following:

(i) the time and location of the meeting;

(ii) the topics to be considered.

(iii) If members of the Board appear electronically or telephonically; and

(iv) notice shall comply with the requirements of Subsection R58-17-17(2) to the extent practicable.

(d) Public notice of the emergency meeting shall be provided as soon as practicable and considered:

(i) at the offices of the department;

(ii) on the department's web page;

(iii) on the Utah Public Notice Website; and

(iv) at the location where the emergency meeting will be conducted.

KEY: aquaculture

Date of Last Change: ~~December 19, 2016~~ 2022

Notice of Continuation: December 17, 2019

Authorizing, and Implemented or Interpreted Law: 4-2-103(i); 4-37-503

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number: R58-27

Filing ID: 54868

Agency Information

1. Department:	Agriculture and Food	
Agency:	Animal Industry	
Building:	4315 S 2700 W, TSOB, South Bldg Floor 2	
Mailing address:	PO Box 146500	
City, state and zip:	Taylorsville, UT 84129-2128	
Contact persons:		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Dean Taylor	385-290-9462	djtaylor@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov

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

General Information

2. Rule or section catchline:

R58-27. Aquaculture, Brokering, Aquatic Animal Processing, and Fee Fishing Licensing

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

Section 4-37-109 directs the Department of Agriculture and Food (Department) to make rules specifying procedures for the application and renewal of aquaculture or fee fishing facility licenses. Section 4-37-503 directs the Fish Health Policy Board (Board) to: develop aquatic animal inspection procedures; determine the pathogens for which inspection is required; determine the criteria for certifying a source of aquatic animals as health approved; and establish procedures for the timely reporting of pathogens. Because the Department and the Board have specific and distinct rulemaking authority, it is logical to develop separate rules that are divided by that authority. This makes it easier for the Department or the Board to amend rules that are under their authority. The Department has revised Rule R58-17 to include only sections pertaining to inspections, health approval, and pathogens. Additionally, this new rule has been written to include previous sections from Rule R58-17 that deal with licensing and license renewal.

(EDITOR'S NOTE: The proposed repeal and reenactment of Rule R58-17 is under ID 54866 in this issue, October 1, 2022, of the Bulletin.)

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

This new rule outlines the licensing requirements and aquaculture facility requirements that were previously in Rule R58-17. Language has been added to clarify the activities that are permitted at aquaculture facilities with and without health approval and states that the Department will collect samples for annual health inspections and may charge fees for the sampling and any supplemental inspections. This new rule also adds language to address the Department's role in collecting samples for sterility verification samples for salmonids and for conducting aquatic invasive species investigations. Additionally, screen construction requirements were added to Section R58-27-6.

Fiscal Information

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

A) State budget:

This rule does not add additional program requirements and includes only language that was previously included in Rule R58-17 with some additional clarifications. There should be no fiscal impact to the state.

B) Local governments:

This rule does not add additional program requirements and includes only language that was previously included in Rule R58-17 with some additional clarifications. There should be no fiscal impact to local governments.

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

This rule does not add additional program requirements and includes only language that was previously included in Rule R58-17 with some additional clarifications. There should be no fiscal impact to small businesses.

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

This rule does not add additional program requirements and includes only language that was previously included in Rule R58-17 with some additional clarifications. There should be no fiscal impact to non-small businesses.

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

This rule does not add additional program requirements and includes only language that was previously included in Rule R58-17 with some additional clarifications. There should be no fiscal impact to other persons.

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

The general cost of participating in the aquaculture program will not change so there should be no change in compliance costs for affected persons.

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 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:

Section 4-37-109		
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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: 10/31/2022

9. This rule change MAY become effective on: 11/07/2022

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

Agency Authorization Information

Agency head or designee and title:	Craig W. Butters, Commissioner	Date:	08/30/2022
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R58. Agriculture and Food, Animal Industry.

R58-27. Aquaculture, Brokering, Aquatic Animal Processing, and Fee Fishing Licensing.

R58-27-1. Authority and Purpose.

(1) This rule is promulgated under the authority of Section 4-37-101, Subsection 4-2-103(1)(i), and Section 4-37-503.

(2) This rule establishes a program for the licensing of fee fishing facilities, aquaculture facilities, aquatic animal brokering, and aquatic animal processing facilities.

(3) Persons engaged in operations listed in Section R58-17-4 must comply with:

(a) Rule R58-17; and

(b) the rules for site selection and species control under the department pursuant to Subsections 4-37-201(3), 4-37-301(3), and Department of Natural Resources Rule R657-3.

R58-27-2. Definitions.

(1) "Aquaculture" means the controlled cultivation of aquatic animals. In this rule, the word "aquaculture" refers to commercial aquaculture.

(2) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture.

(a) "Aquaculture facility" does not include any public aquaculture facility, private fishpond, or fee fishing facility, as defined in this rule.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate aquaculture facilities regardless of ownership.

(3) "Aquatic animal" means an individual or gamete of any species of fish, mollusk, crustacean, or amphibian.

(4) "Aquatic animal processing plant" means a facility, grocery store, processing plant, or other facility pursuant to Subsection R58-27-4(3) that receives live or dead aquatic animals to produce food products that are manufactured, canned, processed, packaged, stored, transported, prepared, sold, or offered for sale.

(a) Aquatic animal processing plants that hold live fish, amphibians, freshwater mollusks, freshwater crustaceans, shrimp, or controlled or prohibited species listed in Rule R657-3 must be

licensed by the department as an Aquaculture Facility and are subject to Rule R58-17.

(5) "Aquatic reselling" is an activity permitted by a Fish Health Policy Board issued variance. The aquatic reselling variance permits a health approved aquaculture facility to acquire and culture aquatic animals from another health approved source and to sell the aquatic animals live without obtaining a facility health approval for that aquatic animal.

(6) "Brokers" or "aquatic animal brokering" means the practice where an aquaculture facility with health approval facilitates the buying, selling, exchanging, or transferring of live aquatic animals between a health approved facility and a stocking destination pursuant to Section R58-17-10. Brokered animals are directly transferred from the source to the destination and do not enter the waters of the broker's facility.

(7) "Certificate of Registration (COR)" means an official document that licenses facilities and events with the division.

(8) "Department" means the Utah Department of Agriculture and Food with appropriate regulatory responsibility pursuant to Section R58-27-4 in accordance with the Sections 4-2-103, 4-37-104, and 4-37-109.

(9) "Division" means the Utah Division of Wildlife Resources in the Department of Natural Resources with the appropriate regulatory responsibility pursuant to Rule R657-3 and Rule R657-59 in accordance with the Sections 23-14-1 and 4-37-105.

(10) "Entry Permit" means an official document issued by the department that grants permission to the permit holder to import aquatic animals into Utah pursuant to Section R58-17-12. An entry permit is issued for up to 30 days and stipulates the species, size or age, weight, and source of aquatic animals to be imported.

(11) "Fee fishing facility" means a body of water used for holding or rearing aquatic animals for providing fishing for a fee or for pecuniary consideration or advantage pursuant to Sections 4-37-103 and R58-27-12. Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, shall be licensed as separate facilities regardless of ownership.

(12) "Health approved" or "Health approval" means a health inspection was conducted in a manner that provides statistical assurance that specific pathogens are not present in a facility or population of aquatic animals.

(13) "Health inspection" means an on-site inspection by a certified inspector for each facility, brood stock location, or free range location in accordance with Section R58-17-5 and the Aquatic Animal Health Inspection Policy.

(14) "Import" "importation" means to bring live aquatic animals, by any means into Utah from any location outside the state and to subsequently possess and use them for any purpose.

(15) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program.

(16) "License" means an official document issued by the department authorizing the importation, transportation, and possession of aquatic animals for use at fee fishing and aquaculture facilities.

(17) "Live Marine Seafood" means a member of any species of mollusk or crustacean that spends its entire life cycle in a marine environment and is marketed as live animals for human consumption such as lobster, crab, oyster.

(a) "Live Marine Seafood" does not include:

(i) freshwater or marine shrimp including mantis shrimp;

(ii) anadromous aquatic animal species;

(iii) species that temporarily or permanently reside in brackish water; and

(iv) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23.

(18) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is sold in the United States' aquarium industry for display.

(19) "Ornamental aquatic animal species" does not include:

(i) sport fish -- aquatic animal species angled or harvested for recreation or sport;

(ii) baitfish -- aquatic animal species authorized for use as bait in Section R657-13-12, and any other species used by anglers as bait in sport fishing;

(iii) food fish -- aquatic animal species cultured or harvested from the wild for human consumption;

(iv) native species;

(v) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or

(vi) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23.

(19)(a) "Private fish pond" means a body of water where privately owned aquatic animals are propagated or kept for a private, non-commercial purpose.

(b) "Private fishpond" does not include any aquaculture facility or fee fishing facility.

(20)(a) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for the controlled cultivation of aquatic animals by the division, the U.S. Fish and Wildlife Service, or an institution of higher education.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate public aquaculture facilities.

R58-27-3. Penalties.

Any violation of or failure to comply with this or any specific requirement contained in a COR or entry permit issued pursuant to this rule may be grounds for issuance of citations, levying of fines, revocation of the COR, or denial of future certificates of registration pursuant to Subsections 4-2-103(1)(f) and 4-2-304(1), as determined by the commissioner of the department.

R58-27-4. Licensing and Certificate of Registration (COR) Requirements.

(1) Fee fishing. A license, issued by the department, is required before a person may operate a fee fishing facility.

(2) Aquaculture Facility. An aquaculture license, issued by the department, is required to operate an aquaculture facility.

(3) Aquatic Animal Processing Plants, Markets, and Restaurants.

(a) An aquaculture license, issued by the department, is required to hold live fish, amphibians, shrimp, freshwater mollusks or freshwater crustaceans at aquatic animal processing plant markets, or restaurants. Fish, amphibians, shrimp, freshwater mollusks, and freshwater crustaceans that are held live at processing plants, markets, or restaurants are subject to Rule R58-17.

(b) Aquatic animal processing plants and markets shall be registered with the department under the Title 4, Chapter 5, Utah Wholesome Food Act. Aquatic animal processing plants and markets shall meet the department's Division of Regulatory Services requirements before an aquaculture license to hold live and sell dead aquatic animals is issued.

(c) The department shall consult with the local health department before issuing an aquaculture license to a restaurant.

(4) An aquaculture license is not required to import, possess, or transfer a live marine seafood, provided it is imported and possessed for the singular purposes of immediate human consumption if the seafood is:

(a) possessed no longer than 30 days from the date of importation;

(b) acquired from a lawful source and documentation of purchase is retained;

(c) not released in any water source, including sewer systems; and

(d) imported and possessed in compliance with applicable state and federal laws, including the importation and possession requirements in Subsection R657-3-11(8).

(5) A COR, issued by the division, is required for operation of the following activities in Utah unless otherwise exempt from COR requirements under Rules R657-3 and R657-59:

(a) public aquaculture facilities;

(b) private fishponds and private aquaponic facilities;

(c) institutional aquaculture facilities;

(d) short term fishing events under;

(e) private stocking under; and

(f) displays under.

R58-27-5. Qualifying Waters, and Species Allowed.

(1) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, shall be licensed as separate facilities regardless of ownership.

(2) The department shall coordinate with the division:

(a) on the suitability of the proposed site relative to potential impacts on adjacent wild aquatic animal populations; and

(b) in determining which species, aquaculture, and fee fishing license holders may propagate, possess, transport, or sell.

(3) The department shall list the species and reproductive capacity of aquatic animals the aquaculture and fee fishing license holder may propagate, possess, transport, or sell.

(a) The department may only list those species and reproductive capabilities of aquaculture products authorized by the division or the Wildlife Board on the license.

(b) The department shall monitor sales receipts from aquaculture facilities to ensure that live transfers were authorized by a license issued by the department, a COR issued by the division, or permissible by division rules.

(4) Except as provided in Subsection R58-27-5(5), an aquaculture facility or a fee fishing facility may not be developed on:

(a) a natural lake;

(b) a natural flowing stream; or

(c) a reservoir constructed on a natural stream channel.

(5) The division may authorize the department to issue a license for an aquaculture facility, or fee fishing facility on a natural lake or reservoir constructed on a natural stream channel upon inspecting and determining:

(a) the facility and inlet source of the facility neither contain wild game fish nor are likely to support such species in the future;

(b) the facility and the facility's intended use will not jeopardize conservation of aquatic wildlife or lead to the privatization or commercialization of aquatic wildlife;

(c) the facility is properly screened as provided in Subsection 23-15-10(3)(c) and otherwise in compliance with the

requirements of Rule R58-17, the rules of the Wildlife board and applicable law; and

(d) the facility is not vulnerable to flood or high-water events capable of compromising the facility's inlet or outlet screens and allowing escapement of privately owned fish into waters of the state.

R58-27-6. Screens Required.

(1)(a) Any permanent and intermittent inlets and outlets of aquaculture and fee fishing facilities shall be screened to prevent the movement of aquatic wildlife into the facility or the escapement of any aquaculture product from the facility into public waters.

(b) Any aquaculture product that escapes an aquaculture facility or fee fishing pond is considered aquatic wildlife for the purposes of licensing requirements, bag limits, and allowable methods of take.

(2) Screens shall meet the following criteria:

(a) the screen shall be constructed of durable materials that are capable of maintaining integrity in a water and air environment for an extended period;

(b) the screen shall have no openings, seams, or mesh width greater than the width of the fish being cultured or stocked;

(c) any water entering or leaving the pond, including runoff and other high-water events, shall flow through a screen consistent with the requirements of this subsection; and

(d) the screen shall be maintained and in place while any aquaculture product remains in the pond.

(3) The department or the division may make site visits to:

(a) determine the suitability of the site, escapement risk, and adequacy of screening during the license issuance process;

(i) The department may charge a fee to inspect a site before licensing or to amend a license;

(b) investigate escapement reports; and

(c) investigate pathogen outbreaks or aquatic animal transfers.

(4) Any escapements of aquatic animals from aquaculture and fee fishing facilities must be reported to the department within 72 hours of the loss or knowledge of the loss.

(a) The report shall include:

(i) facility name and location;

(ii) date of loss;

(iii) estimate of number and type of aquatic animals lost;

(iv) remedial actions taken; and

(v) plans for future remedial action.

(b) The license holder or facility operator or owner will bear costs for remedial actions.

(c) The department shall notify the division within two working days.

(d) The department may suspend activities at the facility, including aquatic animal imports, transfers, sales, and fishing until the investigation and remedial actions are completed.

R58-27-7. Application for Aquaculture and Fee Fishing Licenses; License Renewal; and Fees.

(1)(a) Applications for aquaculture and fee fishing licenses are available from and shall be submitted to the department's Aquaculture Program in Salt Lake City.

(b) Applications may require a minimum of 45 days for review and processing from the date the application is received.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(d) Legal tender in the correct amount must accompany the application.

(2) The department shall forward aquaculture and fee fishing license applications to the division within ten working days to determine

(a) the suitability of the proposed site and

(b) the species the applicant may propagate, possess, transport, or sell.

(3) If the application is granted, a written license and license number shall be issued.

(a) The license holder shall keep a copy of the license on file for two years pursuant to Section 4-37-110.

(b) If the application is denied, a written explanation will be sent to the applicant.

(4)(a) Aquaculture and fee fishing licenses are not transferable and expire December 31 of the year issued.

(b) If the holder of a license is a representative of an institution, organization, business, or agency, the license shall expire effective upon the date of the representative's discontinuation of association with that entity.

(c) Aquaculture and fee fishing licenses do not provide the holder any rights of succession and any license issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer or death of the license holder.

(5) Amending aquaculture and fee fishing licenses.

(a) License holders may request to amend or change the species permitted at their facility by submitting a written request to the Aquaculture Program Manager at the department.

(b) The department shall consult with the division to determine if the species can be added to the license. If the request for an amendment is denied, the department shall provide the applicant with written notice of the reasons for denial.

(c) The department may charge a fee to amend a license.

(6) Renewal of Aquaculture and Fee fishing Licenses.

(a) Aquaculture and fee fishing licenses are valid until December 31 for the calendar year issued unless specified otherwise on the license.

(b) Aquaculture and fee fishing licenses shall be renewed annually by submitting the required fee, a completed annual report and by complying with other applicable renewal criteria established by the department.

(7) Late fees. A late fee shall be assessed if the annual report or license fee is received after December 31st.

(8) Delinquency. Renewal documents received after March 1 are considered delinquent and any animals on the premises may be quarantined until due process of law against the current owner has occurred. This may result in any of the following:

(a) a citation for operating an aquaculture or fee fishing facility without a license;

(b) revocation of the license;

(c) denial of future licenses;

(d) loss of health approval; or

(e) the destruction or removal of the live or dead aquatic animals at the facility.

(i) Removal or disposal of live or dead aquatic animals is the responsibility of the owner and shall be done by means or specified in Section R58-17-16.

(9) Before renewal of a delinquent license, the facility may be inspected by a department or division employee to document that screening requirements are met.

(a) The division may recommend changes to the species or reproductive capacity of the aquatic animals listed on the license.

R58-27-8. Buying, Importing, Selling, and Transporting Aquatic Animals.

(1) Except as provided in Section R58-17-15, live aquatic animals or their gametes may only be acquired, purchased, sold, or transferred from sources that have been granted health approval by the department or the division.

(2) Buying aquatic animals.

(a) Except as provided in Section R58-17-15, live aquatic animals or their gametes may only be sold or transferred from sources that have been granted health approval by the department or the division. Current listing for each source and species on the health approval list is required pursuant to Subsection R58-17-13(3).

(b) Department licensed facilities may only obtain the species and reproductive capacity of the animals listed on the aquaculture or fee fishing license.

(3) Importation of Aquatic animals and gametes.

(a) Importations of live aquatic animals and gametes into Utah shall:

(i) originate from sources that have been health approved by the department;

(ii) receive an official entry permit issued by the department; and

(iii) comply with the requirements listed in Section R58-17-12.

(4) Selling or transferring aquatic animals pursuant to Section R58-17-13.

(a) In-state facilities that produce and sell aquatic animals used for aquaculture shall be licensed as an aquaculture facility by the department. Exemptions to the licensing requirement are listed in Section R58-17-15.

(b) Requirements for selling aquatic animals as food are listed in Subsection R58-27-9(3).

(c) Regulations for selling or transferring live aquatic animals are listed in Subsection R58-27-9(4), and Section R58-17-13. Live transfers of aquatic animals from fee fishing facilities are not permitted under Section R58-27-12.

(5) Transporting aquatic animals.

(a) Any person possessing a valid aquaculture license, fee fishing license, or COR may transport the live, health approved aquatic animals specified on the license or COR to the facility named on the license or COR.

(b) Any transfers or shipments of live aquatic animals within Utah, unless exempted by Section R58-17-15, shall be accompanied with documentation that describes the source and destination of the aquatic animals. Documentation requirements are listed in Subsection R58-17-14(2).

(c) Any transfers or shipments of live aquatic animals within Utah shall comply with the requirements listed in Section R58-17-14

R58-27-9. Aquaculture Facilities, Brokers.

(1)(a) A license is required to operate an aquaculture facility.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, shall be licensed as separate facilities regardless of ownership.

(c) A separate license and fee are required for each facility defined under "aquaculture facility," Subsection 4-37-103(2), regardless of ownership.

(2) The operator of an aquaculture facility may also operate a fee fishing facility pursuant to Subsection 4-37-301(5), provided the fee fishing facility:

(a) is within 1/2 mile distance from the aquaculture facility;

(b) contains only those species authorized on the license for the aquaculture facility; and

(c) is designated on the license for the aquaculture facility.

(3) Aquaculture Facilities without health approval may:

(a) transfer live aquatic animals to processing facilities or markets provided they are killed upon receipt;

(b) transfer live aquatic animals to animals to an out-of-state destination approved by the receiving state; and

(c) sell dead aquatic animals.

(4) Aquaculture facilities that process aquatic animals by filleting, deboning, skinning, smoking, vacuum packing, or another process may sell product directly to consumers at a market or sell product to grocery stores, restaurants, or other markets. These facilities may need to be registered with the department's Division of Regulatory Services as a food establishment under Rule R70-540 and Section 4-5-301.

(5) Aquaculture Facilities with health approval may:

(a) Facilities that sell or transfer live aquatic animals shall be health approved by the department pursuant to Sections 4-37-204 and R58-17-13.

(i) The department shall grant health approval to facilities that meet the requirements in Section R58-17-5 and the Aquatic Animal Health Inspection Policy.

(ii) Each species offered for live sale must be health approved.

(b) Laboratory testing cost for inspections shall be at the owner's expense.

(c) The department shall collect samples for annual health inspections. The department may charge fees to collect samples for supplemental health inspections.

(d) Aquaculture facilities may only sell or transfer live aquatic animals to a person or entity that has been authorized to possess the species and reproductive capacity of the animals by:

(i) an aquaculture or fee fishing license issued by the department;

(ii) a valid COR issued by the division; or

(iii) is otherwise able to possess the animals pursuant to Rules R657-3 and R657-59.

(e) Aquaculture facilities with health approval may broker aquatic animals.

(i) Brokers shall follow the requirements in Subsection R58-17-13(4).

(ii) Brokered aquatic animals shall be directly transferred from the source to the destination and may not enter the waters of the broker's facility.

(iii) Brokered animals shall be included in the annual report.

(f) Aquaculture facilities with health approval may apply to the Fish Health Policy Board for a variance to engage in aquatic reselling. Aquatic reselling requirements are listed in Subsection R58-17-13(5)

(6)(a) Receipts required. Any sale, shipment, or transfer of live aquatic animals shall be accompanied by a receipt.

(b) A receipt book or the electronic equivalent will be provided by the department upon request.

(c) Receipt criteria are specified by Sections 4-37-204 and R58-17-13:

(7)(a) Annual reports are required. Aquaculture facility owners shall submit annual reports of all sales, transfers, purchases, and brokered aquatic animals to the department at the time of the license renewal, pursuant to Sections 4-37-204 and R58-27-7.

(b) Report forms will be provided by the department. The report shall contain:

(i) sources of aquatic animals including name, address; phone number; license number; and aquatic animal health approval number;

(ii) number and weight of aquatic animals acquired, sold or transferred sold by species and reproductive capacity; and

(iii) name; address; phone number; and license or COR number of the receiver.

(iv) geographic coordinates including latitude, longitude or UTM coordinates of the stocking location shall be provided if the receiver is eligible to stock the aquatic animal without a certificate of registration under Wildlife Board Rules R657-3, R657-53, and R657-59.

(v) date of transaction.

(c) The department or division may request copies of receipts from an aquaculture facility.

(8) The division is responsible for certifying the sterility of salmonids Rule R657-59.

(a) Laboratory testing cost for sterility testing shall be at the owner's expense.

(b) Aquaculture facilities shall submit laboratory reports to the division for certification of sterility.

(c) Aquaculture facilities may request the department collect samples for sterility testing.

(i) The department may charge a fee to collect sterility samples.

(ii) The department shall submit sterility laboratory reports to the division for certification, if the department collected the samples.

(9) Aquaculture facilities may request an aquatic invasive species inspection from the department.

(a) The department may charge fees to conduct an aquatic invasive species inspection. Any costs to verify the identification of suspect organisms shall be at the owner's expense.

(b) The department shall inspect for species listed in a memorandum of understanding with the division.

(c) The department shall provide the aquatic invasive species inspection report to the facility, the division, and any requesting state.

R58-27-10. Fee Fishing Facilities.

(1)(a) A license is required to operate a fee fishing facility.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, shall be licensed as separate facilities regardless of ownership.

(2)(a) Live sales or transfers of aquatic animals is prohibited.

(b) The operator of a fee fishing facility may not sell, donate, or otherwise transfer live aquatic animals from the facility.

(3) Fishing licenses not required. A fishing license is not required to take aquatic animals at a fee fishing facility.

(4)(a) Receipts are required to transport dead aquatic animals from a fee fishing facility. Fee fishing facilities shall issue a receipt to the customer that includes:

(i) name, address, license number, license expiration date and phone number of the facility;

(ii) date caught; and

(iii) species and number of fishes.

(b) Receipts are not required for owner associations and catch and release operations.

(5)(a) Annual report required. Fee fishing license holders shall submit an annual report of all aquatic animals purchased or acquired to the department at the time of the license renewal, pursuant to Sections 4-37-302 and R58-27-7.

(b) A report form shall be provided by the department. This report shall contain:

(i) name, address, license number and Health Approval number of the supplier;

(ii) number and weight of aquatic animals by species and reproductive capacity;

(iii) dates of purchase or transfer of aquatic animals; and

(iv) name, address, and license number of the receiver.

R58-27-11. Waste Disposal at Aquaculture Facilities, Fee Fishing Facilities, and Aquatic Animal Processing Plants.

(1) Waste products such as carcasses, viscera, and wastewater, shall be disposed of by means acceptable to the department to deter the spread of pathogens and non-native species by water or animals pursuant to Section R58-17-16 and Rule R657-3

(2) Placement of live aquatic animals, dead aquatic animals, parts, or waste products from an aquatic animal processing plant, aquaculture facility, or fee fishing facility into public waters is illegal. Proper disposal is the responsibility of the processor, owner, broker pursuant to Section R58-17-16.

R58-27-12. Inspection of Records and Facilities.

(1) The following records shall be maintained for a period of two years and be available for inspection during reasonable hours by the appropriate agency pursuant to Sections 4-37-111 and R58-17-4.

(a) Purchase, acquisition, distribution, and production histories of live aquatic animals.

(b) Licenses and entry permits.

(c) Valid identification of stocks, including origin of stocks.

(2) Department representatives may conduct pathological, fish culture, or physical investigations at any aquaculture or fee fishing facility during reasonable hours.

(a) Any laboratory testing as a result of this investigation shall be at the owner's expense if evidence indicates that Rule R58-17 has been violated pursuant to the investigation.

KEY: aquaculture

Date of Last Change: 2022

Authorizing, and Implemented or Interpreted Law: 4-2-103(i); 4-37-503

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R68-25

Filing ID: 54869

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
Brandon Forsyth	801-710-9945	bforsyth@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-25. Industrial Hemp Program-Cannabinoid Product Processors
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 the Utah Code. The current rule requires all processors to be registered with the Division of Regulatory Services and follow Good Manufacturing Practices (GMP) required by federal law, however, the Division of Plant Industry (Division) does not currently have statutory authority to require registration or GMP certification for cosmetics manufacturers. The language requiring Food, Drug, and Cosmetic (FD&C) Act compliance (which was aimed only at cosmetic manufacturers) and Division registration has been removed. Additionally, basic cleanliness requirements have been added to ensure the safety of all products, including cosmetics.
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 requirement of a cosmetics manufacturer to comply with the FD&C Act and be registered with the Division of Regulatory Services has been removed from Section R68-25-7. Basic cleanliness standards for processors have been added to Section R68-25-7, as well. In addition

testing requirements are clarified in Section R68-25-10 to apply to all cannabinoid products.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The changes will have a minimal impact on the state budget because the Department of Agriculture and Food will no longer require registration of cosmetic only manufacturers with the regulatory services division. The Division does not currently have a way to separate registrations for establishments that manufacture just cosmetics from those that may also manufacture other products but feel this number is very small (no more than 1 or 2).
B) Local governments:
Local governments do not administer the program and are not regulated under the program and will not be impacted.
C) Small businesses ("small business" means a business employing 1-49 persons):
There should be a minimal positive fiscal impact to small businesses that manufacture cosmetic cannabinoid products that no longer have to pay for registration. The Division does not currently have a way to separate registrations for registered establishments that manufacture just cosmetics from those that may also manufacture other products but feel this number is very small (no more than 1 or 2).
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There should be a minimal positive fiscal impact to non-small businesses that manufacture cosmetic cannabinoid products that no longer have to pay for registration. The Division does not currently have a way to separate registrations for registered establishments that manufacture just cosmetics from those that may also manufacture other products but feel this number is very small (no more than 1 or 2).
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There should be no fiscal impact to other persons because they do not operate as industrial hemp processors that sell cosmetic products.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There could be a change in compliance costs for persons that produce cosmetics with CBD that no longer are required to register with the Regulatory Services Division. The cost of registration ranges from \$75 to \$750 per year depending on the size of the facility.

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 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 4-41-103(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: 10/31/2022

9. This rule change MAY become effective on: 11/07/2022

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

Agency Authorization Information

Agency head or designee and title:	Craig W Buttars, Commissioner	Date:	09/09/2022
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R68. Agriculture and Food, Plant Industry.

R68-25. Industrial Hemp Program - Cannabinoid Product Processors.

R68-25-1. Authority and Purpose.

Pursuant to Subsection 4-41-103(4), this rule establishes the standards, practices, procedures, and requirements for participation in the Utah Industrial Hemp Program for the processing and handling of cannabinoid products.

R68-25-2. Definitions.

- 1) "CBD" means cannabidiol (CAS #13956-29-1).
- 2) "Cannabinoid" means any:
 - a) naturally occurring derivative of cannabigerolic acid (CAS #25555-57-1); or
 - b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.
- 3) "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.
- 4) "Cannabinoid product" means a product that:
 - a) contains one or more cannabinoids;
 - b) contains less than the cannabinoid product THC level by dry weight; and
 - c) after December 1, 2022, contains a combined amount of total THC and any THC analog that does not exceed 10% of the total cannabinoid content.
- 5) "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%.
- 6) "Community location" means a public or private elementary or secondary school, a church, a public library, a public playground, or a public park.
- 7) "Department" means the Utah Department of Agriculture and Food.

8) "Derivative cannabinoid" means any cannabinoid that has been intentionally created using a process to convert one cannabinoid into another.

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

10) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

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

b) "Key participant" includes an:

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

ii) an operation manager, site manager, or any employee who may present a risk of diversion.

12) "Handle" or "Handling" means possessing, transporting, or storing industrial hemp for any period.

13) "Processing" means any action taken to prepare industrial hemp, or material derived from industrial hemp, for market.

14) "Processor" means a person licensed by the department to process industrial hemp or a material derived from industrial hemp.

15) "Manufacturing" means storing, preparing, packaging, or labeling of industrial hemp or cannabinoid products.

16) "Non-compliant material" means:

(a) a hemp plant or plant material that does not comply with this rule, including a cannabis plant with a concentration of 0.3% tetrahydrocannabinol or greater by dry weight; and

(b) a cannabinoid product, chemical, or compound with a concentration that exceeds the cannabinoid product THC level.

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

18) "Synthetic cannabinoid" means any cannabinoid that:

(a) was chemically synthesized from starting materials other than a naturally occurring cannabinoid; and

(b) is not a derivative cannabinoid.

19) "Tetrahydrocannabinol" or "THC" means delta-9-tetrahydrocannabinol, the cannabinoid identified as CAS #1972-08-3.

20) "Third-party laboratory" means a laboratory that has no direct interest in a grower or processor of industrial hemp or cannabinoid products that is capable of performing mandated testing utilizing validated methods.

R68-25-3. Industrial Hemp Processor Licenses.

1) The department shall issue the following industrial hemp processor licenses:

a) a Tier One license, which allows a licensee to receive, store, extract, transport, and sell raw plant material or raw concentrate, and manufacture finished cannabinoid product;

b) a Tier Two license, which allows a licensee to receive raw plant material and extract it into raw concentrate to store, sell, or transport;

c) a Tier Three license, which allows a licensee to receive cannabinoid concentrate under 0.3% THC concentration, and manufacture, store, package, and label finished cannabinoid product; and

d) a Tier Four license, which allows a licensee to receive, store, transport, or sell raw concentrate, raw plant material, or finished cannabinoid product, and perform minimal processing for [the purpose of] storage only.

2) A Tier One processor may accept industrial hemp derived cannabinoid concentrate with greater than 0.3% THC concentration from another Tier One processor or a Tier two processor.

R68-25-4. Application Requirements.

1) The applicant shall be a minimum of 18 years old.

2) The applicant is not eligible to receive a license if they have been convicted of a drug-related felony or its equivalent.

3) An applicant seeking an industrial hemp processing license shall submit the following to the department:

a) a complete application form provided by the department;

b) a physical description of the processing facility;

c) a plan review of the building, facilities, and equipment;

d) a street address for each building or site where industrial hemp or cannabinoid products will be processed, handled, or stored;

e) the planned source of industrial hemp material; and

f) a statement of the intended end use or disposal for each part of the industrial hemp plant and hemp material.

4) Each applicant and key participant shall submit to a background check pursuant to the requirements of Subsection 4-41-103.2(6) and shall provide the department with an authorization form allowing the department to access their background information.

5) The applicant shall submit a fee as approved by the legislature in the fee schedule.

6) The department shall deny any applicant who does not submit the required information.

7) Each applicant for a Tier one, Tier Two, or Tier Three license shall be required to register as a food establishment under Section 4-5-301 pursuant to the requirements of Section R68-25-7.

R68-25-5. Processing Facility Restrictions.

1) A licensee shall not process or store leaf or floral material from industrial hemp in any structure that is used for residential purposes.

2) A licensee shall not process or store industrial hemp within 1,000 feet of a community location.

3) A licensee shall not process or handle industrial hemp or hemp material from any person who is not licensed by the department or the United States Department of Agriculture (USDA) or from a person outside the state who is not authorized by the laws of that state.

4) A licensee shall not permit a person under the age of 18 to access industrial hemp or cannabinoid products.

5) A licensee shall ensure that each key participant has submitted to a background check as required in Subsection 4-41-103.2(6) and authorized the department to access their background information within the first month of employment.

6) The licensee shall notify the department if a key participant separates from the licensee within two weeks following the separation.

R68-25-6. Extraction Methods.

1) In addition to the requirements of Section R68-25-4, an applicant seeking to engage in the extraction of cannabinoid concentrate from industrial hemp shall submit to the department a detailed description of the proposed extraction method.

2) The applicant shall describe the proposed process for the removal of any solvents added during the extraction process, if applicable.

3) The applicant shall describe the safety measures proposed to protect the public and employees from dangers associated with extraction methods.

4) The department may deny a license for methods that pose a significant risk to public health and safety.

5) Each licensee shall adhere to the following extraction guidelines:

a) ensure hydrocarbons n-butane, isobutane, propane, or heptane are of at least 99% purity;

b) use a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, and control each source of ignition where a flammable atmosphere is or may be present;

c) ensure that any carbon dioxide (CO₂) gas extraction system uses a professional grade closed loop CO₂ gas extraction system where each vessel is rated to a minimum of six hundred pounds per square inch and CO₂ shall be at least 99% purity;

d) ensure that closed loop hydrocarbon, alcohol, or CO₂ extraction systems are commercially manufactured and bear a permanently affixed and visible serial number;

e) upon request, provide the department with documentation showing that the system is:

i) safe for its intended use; and

ii) commercially manufactured.

6) The applicant shall indicate whether they will be using derivative or synthetic cannabinoids and how they will produce or procure them.

R68-25-7. Processing Practices.

1) The department incorporates by reference 21 CFR 111, Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements for a licensee engaged in processing a cannabinoid product intended for human consumption.

2) The department incorporates by reference 21 CFR 507, Current Good Manufacturing Practice, Hazard analysis, and Risk-Based Preventive Controls for Food for Animals for a licensee engaged in processing cannabinoid products for animal consumption.

~~3) Each licensee shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and any other applicable state laws and regulations relating to product development, product manufacturing, consumer safety, and public health.]~~

~~[4]3) A licensee that manufactures cannabinoid products for human consumption [or use as cosmetics] shall be registered with the Division of Regulatory Services within the department.~~

~~[5]4) A licensee shall use a standardized scale that is registered with the department when industrial hemp or cannabinoid products are:~~

~~a) packaged for sale by weight; or~~

~~b) bought and sold by weight.~~

~~[6]5) A licensee that also is a holder of a medical cannabis processing license shall adhere to the separation requirements of Section R68-28-5 to ensure physical separation of medical cannabis and industrial hemp in their facility.~~

~~6) A licensee that manufactures cannabinoid products shall ensure that the facility meets basic cleanliness standards, including:~~

~~a) buildings are of suitable size, design, and construction to permit unobstructed placement of equipment, orderly storage of materials, sanitary operation, and proper cleaning and maintenance;~~

~~b) floors, walls, and ceilings are constructed of smooth, easily cleanable surfaces and are kept clean and in good repair;~~

~~c) fixtures, ducts, and pipes are installed in such a manner that drip or condensate does not contaminate materials, utensils, contact surfaces of equipment, or finished products in bulk;~~

~~d) lighting and ventilation are sufficient for the intended operation and comfort of personnel;~~

~~e) water supply, washing and toilet facilities, floor drainage, and sewage system are adequate for sanitary operation and cleaning of facilities, equipment, and utensils, as well as to satisfy employee needs and facilitate personal cleanliness; and~~

~~f) adequate filth and pest controls are in place.~~

R68-25-8. Required Reports.

1) A licensee shall submit a completed Production Report on a form provided by the department by December 31st.

2) The failure to submit a timely completed form may result in the denial of a renewal license.

R68-25-9. Additional Records.

1) The licensee shall keep records of receipt for any industrial hemp material obtained including:

a) the date of receipt;

b) quantity received;

c) an identifying lot number created by the licensee; and

d) the seller's information including:

i) the seller's department license number;

ii) seller's contact information; and

iii) the address of the facility or growing area from which the industrial hemp material was shipped.

2) The licensee shall keep records that include the following information for each batch of industrial hemp material processed;

a) the date of processing;

b) the lot number of the material;

c) the amount processed;

d) the type of processing; and

e) any lab test conducted on the industrial hemp material or product during the processing.

3) The licensee shall keep records of any derivative or synthetic cannabinoids procured or produced and the products they are used for.

4) The licensee shall keep records of any tests conducted with the identifying lot number.

5) A licensee processing a cannabinoid product for human consumption shall keep records required by 21 CFR 111 including:

a) written procedures for preventing microbial contamination;

b) documentation of training of employees;

c) cleaning logs of equipment;

d) procedures for cleaning the physical facility;

e) documentation of your qualification of supplier; and

f) documentation of calibration of machinery.

6) A licensee processing a cannabinoid product for animals shall keep records as required by 21 CFR 507 including:

a) written procedures for preventing microbial contamination;

b) documentation of training of employees;

c) cleaning logs of equipment;

d) procedures for cleaning the physical facility; and

e) documentation of calibration of machinery.

7) The licensee shall keep records of any products they have manufactured and the disposition of any cannabinoid material that leaves the facility.

8) Records shall be maintained for a minimum of three years.

9) Records are subject to review by department officials at the time of inspection or upon request.

R68-25-10. Testing.

1) ~~[For e]Cannabinoid products [that will be used for human consumption or absorption the product]~~ shall be tested for the following before being made available for retail sale:

- a) cannabinoid profile;
- b) solvents;
- c) pesticides;
- d) microbials;
- e) heavy metals; and
- f) foreign matter.

2) The testing shall be completed by a third-party laboratory.

3) The department shall conduct random testing of cannabinoid products and materials.

4) The sample taken by the department shall be the official sample.

R68-25-11. Inspections and Sampling.

1) The department shall have complete and unrestricted access to industrial hemp plants, seeds, and materials and any land, buildings, and other structures used to process industrial hemp.

2) Samples of industrial hemp or cannabinoid product may be randomly taken from the facility by department officials.

3) The department may review records kept in accordance with rule requirements.

4) The department shall notify a licensee of test results greater than 0.3% THC.

5) Any laboratory test with a result greater than 0.3% THC may be considered a violation of the terms of the license and may result in an immediate license revocation.

6) Any laboratory test of a final product with a result of 1% THC or greater shall be turned over to the appropriate law enforcement agency and revocation of the processor license shall be immediate.

7) The department shall notify the licensee of any solvents, metals, microbials, pesticides, or foreign matter found during testing.

8) The presence of deleterious or harmful substances may be considered a violation of the terms of the license and may result in a license revocation.

R68-25-12. Storage of Industrial Hemp and Cannabinoid Products.

1) A licensee may store hemp and cannabinoid products at their licensed facility provided:

- a) the licensee informs the department of the type and amount of the product being stored in the storage facility;
- b) the storage facility is outside of the public view; and
- c) the storage facility is secured with physical containment such as walls, fences, locks, and with an alarm system to provide maximum reasonable security.

2) A licensee may store a cannabinoid concentrate that exceeds 0.3% THC provided:

- a) the concentrate is kept in a secure room;

b) the concentrate is kept separate from other hemp products;

c) access to the concentrate is limited; and

d) a record is kept of the amount of concentrate being stored and when it is being moved.

3) Storage facilities shall be maintained in accordance with the practice adopted in Section R68-25-7.

4) Storage facilities and records are subject to random inspection by department officials.

R68-25-13. 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.

R68-25-14. Restriction on the Sale and Transfer of Industrial Hemp Material.

1) A licensee shall not sell or transfer living plants, viable plants, viable seed, leaf material, or floral material to any person not licensed by the department or the USDA.

2) A licensee shall not sell or transfer living plants, viable seed, leaf material, or floral material to any person outside the state who is not authorized by the laws of that state or the USDA.

3) A licensee may sell stripped stalks, fiber, and nonviable seed to the general public provided the material's THC level is less than 0.3%.

R68-25-15. Renewal.

1) A licensee shall resubmit the documents required in Section R68-25-4, with updated information, before December 31st of the current year.

2) The department may deny a renewal for an incomplete application.

3) The department may deny renewal for any licensee who has violated any portion of this rule or state law.

R68-25-16. Violation.

1) It is a violation to process industrial hemp or industrial hemp material on a site not approved by the department[?].

2) It is a violation to process industrial hemp or industrial hemp material on a site within 1,000 feet of a community location.

3) It is a violation to process industrial hemp or industrial hemp material from a source that is not approved by the department.

4) A licensee shall not allow unsupervised public access to hemp processing facilities.

5) It is a violation to employ a person under the age of 18 in the processing or handling of industrial hemp or cannabinoid products.

6) It is a violation to sell a cannabinoid product to the general public or another licensee in violation of this section or state laws governing the final product.

7) It is a violation to add cannabinoids to a food product.

8) It is a violation to process raw concentrate without the appropriate industrial hemp processor license.

9) It is a violation to fail to keep records required by this rule or to fail to adhere to the notification requirements of this rule.

10) It is a violation to use derivative or synthetic cannabinoids in cannabinoid products without notifying the department.

11) It is a violation for a licensee to allow an employee that has been convicted of a drug-related felony or its equivalent access to hemp material or cannabinoid product that contains over 0.3% THC or has the potential to contain over 0.3% THC.

12) It is a violation to possess cannabinoid concentrate without an industrial hemp processing license.

13) It is a violation to store cannabinoid concentrate with greater than 0.3% THC concentration without following the requirements of Subsection R68-25-12(2).

14) It is a violation to store industrial hemp material without a processor license from the department or a cultivator license from the USDA.

15) It is a violation to possess non-compliant material.

16) It is a violation for a licensee to engage in practices outside of the scope of their license.

17) It is a violation to use an extraction method that is not authorized by Section R68-25-6.

18) It is a violation to employ a key participant without a background check for longer than 30 days.

19) It is a violation to operate a facility that does not meet current Good Manufacturing Practice requirements.

20) For holders of industrial hemp and medical cannabis processing licenses, it is a violation to operate a facility that does not adhere to the separation requirements of Section R68-28-5.

21) It is a violation to sell a cannabinoid product that has not been tested as required by Section R68-25-10.

22) It is a violation to deny the department the ability to take a sample of a cannabinoid product during an inspection or as part of an investigation.

23) It is a violation to deny the department access to an industrial hemp processing facility or industrial hemp processing facility records during regular business hours.

KEY: cannabidiol, hemp products, hemp extraction, hemp oil
Date of Last Change: ~~August 23,~~ 2022
Authorizing, and Implemented or Interpreted Law: 4-41-103(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R70-350	Filing ID: 54876
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Agency Information

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

Contact persons:

Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Travis Waller	801-982-2200	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 or section catchline:

R70-350. Ice Cream and Frozen Dairy Food Standards

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 text more consistent with the requirements of 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):

The rule text has been updated to address formatting issues, provide clarity, and ensure the requirements of the Utah Rulewriting Manual are met.

Fiscal Information

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

A) State budget:

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

B) Local governments:

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

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

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

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

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

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

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

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

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

G) 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 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:

Section 4-3-201		
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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: 10/31/2022

9. This rule change MAY become effective on: 11/07/2022

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

Agency Authorization Information

Agency head or designee and title:	Craig W Buttars, Commissioner	Date:	09/14/2022
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R70. Agriculture and Food, Regulatory Services.

R70-350. Ice Cream and Frozen Dairy Foods Standards.

R70-350-1. Purpose and Authority.

~~[A-](1)~~ Promulgated ~~[U]~~ under the ~~[A-]~~ authority of Section 4-3-201.

~~[B-](2)~~ ~~[Scope:—]~~ This rule shall apply to ~~[all]~~ any frozen dairy foods and frozen dairy food mixes sold, bought, processed, manufactured, or distributed within ~~[the state of]~~ Utah.

(3) This rule establishes labeling requirements, the qualifications for adulteration and misbranding, and bacterial quality, pasteurization, and sanitation standards for ice cream and frozen dairy food products.

R70-350-2. Definitions.

(1) "3-A sanitary standards and accepted practice" means the same as that term is defined in 7 CFR 58.101.

(2) "Bulky flavoring" means fruits, nuts, and candy.

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

(4) "Frozen dairy food mix" means the unfrozen combination of ingredients to be used in any frozen dairy food with or without fruits, fruit juices, candy, nut meats, flavoring, or harmless color.

(5) "Frozen dairy food" means a frozen product made from dairy ingredients with less than 10% milkfat. Frozen dairy food includes any foods defined in this rule.

(6) "Frozen yogurt," "frozen low fat yogurt," and "nonfat frozen yogurt" mean the food made from dairy ingredients with or without added flavoring or seasoning, pasteurized and fermented by one or more strains of *Lactobacillus bulgaricus*, including yogurt strains, *Streptococcus thermophilus*, and *Lactobacillus acidophilus*.

(7) "Frozen yogurt mix," "frozen low fat yogurt mix," and "frozen nonfat yogurt mix" mean frozen products that are used in the manufacture of frozen yogurt, frozen low fat yogurt, and frozen nonfat yogurt.

(8) "Processor" means any person who subjects milk to a process.

(9) "Shake mix" means a product resulting from agitation of frozen dairy food to which Grade A pasteurized milk has been added.

R70-350-[2]3. Standards[~~of Identity~~].

[A. ~~Federal Standards Acceptance~~.

The standard for federally defined products of ice cream, ice milk, sherbet, water ice, and related products shall be the same in Utah as the most recently accepted federal standards of identity for these frozen desserts unless specifically excluded or modified by some provision of state rule or interpretation thereof. (1) The standards of identity for ice cream, ice milk, sherbet, water ice, and other products shall be in accordance with 21 CFR 135.

[~~B. Frozen Dairy Foods Mix~~.

Frozen Dairy Foods Mix shall be defined as the unfrozen combination of ingredients to be used in any frozen dairy product defined in this rule with or without fruits, fruit juices, candy, nut meats, flavoring or harmless color.]

[C.](2) Shake [M]mix.

[Shake Mix shall be defined as a product resulting from agitation of frozen dairy food to which Grade A pasteurized milk has been added. The resulting product] Shake mix [must have] shall:

(a) have at least [two percent]2% but not more than [seven percent]7% milkfat and at least [11 percent]11% milk solids; or

(b) [it may] be a product prepared from the same ingredients and in the same manner as [prescribed in the definition for] ice milk except that it shall be sold or served in a semi-frozen state.

[D.](3) Frozen [Y]yogurt, [F]frozen [L]low fat [Y]yogurt, and [F]frozen [N]nonfat [Y]yogurt.

[Frozen yogurt, frozen lowfat yogurt, and nonfat frozen yogurt is the food made from dairy ingredients with or without added flavoring or seasoning, which has been pasteurized and fermented by one or more strains of *Lactobacillus bulgaricus*, including yogurt strains, *Streptococcus thermophilus* and *Lactobacillus acidophilus*.

](a) The parenthetical phrase "[~~e~~]heat-treated after culturing[~~g~~]" shall follow the name of the food if the dairy ingredients [have been] are pasteurized after culturing.

(b) Fruits may be added before or after the frozen yogurt mix, frozen low fat yogurt mix, or frozen nonfat yogurt mix is pasteurized and cultured.

(c) [Such]Frozen yogurt, frozen low fat yogurt, or nonfat frozen yogurt products may contain harmless edible stabilizers or emulsifiers not to exceed 0.6[percent]%.
[~~Such~~]

(d) [~~H~~]Frozen yogurt, frozen low fat yogurt, or nonfat frozen yogurt products shall have:

(i) a titratable acidity of not less than 0.5[percent]%, expressed as lactic acid;

(ii) [it shall contain no more than]at most [10]ten coliform bacteria per gram[~~g~~]; and

(iii) [it shall contain not more than]at most [10]ten colonies per gram each of molds, yeasts, and other fungi.

(e) The freezing and air incorporation shall not exceed 60[percent]%, by volume of the product.

(f) Frozen yogurt shall contain not less than 3.25[percent]%, milkfat.

(g) Frozen low fat yogurt shall contain not less than 2[percent]%, milkfat.

(h) Frozen nonfat yogurt shall contain less than 0.5[percent]%, milkfat.

(i) Frozen [fruit]yogurt with fruit added shall contain not less than 8[percent]%, by weight of clean, mature, sound fruit, or its equivalent in other forms.

(i) The milkfat content of frozen [fruit]yogurt with fruit added, may be reduced to not less than 2.8[percent]%, milkfat.[~~and~~]

(k) [~~t~~]The milkfat content of [lowfat frozen fruit yogurt]frozen low fat yogurt with fruit added, may be reduced to not more than 1.3[percent]%, milkfat.

(l) Frozen yogurt, frozen low fat yogurt, and nonfat frozen yogurt shall contain not less than 8.25[percent]%, milk solids not fat.

[E.](4) Frozen yogurt mix, [F]frozen [L]low fat yogurt mix, and [F]frozen nonfat yogurt mix, [are unfrozen products which are used in the manufacture of frozen yogurt, Frozen Lowfat yogurt, and Frozen Nonfat yogurt. They] Frozen yogurt mix, frozen low fat yogurt mix, and frozen nonfat yogurt mix shall comply with [all]any the requirements for frozen yogurt, [F]frozen [L]low fat yogurt, and frozen nonfat yogurt.

R70-350-[3]4. Bacterial Quality.

[A.](1) Sampling.

(a) Samples of [ice cream and]frozen dairy foods shall be tested by each processor at least once a month and from each distributor as often as may be [required]needed by the department,[regulatory authorities].

(b) [The products defined in this rule]Each frozen dairy food shall contain [not more than]at most 50,000 bacteria per milliliter by standard plate count.[~~g~~]

(c) [except e]Cultured products with viable organisms shall be exempt from [this]the bacterial count requirement.

(d) [All]Each frozen dairy food [products]shall have a coliform count not exceeding [10]ten per gram.

[B.](2) Enforcement.

[4.](a) [Whenever more than one of the last four consecutive coliform counts of samples taken on separate days by the processor or the Department is in excess of 10 per gram or more than one of the last four bacteria counts of samples taken on separate days by the processor or the Department is above 50,000 per milliliter, a written warning notice thereof shall be sent to the person concerned by the Department.]A written warning notice shall be sent to a processor when:

(i) more than one of the last four consecutive coliform counts of samples taken on separate days by the processor or department is more than ten per gram; or

(ii) more than one of the last four bacteria counts of samples taken on separate days by the processor or department is above 50,000 per mL.

(b) ~~[An authorized regulatory agency]~~After at least three days and after a warning notice has been sent to the processor, the ~~department~~ shall ~~[then]~~take an additional sample~~[-but not before the lapse of three days after notification].~~

(c) ~~[Violation of the standards as shown by the results of these additional samples shall call for immediate enforcement action to require the discontinuance of the sale or distribution of the product from the establishment until additional samples taken by the authorized regulatory agency shall show the product to be in compliance with the applicable standards.]~~If the additional samples show continued violation of this rule then the processor shall stop the sale or distribution of the product from the establishment until additional samples taken by the department show the product to be in compliance with this rule.

(2-)(d) Frozen dairy foods shall, after pasteurization and before the addition of bulky flavorings~~[-such as fruits, nuts, and candy]~~, meet the bacterial standards requirements listed in this section.

(e) Finished frozen dairy product without bulky flavorings shall also meet the requirements in this section.

(f) Bulky flavorings shall meet ~~[at]~~any food standards for composition, sanitation, and adulteration in effect in Utah~~[-for foods]~~.

R70-350-[4]5. Pasteurization and Sanitation.

~~[A-]~~(1) Pasteurization.

(1-)(a) ~~[At]~~Each frozen dairy food product[s] defined in this rule shall be pasteurized by heating ~~[every]~~each particle of the product to at least 155 degrees F and holding at that temperature or above for at least 30 minutes under the required safeguards in approved equipment as outlined in the ~~[3-A standards; provided that any other method which is demonstrated to be equally efficient and is approved by the Department may be allowed]~~3-A sanitary standards and accepted practice.

(b) Any other pasteurization method that is demonstrated to be equally efficient may be used if approved by the department.

(2-)(c) Time and temperature record charts for pasteurization shall be dated and ~~[preserved]~~kept for a period of at least six months at the plant of manufacture.

~~[B-]~~(2) Reconstitution.

(a) When~~[ever]~~ water must be used to reconstitute any defined product, the frozen dairy product shall be pasteurized after being reconstituted; or

(b) ~~[#]~~the frozen dairy product shall be reconstituted by pouring the concentrate or dry mix from the factory-packed container into a properly constructed, clean, and sanitized container.

~~[C-]~~(3) Cooling.

~~All liquid ingredients which~~ Liquid ingredients that will support bacterial growth shall be kept or immediately cooled to 40 degrees F~~[-]~~ or below.

~~[D-]~~(4) Sanitation. ~~[At]~~Any manufacturing, processing, storage, distribution, or handling of any ~~[product regulated under this act]~~frozen dairy food or frozen dairy food mix shall be done in buildings or other approved facilities using utensils, equipment, and methods ~~[which]~~that are approved by the ~~[D]~~department or other ~~[properly]~~authorized regulatory agency.

R70-350-[5]6. Adulteration and Misbranding.

~~[A-]~~(1) Labeling.

(a) Labeling of packages shall include the name and address of the manufacturer, packer, or distributor~~[-]~~, net contents, ingredients, and common or usual name of the product.

(b) ~~[Also,]~~Labeling shall meet ~~[at]~~any other applicable requirements of Title 4, Chapter 5, Utah Wholesome Food Act, ~~[state labeling rules and federal regulations adopted by reference under the Utah Foods Act,]~~including nutritional labeling where applicable.

~~[B-]~~(2) Imitations.

(1-)(a) Any frozen dairy food product offered for sale in semblance or imitation of any frozen dairy food regulated under this rule shall be ~~[deemed to be]~~considered adulterated and misbranded if ~~[such]~~the frozen dairy food does not conform to the standards under this rule, notwithstanding the ~~[employment]~~use of any fanciful name or use of the word "imitation" to designate the product.

(2-)(b) No person shall use "ice cream,"~~[-]~~ "cream,"~~[-]~~ "creme,"~~[-]~~ "creamy,"~~[-]~~ or "crem[e]y,"~~[-]~~ or any other word or phrase ~~[which]~~that may be construed to be misleading in either labeling or advertising, sale, or distribution of ice milk.

~~[C-]~~(3) Adulteration.

~~Products defined in this rule shall be [deemed to be]~~considered adulterated if they were not produced under the sanitary requirements of this rule or if they contain any substance in sufficient quantity to be deleterious to the public health or if they meet the criteria of adulteration under ~~[Utah's dairy and food laws]~~Title 4, Chapter 3, the Utah Dairy Act or Title 4, Chapter 5, the Utah Wholesome Food Act.

KEY: food inspection

Date of Last Change: ~~[1992]~~2022

Notice of Continuation: December 20, 2021

Authorizing, and Implemented or Interpreted Law: 4-3-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R70-360

Filing ID: 54877

Agency Information

1. Department:	Agriculture and Food	
Agency:	Regulatory Services	
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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:
R70-360. Procedure for Obtaining a License to Test Milk for Payment
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Changes are needed to make the rule text more consistent with the requirements of 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):
The rule text has been updated to address formatting issues, provide clarity, and ensure the requirements of the Utah Rulewriting Manual are met.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.
B) Local governments:
Local governments do not administer the program and are not regulated under the program and will not be impacted.
C) Small businesses ("small business" means a business employing 1-49 persons):
There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

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

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

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

G) 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 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:

Section 4-3-201

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: 10/31/2022

9. This rule change MAY become effective on: 11/07/2022

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

Agency Authorization Information

Agency head or designee and title:	Craig W Butters, Commissioner	Date:	09/14/2022
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R70. Agriculture and Food, Regulatory Services.**R70-360. Procedure for Obtaining a License to Test Milk for Payment.****R70-360-1. Purpose and Authority.**

~~[A-](1)~~ Promulgated ~~[U]~~ under the ~~[A]~~ authority of Section 4-3-201.

~~[B-](2)~~ ~~[Scope:]~~ This rule ~~[outlines the requirements that are necessary in order]~~ establishes the process to obtain a license to test milk for payment.

R70-360-2. Definitions.

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

(2) "License" means a license to test milk for payment.

R70-360-~~[2]~~3. License Requirements.

~~[A-](1)~~ ~~[This]~~ A license ~~[is]~~ shall be issued to an individual applicant and is not transferable.

~~[B-](2)~~ Licenses shall expire on December 31 of each year.

~~[C-](3)~~ ~~[In order to]~~ To ~~[obtain]~~ get a license ~~[to test milk for payment]~~, an ~~[individual must]~~ applicant shall demonstrate testing proficiency by successfully completing a series of split samples provided by the department.

(4) After an ~~[individual]~~ applicant meets the criteria for ~~[certification]~~ licensing, ~~[an application will be filled out and submitted along with payment of a license fee, determined by the department pursuant to Subsection 4-2-2(2), to the department for issuance of a license]~~ the applicant shall submit an application form with the license fee to the department. The license fee shall be determined by the department pursuant to Section 4-2-103.

(5) The department shall issue a license to the applicant when an application form and fee are received.

R70-360-~~[3]~~4. Renewal Procedure.

~~(1)~~ The department shall send a renewal form to each licensed tester before the license expiration date.

~~(2)~~ A licensed tester shall send the finished renewal form and license fee to the department, after which the department will issue a renewed license.

~~(3)~~ ~~[Split samples may be made available to licensed testers periodically to check for competency in testing]~~ The department shall send split samples to licensed testers biennially to check the tester's testing competency.

~~(4)~~ The ~~[D]~~ department ~~[will provide the results to the tester. The split sample results will be evaluated]~~ shall evaluate the split sample results and provide the results to the tester.

~~(5)~~ If a tester does not achieve accurate results, the ~~[D]~~ department ~~[will work with that tester to correct the problem.]~~ shall suspend the tester's license, pursuant to Section R70-360-5, until the tester gets acceptable split sample results.

R70-360-~~[4]~~5. License Suspension or Revocation.

If ~~[any provision of]~~ this rule or ~~[the]~~ Title 4, Chapter 3, Utah Dairy Act is violated, the tester's license may be subject to suspension or revocation ~~[after due process of a hearing]~~.

KEY: food inspection

Date of Last Change: ~~[1992]~~ 2022

Notice of Continuation: December 20, 2021

Authorizing, and Implemented or Interpreted Law: 4-3-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-123	Filing ID: 54885
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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:**

R277-123. Process for Members of the Public to Report Violations of Statute and Board Rule

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

Rule R277-123 is being amended in order to create a process for individuals to appeal local education agency (LEA) decisions on challenged library materials, consistent with H.B. 374, passed in the 2022 General Session.

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

The amendments specifically establish timelines, standards, and procedures for appeals of library materials decisions.

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 incorporates new sensitive materials language. The Utah State Board of Education (USBE) does not anticipate fiscal impact outside of the fiscal note attached to the H.B. 374 (2022).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The new sensitive materials language does not have an impact for LEAs or other local governments outside of the fiscal note on H.B. 374 (2022).

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. There are no affected small businesses.

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only impacts LEAs and the 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 only impacts the USBE and 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)	Subsection 53E-3-401(8)
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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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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R277. Education, Administration.**R277-123. Process for Members of the Public to Report Violations of Statute and Board Rule.****R277-123-1. 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-3-401(8)(d), which requires the Board to establish a process in rule for an individual to bring a violation of statute or board rule to the attention of the Board.

(2) The purpose of this rule is to establish a process for an individual to bring an alleged violation of statute or board rule to the attention of the Board.

R277-123-2. Definitions.

- (1) "Alleged violation" means an alleged violation of statute or Board rule.
- (2) "Hotline report" means a report of an alleged violation submitted to the Board's public education hotline.

(3) "Individual with standing" means, for purposes of Section R277-123-6, an individual who:

- (a) submitted a request for review of library materials with an LEA;
- (b) a parent who did not serve on an LEA review committee whose child attends the same school as a parent who submitted a request for review of library materials within an LEA;
- (c) a student enrolled in the LEA; or
- (d) an employee of the LEA.

([3]4) "Public education hotline" or "hotline" means the process and database maintained by the Board's internal audit staff where an individual may report an alleged violation.

R277-123-3. Individual Reports of Alleged Violations of Statute and Board Rule - Public Education Hotline Reports.

(1) An individual may report an alleged violation of statute or state board rule to the Board's public education hotline, which can be found at <https://schools.utah.gov/internalaudit?mid=892&tid=3>.

(2) A hotline report may be submitted through the internal audit web page on the Board's website, form, mail, phone, or email.

(3)(a) As part of the individual's hotline report, the individual may provide:

- (i) a detailed description of the report or alleged violation, including any laws, regulations, or policies that are relevant;
- (ii) the name of the individual, program, and, if applicable, funding, involved;
- (iii) the location where the action or concern occurred;
- (iv) the date the action or concern occurred; and
- (v) any additional information, including:
 - (A) other witnesses; and
 - (B) supporting documents or evidence.

(4) The Board's internal audit staff shall conduct a preliminary analysis of an alleged violation and may request additional information from the individual.

(5) Upon review of the information described in this Section R277-123-3, internal audit staff may refer an alleged violation to the applicable LEA to be resolved or to applicable staff.

(6) An alleged violation related to special education or educator misconduct shall be reviewed and resolved in accordance with:

- (a) for a report related to special education, Rule R277-750; or
- (b) for a report related to educator misconduct, Rules R277-210 through R277-217.

(7) If a response is requested by an individual or implied, internal audit or other staff shall respond to the individual who submits an alleged violation within three business days.

(8) If a staff member requests additional information from an individual who submitted an alleged violation, the individual shall respond to the request in a timely manner.

(9) If after two attempts to obtain information from an individual as described in Subsection (8) the individual does not respond to staff, the alleged violation shall be closed in the public education hotline.

R277-123-4. Resubmitted Alleged Violations of Statute or Board Rule.

(1) An individual whose alleged violation is referred to an LEA, state agency, or other entity for resolution, may resubmit the alleged violation to the public education hotline if:

- (a) the alleged violation is not resolved by the LEA, state agency or other entity; and

(b) the alleged violation is within the jurisdiction or authority of the Board to resolve.

(2) Staff who receive a resubmitted alleged violation described in Subsection (1) may:

(a) request information from the LEA, state agency, or other entity; and

(b) conduct a preliminary investigation of the issue.

R277-123-5. Substantiated Allegations of Violations of Statute or Board Rule.

(1) If an alleged violation is substantiated or significant risk is identified, internal audit may recommend:

(a) that the Board's Audit Committee recommend prioritization of an audit to the full Board; or

(b) that Superintendent implement corrective or other action in accordance with Rule R277-114.

(2) If an alleged violation is not substantiated, staff shall notify the individual who submitted the alleged violation.

R277-123-6. Board Review of Appeals on LEA Library Materials Decisions.

(1) An individual with standing may request the Board review an LEA determination on a library materials appeal by filing a request on a form provided by the Board's legal counsel within 30 days of the LEA's final decision.

(2) The Board's legal counsel shall review an appeal submitted under Subsection (1) to determine if the request presents an allegation that the LEA violated the procedure outlined in the LEA's library materials appeal policy.

(3)(a) If the Board's legal counsel determines that an appeal presents a question appropriate for Board review, the Board's legal counsel shall refer the appeal to Board leadership to place on a standing committee agenda.

(b) A standing committee shall make a recommendation to the Board for final action.

(c) The Board shall take action on an appeal within 60 days of the Board's legal counsel referring the matter to the Board.

(4) The Board may review an appeal of an LEA decision only to determine if the LEA appeals process violated the procedure outlined in the LEA's library materials policy.

(5)(a) If the Board determines that an LEA did not correctly follow the procedure outlined in the LEA's library materials review policy, the Board shall return the appeal to the LEA with an order stating:

(i) the reasons for the Board's determination;

(ii) recommendations to the LEA, which may include a request to include a governing board review as part of the library materials policy; and

(iii) a requirement that the LEA repeat its review process in compliance with the LEA's policy.

(b) An LEA shall post an order issued under Subsection (5)(a) on its website.

KEY: hotline, report, and violations

Date of Last Change: 2022[November 8, 2021]

Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4) and (8)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R277-324

Filing ID: 54886

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:

R277-324. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications

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

Rule R277-324 is being amended in order to update requirements for paraprofessionals in schools receiving Title I funds.

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 remove outdated language based on the federal No Child Left Behind Act and add update preparation requirements for paraprofessionals.

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 removes outdated language and clarifies the process for paraprofessionals. No costs are added for the Utah State Board of Education (USBE) as the changes

pertain mostly to LEA staff. No staff or resources are required to implement the rule change.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule change removes outdated language and clarifies the process for paraprofessionals. This does not add any expenses for local education agencies (LEAs) and any minor cost savings are not quantifiable at this time.

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 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 has an impact on 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. LEAs have no new compliance requirements.

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)(i)
Subsection 53F-2-411(4)		

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)	Utah Standards for Instructional Paraeducators
Publisher	Utah State Board of Education
Issue Date	December 4, 2018

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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
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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:	09/15/2022
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R277. Education, Administration.

R277-324. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications.

R277-324-1. 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 gives the Board authority to adopt rules in accordance with its responsibilities;

(c) Subsection 53E-3-501(1)(a)(i), which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and

(d) Subsection 53F-2-411(4), which requires the Board to establish a rule that creates the funding distribution for money appropriated to paraeducator programs.

(2) The purpose of this rule is to:

(a) designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals;

(b) establish the formula for distribution of Paraeducator funding under Section 53F-2-411 to eligible schools; and

(c) provide minimum standards for use of funds and reporting requirements.

R277-324-2. Definitions.

(1) "Eligible school," means the same as the term is defined in Subsection 53F-2-411(1)(a).

(2) "Paraeducator funding" means supplemental state funding provided under Section 53F-2-411 to Title I schools identified as in need of improvement under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801 to hire additional paraeducators to assist students in achieving academic success.

(3) "Paraprofessional" or "paraeducator" means the same as the term is defined in Subsection 53F-2-411(1)(b).

(4) "Paraprofessional training" means professional development consistent with or using information provided in this rule and the Utah Standards for Instructional Paraeducators.

R277-324-3. Incorporation by Reference of Utah Standards for Instructional Paraeducators.

(1) This rule incorporates by reference the Utah Standards for Instructional Paraeducators, dated December 4, 2018.

(2) A copy of the Utah Standards for Instructional Paraeducators is available at:

(a)

<https://www.schools.utah.gov/specialeducation/programs/instructioninclusion?mid=4949&tid=3>; and

(b) the offices of the Utah State Board of Education, 250 E. 500 So., Salt Lake City, Utah, 84111.

R277-324-4. Appropriate Assignments or Duties for Paraprofessionals.

(1) A paraprofessional may:

(a) upon completion of explicit training from appropriately licensed teachers or related service providers, provide individual or small group instructional assistance or tutoring to students as designed by an appropriately licensed teacher or related service provider during times when students would not otherwise receive instruction from an appropriately licensed teacher or related service provider;

(b) assist with classroom organization and management, such as organizing instructional or other materials;

(c) provide assistance with supplementary aids and services, program modifications, and support, such as assistive technology devices and services;

(d) conduct parental involvement activities;

(e) provide support in library or media centers; or

(f) provide supervision for students in non-instructional settings.

(2) A paraprofessional may not:

(a) be responsible for selecting or administering formal diagnostic or psychological instruments or for interpreting the results of those instruments if the paraprofessional's training, licensure, or other forms of certification do not align with the administration and interpretation requirements stated in an instrument's technical manual;

(b) be responsible for selecting programming or prescribing educational activities or materials for the students without the supervision and guidance of an appropriately licensed teacher or related service provider;

(c) be solely responsible for designing lesson plans;

(d) be assigned to implement elements of an IEP for a student with disabilities without direct training, supervision, and involvement from an appropriately licensed teacher or related service provider;

(e) employed to fulfill the responsibilities that may only be provided by an appropriately licensed and otherwise qualified teacher or related service provider; or

(f) perform nursing procedures or administer medications without appropriate supervision and training from an appropriately licensed health care professional.

(3) A licensed teacher shall:

(a) prepare a lesson and plan the instruction support activities to be carried out by a paraprofessional;

(b) evaluate the achievement of the students with whom a paraprofessional works; and

(c) provide the supervision and support to the paraprofessional that the teacher deems appropriate for the paraprofessional to work effectively in the paraprofessional's role and responsibilities.

(4) If a paraeducator is working in a special education program, the LEA shall appropriately train the special education teacher to supervise and direct the work of the paraeducator in the paraeducator's assigned roles and responsibilities.

(5) An LEA that employs a paraprofessional shall establish and maintain documentation of training provided by the LEA as required in:

(a) Subsection (1)(a); and

(b) for an paraprofessional who works with a student with a disability, Utah State Board of Education Special Education Rules Section IX.E, incorporated by reference into Rule R277-750.

R277-324-5. Requirements for Paraprofessionals in Title I Schoolwide and Targeted Assistance Programs.

~~[(1) A paraprofessional hired before January 6, 2002 who function under Subsection R277-504-3(1), and work in Title I schoolwide and targeted assistance programs supported by Title I funds shall be a high school graduate or equivalent and shall meet at least one of the following requirements:~~

~~—(a) complete at least two years, or a minimum of 48 semester hours, at an accredited higher education institution;~~

~~—(b) obtain an associates, or higher, degree from an accredited higher education institution; or~~

~~—(c) satisfy a rigorous state assessment, approved by the Board or LEA governing board, that demonstrates:~~

~~—(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or~~

~~—(ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.]~~

[(2)]1 A paraprofessional hired [after January 6, 2002]to work in Title I schoolwide [and]or targeted assistance programs supported by Title I funds shall be a high school graduate or equivalent and shall meet at least one of the following requirements:

(a) complete at least two years, or a minimum of 48 semester hours, at an accredited higher education institution;

(b) obtain an associate[s], or higher, degree from an accredited higher education institution; or

(c) satisfy a rigorous [state or local]Board approved assessment [about the individual's knowledge of an ability to assist students in core courses under state or federal law.]that demonstrates:

(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

[(3)]2 [The individual]A paraprofessional shall satisfactorily complete a criminal background check consistent with Section 53G-11-402 and Rule R277-~~[516]~~316.

R277-324-6. Exceptions in Title I Schoolwide and Targeted Assistance Programs.

The requirements in Section R277-324-4 do not apply to a paraprofessional with a high school diploma or equivalent solely providing:

(1) support through translator services;

(2) support as a parent engagement liaison; or

(3) personal care for students with disabilities.

R277-324-7. Use of Funds.

An LEA may use Title I funds in addition to other funds available and identified by the LEA to support ongoing training and professional development for paraprofessionals.

R277-324-8. Funding Distribution.

(1) The Superintendent shall divide the funds provided under Section 53F-2-411 equally to schools identified as comprehensive support and improvement schools.

(2) A school may only use funds distributed in accordance with Subsection (1) to hire high quality paraeducators to assist with reading instruction.

R277-324-9. Responsibilities of Eligible Schools Receiving Paraeducator Funding.

(1) A paraeducator hired with paraeducator funding shall:

(a) meet the qualifications described in Section R277-324-5; and

(b) provide additional aid in the classroom to assist students in achieving academic success.

KEY: paraprofessional qualifications

Date of Last Change: 2022~~[November 26, 2021]~~

Notice of Continuation: September 9, 2021

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(a)(i); 53F-2-411(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R277-426

Filing ID: 54887

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:

R277-426. Definition of Private and Non-Profit Schools for Federal Program Services

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

Rule R277-426 is being amended in order to update terminology.

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 replace use of the Data Universal Numbering System (DUNS) number with the Unique Entity Identifier (UEI) number issued by the federal government.

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 rule changes simply removes reference to DUNS numbers and adds reference to UEI numbers following federal changes. There are no costs for the Utah State Board of Education (USB E).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The rule changes simply removes reference to DUNS numbers and adds reference to UEI numbers following federal changes. Local education agencies (LEAs) were issued UEI numbers by the federal government and there are no 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 only affects LEAs and the USB E.

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 LEAs and the USB E.

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. No added costs for the USB E and LEAs as UEI numbers have already been generated.

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(3)
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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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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R277. Education, Administration.**R277-426. Definition of Private and Non-Profit Schools for Federal Program Services.****R277-426-1. 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-3-501(3), which allows the Board to administer federal funds and to distribute them to eligible applicants; and
- (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to define requirements that private, non-public, and non-profit schools must meet in conjunction

with federal program criteria to receive services under federal laws requiring the public education system to serve students in these schools.

R277-426-2. Definitions.

~~[(1) "Data Universal Numbering System Number" or "DUNS Number" means a unique numeric identifier assigned to a single business entity by Dun and Bradstreet.]~~

~~[(2)]~~ "Exempt Organization Determination Letter" means a letter issued by the Internal Revenue Service, which verifies that an organization is a qualified tax-exempt entity.

(2) "Unique Entity Identifier" or "UEI Number" means an identification number issued by the General Services Administration through the System for Award Management, www.sam.gov.

R277-426-3. Qualifications.

For the purposes of receiving services under federal programs:

- (1) "Private or non-public school" means a school which:
- is owned and operated by:
 - an individual;
 - a religious institution;
 - a partnership; or
 - a corporation other than the State, a subdivision of the State, or the Federal government;
 - is supported primarily by non-public funds;
 - vests the operation and determination of its program with other than publicly-elected or appointed officials;
 - teaches the required subjects on each grade level as designated by the Board for the same length of time as students must be taught in the public schools;
 - is properly licensed, if so required by the appropriate governmental jurisdiction;
 - complies with any state and local ordinances and codes pertaining to the operation of that type of facility or institution; and
 - possesses a ~~[DUNS]~~UEI number.
- (2) "Non-profit school" means a school which:
- is not a part of the public school system;
 - is operated with no intention of making a profit;
 - does not primarily provide educational services to students enrolled in for profit residential programs;
 - possesses:
 - a State of Utah tax exemption number;
 - a ~~[DUNS]~~UEI number;
 - a United States Internal Revenue Service Employer Identification Number; and
 - a favorable Exempt Organization Determination Letter;
 - teaches the required subjects on each grade level as designated by the Board for the same length of time as students must be taught in the public schools if required by the federal program;
 - is properly licensed, if so required by the appropriate governmental jurisdiction; and
 - complies with any state or local legal requirements pertaining to the operation of that type facility or institution.

KEY: education finance, private schools

Date of Last Change: ~~2022~~**November 7, 2017**

Notice of Continuation: September 13, 2017

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Rule or Section Number:	R277-436	Filing ID: 54888

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:
R277-436. Gang Prevention and Intervention Programs in the Schools
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Rule R277-436 is being amended in order to align the rule requirements with best practices for the administration of the program.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The amendments specifically allow grant funds to be used for "professional and technical services" so that local education agencies (LEAs) may contract with Law Enforcement to utilize their advocates/mentors for gang-involved students. These mentors have a level of technical expertise and training that LEA staff do not have. It has been determined that this is an allowable use of funds for the program. Removing the line in rule enables LEAs to be able to contract for this purpose.

Fiscal Information

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

A) State budget:
This rule change is not expected to have fiscal impact on state government revenues or expenditures. This change only affects LEA expenditure rules for gang prevention funds and does not impact Utah State Board of Education (USB E) budgets.
B) Local governments:
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule removes an allowable use of 10% of funds for professional and technical services. The 10% can still be used for administrative oversight and professional development. The USB E anticipates LEAs will still expend their full allotments for gang prevention programs and does not anticipate any quantifiable fiscal impacts.
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 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 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. The USB E does not estimate any costs associated with compliance for 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(3)	Section 53F-2-410
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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: 10/31/2022

9. This rule change MAY become effective on: 11/07/2022

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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R277. Education, Administration.

R277-436. Gang Prevention and Intervention Programs in the Schools.

R277-436-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53F-2-410(1)(b), which appropriates funds to be used for Gang Prevention and Intervention Programs in the schools.

(2) The purpose of this rule is to establish standards and procedures for distributing funding for gang prevention and intervention programs in public schools.

R277-436-2. Definitions.

(1) "At-risk student" means any student who because of the student's individual needs requires some kind of uniquely designed intervention ~~[in order to]~~ to achieve literacy, graduate, and be prepared for transition from school to post-school options.

(2)(a) "Gang" means a group of three or more people who form an allegiance and engage in criminal activity, which uses violence or intimidation to further its criminal objectives.

(b) A gang may have a name, turf, colors, symbols, distinct dress, or any combination of the preceding characteristics.

(3)(a) "Gang prevention" means instructional and support strategies, activities, programs, or curricula designed and implemented to provide successful experiences for youth and families.

(b) Gang prevention activities shall promote cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

(4) "Gang intervention" means specially designed services required by an individual student experiencing difficulty in cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationships, within or outside of the school, which may impact the individual's susceptibility to gang membership or gang-like activities.

([4]5) "Gang Prevention and Intervention Program" means specifically designed projects and activities to help at-risk students stay in school and enhance their cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

R277-436-3. Application, Distribution of Funds, and Administrative Support.

(1) An LEA may apply for gang intervention funds by submitting a proposal on a form approved by the Superintendent.

(a) A school district may submit:

- (i) a proposal for a single school; or
- (ii) a single district-wide proposal.

(b) A charter school may apply individually or jointly with other charter schools.

(2) A proposal submitted in accordance with Subsection (1) shall:

- (a) provide for distribution of funds to individuals schools;
- (b) explain prevention and intervention activities and strategies planned for individual schools;
- (c) identify the school's at-risk student population and demonstrate how the prevention and intervention strategies will benefit at-risk students; and

(d) demonstrate interagency collaboration between the LEA and other service providers.

(3) The Superintendent shall award gang intervention funds based on proposals submitted in accordance with Subsection (1), and subject to the annual legislative appropriation.

(4) The Superintendent shall give priority in awarding funds to:

(a) schools that demonstrate multiple risk factors for gang involvement; and

(b) schools with outcome data that show successful reduction of gang involvement.

(5) The Superintendent shall notify successful applicants of their awards by July 1 annually.

(6) An LEA or charter consortia may use up to ~~ten~~ ten percent 10% of its funding awarded in accordance with this rule for:

(a) administrative oversight; and

(b) professional development for licensed and non-licensed employees who directly engage in gang prevention or intervention activities[; and

~~(c) professional and technical services].~~

R277-436-4. Evaluation and Reports.

(1) An LEA or charter school consortia shall provide the Superintendent a year-end evaluation report by June 30 for the previous fiscal year.

(2) A year-end report shall include:

- (a) an expenditure report;
- (b) a narrative description of all activities funded;
- (c) copies of ~~[any and all]~~ products developed;
- (d) an effectiveness report detailing evidence of individual and overall program impact on gang and gang-related activities and involvement; and

(e) any other information or data required by the Superintendent.

(3) The Superintendent may require additional evaluation or audit procedures from the grant recipient to demonstrate use of funds consistent with the law and Board rules.

R277-436-5. Waivers.

Notwithstanding Rule R277-121, the Superintendent may grant a written request for a waiver of a requirement or deadline contained in this rule, which a district or school finds unduly restrictive.

KEY: public schools, disciplinary problems, students at risk, gangs

Date of Last Change: ~~2022~~ November 26, 2021

Notice of Continuation: May 11, 2018

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-2-410; 53E-3-401(3)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-454	Filing ID: 54889
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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:

R277-454. Construction Management of School Building Projects

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

Rule R277-454 is being amended in order to reformat this rule in conformance with the Rulewriting Manual.

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

The amendments specifically reformat this rule. There were no substantive changes.

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 includes a nonsubstantive update to the definition for the construction manager on local education agency (LEA) projects. There are no impacts to the Utah State Board of Education (USBE) budget.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule updates definitions for the construction manager on LEA projects. It clarifies responsibilities but does not have a material impact on LEA budgets or project 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 only affects 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 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. LEAs should not incur more costs with the updated definition.

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-3-705
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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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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R277. Education, Administration.

R277-454. Construction Management of School Building Projects.

R277-454-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Article X, Section 3 of the Utah Constitution, which vests general control and supervision 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) Section 53E-3-705, which requires the Board to prepare an annual school plant capital outlay report for all LEAs, which includes the number and size of building projects completed and under construction.

(2) The purpose of this rule is to specify the standards local boards of education shall follow in using construction management for school construction projects.

R277-454-[4]2. Definitions.

[~~A. "Board" means the Utah State Board of Education.~~]

[~~B. (1)(a) "CM" means an individual designated as a construction manager, which acts as the agent of the owner of a construction project and may include: [The CM may be an architect, engineer, general contractor, or other professional consultant. It may also be an entity which is referred to as a construction management firm. The CM works as the agent of the owner of the construction project. The CM, at the discretion of the owner, may assist in the development and implementation of any or all of the predesign, design, bidding, construction, and occupancy stages of the construction project. The CM is responsible for the effective, orderly, and acceptable completion of the construction project.]~~]

(i) an architect;

(ii) an engineer;

(iii) a general contractor;

(iv) a professional consultant; or

(v) a construction management firm.

(b) A "CM" may, at the discretion of the project owner, assist in the development and implementation of predesign, design, bidding, construction, and occupancy stages of the construction project.

(c) A "CM" is responsible for the effective, orderly, and acceptable completion of a construction project.

[~~C. (2) "Construction management" means a contractual and professional working relationship between the owner of a construction project and a CM.~~]

[~~D. "LEA" means a local education agency, including local school boards/public school districts and charter schools.~~]

[R277-454-2. Authority and Purpose.

[~~A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities and Section 53E-3-705 which requires the Board to prepare an annual school plant capital outlay report of all LEAs, which includes information on the number and size of building projects completed and under construction.~~]

[~~B. The purpose of this rule is to specify the standards local boards of education shall follow in using construction management for school construction projects.~~]

R277-454-3. Standards.

[~~A. (1) A construction management contract shall clearly specify the duties of the CM with respect to the building project.~~]

[~~B. (2) An LEA shall bid each component part of the building project in accordance with statutory:~~]

(a) advertising requirements[~~;~~];

(b) public opening requirements[~~;~~];

(c) performance bond requirements[~~;~~]; and

(d) payment bond requirements[~~, and other statutory requirements~~].

KEY: educational facilities, education finance

Date of Last Change: 2022[November 8, 2012]

Notice of Continuation: September 13, 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-705

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R277-468

Filing ID: 54890

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:

R277-468. Parents Review of Public Education Curriculum and Review of Complaint Process

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

Rule R277-468 is being amended in order to make conforming changes consistent with the passage of H.B. 374, passed in the 2022 General Session.

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

The amendments specifically amend the definition of "instructional material" to clarify that "sensitive material" defined in Section 53G-10-103 is not instructional material. The rule changes also require an local education agency (LEA) to include parents that are "reflective of the school community" in all the material selection and complaint review processes. The rule changes also require an LEA to make these processes transparent and available to the public.

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 changes only affect LEA responsibilities.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The rule changes require "transparent and publicly available" curriculum review processes and review committees that "reflect the school's community". The Utah State Board of Education (USBE) feels that LEAs can comply with the requirements through the already existing open and public meeting compliance and this does not add quantifiable costs for LEAs.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This only applies to 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 applies to 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. The USBE feels that LEAs can comply with the requirements through the already existing open and public meeting compliance and this does not add quantifiable costs for 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(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:	10/31/2022

9. This rule change MAY become effective on:	11/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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R277. Education, Administration.

R277-468. Parents Review of Public Education Curriculum and Review of Complaint Process.

R277-468-1. 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.

(2) The purpose of this rule is to direct an LEA to include parents in the adoption and review of an LEA's primary instructional materials including the review of complaints specific to curriculum materials.

R277-468-2. Definitions.

[B-](1) "Instructional materials" means the same as the term is defined in Section 53E-4-401 and may not be sensitive materials as defined in Subsection 53G-10-103(1)(g).

R277-468-3. Parental Involvement with Instructional Material.

(1) An LEA shall involve parents reflective of the school's community, who have a student who attends a school within the LEA, and instructional staff in the consideration of LEA-purchased instructional materials.

(2) An LEA shall include parents reflective of the school's community, who have a student who attends a school within the LEA, in reviewing complaints specific to instructional materials.

(3) An LEA may seek assistance from parent organizations or associations or other groups to recruit and select parent members reflective of the school's community for the purposes described in [s]Subsections (1) and (2).

(4) An LEA shall make the LEA's instructional material approval or complaint processes transparent and publicly available.

R277-468-4. Parental Involvement Resources.

(1) An LEA may request the Board provide the LEA resources for effective parent participation in the instructional materials review or complaint process.

(2) An LEA may request the Board assist the LEA in policy development regarding parental involvement in the instructional materials review or complaint process.

KEY: parents, committees, curriculum, complaints

Date of Last Change: ~~December 10, 2019~~ 2022

Notice of Continuation: October 7, 2019

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-469	Filing ID:	54891
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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:
R277-469. Instructional Materials Commission Operating Procedures
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Rule R277-469 is being amended in order to make conforming changes consistent with the passage of H.B. 374, passed in the 2022 General Session.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The amendment specifically amends the definition of "instructional material" to clarify that "sensitive material" defined in Section 53G-10-103 is not instructional material. The rule changes also require the commission to ensure recommended materials adhere to the updated definition.

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 clarifies that sensitive materials cannot be instructional materials. Sensitive materials were defined by new legislation and there is no fiscal impact outside fiscal notes.
B) Local governments:
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This clarifies that sensitive materials cannot be instructional materials. Sensitive materials were defined by H.B. 374 (2022) and there is no fiscal impact outside fiscal notes.
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. This only affects the 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 clarifies that sensitive materials cannot be instructional materials. Sensitive materials were defined by H.B. 374 (2022) and there is no fiscal impact outside fiscal notes.

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 53E-4-402
Section 53E-4-408		

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:	10/31/2022
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:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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R277. Education, Administration.

R277-469. Instructional Materials Commission Operating Procedures.

R277-469-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitutional 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 53E-4-40[+]2, which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board; and

(d) Section 53E-4-408, which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials and requirements for the detailed summary of the evaluation.

(2) The purpose of this rule is to:

(a) provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools;

(b) provide for mapping and alignment of primary instructional materials to the Core consistent with Utah law; and

(c) provide rules for purchase and distribution of instructional materials within the state.

R277-469-2. Definitions.

(1) "Commission" means the Instructional Materials Commission established in accordance with Section 53E-4-40[+]2.

(2) "Core" means the core standards adopted by the Board in Rule R277-700.

(3) "Curriculum alignment" means the assurance that the material taught in a course or grade level matches the standards, and assessments set by the state for specific courses or grade levels.

(4) "Depository" means a business dedicated to storing and distributing resources or materials in sufficient quantities to insure rapid and efficient delivery to LEAs.

(5)(a) "Instructional materials" means systematically arranged content in text, digital, Braille and large print, or audio format which may be used within the state curriculum framework for courses of study by students in public schools.

(b) "Instructional materials" include:

- (i) textbooks;
- (ii) workbooks;
- (iii) computer software;
- (iv) online or internet courses;
- (v) CDs or DVDs; and
- (vi) multiple forms of communication media.

(c) "Instructional materials" may be used by students or teachers or both as principal sources of study to cover any portion of a course.

(d) "Instructional materials":

(i) are designed for student use;

(ii) may be accompanied by or contain teaching guides and study helps;

(iii) shall include all textbooks, workbooks, student materials, supplements, and online and digital materials necessary for a student to fully participate in coursework; ~~and~~

(iv) shall be high quality, research-based materials for supporting student learning; and ~~and~~

(v) may not be sensitive materials as defined by Subsection 53G-10-103(1)(g).

(6) "Independent party" means an entity that is not part of or related to:

- (a) the Board;
- (b) Board staff;
- (c) an employee or governing board member of an LEA;

(d) the creator or publisher of instructional materials under review; or

(e) anyone with a financial interest, however minimal, in instructional materials under review.

(7) "Instructional Materials Commission" or "Commission" means the commission appointed by the Board in accordance with Section 53E-4-40[1]2.

(8) "Integrated instructional program" means any combination of instructional materials for students, including:

- (a) textbooks;
- (b) workbooks;
- (c) software;
- (d) videos;
- (e) electronic devices; or
- (f) similar resources.

(9) "Instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

(10) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(11) "Mapping" means creating a visual representation listing topics in instructional materials in correlation to the standards of the Utah [e]Core.

(12) "National Instructional Materials Access Center" or "NIMAC" means the same as that term is defined in Subsection R277-800-2(14).

(13) "National Instructional Materials Accessibility Standard" or "NIMAS" means the same as that term is defined in Subsection R277-800-2(15).

(14) "Not sampled" means instructional materials that were included in a publisher bid for evaluation by the Instructional Materials Commission, but which were not sampled to the Superintendent or the Commission.

(15) "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects designated in Sections R277-700-4 through R277-700-6.

(16) "Recommended instructional materials" or "RIMs" means the recommended instructional materials searchable database provided as a free service by the Board for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers for review by the Commission and approval of the Board.

(17) "Recommended limited" means instructional materials that are in limited alignment with the Core requirements or are narrow or restricted in their scope and sequence.

(18) "Recommended primary" means instructional materials that:

(a) are in alignment with content, philosophy, and instructional strategies of the Core;

(b) have been mapped and aligned to the Core, consistent with Section 53E-4-408;

(c) are appropriate for use by students as principal sources of study; and

(d) support Core requirements.

(19) "Recommended student resource" means instructional materials aligned to the Core that are developmentally appropriate, but not intended to be the primary instructional resource, which may provide valuable content information for students.

(20) "Recommended teacher resource" means instructional materials that are appropriate as resource materials for use by teachers.

(21) "Reviewed, but not recommended" means instructional materials that an LEA is strongly cautioned against using because the materials:

- (a) do not align with the Core;
- (b) are inaccurate in content;
- (c) include misleading connotations;
- (d) contain undesirable presentation; or
- (e) are in conflict with existing law or rule.

(22) "Utah State Instructional Materials Access Center" or "USIMAC" means the same as that term is defined in Subsection R277-800-2(21).

R277-469-3. Use of State Funds for Instructional Materials.

(1) An LEA may use state funds for any primary supplemental or supportive instructional materials that support Core requirements.

(2) An LEA may select and approve instructional materials consistent with:

- (a) the standards of this ~~rule~~ R277-469;
- (b) established local board procedures and timelines;
- (c) Section 53G-10-103;

~~([e]d)~~ Subsection 53G-10-402(1)(c)(iii); and

~~([d]e)~~ Subsection 53E-4-403(4).

(3) A school or school district that uses any funding source to purchase materials that have not been recommended or selected consistent with state law, may have funds withheld to the extent of the actual costs of those materials pursuant to Subsection 53E-3-401(8)(a)(ii).

(3)(a) An LEA may use free instructional materials that are used as primary instructional materials or that are part of primary integrated instructional programs subject to the same independent party evaluation and Core mapping as basal or Core material.

(b) If an LEA receives free materials as part of a supplemental program, the LEA may use the materials as student instructional materials only consistent with the law and this ~~rule~~ R277-469.

(4) An LEA shall include a requirement in all publisher contracts for instructional materials that the publisher shall:

(a) prepare and provide electronic files of all instructional materials in the NIMAS format to NIMAC on or before delivery of print instructional materials; or

(b) provide instructional materials that are produced in, or may be ~~rendered~~ made in, specialized formats.

(5)(a) An LEA shall provide timely notice to all publishers with whom the LEA contracts for instructional materials that all materials shall be provided consistent with Subsection (4).

(b) An LEA's notice shall include a copy of this ~~rule~~ R277-469.

R277-469-4. Instructional Materials Commission Members Terms of Service.

(1) The Board shall appoint members of the Instructional Materials Commission in accordance with Section 53E-4-40[1]2.

(2)(a) A member appointed in accordance with Subsection (1) shall serve four year terms, staggered to ensure continuity in the efficient operation of the Commission.

(b) A member may apply for reappointment to one additional term.

(3) The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

(1) The Instructional Materials Commission shall primarily focus on reviewing materials used in subjects aligned with Core requirements to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, and other Core subject areas as assigned by the Board.

(2) The Commission shall determine subject areas and timelines for review based on school district and charter school needs and requests, using forms and procedures provided by the Superintendent.

(3) The Commission shall meet to review materials at least semi-annually.

(4) Following its evaluation of a submitted item, the Commission shall recommend that the Board classify materials in one of the following categories:

- (a) Recommended primary;
- (b) Recommended limited;
- (c) Recommended teacher resource;
- (d) Recommended student resource;
- (e) Reviewed, but not recommended; or
- (f) Not sampled.

R277-469-6. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.

(1) The Instructional Materials Commission and the Board, in reviewing whether to recommend instructional materials, may consider whether the instructional materials:

- (a) are consistent with Core requirements;
- (b) are mapped and aligned to the Core and state adopted assessments if planned for use as primary materials;
- (c) are high quality, research-based, and proven to be effective in supporting student learning;
- (d) provide an objective and balanced viewpoint on issues;
- (e) include enrichment and extension possibilities;
- (f) are appropriate to varying levels of learning;
- (g) are accurate and factual;
- (h) are arranged chronologically or systematically, or both;
- (i) reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups;

(j) are not sensitive materials as defined in Subsection 53G-10-103(1)(g):

- ([j]k) are free from sexual, ethnic, age, gender or disability bias and stereotyping; and
- ([k]l) are of acceptable technical quality.

(2) A publisher, when submitting new primary material to be evaluated by the Superintendent, shall submit an electronic version of that material in NIMAS file format to NIMAC for use in conversion into Braille, large print, and other formats for students with print disabilities.

(3) The Superintendent may require an LEA to provide a report of instructional materials purchased by the LEA or a school in the previous five years.

(4) The Superintendent may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

R277-469-7. Agreements and Procedures for LEAs.

(1) A local board shall establish a policy for selection and purchase of instructional materials.

(2) As part of any materials adoption process or procurement contract for ~~the purpose of~~ purchasing instructional materials, an LEA shall provide instructional materials to all students, including blind students and other students with disabilities, in a timely manner.

(a) A publisher may provide materials in electronic files to NIMAC to make materials available to eligible students.

(b) An LEA shall include NIMAS contract language in all contracts with publishers for Core materials.

(c) An LEA may purchase instructional materials from the publisher that are produced in, or may be ~~rendered~~ in, specialized formats for eligible students.

(3) An LEA shall require a detailed Core curriculum alignment ~~[prior to]~~ before the purchase of primary instructional materials.

R277-469-8. Qualifications for Core Curriculum Alignment Independent Parties.

(1) A primary instructional materials provider shall contract with an independent party in accordance with Subsection 53E-4-408(1)(a).

(2) An independent party may only employ or contract with a reviewer who has a degree or an endorsement specific to the subject area of the primary instructional materials.

(3) A publisher shall provide proof of an independent party's credentials to the Superintendent upon request.

R277-469-9. Detailed Summary Requirements.

(1) An independent party shall submit a summary required under Subsection 53E-4-408(1)(b) in a searchable, software database format designated by the Superintendent.

(2) A summary required under Subsection 53E-4-408(1)(b) shall:

(a) include detailed alignment information that includes, at a minimum:

- (i) the title of the material;
- (ii) the ISBN number;
- (iii) the publisher's name;
- (iv) the name and grade of the Core document used to align the material;
- (v) the overall percentage of coverage of the Core;
- (vi) the overall percentage of coverage in ancillary resources of the material to the Core;
- (vii) the percentage of coverage of the Core in the material for each standard, objective and indicator in the Core with corresponding page numbers;
- (viii) percentage of coverage of the Core not covered in the material but covered in the ancillary resources for each standard; and
- (ix) objective and indicator in the Core with corresponding page numbers or URLs; and

(b) provide the detailed alignment information listed in Subsection (a)(iv) for the student text for all editions of the text that are used in Utah public schools;

(c) provide the detailed alignment information listed in Subsection (a)(iv) for a teacher edition of text, if a teacher edition is used in Utah public schools; and

(d) provide an assurance, including a personal signature, that the work was completed personally and as required by the licensed and endorsed reviewer.

R277-469-10. Agreements and Procedures for Publishers.

(1) A publisher desiring to sell primary instructional materials to Utah school districts shall comply with the requirements of Section 53E-4-408 and this ~~rule~~^[R277-469].

(2)(a) A publisher seeking to sell recommended materials to Utah schools or school districts shall have 10 books and tangible adopted materials or such other amount as required by a depository based on anticipated need on deposit within the state at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

(b) A publisher shall submit verification of compliance with Subsection (2)(a) to the Superintendent through the publisher's contracted depository prior to the Superintendent posting a review of the materials on RIMs.

(3) A publisher may make a depository agreement with one or more depository.

(4) Notwithstanding ~~[the provisions of]~~ Subsection (2), a publisher may sell instructional materials to schools or school districts in Utah directly or through means other than a designated depository.

(5) A publisher need not store digital and online resources within the state, but shall guarantee timely resource availability of a placed order and shall provide digital and online resource orders without shipping charges.

(6) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the Superintendent for examination purposes; and

(d) the publisher submits a revised electronic edition in NIMAS file format to the NIMAC if the Superintendent approves the substitution request.

(7) The Commission shall make the final determination about the substitution of a new edition for a previously recommended edition with assistance from the Superintendent.

(8) A publisher's contract price for materials recommended by the Commission and the Board shall apply for five years from the contract date.

R277-469-11. Request for Reconsideration of Recommendation.

(1) The Superintendent shall provide a school district, school, or publisher with the evaluations and recommendations resulting from the initial review of the Commission.

(2) A school district, school or publisher may, within 30 days of the Commission's initial recommendation, request to have materials reviewed again during the Commission's next review cycle.

(3)(a) During the period of the reconsideration request, the Superintendent shall classify materials only tentatively.

(b) The Superintendent shall not post tentatively classified materials to RIMs until recommended through the official Commission process.

(4) A school district, school, or publisher may be asked to send a second set of sample materials to the Superintendent as part of a reconsideration request.

(5) Any written information provided by a school district, school, or publisher shall be available to the advisory committees during the second review.

(6) After the second review by the subject area advisory committee, the Commission shall vote on the advisory committee's recommendation at the next scheduled meeting.

(7) If the Commission votes to change the recommendation, the Superintendent shall notify the Board of the action at the next scheduled Board meeting.

(8) The Superintendent shall send a school district, school, or publisher written notification of the final recommendation and new evaluation.

(9) If the Commission and Board approve materials following a request for reconsideration, the Superintendent shall post the evaluation to RIMs.

KEY: instructional materials

Date of Last Change: ~~2022~~^[January 9, 2018]

Notice of Continuation: November 6, 2017

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; ~~53E-4-401~~^[42]; 53E-4-408; 53E-3-401(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-496	Filing ID:	54892
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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:
R277-496. K-3 Reading Software Licenses
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Rule R277-496 is being amended in order to update requirements for software providers as required by Subsections 53G-11-303(1)(a) and (b).

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

The amendments specifically require use of evidence-informed processes and grant the Superintendent authority to define standards for evidence.

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 using evidence based practices to select software vendors. It does not impact the Utah State Board of Education (USBE) or local education agency (LEA) budgets.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule adds language for using evidence based practices to select software vendors. It does not impact the USBE or LEA budgets.

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 USBE and LEAs.

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

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

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

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

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

There are no compliance costs for affected persons. This rule adds language for using evidence based practices to select software vendors. It does not impact the USBE or LEA budgets.

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-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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
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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:	09/15/2022
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R277. Education, Administration.**R277-496. K-3 Reading Software Licenses.****R277-496-1. Authority and Purpose.**

(1) This rule is authorized by:

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

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

(c) Subsection 53F-4-203(2), which directs the Board to distribute software licenses for the early interactive reading software program to LEAs that apply for the licenses.

(2) The purpose of this rule is to establish criteria and procedures to administer the K-3 reading software program.

R277-496-2. Definitions.

(1) "Aggregate student population" means the total number of students within a school who are using a technology provider's early interactive reading software licenses.

(2) "Dosage" means amount of instruction time.

(3) "Early interactive reading software" or "K-3 reading software license" means technology tools and software that adjust the presentation of educational material according to a student's weaknesses and strengths, as indicated by the student's responses to questions.

(4) "Personalized fidelity" means local measures for fidelity to a software product based on three or more data points that demonstrate successful student outcomes at or above the level of student outcomes achieved by the technology provider's dosage recommendations.

(5) "Use early interactive reading software in accordance with a technology provider's dosage recommendations" means when at least 80% of the aggregate student population of a school, by provider:

(a) uses a technology provider's K-3 reading software for at least 80% of:

(i) the minimum number of weeks of use recommended by the technology provider for the K-3 reading software program;

(ii) the average number of minutes of use recommended by the technology provider for the K-3 reading software program or

(b) demonstrates personalized fidelity per programmatic requirements.

R277-496-3. K-3 Reading Software Licenses.

(1)(a) The Superintendent shall select one or more technology providers through an RFP to provide early interactive reading software for students in kindergarten through grade 3.

(b) A provider identified by the Superintendent under Subsection (1)(a) shall use evidence-informed core materials and evidence-based instructional practices and intervention materials.

(c) The Superintendent may define standards for evidence consistent with Subsections 53G-11-303(1)(a) and (b).

(2) A school may apply for early interactive reading software for students in kindergarten through grade 3.

(3) The Superintendent shall accept applications from LEAs for early interactive reading software licenses that satisfy the requirements of Section 53F-4-203 and the provisions of this rule.

(4) If the number of requests for K-3 reading software licenses exceeds the number of licenses available, the Superintendent shall give priority to:

(a) requests for licenses to be used in Kindergarten or grade 1; or

(b) a school that:

(i) received a K-3 reading license in a previous school year; and

(ii) used the K-3 reading license in accordance with the technology provider's dosage recommendations.

(5) The Superintendent shall establish timelines for submission of applications.

(6) A school may not require a student to participate in the K-3 reading software license program.

R277-496-4. School Probationary Re-entry Into the Program.

(1) If a school does not use the early interactive reading software licenses in accordance with the technology provider's dosage recommendations, the school may not receive K-3 reading software licenses for one year.

(2) A school described in Subsection (1) may reapply to re-enter the program on a probationary basis and receive K-3 reading software licenses if the school meets the probation requirements of this Section R277-496-4.

(3) A school is on probation if the school:

(a) previously received K-3 reading software licenses;

(b) lost eligibility to participate in the program, which includes failure to use the early interactive software per the technology provider's dosage recommendations for two consecutive years; and

(c) receives K-3 reading software licenses after re-entering the program.

(4)(a) The school principal, instructional leaders, and teachers of a school on probation shall engage in all of the available technology provider support structures and interventions for probationary software programs, including:

(i) data dives;

(ii) professional learning; and

(iii) usage and fidelity updates.

(b) A technology provider shall establish the specific support structure requirements and interventions described in Subsection (4)(a) for the technology provider's software program.

(5) If a technology provider does not offer support structure requirements and interventions as described in Subsection (4), the Superintendent may not make the technology provider's software available for a school that is on probation.

(6) If a school on probation does not use the early interactive reading software licenses in accordance with a technology provider's dosage recommendations during the probationary year, the school may not receive an early interactive reading license for the following year unless the school on probation pays for 50% of the costs of the K-3 reading license software license.

R277-496-5. Reporting.

(1) An LEA that receives K-3 reading software licenses shall provide information that is requested by the Superintendent or external evaluator selected by the Board in conducting the evaluation required in Subsections 53F-4-203(3) and (4).

(2) The Superintendent may recommend action to the Board, including withholding of funds, in accordance with Rule R277-114 for an LEA that fails to provide complete, accurate, and timely reporting as required by this rule.

KEY: reading, software, licenses

Date of Last Change: 2022~~December 10, 2018~~

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-614	Filing ID: 54893
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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:
R277-614. Athletes and Students with Head Injuries

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

Rule R277-614 is being amended in order to make changes that align with current best practices regarding head injuries that occur at school.

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 remove the exception to parental notification regarding head injuries that occur during free play when the school is made aware that the head injury occurred.

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 language only applies to local education agency (LEA) reporting and does not impact the Utah State Board of Education (USBE) budgets.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule change adds language "during free play" to clarify that the same standards apply when students are freely playing to report head injuries. There is no major fiscal impact to LEAs because the reporting mechanisms are already in place.

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 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 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 change adds language "during free play" to clarify that the same standards apply when students are freely playing to report head injuries. There is no major fiscal impact to 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(3)	
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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: 10/31/2022

9. This rule change MAY become effective on: 11/07/2022

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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R277. Education, Administration.

R277-614. Athletes and Students with Head Injuries.

R277-614-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution X, Section 3, which vests general control and supervision 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.

(2) The purpose of this rule is to direct LEAs under the general control and supervision of the Utah State Board of Education to adopt and enforce a head injury policy for students participating in physical education and extracurricular sporting events.

R277-614-2. Definitions.

(1) "Agent" has the same meaning as described in Subsection 26-53-102(1).

(2) "Free play" means unstructured student play, games, and field days during school hours.

(3) "Head injury" means any injury to the head not described in Subsection 26-53-102(6) including a mild bump.

(4) "LEA" includes for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(5) "Parent" means a parent or legal guardian of a student for whom an LEA is responsible.

(6) "Physical education class" means a structured school class that includes an adult supervisor.

(7) "Sporting event" has the same meaning as described in Subsection 26-53-102(5).

(8) "Traumatic head injury" has the same meaning as described in Subsection 26-53-102(6).

R277-614-3. Superintendent Responsibilities.

(1) The Superintendent shall, in consultation with Utah State Risk Management, provide a model policy for LEAs to use in developing the policy required in Section R277-614-4.

(2) The Superintendent shall provide model forms for LEAs to use to inform parents of LEA policies and obtain parent signatures documenting the parents' understanding of and willingness to adhere to LEA policies.

(3) The Superintendent shall provide professional development, as needed and to the extent of funds available, to assist LEAs with training to:

(a) identify students' traumatic head injuries;

(b) provide notice to parents;

(c) encourage best practices in supporting a child in their recovery; and

(d) comply with the law.

(4) The Superintendent shall make the resources required by this Section R277-614-3 available on the Board website.

R277-614-4. LEA Responsibilities.

(1) An LEA shall comply with Title 26, Chapter 53, Protection of Athletes with Head Injuries Act, including all responsibilities of an amateur sports organization.

(2) All LEAs shall adopt and maintain a traumatic head injury policy for students:

(a) participating in physical education classes[~~excluding free play,~~] offered by the LEA; and

(b) participating in extracurricular activities sponsored by the LEA or statewide athletic associations.

(3) An LEA's policy shall include:

(a) direction to agents to remove a student from a sporting event if the student is suspected of sustaining a concussion or a traumatic head injury;

(b) the prohibition of the continued participation of a student removed under Subsection (3)(a) until the student is evaluated by a trained qualified health care professional;

(c) a written statement from a trained qualified health care provider clearing a student removed under Subsection (3)(a) to resume participation in a sporting event;

(d) adequate training for agents, consistent with their involvement and responsibility for supervising students in sporting events and physical education classes, about traumatic head injuries and response to suspected student injuries, consistent with the law; and

(e) a requirement of notice at least annually to parents of students who participate in sporting events, to be acknowledged by a parent in writing, of an LEA's traumatic head injury policy.

(4) An LEA shall post the policy required under Subsection (2) on the LEA's website where the information will be readily accessible to the public and to parents.

(5) An LEA shall notify a parent if an LEA becomes aware a student is reported to have experienced a head injury during school hours or a school sanctioned activity, including during free play.

KEY: athletes, head injuries

Date of Last Change: ~~June 24, 2021~~2022

Notice of Continuation: May 11, 2018

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R277-625

Filing ID: 54894

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:

R277-625. Mental Health Screeners

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

Rule R277-625 is being amended in order to correct a procedural inconsistency with Rule R277-622 and deadlines delineated for the grant program governed by Rule R277-622.

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 remove the May 1 deadline from this rule regarding when a local education agency (LEA) needs to notify the Utah State Board of Education (USBE) staff regarding the intent to offer mental health screeners and if they are using a screener from the approved list or seeking USBE approval for a screener not on the list. The reason for removing this deadline is that related grant programs for the hiring of mental health personnel (School-base Qualified Mental Health Grant,

and the Teacher Student Support Accounts) have deadlines that do not align with the May 1st deadline. This requires LEAs to then make an assertion about mental health screeners prior to when they would be able to submit and have approved, plans to hire personnel who's duties may include administering mental health screeners. For this reason, staff is asking for flexibility in the notice deadline to allow staff to align that deadline with existing grant program deadlines.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This change simply allows flexibility on the date that LEAs are required to report on mental health screeners to USBE. There are no added costs for the USBE or LEAs.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This change simply allows flexibility on the date that LEAs are required to report on mental health screeners to the USBE. There are no added costs for the USBE or 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 LEAs and the 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 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 applies to the 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 change simply allows flexibility on the date that LEAs are required to report on mental health screeners to the USBE. There are no added costs for the 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)	Section 53F-2-522
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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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
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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:	09/15/2022
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R277. Education, Administration.

R277-625. Mental Health Screeners.

R277-625-1. 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-2-522 which directs the board to make rules regarding the selection of a mental health screener and financial aid for qualifying parents.

(2) The purpose of this rule is to:

(a) provide the approval process for a mental health screener chosen by an LEA; and

(b) establish the approval and distribution of funds for a qualifying parent to receive financial assistance for related mental health services.

R277-625-2. Definitions.

(1) "Division of Substance Abuse and Mental Health" or "DSAMH" means the same as the term is defined in ~~S[ub]s~~ection 62A-15-103.

(2) "Mental health" means a person's emotional, psychological, and social well-being which can affect how a person thinks, feels, and acts including how a person handles stress, relates to others, and makes healthy choices.

(3) "Mental health screener" or "screener" means the use of a systematic tool or process :

(a) to identify if a student is experiencing, or is at risk of experiencing, issues related to the student's mental health;

(b) for an early identification strategy to detect the onset of mental health conditions, enabling the mental health conditions to be potentially addressed; and

(c) that is not:

(i) a diagnostic tool or process; or

(ii) a system or process used by a student's teacher to observe behavior for ~~the purpose of~~ targeted learning interventions.

(4) "Mental health services" means the same as the term is defined in Subsection R523-1-3(3).

(5) "Qualifies for financial assistance" means a qualifying parent that has a student receiving educational services through an LEA who:

(a) receives free or reduced lunch; or

(b) as recommended by the local mental health authority, demonstrates need including being:

(i) uninsured;

(ii) underinsured;

(iii) ineligible for Medicaid to cover part or all of any recommended mental health treatments; or

(iv) demonstrates a high need for interventions based upon results of the LEA's mental health screener.

(6) "Qualifying parent" means the same as the term is defined in Subsection 53F-2-522(1)(d).

(7) "Relevant services" means mental health services provided to a student that are directly related to mental health needs identified by a student's mental health screening.

R277-625-3. Approval of Mental Health Screeners.

(1)(a) The Superintendent, in consultation with DSAMH, shall publish annually a list of pre-approved mental health screeners to the Board's website.

(b) the published pre-approved list shall include:

(i) the name or brand of the mental health screener including a link to the screener's website;

(ii) the recommended ages for the mental health screener;

~~(iii)~~ (iii) any limitations of the mental health screener including the typical level of false positives;

~~(iv)~~ (iv) the mental health conditions the mental health screener can detect; and

~~(v)~~ (v) the scientific data or research used to verify a screener is evidence~~-~~based.

(2) The Board shall approve:

(a) the pre-approved mental health screener list; and

(b) the mental health conditions for which a screener can be used.

(3) All pre-approved mental health screeners shall comply with the requirements as described in Title 53E, Chapter 9, Student Privacy and Data Protection, and the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

(4) ~~Except as provided for in Subsection (4)(c) and (d),~~ a) An LEA that plans to administer a mental health screener shall notify the Superintendent by a deadline established by the Superintendent ~~May 1~~:

(a) if the LEA plans to:

(i) use a mental health screener from the Board's pre-approved list; or

(ii) apply to the Superintendent for approval of a mental health screener that is not on the pre-approved list as described in Subsection (5); and

(b) whether an LEA elects to participate in providing a qualifying parent with financial assistance;

~~(c) In accordance with Subsections (4)(a) and (b) and for the 2020-2021 school year, an LEA shall notify the Superintendent by August 15; and~~

~~(d) An LEA is not required to comply with Subsection (4) if the LEA chooses not to offer a mental health screener].~~

(5) If the LEA chooses to apply for use of a mental health screener that is not on the pre-approved list, the LEA shall submit an application in a form prescribed by the Superintendent specifying:

(a) the mental health screener proposed for use by the LEA;

(b) the reason for choosing the mental health screener over a screener from the pre-approved list;

(c) the approved mental health conditions the mental health screener measures;

(d) how the mental health screener complies with all state and federal data privacy laws; and

(e) the scientific data or research demonstrating the mental health screener is evidence based and meets industry standards;

(f) why the mental health screener is age appropriate for each grade the screener is administered; and

(g) why the mental health screener is an effective tool for identifying whether a student has a mental health condition that requires intervention.

(6) The Superintendent shall review the application in consultation with DSAMH and approve or deny the application within 30 days of receipt.

(7) If the application is approved, the Superintendent shall submit the approved application to the Board for final approval.

(8) Subject to legislative appropriation, the Superintendent shall provide annually a maximum reimbursement amount an LEA may receive for use of a mental health screener.

(9) An LEA may request in writing a reimbursement from the Superintendent in an amount not to exceed the amount described in Subsection (8).

(10)(a) An LEA shall require relevant staff, who will be administering a mental health screener, to attend an annual mental health screener training provided by the Superintendent in collaboration with DSAMH;

(b) the training described in Subsection (10)(a) shall provide an LEA with information needed for appropriate parental consent including:

(i) consent shall be obtained:

(A) within eight weeks ~~[prior to]~~before administration of the mental health screener; and

(B) in accordance with Subsection 53E-9-203(4);

(ii) the consent form shall be provided separately from other consent forms given to a parent pursuant to other state or federal laws;

(iii) additional variables that might influence a screener's results; and

(iv) a statement that:

(A) the mental health screener is optional;

(B) a screener is not a diagnostic tool;

(C) a parent has the right to seek outside resources or opinions; and

(D) specifies which board approved mental health conditions the mental health screener measures.

(11) An LEA may not administer a mental health screener if the LEA has not attended the annual mental health screener training described in Subsection (10).

(12) An LEA shall report annually to the Superintendent aggregate data regarding the types of LEA provided mental health

interventions, referrals, or other actions taken based on screener results.

R277-625-4. Data Privacy.

(1)(a) An LEA shall ensure all data collected or stored by a mental health screener complies with all state and federal data privacy laws and requirements, including those described in Subsection R277-625-3(3).

(b) notwithstanding Subsection (1)(a), an LEA shall provide a parent with a list of all parties that may receive any data related to a student's mental health screener ~~[prior to]~~before the parent providing consent.

(2) An LEA shall provide a parent with a list of all data potentially collected by the mental health screener ~~[prior to]~~before consenting to a student's mental health screening.

(3) An LEA shall provide the parent of a screened student with:

(a) results as described in Subsection 53F-2-522(4)(d);

(b) applicable available resources; and

(c) who has access to the screener data.

(4) If an LEA has received parental consent, an LEA may share data collected from the mental health screener with a school's multi-disciplinary team.

(5) An LEA shall retain and dispose of all data related to a student's mental health screener in accordance with an approved retention schedule not to exceed three years.

R277-625-5. Financial Assistance for a Qualifying Parent.

(1) An LEA that has elected to participate as described in Subsection R277-625-3(4)(b), may receive reimbursement for relevant services obtained by a qualifying parent who receives financial assistance.

(2) An LEA may not receive reimbursement for a qualifying parent if:

(a) the qualifying parent's student has begun to receive relevant services outside of the school setting ~~[prior to]~~before seeking reimbursement;

(b) the LEA can provide the relevant services, including relevant services provided by a third party through a contract with the LEA;

(c) except for as provided in Subsection (d), the qualifying parent has received reimbursement for the same relevant services within one year from the date the relevant services began for the student; or

(d) an LEA may provide reimbursement to a qualifying parent for the same relevant services within one year from the date relevant services began for the student if:

(i) the LEA has no other qualifying parents seeking reimbursement by April 1 and;

(ii) has reimbursement funds remaining.

(3) An LEA may not receive reimbursements that exceed the LEA's award amount as described in Subsection (4).

(4) An LEA that has elected to participate as described in Subsection R277-625-3(4)(b), shall receive a total award amount based on need as determined by the Superintendent.

(5) The Superintendent shall determine a participating LEA's need by considering the LEA's ability to support and provide mental health services for a student including:

(a) the availability of mental health services within the LEA;

(b) the availability of mental health services within the LEA's surrounding community;

- (c) the overall accessibility of mental health services for students within the LEA;
- (d) the current student demand for mental health services within an LEA; and
- (e) capacity of the LEA to meet existing and future student demands for mental health services.

KEY: mental health screener, mental health, prevention
Date of Last Change: 2022[February 9, 2021]
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-522

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R277-726	Filing ID:	54895
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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:

R277-726. Statewide Online Education Program

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

Since the updated language in Rule R277-726 became effective in August, local education agencies (LEAs) reached out and shared their understanding of the new language and it does not match the Utah State Board of Education (USBE) staff understanding. Rule R277-726 is being amended to clarify what the USBE had previously been communicating with school districts and charter schools, in accordance with the limited amount of the legislative appropriation.

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, subject to legislative appropriations available for this purpose, each public high school with a student population of less than 1,000 students will be eligible to receive available funds to cover at least one course at the highest course rate.

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 change prioritizes funding for schools with under 1,000 students.

B) Local governments:

This rule change prioritizes funding for schools with under 1,000 students if legislative appropriations do not cover courses. This change may lead to some larger schools not receiving full funding for courses if legislative appropriations are exhausted. The USBE does not anticipate this to be a common occurrence and there is not a quantifiable 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 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 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 applies to distribution for courses and does not change compliance requirements.

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	Section 53E-3-401	Section 53F-4-510
Section 53F-4-514		

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: 10/31/2022

9. This rule change MAY become effective on: 11/07/2022

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

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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R277. Education, Administration.

R277-726. Statewide Online Education Program.

R277-726-1. 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) Section 53F-4-514, which requires the Board to make rules:

(i) providing for the administration of the applicable statewide assessments to students enrolled in online courses;
(ii) that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and
(iii) that establish protocols for an online course provider to obtain approval to become a certified online course provider; and
(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) define necessary terms;
(b) provide and describe a program registration agreement; and
(c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

R277-726-2. Definitions.

(1) "Actively participates" means the student actively participates as defined by the provider.

(2) "Applicable statewide assessments" means:

(a) the high school assessment described in Section 53E-4-304 and Subsection R277-404-2(6);
(b) a standards assessment as defined in Section 53E-4-303; and

(c) a Utah alternative assessment as defined in Subsection R277-404-2(13).

(3) "Certified online course provider" means the same as the term is defined in Subsection 53F-4-501(1).

(4) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.

(5)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the Statewide Online Education Program application provided by the Superintendent.

(b) Except as provided in Subsection 53F-4-508(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.

(6)(a) "Eligible student" means a student enrolled in grades 7-12 in a secondary environment in a course that:

(i) is offered by a public school; and

(ii) provides the student the opportunity to complete middle school requirements or earn high school graduation credit.

(b) "Eligible student" does not include a student enrolled in an adult education program.

(7) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection (1).

(8)(a) "Executed CCA" means a CCA that has been executed pursuant to Subsection 53F-4-508(3) and received by the Superintendent.

(b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53F-4-505 through 53F-4-507.

(9) "High school" means the same as the term is defined in Section 53F-4-501.

([9]10) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

([10]11) "Online course" means a course of instruction offered through the Statewide Online Education Program.

([11]12) "Online course payment" means the amount withheld from a student's primary LEA and disbursed or otherwise paid to the designated provider following satisfaction of the requirements of the law, and as directed in Subsection 53F-4-507(2).

([12]13) "Online course provider" or "provider" means:

(a) a school district school with an approved application described in Subsection R277-726-3(1)(a);

(b) a charter school with an approved application described in Subsection R277-726-3(1)(a);

(c) an LEA program created to serve Utah students in grades 7-12 online with an approved application described in Subsection R277-726-3(1)(a); or

(d) a program of an institution of higher education described in Subsection 53F-4-504(3) with an approved application described in Subsection R277-726-3(1)(b).

([13]14) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program, and which reports the student to be in regular membership, and special education membership, if applicable.

([14]15) "Primary school of enrollment" means:

(a) a student's school of record within a primary LEA of enrollment; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

([15]16) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

([16]17) "Section 504" means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

([17]18) "Standard of active participation" means the measure of student engagement that is used by the certified online course provider to count a student as in attendance for a course.

([18]19) "Statewide Online Education Program" or "program" means courses offered to students under Title 53F, Chapter 4, Part 5, Statewide Online Education Program Act.

([19]20) "Teacher of record" means the teacher who is employed by a provider and to whom students are assigned for purposes of reporting and data submissions to the Superintendent in accordance with Section R277-484-3.

([20]21) "Underenrolled student" means a student with less than a full course load, as defined by the LEA, during the regular school day at the student's primary school of enrollment.

([21]22) "USB E course code" means a code for a designated subject matter course assigned by the Superintendent.

([22]23) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date;

(c) within 20 calendar days after the start date of the second 0.5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

R277-726-3. Course Credit Acknowledgment (CCA) Process.

(1) A student, a student's parent, a counselor, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements;

(ii) the student's plan for college and career readiness;

(iii) the student's IEP;

(iv) the student's Section 504 plan; or

(v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) The primary school of enrollment is not required to meet with the student or parent for approval of a course request.

(b) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP, Section 504 plan, or qualifies for multilingual supports, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations and other relevant supports to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs the appropriate parties.

R277-726-4. Eligible Student and Parent Rights and Responsibilities.

(1) An eligible student may register for program credits consistent with Section 53F-4-503.

(2) An eligible student may exceed a full course load during a regular school year if the student's plan for college and career readiness indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort.

(3) In accordance with Subsection 53F-4-509(5), if a student enrolled in a program course exceeds a full course load during a regular school year, a primary LEA of enrollment may mark the student as an early graduate and increase membership in accordance with Section R277-419-8 and Rule R277-484 to account for credits in excess of full-time enrollment in a local student information system.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53F-4-505 and requirements for attendance and participation in accordance with Subsection R277-726-7(15) and Subsection R277-726-2(17).

(b) If a student changes the student's enrollment in the student's primary LEA or withdraws from an online course for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student shall enroll in online courses, or declare an intention to enroll, during the school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment by entering the course into the primary LEA's student information system and increasing membership, if necessary.

R277-726-5. LEA Requirements and Responsibilities.

(1) A primary school of enrollment shall facilitate student enrollment with any eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA application, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

- (a) in registration materials;
- (b) on the LEA's website; and
- (c) on the school's website.

(4) A primary school or LEA of enrollment shall provide the notice required under Subsection (3) concurrent with the high school course registration period designated by the LEA for the upcoming school year to facilitate enrollment as required by Section 53F-4-513.

(5) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's

transcripts, including appropriate student coursework completed before grade 9.

(6) A primary school of enrollment shall recognize credit earned toward high school graduation by a participating secondary student through courses completed before grade 9 for purposes of high school graduation provided that:

(a) the student has in the student's records documentation of the student's intention to graduate early; and

(b) the student is enrolled at a middle school or junior high school and a high school accredited in accordance with Rule R277-410.

(7) A primary school of enrollment shall determine fee waiver eligibility for participating public school students pursuant to Rule R277-407.

(8)(a) If a participating student qualifies for a fee waiver, the student's primary LEA or school of enrollment shall provide the participating student access to an online course by:

(i) allowing a student access to necessary technology in a computer lab or other space within the school building during a school period or during the regular school day for the student to participate in an online course; or

(ii) providing a participating student technology and wi-fi needed for the student to participate outside of the school building.

(b) If a participating student who qualifies for a fee waiver is a home or private school student, the online course provider shall provide the participating home or private school student access to the online course.

(9) A primary school of enrollment shall provide participating students access to facilities for the student to participate in an online course during the regular school day, sports, extracurricular and co-curricular activities, and graduation services consistent with local policies governing participation irrespective of relative levels of participation in traditional courses versus Statewide Online Education courses.

(10)(a) If a participating student's primary school of enrollment is a middle school or junior high as defined in Rule R277-700, course completions will be recorded in a student's record of credit and course completion for grade 9 to allow recognition toward grades 9-12, high school graduation requirements, and post-secondary requirements.

(b) A primary LEA of enrollment accepting credit toward high school requirements is not required to independently verify:

- (i) early graduation status; or
- (ii) the non-supplanting nature of SOEP courses.

(11) When a student satisfactorily completes an online semester or quarter course, in accordance with the LEA's procedures, a designated counselor or registrar at the primary school of enrollment shall forward records of grades and high school graduation credit for students participating before grade 9 to the student's grade 9 primary school of enrollment for recording grades and credit per Subsection (10) once a student completes grade 8.

R277-726-6. Superintendent Requirements and Responsibilities.

(1) The Superintendent shall provide a website for the program, including information required under Section 53F-4-512 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer the Utah standards and high school assessments, as applicable, consistent with Section 53F-4-514 and Rule R277-404.

(3) The Superintendent shall prepare and make available applications and program agreements for:

- (a) LEA providers;

(b) higher education providers; and

(c) certified online providers.

(4)(a) The Superintendent may determine space availability standards and appropriate course load standards for online courses consistent with Subsection 53F-4-512(3)(d).

(b) Course load standards may differ based on subject matter.

(5)(a) Before approving a provider, the Superintendent shall review Annual Financial Reports and state-administered test data to establish capacity of a program to serve an increased range of students while still meeting program requirements.

(b) The Superintendent may restrict a provider from offering coursework if the Superintendent determines that the provider demonstrates repeated low performance on statewide assessments in English Language Arts, math, or science.

(6) The Superintendent shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53F-4-505 through 53F-4-507.

(7) The Superintendent may refuse to provide funds under a CCA if the Superintendent finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(8) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(9) If a Superintendent or federal entity's investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for costs related to compliance.

(10) The Superintendent may monitor an LEA's or program provider's compliance with any requirement of state or federal law or Board rule under the program.

(11) The Superintendent may withhold funds from a program provider for the participant's failure to comply with a reasonable request for records or information.

(12) Program records are available to the public subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(13) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and when a provider qualifies to receive payment, under Subsection 53F-4-505(4).

(14) The Superintendent shall pay a provider consistent with Minimum School Program funding schedules.

(15)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53F, Chapter 4, Part 5, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (15)(a) to the Board consistent with the purposes of the law and this rule.

R277-726-7. Provider Requirements and Responsibilities.

(1)(a) A provider shall administer the applicable statewide assessments to a participating private or home school student as directed by the Superintendent, including proctoring the applicable statewide assessments, consistent with Section 53F-4-510 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for the applicable statewide assessments described in Subsection (1)(a).

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours to facilitate parent contact.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy Board requirements for:

(a) consistency with course standards;

(b) criminal background checks for provider employees;

(c) documentation of student enrollment and participation;

and

(d) compliance with:

(i) the IDEA;

(ii) Section 504; and

(iii) requirements for multilingual students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

(a) Board procedures;

(b) Board timelines; and

(c) Sections 53F-4-505 through 53F-4-508.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee of any kind, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) shall provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) shall post fees on the provider website;

(iv) shall be responsible for fee waivers for an eligible student, including materials for a student designated fee waiver eligible by a student's primary school of enrollment;

(v) shall satisfy the requirements of Rule R277-407, as applicable; and

(vi) shall provide fee waivers to home school or private school students who meet fee waiver eligibility at the provider's expense.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53E, Chapter 9, Part 3, Student Data Protection, and Rule R277-487, including:

(a) protecting the confidentiality of a student's records and providing a parent and an eligible student access to records; and

(b) providing a parent or student documentation of educational performance, including:

(i) test scores;

(ii) grades;

(iii) progress and performance measures; and

(iv) completion of credit.

(7) Except as otherwise provided in this Rule R277-726, a provider shall submit a student's credit and grade to the Superintendent, using processes and applications provided by the Superintendent for this purpose, to a designated counselor or registrar at the primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider suspends or expels a student from an online course for disciplinary reasons, the provider shall notify the student's primary LEA of enrollment by placing the student on disciplinary withdrawal.

(b) A provider is responsible for due process procedures for student disciplinary actions in the provider's online program.

(c)(i) A provider shall notify the Superintendent of a student's administrative withdrawal, if the student is inactive in a course for more than ten days, using forms and processes developed by the Superintendent for this purpose.

(ii) If a student, parent, or counselor fails to request reinstatement following notification under Subsection (c)(i), the provider shall formally withdraw the student within 72 hours and notify the student, parent, and primary LEA of the action.

(10) If a student entitled to services under the IDEA is removed from an online program, the primary LEA shall work with the student and the student's parents to identify alternatives to provide a free and appropriate public education.

(11)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) A provider shall code program courses as semester or quarter courses.

(c) A provider shall update the provider's course offerings annually.

(12) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(13) A provider shall maintain and provide records and systems as part of a public online school or program, including:

(a) financial and enrollment records;

(b) information for accountability, program monitoring, and audit purposes; and

(c) providing timely documentation of student participation, enrollment, educator credentials, and other additional data for purposes including giving a student's primary school of enrollment access to the student's records to appropriately support the student.

(14) A provider shall maintain the following for at least five calendar years after the student graduates:

(a) test scores;

(b) student grades;

(c) completion of credit; and

(d) other progress and performance measures.

(15)(a) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(b) A provider shall update CCAs to the nearest credit value earned by June 30 annually.

(c) A provider may only maintain an CCA open after June 30 if a student remains actively engaged in coursework, meeting the provider's standard of active participation.

(16) A provider shall inform a student and the student's parent of expectations for active participation before the inception of course work, including informing the student and the student's parent of travel expectations to fulfill course requirements.

(17)(a) An LEA may participate in the program as a provider by offering a school or program consistent with Rule R277-115 to a Utah secondary student in grades 7-12 who is not a resident

student of the LEA and a regularly-enrolled student of the LEA consistent with Sections 53F-4-501 and 53F-4-503.

(b) An LEA program created in accordance with Subsection (18)(a) for serving students in grades 9-12 online must partner with an accredited school and shall:

(i) report grades and credit earned by a student to the Superintendent; and

(ii) record educator assignments consistent with Rule R277-484.

(18) A program school or program shall:

(a) be accredited consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Rule R277-309;

(c) ensure that a student who qualifies for a fee waiver receives services offered by and through the public schools consistent with Section 53G-7-504 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and 34 CFR Part 99;

(ii) Rule R277-487;

(iii) this Rule R277-726; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with Rules R277-700 and R277-404;

(f) shall not issue transcripts under the name of a third party provider; and

(g) shall record teaching assignments by November 15 annually consistent with Rule R277-484 and Section R277-312-3, either directly or through a partner school in accordance with Subsection (18)(b).

(19) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only educators licensed in Utah as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require employees to meet requirements of Title 53G, Chapter 11, Part 4, Background Checks, before the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-301, Educator Licensing - Highly Qualified Assignment;

(e) for a provider that provides an online course to a private or home school student, shall agree to administer and have the capacity to proctor and carry out the applicable statewide assessments, consistent with Sections 53E-4-302, 53F-2-103, and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for multilingual students;

(g) shall submit CCAs to the Superintendent before the provider initiating instruction of a student;

(h) may not begin offering instruction to a student until the Superintendent issues a notice of enrollment for the student for each course the student participates in; and

(i) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53F-4-505, 53F-4-506, and 53F-4-508.

(21) A provider shall post required information online on the provider's individual website including required assessment and accountability information.

(22)(a) A provider contracting with a third party to provide educational services to students participating with the provider through the Statewide Online Education Program shall:

(b) develop a written monitoring plan to supervise the activities and services provided by the third party provider to ensure:

(i) a third party provider is complying with:

(A) federal law;

(B) state law; and

(C) Board rules;

(ii) curriculum provided by a third party provider is aligned with the Board's core standards and rules;

(iii) a third party provider has access to curriculum for alignment and adjustment to ensure the curriculum is consistent with the Utah core standards in Rule R277-700 and a Board approved core code;

(iv) supervision of third party facilitation and instruction by an educator licensed in Utah:

(A) employed by the provider, and

(B) reported as teacher of record per Section R277-484-3 and Subsection R277-726-2(3); and

(iv) consistent with the LEA's administrative records retention schedule, maintenance of documentation of the LEA's supervisory activities.

(23) A provider shall offer courses consistent with standards outlined in an applicable Statewide Services Agreement, which may be updated or amended to reflect changes in law, rule or recommended practice.

(24) A provider shall maintain a course completion rate of at least 80% annually to remain in good standing with the program.

(25) A provider is subject to the same approval and annual performance review as described for a certified online course provider in Subsections R277-726-12(1) through (10) while utilizing the applicable applications for a provider described in Subsections R277-726-3(1)(a) and (b).

(26) A provider utilizing a third party shall establish contractual and procedural safeguards:

(a) retaining legal and procedural authority to open coursework to a participating student only upon issuance of a notice of enrollment regarding a particular course and credit;

(b) signifying the provider's authority to interact instructionally with a student not regularly-enrolled in an LEA, but participating in SOEP courses with approval of the student's primary LEA of enrollment; and

(c) including acceptance of financial responsibility by a primary LEA of enrollment.

(27) A provider is not required to independently verify:

(a) early graduation status; or

(b) the non-supplanting nature of SOEP courses.

R277-726-8. Services to Students with Disabilities Participating in the Program.

(1)(a) If a student wishes to receive services under Section 504 of the Rehabilitation Act of 1973, the student shall make a request with the student's primary school of enrollment.

(b) The primary school of enrollment shall evaluate a student's request under Subsection (1)(a) and determine if a student is eligible for Section 504 accommodations.

(c) If the primary school of enrollment determines the student is eligible, the school shall prepare a Section 504 plan and implement the plan in accordance with Subsection (2)(b).

(2)(a) If a student requests services related to an existing Section 504 accommodation, a provider shall:

(i) except as provided in Subsection (2)(b), review and implement the plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(3) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) working with a provider LEA representative, review or develop an IEP for the student within ten days of enrollment;

(ii) working with a provider LEA representative, update an existing IEP with necessary accommodations and services, considering the courses selected by the student;

(iii) provide the IEP described in Subsection (3)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iv) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (3)(a)(i).

(4) If a home or private school student requests an evaluation for eligibility to receive special education services:

(a) the home or private school student's resident school shall:

(i) evaluate the student's eligibility for services under the IDEA;

(ii) if eligible, the student may enroll in the LEA that will prepare an IEP for the student, with input from the provider LEA, in accordance with the timelines required by the IDEA;

(iii) provide the IEP described in Subsection (4)(a)(ii) to the provider within 72 business hours of completion of the student's IEP; and

(b) the provider shall provide special education services and accommodations to the student in accordance with the student's IEP described in Subsection (4)(a)(i) including in cases where the provider utilizes a third party provider for delivery of educational or other services.

R277-726-9. Limited Appropriations for Special Populations.

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:

(a) Before December 1 annually, the Superintendent shall accommodate home school students with at least 50% of the total appropriation for home and private school students, unless the home school demand is less.

(b) After December 1 annually, until available funds are obligated, the Superintendent shall:

(i) receive and accept enrollment requests on a first come, first served basis; and

(ii) offer preference to home school students in the event demand exceeds available funding.

(3) If home school or private school student funds remain by December 1, the Superintendent may release the funds for any pending enrollment requests.

(4)(a) ~~For~~ Subject to legislative appropriations available for this purpose, for each public high school with a student population of less than 1,000 students, the Superintendent shall prioritize available funds to cover at least one course ~~per student~~ at the highest course rate.

(b) After disbursing funds in accordance with Subsection (4)(a), if funds remain, the Superintendent shall distribute the remaining funds based on population with 70% to qualifying district schools and 30% to charter schools.

(c) If unused funds remain after March 1 annually, the Superintendent may redistribute available funds to qualifying LEAs whose needs exceeded their initial allocation.

(d) The Superintendent shall calculate allocations using prior-year UTREx end of year extracts.

R277-726-10. Other Information.

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

R277-726-11. Certified Online Course Provider Application Approval, Program Requirements, and Fees.

(1) An entity other than an online course provider may become a certified online course provider if the entity submits an application on a form provided by the Superintendent.

(2) An entity other than an online course provider shall submit an application on or before the annual deadline established by the Superintendent.

(3) The Superintendent shall review each application within a reasonable amount of time.

(4) If the Superintendent finds the application submitted is satisfactory, including a demonstration of the entity's ability to adhere to requirements within the application, this Rule R277-726, and state law, the Superintendent shall forward the application to the Board for final approval.

(5) Once approved by the Board, an entity shall become a certified online course provider.

(6) A certified online course provider shall adhere to requirements to remain certified and in good standing within the program including:

(a) requirements applicable to an online course provider described in this Rule R277-726, including the requirement to maintain a course completion rate of at least 80%;

(b) additional requirements prescribed in the application; and

(c) state laws applicable to an online course provider, including Sections 53F-4-501 et. seq.

(7) A certified online course provider shall be subject to an annual performance review by the Superintendent.

(8) If the Superintendent finds the certified online course provider is not in compliance with any requirement as outlined in Subsection (6) of this part, the Superintendent shall provide the certified online course provider with a list of non-compliance issues and a reasonable timeline for the certified online course provider to cure the instances of non-compliance.

(9) If the certified online course provider fails to correct instances of non-compliance within the allotted timeline, the certified online course provider shall be removed from the program.

(10) A certified online course provider that has been removed from the program may apply in the application round following removal from the program for re-admission to the program using an application provided by the Superintendent.

(11) A certified online course provider shall remit fees to the Superintendent for participation in the program as follows:

(a) 5% of revenue collected for the first \$200,000 received pursuant to Section 53F-4-505; and

(b) 1% of revenue collected after the first \$200,000 received pursuant to Section 53F-4-505.

R277-726-12. Online Concurrent Enrollment.

For a student enrolled in a concurrent enrollment course through an SOEP provider, to the extent there is a conflict between this rule and Title 53F, Chapter 4, Part 5, Statewide Online Education Program, and Title 53E, Chapter 10, Part 3, Concurrent Enrollment, the concurrent enrollment code provisions shall govern.

KEY: statewide online education program

Date of Last Change: [August 22,] 2022

Notice of Continuation: January 13, 2022

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-4-510; 53F-4-514; 53E-3-401

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number: R277-728

Filing ID: 54896

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:

R277-728. Honors Courses

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

Rule R277-728 is being proposed in order to establish standards for honors courses.

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 establishes standards for teaching honors courses and admissions to honors courses.

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 adds guidelines for honors courses but does not add any costs for the Utah State Board of Education (USBE).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. It adds guidelines for honors courses, which are not required. It simply adds clarity for local education agencies (LEAs) wishing to offer the courses.

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 applies to 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 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 applies to 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 provides guidelines for honors courses with no 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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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R277. Education, Administration.

R277-728. Honors Courses.

R277-728-1. 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 establish standards for honors courses in k-12 schools.

R277-728-2. Definitions.

"Honors course" means a course that focuses on extension and purposeful differentiation while facilitating more depth within course standards.

R277-728-3. Honors Course Objectives.

- (1) An honors course shall:
- (a) offer students opportunities to learn from the perspectives of others;
- (b) encourage students to find multiple possible solution pathways, where appropriate;
- (c) use data to reason;

(d) encourage students to take risks and persevere in problem solving;

(e) personalize student learning experiences; and

(f) emphasize deep understanding of grade level content and above-level content, if appropriate.

(2) An honors course may not:

(a) emphasize teacher lecture;

(b) emphasize rote memorization of rules and procedures or basic recall of facts;

(c) equate an honors distinction with an increased workload, such as requiring more assignments or reading additional texts without clear intent; or

(d) include little to no collaborative work.

(3)(a) An honors course shall be open and available to any interested student.

(b) A school may not prohibit enrollment in an honors course based on a student's past performance, experience, or other measures.

(4) School staff shall uniformly promote honors courses to all students and families.

(5) To the extent possible, a school shall provide enough sections for honors courses to meet student demand.

(6) A school shall remove barriers and provide opportunities to students from all representative demographics to reach their academic potential.

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:	R313-19-100	Filing ID:	54863
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Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Radiation	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, UT 84114-4880	
Contact persons:		
Name:	Phone:	Email:
Thomas Ball	801-536-0251	tball@utah.gov
Spencer Wickham	801-536-0082	swickham@utah.gov

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

General Information

2. Rule or section catchline:

R313-19-100. Transportation

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

In a letter to the director of the Division of Waste Management and Radiation Control, Radiation (Division) dated 07/11/2022, the Nuclear Regulatory Commission (NRC) stated that Utah has erroneously incorporated by reference 10 CFR Part 71.19(a) and (b) into Section R313-19-100. The NRC stated that 10 CFR Part 71.19 is designated as Compatibility Category NRC, which means that these are program elements that belong solely to the NRC and should not be adopted by the Agreement States.

The Division is removing 10 CFR Part 71.19(a) and (b) from R313-19-100 to meet the Compatibility Category NRC designation.

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

The change removes the incorporation by reference of 10 CFR 71.19(a) and (b) from Section R313-19-100 to meet the Compatibility Category NRC designation assigned to 10 CFR part 71.19.

Fiscal Information

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

A) State budget:

It is not anticipated that there will be any cost or savings to the state budget due to this change because the change does not result in any changes to state agency operations.

B) Local governments:

It is not anticipated that there will be any cost or savings to local governments due to this change because the change does not result in any changes to local government agency operations.

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

It is not anticipated that there will be any cost or savings to small businesses due to this change because the change does not require any small businesses that are required to comply with this rule to do anything different than they are currently doing.

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

It is not anticipated that there will be any cost or savings to non-small businesses due to this change because the change does not require any non-small businesses that are required to comply with this rule to do anything different than they are currently doing.

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**):

It is not anticipated that there will be any cost or savings to any other persons due to this change because the change does not require any persons that are required to comply with this rule to do anything different than they are currently doing.

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

It is not anticipated that there will be any additional compliance costs for affected persons due to the amendment to this rule because the amended rule does not require any affected persons to do anything different than they are currently doing.

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 Environmental Quality, Kimberly D. Shelley, 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 19-3-103.1		

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:	10/31/2022

9. This rule change MAY become effective on:	11/14/2022
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:	Douglas J. Hansen, Director	Date:	09/08/2022
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R313. Environmental Quality, Waste Management and Radiation Control, Radiation.**R313-19. Requirements of General Applicability to Licensing of Radioactive Material.****R313-19-100. Transportation.**

For purposes of Section R313-19-100, 10 CFR 71.0(c), 71.0(d)(1), 71.1(a), 71.3, 71.4, 71.13, 71.14(a), 71.15, 71.17, [71.19(a), 71.19(b),] 71.21 through 71.23, 71.47, 71.83, 71.85 introductory paragraph, 71.85(d), 71.87 through 71.89, 71.91(a), 71.91(c), 71.91(d), 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, 71.127, 71.129, 71.131, 71.133, 71.135, 71.137, and Appendix A to Part 71 (2020) are incorporated by reference with the following clarifications or exceptions:

- (1) The exclusion of the following:
 - (a) In 10 CFR 71.4 the following definitions:
 - (i) "close reflection by water";
 - (ii) "licensed material";
 - (iii) "optimum interspersed hydrogenous moderation";
 - (iv) "spent nuclear fuel or spent fuel";
 - (v) "special form radioactive material", since this definition exists in Section R313-12-3; and
 - (vi) "state."
 - (b) In 10 CFR 71.91(c) and 71.91(d), the phrase "certificate holder and applicant for a COC";
 - (c) In 10 CFR 71.101(a), the sentence "Each certificate holder and applicant for a package approval is responsible for satisfying the quality assurance requirements that apply to the design, fabrication, testing, and modification of package subject to this subpart;" and
 - (d) In 10 CFR 71.101(b), each instance of "certification holder, and applicant for a COC."
- (2) The substitution of the following rule references:
 - (a) "Rule R313-36, incorporating 10 CFR 34.31(b) by reference," for "Sec. 34.31(b) of this chapter" as found in 10 CFR 71.101(g);
 - (b) "Section R313-15-502" for reference to "10 CFR 20.1502";
 - (c) "Rule R313-14" for reference to "10 CFR Part 2 Subpart B";
 - (d) "Rule R313-32, 10 CFR Part 35," for reference to "10 CFR part 35";
 - (e) "Subsection R313-15-906(5)" for reference to "10 CFR 20.1906(e)";
 - (f) "Subsection R313-19-100(5)" for "Sec. 71.5";
 - (g)(i) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, and 71.127 through 71.137" for "subpart H of this part" or for "subpart H";
 - (ii) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, and 71.127 through 71.137" for "this subpart" in 71.101(a) and 71.101(c)(1).
 - (h) "10 CFR 71.0(c), 71.0(d)(1), 71.1(a), 71.3, 71.4, Subsection R313-19-100(5), Sections R313-19-1 and R313-19-5, 71.83, 71.85 introductory paragraph, 71.85(d) through 71.89, 71.91(a), 71.91(c), 71.91(d), 71.97, 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, and 71.127 through 71.137" for "subparts A, G, and H of this part";
 - (i) "10 CFR 71.47" for "subparts E and F of this part";
 - (j) "10 CFR 71.101(a), 71.101(b), 71.101(c)(1), 71.101(g), 71.103(a), 71.103(b), 71.105, 71.106, and 71.127 through 71.137" for "Sec. 71.101 through 71.137." in 71.101(b) and 71.105(a);
 - (k) "10 CFR 71.85(a) through (c)" for "paragraphs (a) through (c) of this section" in 71.85(d);
 - (l) "10 CFR 73.24" for "73.24 of this chapter" in 71.88(b);
 - (m) "71.14(a)" for "71.14" in 71.91(a);
 - (n) "R313-12-110" for "Sec. 71.1(a)" and for the NRC contact information in 71.101(c)(1) and 71.106(b); and
 - (o) "10 CFR 71.111" for "Sec. 71.111" in 71.135.
- (3) The substitution of the following terms:
 - (a) "Director" for:
 - (i) "Commission" in 10 CFR 71.0(c), 71.17(a), 71.17(b), 71.21(a), 71.21(b), 71.22(a), 71.22(b), 71.23(a), 71.23(b), 71.91(c), and 71.101(c)(1);
 - (b) "Director, the U.S. Nuclear Regulatory Commission, or an Agreement State" for "Commission" in 10 CFR 71.3;
 - (c) "Specific or general" for "NRC" in 10 CFR 71.0(c);

(d) "The Director at the address specified in SecR313-12-110" for reference to "ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards" in 10 CFR 71.101(c)(1);

(e) "Each" for "Using an appropriate method listed in Sec. 71.1(a), each" in 10 CFR 71.101(c)(1);

(f) "The material shall be contained in a Type A package meeting the requirements of 49 CFR 173.417(a)." for "The fissile material need not be contained in a package which meets the standards of subparts E and F of this part; however, the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a)." as found in 10 CFR 71.22(a) and 71.23(a);

(g) "Licensee" for "licensee, certificate holder, and applicant for a COC"; and

(h) "Licensee is" for reference to "licensee, certificate holder, and applicant for a COC are."

(4) The insertion of "NRC-issued" in 10 CFR 71.17(c)(1) immediately before "Certificate of Compliance."

(5) Transportation of licensed material

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license issued by the Director, the U.S. Nuclear Regulatory Commission or an Agreement State, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation regulations in 49 CFR parts 107, 171 through 180, and 390 through 397 (2014), appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR part 173: subparts A, 49 CFR 173.1 through 49 CFR 173.13, B, 49 CFR 173.21 through 49 CFR 173.40, and I, 49 CFR 173.401 through 49 CFR 173.477.

(B) Marking and labeling--49 CFR part 172: subpart D, 49 CFR 172.300 through 49 CFR 172.338; and 49 CFR 172.400 through 49 CFR 172.407 and 49 CFR 172.436 through 49 CFR 172.441 of subpart E.

(C) Placarding--49 CFR part 172: subpart F, 49 CFR 172.500 through 49 CFR 172.560, especially 49 CFR 172.500 through 49 CFR 172.519 and 49 CFR 172.556; and appendices B and C.

(D) Accident reporting--49 CFR part 171: 49 CFR 171.15 and 171.16.

(E) Shipping papers and emergency information--49 CFR part 172: subparts C, 49 CFR 172.200 through 49 CFR 172.205 and G, 49 CFR 172.600 through 49 CFR 172.606.

(F) Hazardous material employee training--49 CFR part 172: subpart H, 49 CFR 172.700 through 49 CFR 172.704.

(G) Security plans--49 CFR part 172: subpart I, 49 CFR 172.800 through 49 CFR 172.804.

(H) Hazardous material shipper or carrier registration--49 CFR part 107: subpart G, 49 CFR 107.600 through 49 CFR 107.606.

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR part 174: subparts A through D, 49 CFR 174.1 through 49 CFR 174.86, and K, 49 CFR 174.700 through 49 CFR 174.750.

(B) Air--49 CFR part 175.

(C) Vessel--49 CFR part 176: subparts A through F, 49 CFR 176.1 through 49 CFR 176.99, and M, 49 CFR 176.700 through 49 CFR 107.720.

(D) Public Highway--49 CFR part 177 and parts 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in Subsection R313-19-100(5)(a) as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, shall be filed with, or made to, the Director, PO Box 144850, Salt Lake City, Utah 84114-4850.

KEY: licenses, reciprocity, transportation, exemptions

Date of Last Change: ~~May 16,~~ 2022

Notice of Continuation: April 8, 2021

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-104

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R315-101

Filing ID: 54864

Agency Information

1. Department:	Environmental Quality	
Agency:	Waste Management and Radiation Control, Waste Management	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144880	
City, state and zip:	Salt Lake City, UT 84114-4880	
Contact persons:		
Name:	Phone:	Email:
Tom Ball	801-536-0251	tbball@utah.gov

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

General Information

2. Rule or section catchline:

R315-101. Cleanup Action and Risk-Based Closure Standards

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

Rule R315-101 is being amended to include the most up-to-date methods and procedures being used by industry to conduct cleanups of contaminated sites and risk assessments based on EPA guidance.

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 current rule contains limited information and is not clear in its' requirements resulting in confusion and inconsistent interpretations. The revised rule provides consistency in interpretations and requirements needed to conduct risk assessments.

This rule is being amended to provide several available approaches for conducting risk assessments allowing regulated entities to choose the approach that best fits their situation.

Contaminated groundwater is not adequately addressed in the current rule. This rule is being amended to adequately address groundwater at all contaminated sites.

The amended rule spells out a hierarchy of toxicological sources that are scientifically defensible for use in risk assessment evaluation.

The amended rule provides more details, requirements and information resources that are needed to conduct an acceptable ecological risk assessment.

The amended rule defines what DEQ considers to be an acceptable risk range and the target risk considered to be the point of departure. The amended rule also provides clear risk management options available depending on the level of risk. The interpretation of the term No Further Action (NFA) is well defined with regards to the level of risk at a site and the land use exposure scenario. The requirements for drafting a site management plan (SMP) as well as termination are clearly provided.

There is a section in the amended rule that contains a list of guidance documents and other resources that are incorporated by reference into this rule and a section that provides clear definitions of terms used in this rule.

Fiscal Information

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

A) State budget:

It is not anticipated that there will be any cost or savings to the state budget due to this rule amendment. There will be no change to the procedures and manpower used by the state to review risk assessments and cleanup plans that are based on the amended rule. Any state agencies that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to this rule that would increase costs, nor does it remove any requirements that would decrease costs.

B) Local governments:

It is not anticipated that there will be any cost or savings to local governments due to this rule amendment. Any local governments that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to this rule that would increase costs, nor does it remove any requirements that would decrease costs.

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

It is not anticipated that there will be any cost or savings to small businesses due to this rule amendment. Any small businesses that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to the rule that would increase costs, nor does it remove any requirements that would decrease costs.

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

It is not anticipated that there will be any cost or savings to non-small businesses due to this rule amendment. Any non-small businesses that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to this rule that would increase costs, nor does it remove any requirements that would decrease costs.

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**):

It is not anticipated that there will be any cost or savings to persons other than small businesses, non-small businesses, state, or local government entities due to this rule amendment. Any persons other than small businesses, non-small businesses, state, or local government entities that may be or may need to perform cleanups or risk assessments would be required to do so under the existing rule. This amendment does not add any requirements to this rule that would increase costs, nor does it remove any requirements that would decrease costs.

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

Because this is an amendment to an existing rule and the changes to this rule do not significantly change how cleanups and risk assessments are conducted under this rule it is not anticipated that the compliance costs for affected persons will change due to the rule amendments.

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 Environmental Quality, Kimberly D. Shelley, 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 19-6-105	Section 19-6-106	
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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)	Groundwater Statistics and Monitoring Compliance
Publisher	Interstate Technology Regulatory Council (ITRC)
Date Issued	December 2013

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

Official Title of Materials Incorporated (from title page)	ECO-Risk Database
Publisher	Los Alamos National Laboratory (LANL)
Date Issued	2011

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

Official Title of Materials Incorporated (from title page)	Toxicological Benchmarks for Wildlife: 1996 Revision
Publisher	Oakridge National Laboratory (ORNL)
Date Issued	1996

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

Official Title of Materials Incorporated (from title page)	A Guide to the ORNL Ecotoxicological Screening Benchmarks: Background, Development, and Application
Publisher	Oakridge National Laboratory (ORNL)
Date Issued	May 1998
Issue, or version	Revision 1

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

Official Title of Materials Incorporated (from title page)	Guidelines for the Health Risk Assessment of Chemical Mixtures
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	1986

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

Official Title of Materials Incorporated (from title page)	Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part A)
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	1989
Issue, or version	Interim Final

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

Official Title of Materials Incorporated (from title page)	Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual Supplemental Guidance Standard Default Exposure Factors
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	March 25, 1991
Issue, or version	Interim Final

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

Official Title of Materials Incorporated (from title page)	Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part B Development of Risk-based Preliminary Remediation Goals)
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	December 1991
Issue, or version	Interim Final

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

Official Title of Materials Incorporated (from title page)	Wildlife Exposure Factors Handbook, Volume I of II
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	December 1993

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

Official Title of Materials Incorporated (from title page)	Supplemental Guidance to RAGS: Calculating the Concentration Term
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Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	May 1992

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

Official Title of Materials Incorporated (from title page)	Framework for Ecological Risk Assessment
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	February 1992

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

Official Title of Materials Incorporated (from title page)	Wildlife Exposure Factors Handbook, Appendix: Literature Review Database, Volume II of II
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	December 1993

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

Official Title of Materials Incorporated (from title page)	Soil Screening Guidance Technical Background Document
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	May 1996

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

Official Title of Materials Incorporated (from title page)	Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	June 1997
Issue, or version	Interim Final

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

Official Title of Materials Incorporated (from title page)	Guidelines for Ecological Risk Assessment
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Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	April 1998

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

Official Title of Materials Incorporated (from title page)	Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	August 2000

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

Official Title of Materials Incorporated (from title page)	Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	2001
Issue, or version	Final

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

Official Title of Materials Incorporated (from title page)	EPA Requirements for Quality Management Plans
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	2001

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

Official Title of Materials Incorporated (from title page)	Risk Assessment Guidance for Superfund: Volume III - Part A, Process for Conducting Probabilistic Risk Assessment
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	December 2001

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

Official Title of Materials Incorporated (from title page)	Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	2002

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

Official Title of Materials Incorporated (from title page)	Guidance for Quality Assurance Project Plans
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	December 2002

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

Official Title of Materials Incorporated (from title page)	Calculating Upper Confidence Limits for Exposure Point Concentrations at Hazardous Waste Sites
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	December 2002
Issue, or version	December 2002(a)

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

Official Title of Materials Incorporated (from title page)	Guidance for Developing Ecological Soil Screening Levels
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	November 2003
Issue, or version	February 2005

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

Official Title of Materials Incorporated (from title page)	Human Health Toxicity Values in Superfund Risk Assessment
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	December 2003

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

Official Title of Materials Incorporated (from title page)	User's Guide for Evaluating Subsurface Vapor Intrusion into Buildings
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	February 2004
Issue, or version	February 22, 2004

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

Official Title of Materials Incorporated (from title page)	Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Model (Part E, Supplemental Guidance for Dermal Risk Assessment)
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	July 2004
Issue, or version	Final

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

Official Title of Materials Incorporated (from title page)	Guidelines for Carcinogen Risk Assessment
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	March 2005
Issue, or version	March 2005(b)

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

Official Title of Materials Incorporated (from title page)	Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	March 2005
Issue, or version	March 2005(c)

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

Official Title of Materials Incorporated (from title page)	Guidance on Systematic Planning Using the Data Quality Objectives Process
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Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	February 2006

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

Official Title of Materials Incorporated (from title page)	Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment)
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	January 2009
Issue, or version	Final

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

Official Title of Materials Incorporated (from title page)	Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, Unified Guidance
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	March 2009
Issue, or version	Final

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

Official Title of Materials Incorporated (from title page)	Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part C, Risk Evaluation of Remedial Alternatives)
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	December 1991
Issue, or version	Interim

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

Official Title of Materials Incorporated (from title page)	Exposure Factors Handbook: 2011 Edition
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	September 2011
Issue, or version	2011

HH) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Superfund Vapor Intrusion FAQs
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	February 2012

II) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	ProUCL Version 5.1 Technical Guide Statistical Software for Environmental Applications for Data Sets with and without Nondetect Observations
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	October 2015

JJ) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	February 2014

KK) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Vapor Intrusion Screening Level (VISL) Calculator User's Guide
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	May 2014

LL) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	June 2015

MM) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	June 2015

NN) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Update of Ecological Soil Screening Level (Eco-SSL) Guidance and Contaminant Specific Documents
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	March 2005

OO) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Guidelines for Mutagenicity Risk Assessment
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	September 1986

PP) This rule adds, updates, or removes the following title of materials incorporated by references:	
Official Title of Materials Incorporated (from title page)	Establishing Background Levels
Publisher	United States Environmental Protection Agency (US EPA)
Date Issued	September 1995

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:	10/31/2022
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9. This rule change MAY become effective on:	11/14/2022
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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:	Douglas J. Hansen, Division Director	Date:	09/08/2022
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R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-101. Cleanup Action and Risk-Based Closure Standards.

R315-101-1. Purpose, Applicability.

(a) Purpose. Rule R315-101 establishes information requirements to support risk-based cleanup and closure standards at sites for which remediation, including ~~or~~ removal of hazardous constituents to background levels ~~will not be achieved~~ is not the remediation objective. The procedures in ~~this rule~~ Rule R315-101 also provide for continued management of sites for which ~~minimal~~ risk-based clean closure standards ~~cannot be~~ are not met.

(b) Applicability.

(1) Rule R315-101 ~~is applicable~~ applies to any responsible party, or other interested party on a voluntary basis, such as a prospective purchaser, a lending institution, or land developer, involved in management of a site contaminated with hazardous waste, ~~or~~ hazardous constituents, or other contaminants, as determined by the director. ~~This rule~~ Rule R315-101 does not apply to a site that has been or will be cleaned to background levels of constituents.

(2) In the event of a release of hazardous waste or material ~~which~~ that, when released, becomes hazardous waste, ~~these~~ the requirements of Rule R315-101 apply if the responsible party fails to clean up ~~all~~ the released material and any residue or contaminated soil, water, or other material resulting from the release, as required by Section R315-263-31. The requirements of Section R315-263-31 shall be considered met if:

(i) ~~If~~ the level of cumulative risk present at the site is ~~below~~ less than or equal to 1×10^{-6} for carcinogens and ~~a~~ the ~~H~~ hazard ~~index~~ ~~of~~ is less than or equal to one for non-carcinogens based on ~~the~~ a risk assessment conducted ~~in accordance with~~ assuming the land use exposure scenario defined in Subsection R315-101-5~~(2)(b))~~(g)(1);

(ii) ~~and~~ the ~~D~~ director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with Subsection R315-101-5~~(3(a)(8))~~(j); and

(iii) ~~the requirements of R315-9-3 shall be considered met~~ the director determines that current and potential future impacts to groundwater are insignificant in accordance with Subsection R315-101-5(f)(8).

(3) ~~The owner or operator of a hazardous waste management facility or a facility subject to interim status requirements shall meet the requirements of 40 CFR 265.110 through 120, incorporated by reference in Rule R315-265, and Sections R315-264-110 through 120 prior to implementation of any activities described in R315-101. The requirements of Subsections R315-270-1(c)(5) and (6) shall be met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in~~

accordance with R315-101-5.3(a)(8). If these risk exposure criteria are met, a request for a risk-based closure may be submitted to the Director for review.]The responsible party of a hazardous waste management site shall meet the requirements of Sections R315-265-110 through R315-265-120 or Sections R315-264-110 through R315-264-120, as applicable, before implementation of any activities described in Rule R315-101.

(4) ~~If the risk present at the site is greater than the exposure limit as defined in R315-101-1(b)(2) or (3) or the Director determines that ecological effects may be significant, then a risk-based closure will not be granted and appropriate management will be required and may include corrective action, post closure care, monitoring, deed restrictions, and security of the site. For determinations of appropriate corrective action or management activities at a site, the following criteria shall be considered in order of importance:~~

~~(a) The impact or potential impact of the contamination on the human health;~~

~~(b) The impact or potential impact of the contamination on the environment;~~

~~(c) The technologies available for use in clean up; and~~

~~(d) Economic considerations and cost effectiveness of clean up options.]The requirements of Subsections R315-270-1(c)(5) and R315-270-1(c)(6) shall be considered met for a hazardous waste management unit or solid waste management unit if:~~

(i) the level of risk, cumulative, present at the site is less than or equal to 1×10^{-6} for carcinogens and a hazard index of less than or equal to one for non-carcinogens, based on the risk assessment conducted, assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1);

(ii) the director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with Subsection R315-101-5(j); and

(iii) the director determines that current and potential future impacts to groundwater are insignificant in accordance with Subsection R315-101-5(f)(8).

(5) If these risk criteria are met, a request for a risk-based clean closure in accordance with Subsection R315-101-7(a) may be submitted to the director for review and approval.

(6) If the level of risk, cumulative, present at the site is greater than the limits defined in Subsection R315-101-1(b)(2) or R315-101-1(b)(4) or the director determines that ecological effects may be significant in accordance with Subsection R315-101-5(j), or current and potential future impact to groundwater is significant in accordance with Subsection R315-101-5(f)(8), then a risk-based clean closure shall not be granted. Either corrective action, as determined in accordance with Section R315-101-6 and as defined in Subsection R315-101-13(u), appropriate site management as defined in Subsection R315-101-13(f) and as determined in Subsections R315-101-7(b) and R315-101-7(c), or both, shall be required.

(c) For determination of appropriate corrective action at a site, the following criteria shall be considered in order of importance:

(1) the impact or potential impact of the contamination on human health;

(2) the impact or potential impact of the contamination on the environment;

(3) the technologies available for use in cleanup; and

(4) economic considerations and cost-effectiveness of cleanup options.

(d) The responsible party shall follow applicable guidance documents, including Utah and federal risk assessment guidance and methods approved by the director, as set forth in Rule R315-101.

R315-101-2. Stabilization of Releases.

(a) The responsible party ~~[must]~~shall immediately take appropriate action to stabilize the site either through source removal or source control. ~~[After the responsible party has attempted to complete the requirements of Sections R315-263-30 through 33 and the Director determines that additional work is needed to stabilize the site, the Director will notify the responsible party that additional work is necessary and provide the responsible party with objectives to be addressed in developing a work plan to further stabilize the site. The work plan shall be submitted to the Director for review and approval within fifteen days of receiving notification that additional work will be necessary to complete the emergency actions required by Sections R315-263-30 through 33. Work plans shall be of a scope commensurate with the work to be performed and site specific characteristics. This work plan shall include a description of the interim measure and how it will meet the criteria of source removal or source control. The implementation of the work plan shall be according to the schedule contained within the approved plan. All interim measures shall be at the expense of the party responsible for the site. If the party responsible for the site fails to take the measures required for stabilizing the site, the Director may request the Executive Director of the Department to take abatement and cost recovery actions as provided in Section 19-6-301, et seq., Utah Hazardous Substances Mitigation Act]~~If the director determines that the action taken is insufficient to meet the requirements of Section R315-263-30, the responsible party shall submit a work plan pursuant to Subsection R315-101-2(b) to the director for approval within 60 days of receiving notice from the director.

(b) The work plan shall:

(1) define the scope of work to be performed;

(2) include a description of the interim measures and other corrective actions to be taken; and

(3) include a description of how the plan shall meet the criteria of source removal or source control.

(c) The responsible party shall implement the work plan in accordance with the schedule contained in the approved plan. The responsible party shall implement interim measures or other corrective actions as approved. If the responsible party fails to take the measures required for stabilizing the site, the director may request the executive director of the Department of Environmental Quality to take abatement and cost recovery actions as provided in Sections 19-6-301 through 19-6-326 of the Utah Hazardous Substances Mitigation Act.

R315-101-3. Principle of Non-degradation.

(a) When closing or managing a contaminated site that has been stabilized in accordance with Section R315-101-2, the responsible party shall, to the extent practicable in accordance with Subsection R315-101-1(c), not allow the mass of contaminants in the source area to increase. ~~[4]~~Levels of contamination in groundwater, regardless of quality, ~~[surface water, soils, and air to]~~shall not increase beyond the existing levels of contamination at a site when the responsible party has defined the nature and extent of contamination pursuant to Section R315-101-4. Consideration will be given to naturally occurring variations in groundwater contaminant concentrations, natural groundwater flow, and dispersion. ~~[when site management commences.]~~

(b) The responsible party ~~[will]~~shall demonstrate compliance with ~~[this policy]~~Subsection R315-101-3(a) by submitting appropriate ~~[monitoring data]~~sampling or other data as may be required by the ~~[D]~~director.

(c) If at any time the level of contamination increases to a significant level, as determined by the director on a case-by-case basis, the responsible party shall take ~~[immediate corrective]~~action, as determined by the director, such as source removal or source control, to prevent further degradation of ~~[any medium]~~groundwater. A work plan addressing interim action or other corrective action to mitigate the situation shall be submitted to the director for review and approval.

R315-101-4. Site Characterization, Data Collection and Documentation.

~~[The following information shall be collected to characterize the site, and define site boundaries and Area(s) of Contamination:~~

~~(a) A legal description of the site;~~

~~(b) Historical land use and ownership of the site;~~

~~(c) Topographical map(s) of sufficient detail, scale, and accuracy to depict and locate all past and current physical structures including all building(s) and waste activities at the site;~~

~~(d) Information and maps of sufficient detail, scale, and accuracy to describe regional, local, and site geology, surface water, and hydrogeological conditions;~~

~~(e) An inventory of all current and past wastestreams managed at the site, including process descriptions and suspected contamination source information;~~

~~(f) Background levels of suspected hazardous constituents based on the inventory as determined in R315-101-4(e) in media of concern, e.g. sediments, soil, groundwater, surface water, and air which are representative of the site; and~~

~~(g) Location and boundaries of all Area(s) of Contamination, including concentrations, types and extent of hazardous constituents. Media to be sampled may include sediments, soil, groundwater, surface water, and air, as applicable.]~~

(a) Purpose. The intent of a site investigation or characterization is to define the nature and extent of all impacted environmental media, whether on-site or off-site. A phased approach to site characterization may be conducted as applicable on a case-by-case basis. These data shall be collected as part of an initial site investigation to define the nature and extent of potential contamination. The known or suspected history of past or current operations at the facility, in any environmental media shall be considered. Site characterization may also include data collected to demonstrate efficacy of a corrective action remedy pursuant to Section R315-101-6. Before the collection of any data that shall be used in a site characterization, corrective action, or post-remedial corrective action risk assessment, the responsible party shall develop and submit a work plan to the director for review and approval. The work plan shall include the following:

(1) Sampling and analysis plan specifying methods and procedures to be used for data collection and analysis as outlined in Section R315-261-1090, Appendix I, and in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW-846, available at the EPA Hazardous Waste Test Methods/SW-846 website;

(i) samples shall be analyzed by a Utah certified laboratory using procedures and methods in accordance with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" EPA Publication SW-846, available at the EPA Hazardous Waste Test Methods/SW-846 website;

(ii) analysis not available in Utah or methods not contained in Subsection R315-101-4(a)(1)(i) may be reviewed and approved by the director; and

(iii) documentation for laboratory work shall include the data accompanied by quality assurance and quality control measures taken in accordance with current environmental laboratory standards for a level III data package, or other QA/QC data level as determined by the director on a site-specific basis.

(2) Representative proposed media sample locations with depths, sample analytes and justification that the proposed sampling is sufficient to define the nature and extent of contamination:

(i) surface soil is defined as surface or zero to a maximum of six inches below ground surface, or as determined on a case-by-case basis; and

(ii) subsurface soils is defined as greater than six inches below ground surface, or as determined on a case-by-case basis.

(3) Conceptual site model for a site-specific characterization, identifying and showing potential primary source areas, media of concern, contaminant release mechanism, receptors of interest, exposure pathways and possible contaminant migration pathways, including the following media as applicable based on current site conditions:

(i) sediments;

(ii) soil;

(iii) biota;

(iv) groundwater;

(v) surface water; and

(vi) air.

(4) Data quality objective process steps related to the implementation of the sampling and analysis plan in accordance with "Guidance on Systematic Planning Using the Data Quality Objectives Process," EPA QA/G-4, EPA/240/B-06/001, as incorporated by reference in Section R315-101-12.

(5) Quality assurance project plan for field procedures, chain-of-custody and laboratory analytical methods to be used for the sampled media.

(6) Field quality assurance and quality control procedures to characterize and dispose of any site investigation derived waste in an appropriate manner, including a plan for decontamination procedures, field instrument calibration procedures, any standard operating procedures and other relevant documentation.

(b) Background levels. Based on the site characterization sampling results, the responsible party may determine or propose background levels of suspected hazardous constituents and may follow or consider procedures in the Soil Background and Risk Guidance document available on the Interstate Technology Regulatory Council website. The constituent list may be based on the inventory as determined in Subsection R315-101-4(c)(5) in media of concern, including: sediments, soil, groundwater, surface water, and air that are representative of the site.

(c) Additional information. The following additional information shall be collected to characterize the site and to define site boundaries and areas of contamination:

(1) a description of the site, including legal boundaries;

(2) historical land use and ownership of the site, including existing aerial photos of the site through time if requested by the director;

(3) topographical and other relevant maps of sufficient detail, scale, and accuracy to depict and locate each past and current physical structure including any buildings and waste activities at the site;

(4) information and maps of sufficient detail, scale, and accuracy to describe regional, local, and site geology, surface water, groundwater and groundwater quality, drainage features and other hydrogeological conditions;

(5) an inventory of each current and past waste stream managed at the site, hazardous waste management units, areas of concern and solid waste management units at the site, including process descriptions, amounts and types of waste generated and disposed and suspected contamination source information;

(6) location and boundaries of areas of concern including any hazardous waste management units and solid waste management units;

(7) any past sampling results, and an inventory of any releases, discharges and spills;

(8) available information such as reports and data on any previous corrective actions; and

(9) a list of all off-site property owners whose property has been or may have been affected by the release of contaminants for which the responsible party is responsible. This list shall include the name and address of each property owner and shall identify the current land use of each property.

(d) Petroleum wastes and total petroleum hydrocarbon.

At sites where petroleum wastes may be present, the media samples shall be analyzed for volatile organic compounds, semi-volatile organic compounds including Poly Aromatic Hydrocarbons (PAHs), and total metals.

(e) The responsible party may propose other analytical suites for the impacted media for review and approval by the director. This shall include Polychlorinated Biphenyls (PCBs), dioxins and furans, and any other emerging contaminant of concern, as determined on a case-by-case basis, based on the history of the site and activities.

(f) Relevant information gathered in Subsections R315-101-4(a) through R315-101-4(e) shall be submitted in a site characterization report to the director for review and approval. In addition, the site characterization report shall include:

(1) site location, legal description and objectives of the site investigation;

(2) methodology and field activities completed, including the handling of any site investigation derived wastes;

(3) maps of sufficient detail and accuracy to depict waste management units, areas of contamination, nature and extent of contamination, topography, geology, groundwater quality, and potentiometric surface;

(4) site and regional geological, hydrogeological, and hydrological descriptions;

(5) a detailed discussion of any areas of contamination found during the site characterization field work;

(6) listing and concentrations of any historic and current hazardous constituents identified in Section R315-101-4;

(7) background levels of hazardous constituents, including details of statistical methods used to analyze the data gathered, if applicable;

(8) the hazardous constituents identified in accordance with Subsections R315-101-4(f)(6) and R315-101-4(f)(7) shall be known as contaminants of interest;

(9) descriptions of historic and current releases of hazardous constituents and expected extent of migration from the areas of contamination;

(10) deviations from the approved site characterization work plan and the sampling and analysis plan;

(11) discussion of the evaluated potential exposure pathways including groundwater, surface water, sediments, surface and subsurface soils and air;

(12) a summary outlining the completion of data quality objectives, completed analytical request forms for each analysis

performed reported on dry-weight basis, actual sampling locations and depths with justification for variations to the approved sampling and analysis plan, any statistical analysis performed if completed, and quality assurance and quality control results and analytical data validation report in accordance with current environmental laboratory standards for a level II data package, or other QA/QC data level, as determined by the director on a site-specific basis;

(13) revised conceptual site model identified in Subsection R315-101-4(a)(3) based on the information presented in the final site characterization report; and

(14) conclusions and recommendations for additional site work and applicable supporting documentation, including figures, tables, and appendices.

(15) Groundwater, on-site or off-site, shall be considered impacted if contaminant levels are above screening levels as defined in Subsection R315-101-5(f)(1)(vii) or maximum contaminant levels.

(g) Additional site characterization data shall be collected after corrective action or other remedial actions. The confirmation data shall be used to support a closure risk assessment.

R315-101-5. Human Health and Ecological Risk Evaluation Criteria and Risk Assessment.

[~~5.1 REQUIRED STUDY~~]

(a) When conducting the risk assessment, the responsible party [will use all applicable site characterization data and shall consider the following parameters] shall use the conceptual site model, as defined in Subsection R315-101-13(o) and as described in Subsection R315-101-4(a)(3) or R315-101-4(f)(13), as applicable, and shall use applicable site characterization or confirmation data. For the areas of contamination as defined in Subsection R315-101-13(g), the following shall be included when conducting the risk assessment:

(1) [F]identification, concentration, and distribution of [all]any suspected hazardous constituents identified in Section R315-101-4(e) and defined as contaminants of interest in Subsection R315-101-4(f)(8);

[~~(2) All area(s) of contamination at the site;~~]

[~~(3)(2) [F]fate of contaminants of interest and any pathways [of contaminant]and transport of contaminants of interest; and~~]

[~~(4) Potentially exposed populations;~~](3) any potential exposure routes;

(4) human receptors; and

(5) ecological receptors.

[5.2](b) [CHARACTERIZATION AND EVALUATION OF RISK]General Human Health Risk Assessment Methodology.

[~~(a)~~](1) A risk assessment shall be conducted once the nature and extent of contamination has been adequately defined or corrective action completed. The risk assessment may be performed for impacted media by choosing either a Tier 1 approach in accordance with Subsection R315-101-5(f) or a Tier 2 risk assessment process in accordance with Subsection R315-101-5(g). Tier 1 shall be a screening risk assessment and Tier 2 shall be a refined risk assessment that may include site-specific exposure assumptions and allowance for alternative approaches, such as a Monte Carlo exposure risk analysis, probabilistic risk assessment. If excess risks are noted for the Tier 1 assessment a Tier 2 assessment is required.[The responsible party shall conduct a risk assessment which includes the following:]

(2) The concentration term for each medium and for each contaminant of interest identified in Section R315-101-4 and

Subsection R315-101-4(f)(8) and determined to be a contaminant of potential concern following comparison to background shall be evaluated using either the maximum detected concentration or an upper confidence limit as derived using the US EPA ProUCL program.

(3) The fate, pathways, and transport of contaminants of interest identified in Section R315-101-4, defined in Subsection R315-101-4(f)(8), and determined to be a contaminant of potential concern following comparison to background, shall be evaluated using the conceptual site model developed pursuant to Subsection R315-101-4(a)(3) or R315-101-4(f)(13), as applicable and approved by the director.

[~~(1) The concentration term "C" for each medium for each hazardous constituent identified in R315-101-5.1(a)(1);~~]

[~~(2) Evaluation of the fate of contaminants and of all pathways of contaminant transport identified in R315-101-5.1(a)(3);~~]

[~~(3) Exposure assessment identifying the RME for all exposure pathways, intakes, and identified constituents;~~]

[~~(4) Current toxicity information for carcinogenic and noncarcinogenic effects;~~]

[~~(5) Risk characterization identifying carcinogenic risk, individual and multiple substances, and noncarcinogenic hazardous index, individual and multiple substances;~~]

[~~(6) An ecological evaluation which provides for terrestrial and aquatic processes; and~~]

[~~(7) Current toxicity information for all the constituents and biological processes relevant to the ecological evaluation.~~]

(b) The risk assessment shall be conducted using one or both of the standard exposure scenarios listed below, as needed to determine site management options:

(1) Residential. This exposure scenario includes ingestion of water (must include surface water and ground water regardless of water quality), ingestion of soil and dust, ingestion of contaminated and potentially contaminated food, inhalation of contaminants, dermal contact with chemicals in soil, and dermal contact with chemicals in water for a human being ages zero through 70 years old using the equations and default variable values found in the Risk Assessment Guidance for Superfund, Volume 1: Human Health Evaluation Manual Supplemental Guidance, "Standard Default Exposure Factors", Interim Final, OSWER Directive 9285.6-03, March 25, 1991 or most recent edition;

(2) Actual land use conditions or potential land use conditions based upon applicable zoning and future land use planning considerations, if potential land use conditions offer a more protective exposure scenario than actual land use conditions. This exposure scenario involves an assessment based on actual site conditions using standard default variable values. The potential land use exposure scenario should include a conceptual model including current site conditions, expected future conditions based upon site-specific physical and chemical information, and the assumption that contaminated media will not have undergone any remedial engineering.

[5.3 DATA PRESENTATION]

(a) A risk assessment report shall be submitted to the Director and must include at a minimum the following:

(1) An executive summary;

(2) An overview of the site and the areas of contamination;

(3) A site characterization report which includes:

(i) Maps of sufficient detail and accuracy to depict areas of contamination, topography, geology, and groundwater contours or potentiometric surface;

~~(ii) Site and regional geological and hydrological descriptions;~~

~~(iii) A detailed discussion of areas of contamination;~~

~~(iv) Background levels of hazardous constituents including details of statistical methods used to determine background; and~~

~~(v) Descriptions of releases of hazardous constituents and expected extent of migration from the area of contamination.~~

~~(4) Identification and concentration of hazardous constituents identified in R315-101-5.1(a)(1). A sampling and analysis plan shall be prepared and utilized for the collection of all data. This plan shall be developed using procedures and methods outlined in Section R315-261-1090 and the most current version of "SW 846, Test Methods for Evaluating Solid Waste." It shall contain a summary outlining data quality objectives, completed analytical request forms for all analysis performed, dry weight equivalents, sampling location identification and justification, standard operating procedures used for data collection, all statistical analysis performed, quality assurance and quality control plans (QA/QC plan) and QA/QC results, instrument calibration results, and analytical methods including constituent detection limits;~~

~~(5) Exposure assessment identifying exposure levels for all exposure pathways identified in R315-101-5.2(a)(3). If fate and transport models are used, the users manual, model theory, computer software for the model, installation verification data set for the model and parametric analysis of the input parameters must be provided upon request of the Director;~~

~~(6) Identification of toxicity information gathered for all identified hazardous constituents for carcinogenic, slope factors and weight of evidence classification, noncarcinogenic effects, chronic reference doses (RfDs) and critical effects associated with RfDs from, in order of preference, the Integrated Risk Information System (IRIS), Health Effects Assessment Summary Tables (HEAST), Agency for Toxic Substances and Disease Registry (ATSDR) toxicological profiles, Environmental Criteria and Assessment Office (ECAO), or other scientifically accepted listings. The source and date of the toxicological information must be identified and be acceptable to the Director;~~

~~(7) The risk characterization identifying carcinogenic risk, individual and multiple substances, noncarcinogenic hazardous index, individual and multiple substances, chronic hazard quotient, subchronic hazard quotient, uncertainties, and a tabulation of all risk characterization data presented in a format approved by the Director; and~~

~~(8) Unless justification is provided to the Director, and a waiver of this requirement is granted by the Director in writing, an ecological assessment of the site which contains at least the following:~~

~~(i) An inventory of the current biological community;~~

~~(ii) Estimates of ecological effects based on a subset of ecological endpoints;~~

~~(iii) The magnitude and variation of toxic effects; and~~

~~(iv) Identification of extent of effects, specifically from the presence of hazardous waste.~~

~~(b) If the risk assessment report does not contain all required information of sufficient quality and detail, the Director will notify the responsible party in writing of the deficiencies and require resubmittal of the report in a designated time frame.~~

~~(c) If the risk assessment report contains all required information of sufficient quality and detail, the Director will approve the risk assessment report in writing.]~~

~~(c) The exposure scenarios identified in the conceptual site model shall be estimated using reasonable maximum exposure~~

parameters and shall be based on both current and potential future anticipated land use and receptors defined in Subsections R315-101-5(g)(1) and R315-101-5(g)(2).

(d) The conceptual site model shall include a determination as to whether or not each of the following pathways is complete under both current and anticipated future conditions. Risks shall be quantified for those receptors where exposure pathways have a reasonable potential for being complete unless it may be demonstrated that the risk is less significant when compared to other quantified receptor risks.

(1) Potential exposure pathways for surficial soils include:

(i) leaching to groundwater;

(ii) migration to a surface water body; and

(iii) human exposure through ingestion of soil, dermal contact with soil, inhalation of vapors and particulates emitted by surficial soils.

(2) Potential exposure pathways for subsurface soils include:

(i) leaching or vapor migration, including sinking vapors, to groundwater;

(ii) migration to a surface water body;

(iii) volatilization and upward migration of vapors from subsurface soil and potential indoor or outdoor inhalation of these emissions; and

(iv) human exposure through ingestion of soil, dermal contact, inhalation of vapors and particulates.

(3) The soil exposure interval applicable to residents is defined as surface down to ten feet below ground surface. The soil exposure interval applicable to the industrial or commercial worker is defined as surface to one foot below ground surface. The soil exposure interval applicable to the construction worker is defined as surface down to depth of construction of ten feet below ground surface. Alternative soil exposure intervals shall be determined on a case-by-case basis as approved by the director.

(4) Soil exposure pathways applicable to all receptors where the conceptual site model, in accordance with Subsection R315-101-4(a)(3) or R315-101-4(f)(13), identifies soils as a complete or potentially complete exposure pathway, shall include:

(i) ingestion;

(ii) dermal contact with soil;

(iii) inhalation of vapor emissions; and

(iv) inhalation of particulates from soil.

(5) Groundwater exposure pathways applicable to all receptors where the conceptual site model, in accordance with Subsection R315-101-4(a)(3) or R315-101-4(f)(13), identifies ground water as a complete or potentially complete exposure pathway, shall include:

(i) ingestion;

(ii) dermal contact with groundwater; and

(iii) inhalation of vapor emissions.

(6) Additional exposure to groundwater shall be considered on a site-specific basis which may include:

(i) volatilization and upward migration of vapors from groundwater and potential indoor inhalation of vapor emissions;

(ii) volatilization and upward migration of vapors from groundwater and potential outdoor inhalation of vapor emissions;

(iii) potable use of groundwater, including ingestion of groundwater, dermal contact with groundwater during showering or bathing, and inhalation of vapors from domestic use of groundwater if pathway is complete; and

(iv) migration to surface water body and potential impacts to surface water and potential exposures to surface water.

(7) Other exposure pathways that may need to be considered on a site-specific basis may include the following:

(i) contact with soils and ingestion of soils, sediments, inhalation of vapors and particulates, surface water and groundwater for any other anticipated human contacts, such as recreational and trespasser activities;

(ii) ingestion of produce grown in impacted soils;

(iii) use of groundwater for irrigation purposes;

(iv) use of groundwater for industrial purposes;

(v) ingestion of livestock or fish or other aquatic organisms that, as a result of media contamination, have bioaccumulated constituents of potential concern through the food chain; and

(vi) ingestion, dermal contact, and inhalation of vapors from surface water such as from recreational activities, including swimming.

(e) The responsible party shall develop a risk assessment work plan for review and approval by the director before the risk evaluation.

(f) Tier 1 screening risk assessment. The Tier 1 evaluation shall assume no institutional or engineering controls in place, such as security, signage, pavements, personal protective equipment, fences, or remediation. The Tier 1 risk assessment evaluation may not be appropriate under circumstances when every complete exposure pathway is not covered by the screening values. The Tier 2 refined risk assessment approach may be more appropriate for evaluation in this circumstance.

(1) Screening levels. The Tier 1 evaluation shall use one or more of the following screening levels:

(i) US EPA Regional Screening Levels available at the US EPA Risk Assessment, Regional Screening Levels (RSLs) website;

(ii) site-specific background 95% upper tolerance limit levels developed in accordance with the US EPA ProUCL model;

(iii) vapor intrusion screening levels calculated using US EPA Vapor Intrusion Screening Level Calculator, as incorporated by reference in Section R315-101-12, available at the EPA Vapor Intrusion Screening Levels Calculator website;

(iv) petroleum vapor intrusion screening guidelines developed in accordance with "Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites," US EPA, as incorporated by reference in Section R315-101-12;

(v) site-specific confidence limits for groundwater background established for the site in accordance with "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, Unified Guidance," US EPA, as incorporated by reference in Section R315-101-12; or

(vi) in instances where a US EPA Regional Screening Level is not available, a responsible party, with the approval of the director, may develop and calculate a site-specific screening value.

(2)(i) The US EPA Regional Screening Levels, confidence limits, site-specific background levels, calculated site-specific screening values, and vapor intrusion screening levels shall be known collectively as screening values.

(ii) Documents referenced in Subsections R315-101-5(f)(1)(i) through R315-101-5(f)(1)(vi) and other director approved sources shall be used as sources for obtaining screening values.

(3) Determination of constituents of potential concern.

(i) For inorganic contaminants of interest, the following steps shall be followed for determination of constituents of potential concern that shall be included in the risk evaluation.

(A) The maximum detected concentration of each contaminant of interest for soil, sediment, and groundwater may be

compared to the site-specific background reference level, defined as the 95% upper tolerance limit or a confidence limit as defined for groundwater. If the maximum detected site concentration is greater than the background reference level, the inorganic contaminants of interest shall be considered a constituent of potential concern. If site-specific background reference levels are not available, the detected inorganic contaminant shall be retained as a contaminant of potential concern.

(B) For those inorganic contaminants of interest whose maximum concentrations are greater than the background reference, a test of means hypothesis shall be used to determine if inorganic contaminants of interest are present at elevated levels over background levels.

(C) If the results of the test of means hypothesis indicate the detected inorganic contaminant of interest is elevated over background level, it will be retained as a constituent of potential concern.

(D) If a test of means hypothesis cannot be performed due to sample size or if there is no established site-specific background reference level, the inorganic contaminant of interest shall be retained as a constituent of potential concern.

(ii) For organic contaminants of interest, all contaminants with a minimum of one detection shall be retained as constituents of potential concern. If site-specific background reference levels are available for organics, additional refinement of organic contaminants of potential concern may be conducted in accordance with Subsection R315-101-5(f)(3)(i).

(4) Exposure point concentration.

(i) The initial exposure point concentration for all inorganic and organic constituents of potential concern shall be the maximum detected concentration for each medium evaluated in the Tier 1 assessment.

(ii) If the maximum detected concentration results in a cancer risk greater than 1×10^{-6} or a hazard quotient greater than one, a refined exposure point concentration based on a 95% upper confidence limit on the mean may be calculated using the USEPA ProUCL program. The lesser of the maximum concentration and the 95% upper confidence limit concentration shall be selected as the exposure point concentration.

(iii) If the minimum required sample size of eight or more for calculating the 95% upper confidence limit cannot be met, the maximum detected concentration shall be the exposure point concentration.

(5) Cumulative risk shall be determined for all carcinogenic constituents of potential concern and a hazard index shall be determined for all noncarcinogenic contaminants of potential concern.

(i) The cumulative effects screening cancer risk estimate is calculated as the sum of the ratios of exposure point concentrations and screening values for the combined land use exposure pathways, identified under the conceptual site model developed in accordance with Subsection R315-101-4(a)(3) or R315-101-4(f)(13) as applicable for soil and groundwater media, multiplied by 1×10^{-6} .

(ii) The hazard index is calculated as the sum of the ratios of exposure point concentrations and screening values for the combined residential land use exposure pathways identified under the conceptual site model in accordance with Subsection R315-101-4(a)(3) or R315-101-4(f)(13) as applicable for soil and groundwater media.

(iii) If a contaminant of potential concern has both carcinogenic and non-carcinogenic toxicity, both toxicities shall be

evaluated using both the carcinogenic and non-carcinogenic based US EPA Regional Screening Level or other screening levels.

(iv) If the cumulative effects screening cancer risk is less than or equal to 1×10^{-6} and hazard index is less than or equal to one, then the cumulative effects screening risks posed by detected carcinogenic contaminants of interest at the site meet acceptable risk levels and additional evaluation for the receptor and scenario is not required.

(v) If the cumulative effects screening cancer risk is greater than 1×10^{-6} or the hazard index is greater than one, then a Tier 2 risk assessment or further evaluation may be required.

(6) Residential land use.

(i) Risks to residents from ingestion of livestock grazing on a contaminated site shall be determined and added to the cumulative effects risk equation if it is determined to be a plausible and complete exposure pathway.

(ii) Vapor intrusion pathway if complete, shall be evaluated and added to the cumulative effects screening risk equation.

(iii) Any other relevant exposure pathway consistent with the residential exposure pathway shall be evaluated and added to the cumulative risk.

(iv) If it is determined that the residential land use cumulative effects screening cancer risk posed by constituents of potential concern is less than or equal to the target cancer risk of 1×10^{-6} and the hazard index is less than or equal to one for each combined residential land use exposure pathways, and it is determined that there are no current and potential future impacts to groundwater as determined by site-specific attenuation factors derived using "Supplemental Guidance For Developing Soil Screening Levels," US EPA, as incorporated by reference in Section R315-101-12, Subsections R315-101-4(f)(15), R315-101-5(f)(8) and R315-101-5(f)(1)(vii), and ecological impacts are insignificant in accordance with Subsection R315-101-5(j), then the site meets the risk-based clean closure criteria for no further action or unrestricted land use as identified in Subsection R315-101-7(a).

(v) If it is determined that the residential land use cumulative effects screening cancer risk posed by constituents of potential concern is greater than the target risk of 1×10^{-6} or the hazard index is greater than one for each combined residential land use exposure pathway, then further evaluation of the site may be conducted using either the Tier 2 refined risk assessment evaluation approach for a residential land use exposure scenario as identified in Subsection R315-101-5(g)(1) or a non-residential land use exposure scenario as identified in Subsection R315-101-5(g)(2) and site management as identified in Section R315-101-7, or the responsible party may choose to conduct corrective action as identified in Section R315-101-6 to mitigate risks at the site to residential acceptable levels.

(vi) An ecological evaluation shall also be completed as part of the screening residential land use risk evaluation as described in Subsection R315-101-5(j).

(vii) A groundwater impact evaluation shall also be completed as part of the screening residential land use risk evaluation as identified in Subsection R315-101-5(f)(8).

(7) Industrial or commercial land use or construction worker.

(i) If the cumulative effects screening risk is less than or equal to a cancer risk of 1×10^{-6} and the hazard index is less than or equal to one, then the cumulative effects screening risks posed by detected contaminants of potential concern at the site meets the industrial or commercial land use or both or construction worker risk

and the site meets the criteria for restricted land use as identified in the Subsection R315-101-7(b).

(ii) If the cumulative effects screening risk is greater than a cancer industrial risk of 1×10^{-6} or the hazard index is greater than one, then the cumulative effects screening risks posed by the detected contaminants of potential concern at the site do not meet the industrial or commercial land use or both, and a Tier 2 assessment or further evaluation is required.

(iii) If the cumulative effects screening risk is greater than cancer industrial risk of 1×10^{-6} but less than 1×10^{-4} and the hazard index is less than or equal to one, then restricted land use closure with land use controls may be used in accordance with Subsections R315-101-7(b)(1) and R315-101-7(c).

(iv) Exposure scenarios not covered in the screening values shall be evaluated separately and added to the cumulative effects risks. Evaluations may include the vapor intrusion pathway if it is determined to be complete using the vapor intrusion screening levels.

(v) Other receptors relevant to the industrial or commercial land use or both scenario, such as a trespasser or recreational user, shall be evaluated.

(vi) An ecological evaluation, as identified in Subsection R315-101-5(j), shall also be completed as part of the screening industrial or commercial land use or both risk evaluation.

(vii) A groundwater impact evaluation, as identified in Subsections R315-101-5(f)(8) and R315-101-4(f)(15), shall also be completed as part of the screening industrial or commercial land use or both risk evaluation.

(8) For evaluation of potential future impacts to groundwater one or more of the following steps shall be used:

(i) Step 1. Compare the maximum detected constituents of potential concern in soil to the US EPA Regional Screening Levels, groundwater protection soil screening level based on a dilution attenuation factor of 20, unless it may be demonstrated that background levels for the contaminants of concern at the site exceed the applicable soil screening levels. If the maximum detected concentrations exceed the US EPA Soil Screening Levels for groundwater protection, the potential exists for future impacts to groundwater. The groundwater protection soil screening level value shall be the greater of either the maximum contaminant level or the risk-based groundwater protection soil screening level value for evaluation. If the potential for future groundwater contamination exists, the responsible party may provide additional lines of evidence and a re-evaluation using a refined exposure point concentration of the 95% upper confidence limit. If sufficient data are not available to calculate a 95% upper confidence limit, the maximum constituent of potential concern concentration value shall be used for evaluation, or the director may approve an alternate value; or

(ii) Step 2. Derive a site-specific dilution attenuation factor and a site-specific groundwater protection soil screening level value. The development of the site-specific dilution attenuation factor shall follow "Supplemental Guidance for Developing Soil Screening Levels," US EPA, as incorporated by reference in Section R315-101-12. If the 95% upper confidence limit concentration exceeds the calculated groundwater protection soil screening level, the potential exists for future impacts to groundwater. The groundwater protection soil screening level value shall be the greater of either the maximum contaminant level or the risk-based groundwater protection soil screening level value for evaluation. If the potential for future groundwater contamination exists, the responsible party may choose to submit a work plan for approval by the director describing actions that will be taken to protect groundwater from future impacts due to soil contamination. In

addition, the work plan shall include a proposal for collection of sufficient monitoring data to evaluate both current and future groundwater conditions; or

(iii) Step 3. The responsible party shall propose an alternate method for evaluating potential future impacts to groundwater due to soil contamination to the director for approval. If it is determined that the potential for future groundwater contamination exists, the responsible party shall submit a work plan for approval by the director describing actions that will be taken to protect groundwater from future impacts due to soil contamination. In addition, the work plan shall include a proposal for collection of sufficient monitoring data to evaluate both current and future groundwater conditions.

(g) Tier 2 refined risk assessment. A Tier 2 refined risk assessment shall be conducted using the methodologies described in the "US EPA Risk Assessment Guidance for Superfund Sites," Parts A to F, as incorporated by reference in Section R315-101-12, and following standard land use exposure assumption scenarios listed in Subsections R315-101-5(g)(1) and R315-101-5(g)(2):

(1) Residential Land Use.

(i) child receptor; and

(ii) adult receptor

(2) Non-residential Land Use.

(i) commercial or industrial or both;

(ii) construction worker; and

(iii) trespasser or recreationalist as applicable.

(3)(i) The Tier 2 risk assessment shall assume no institutional or engineering controls in place, such as security, signage, pavements, personal protective equipment, fences or remediation.

(ii) The risk assessment shall use US EPA standard default exposure parameters, variables and equations based on reasonable maximum exposure in the evaluation, unless scientific evidence suggests otherwise. If a US EPA standard default exposure parameter or variable is not available, the responsible party shall use the "Exposure Factors Handbook," US EPA, as incorporated by reference in Section R315-101-12, for default values, or other sources as approved by the director.

(iii) A refined risk assessment may be conducted using site-specific exposure parameters and a Monte Carlo simulation in a probabilistic risk analysis with the approval of the director.

(4) Evaluations shall be conducted in accordance with US EPA approved standards and methodologies and other methodologies as approved by the director. This may include the following guidance:

(i) "Guidelines for the Health Risk Assessment of Chemical Mixtures," Risk Assessment Forum, EPA/630/R-98/002, as incorporated by reference in Section R315-101-12;

(ii) "Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Parts A-F)," Office of Emergency and Remedial Response EPA/504/1-89/002, Interim Final, as incorporated by reference in Section R315-101-12;

(iii) "Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors," US EPA OSWER Directive 9200.1-20, as incorporated by reference in Section R315-101-12;

(iv) "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures," US EPA, as incorporated by reference in Section R315-101-12;

(v) "Soil Screening Guidance Technical Background Document," US EPA and "Supplemental Guidance for Developing

Soil Screening Levels for Superfund Sites," US EPA, as incorporated by reference in Section R315-101-12;

(vi) "Guidelines for Carcinogen Risk Assessment," EPA/630/P-03/001F, as incorporated by reference in Section R315-101-12;

(vii) "Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens," EPA/630/R-03/00F, as incorporated by reference in Section R315-101-12;

(viii) "OSWER Technical Guidance for Assessing and Mitigating the Vapor Intrusion Pathway From Subsurface Vapor Sources to Indoor Air," US EPA OSWER 9200.2-154, as incorporated by reference in Section R315-101-12;

(ix) "Technical Guide For Addressing Petroleum Vapor Intrusion At Leaking Underground Storage Tank Sites," US EPA, as incorporated by reference in Section R315-101-12; and

(x) "Risk Assessment Guidance for Superfund, Part A, Volume III, Process for Conducting Probabilistic Risk Assessment," EPA 540-OR-02-002 OSWER 9285.7-45 PB 2002 963302, as incorporated by reference in Section R315-101-12.

(5) In performing the Tier 2 risk assessment, the responsible party shall use toxicity information for carcinogenic and non-carcinogenic effects in accordance with Subsections R315-101-5(i) and R315-101-5(j)(8).

(6) Risk characterization shall identify carcinogenic risks and non-carcinogenic risks for the constituents of potential concern.

(7) The age dependent adjustment factors shall be applied to carcinogens with a mutagenic mode of action.

(8) Risk characterization shall be based on cumulative risk effects and assumption of additivity in the absence of adequate evidence of toxicological interactions as follows.

(i) For non-carcinogenic toxicants acting by similar modes of action or affecting common organs, dose addition shall be followed.

(ii) For carcinogenic risks or toxicants acting independently, response addition shall be followed.

(9) Carcinogenic cumulative risk may also be calculated as the sum of the probabilities of each chemical across the exposure pathways for cumulative risks less than 0.01. For cumulative risks greater than 0.01, the One-Hit Model, as specified in "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual," Part A, US EPA, Office of Emergency and Remedial Response EPA/504/1-89/002, Interim Final, as incorporated by reference in Section R315-101-12, shall be used.

(10) Non-carcinogenic hazard indices shall be calculated as the sum of the non-carcinogenic effects for each chemical across the exposure pathways. However, if the hazard index is greater than one, the hazard quotients should be summed separately by target organ or mode of action.

(11) If total petroleum hydrocarbons are present, the risk assessment shall be evaluated using indicator compounds, and shall be conducted in accordance with Subsections R315-101-5(f), R315-101-5(f)(8), R315-101-5(g), R315-101-5(j), "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures," EPA/630/R-00/002, as incorporated by reference in Section R315-101-12, and the US DOE Risk Assessment Information System website, and in accordance with other procedures approved by the director.

(i) The cumulative risk of the petroleum mixture shall assume additivity, dose addition or response addition, unless there is data suggesting toxicological interaction.

(ii) The risk assessment shall be based on the conceptual site model identified in Subsection R315-101-4(a)(3) or R315-101-4(f)(13) as applicable.

(12) Current and future anticipated land use scenarios evaluation.

(i) The evaluation shall be based on current and reasonably anticipated future uses of the property. Sources of information on land uses may include:

(A) current zoning and comprehensive plan maps and applicable regulations provided by the local jurisdiction for the properties within the locality of the site;

(B) inquiries made and responses as to whether there are regional trends that are relevant to land uses and activities in the locality of the site;

(C) inquiries made of any environmental protection zones or regulations; and

(D)(I) the property owner's planned use of land.

(II) An inactive or vacant, fenced or non-fenced, property with no proposed land use in an area zoned for industrial or commercial land use or both shall be assumed to be reasonably used for industrial or commercial use or both in the future.

(III) An inactive or vacant, fenced or non-fenced, property in an area zoned for residential land use shall be assumed to be reasonably used for residential land use in the future.

(IV) For the protection of human health and the environment, if future anticipated land use conditions offer a more protective exposure scenario than the current land use scenario, the more protective future anticipated land use shall be evaluated.

(V) A summary of the results and conclusions along with supporting documentation as to what the current and reasonably anticipated future land uses are for parcels within the locality of the site shall be submitted with the Tier 2 refined risk assessment for approval.

(h) Data and results presentation.

(1) A risk assessment report shall be submitted to the director for review and approval. The report may be a stand-alone document or included in a site characterization or closure report. The risk assessment, whether submitted by itself or included in a larger report, shall include, at a minimum, the following:

(i) an executive summary;

(ii) an overview of the site;

(iii) a detailed discussion of areas of contamination;

(iv) an exposure assessment identifying exposure levels for the exposure pathways identified in Subsections R315-101-5(c) and R315-101-5(j)(4)(i);

(v) if fate and transport models are used, the user's manual, model theory, computer software for the model, installation verification data set for the model and input files for the model runs shall be provided upon request by the director;

(vi) the output results of the model runs;

(vii) background levels of identified hazardous constituents including any statistical methods used in evaluation of background data;

(viii) identification and concentration of the contaminants of interest identified in Subsection R315-101-4(f)(8);

(ix) a list of constituents of potential concern, contaminants of concern, and contaminants with mutagenic mode of action for human health and constituents of potential ecological concern;

(x) US EPA Regional Screening Levels or, when US EPA Regional Screening Levels are not used, the toxicity information of identified constituents of potential concern, specifically listing

mutagenic constituents of potential concern, including slope factors, inhalation unit risks, weight-of-evidence classification, non-carcinogenic chronic reference doses, age dependent adjustment factors, chronic reference concentrations and critical effects associated with reference doses and reference concentrations, toxicity reference values and any other ecological benchmarks used in the risk assessment;

(xi) a list of identified ecological receptors;

(xii) a list of identified ecological habitats;

(xiii) risk characterization calculations including data used; and

(xiv) the risk characterization identifying carcinogenic risk and non-carcinogenic risk for the constituents of potential concern, ecological hazard indices as determined in accordance with Subsection R315-101-5(j), uncertainties analysis, and a tabulation of the risk characterization data presented in a format approved by the director.

(2) If the risk assessment report does not contain the required information of sufficient quality and detail, the director will notify the responsible party in writing of deficiencies and shall require resubmittal of the report in a designated time frame.

(3) If the risk assessment report contains the required information of sufficient quality and detail, the director will approve, the risk assessment report in writing.

(i) Identification of sources of toxicity information.

(1) Sources of toxicity information gathered for identified hazardous constituents, weight-of-evidence classification and critical effects associated with reference doses and reference concentrations shall be in order of preference based on the US EPA hierarchy of human health toxicity values tiered system, "Human Health Toxicity Values in Superfund Risk Assessment," EPA OSWER Directive 9285.7-53, as incorporated by reference in Section R315-101-12. The approved hierarchy, in order of acceptance is as follows:

(i) US EPA Integrated Risk Information System.

(ii) US EPA Provisional Peer Reviewed Toxicity Values.

(iii) Additional sources may include US EPA and non-US EPA sources of toxicity information with priority given to sources that have been peer reviewed including the following:

(A) California Environmental Protection Agency toxicity values;

(B) Agency for Toxic Substances and Disease Registry Minimal Risk Levels;

(C) US EPA additional sources; or

(D) US EPA Health Effects Assessment Summary toxicity data.

(2) US EPA Regional Screening Levels; and

(3) US DOE Risk Assessment Information System website.

(j) Ecological risk assessment.

(1) Before conducting the risk assessment, the responsible party shall submit a work plan for approval.

(2) An ecological risk assessment for the site shall include terrestrial and aquatic processes as appropriate using toxicity information for the constituents and biological processes relevant to the ecological evaluation. This shall include plants, soil invertebrates, benthic invertebrates, wildlife species and other ecological receptors as approved by the director. A list of all ecological receptors of interest shall also be included.

(3) A waiver of Subsection R315-101-5(j) may be granted by the director if the responsible party demonstrates that ecological receptors will not be affected by any contamination using any of the following criteria:

(i) environmental conditions at the site may be used to eliminate the need for ecological risk assessment;

(ii) the affected property is not a viable habitat and the site cannot be used by potential ecological receptors as a habitat;

(iii) complete or potentially complete exposure pathways do not exist due to prevailing conditions or property setting; or

(iv) detected chemicals at the site are below the ecological screening bench mark levels.

(4) An ecological risk assessment for a site shall be conducted to include the following information:

(i) a problem formulation, identification of constituents of potential ecological concern, identification of habitats, media sampled, potential ecological effects, relevant ecological receptors, relevant exposure pathways, initial definition of assessment and measurement endpoints, with respect to current and reasonably anticipated future land and water uses as described in a conceptual site model;

(ii) the data quality objectives for the ecological risk assessment shall be based on the conceptual site model, with emphasis on analytical detection limits appropriate for ecological receptors;

(iii) an exposure analysis to include identification and selection of constituents of potential ecological concern, identification and selection of target or representative ecological receptors, an exposure pathway model relating target or representative receptors, exposure routes and measurement endpoints for both current and reasonably anticipated future land and water use scenarios;

(iv) an ecological response analysis including a summary of current information regarding the toxicological effects, ecological effects, bioconcentration potential, bioaccumulation potential, biomagnification potential, persistence of the identified constituents of potential ecological concern and ecological benchmark values;

(v) a risk characterization presenting the quantitative ecological risks potentially associated with the site, a discussion of any available site-specific ecological studies, a detailed discussion of risks associated with the bioconcentration potential, bioaccumulation potential, biomagnification potential, and persistence of each contaminant, and consideration of any other available, published and peer reviewed scientific information on other sources of adverse ecological conditions as appropriate;

(vi) an evaluation of the potential for significant adverse effects on the health or viability of individual ecological receptors or local populations, including a weight-of-evidence analysis or population viability analysis. These evaluations may include field studies, laboratory investigations, appropriate population models, or any combination of these or other methods of evaluation as approved by the director; and

(vii) a quantitative and qualitative uncertainty analysis as appropriate for each element of the risk assessment.

(5) Ecological risk assessment estimates shall be conducted:

(i) at the individual level for species present in the locality of the site if the species is listed as threatened or endangered, or is a state sensitive species; and

(ii) at the population level for any other species of plants or animals in the locality of the site.

(6) Cumulative hazard from multiple hazardous substances shall be assessed by summing the hazards posed separately by individual hazardous substances in the locality of the site, unless it is demonstrated that the summation assumption is not appropriate.

(7) Ecological risk assessment shall be conducted in accordance with the following:

(i) "Framework for Ecological Risk Assessment," EPA/630/R-92/001, as incorporated by reference in Section R315-101-12;

(ii) "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments Interim Final," EPA 540-R-97-006, OSWER 9285.7-25, PB97-963211, as incorporated by reference in Section R315-101-12;

(iii) "Guidelines for Ecological Risk Assessment," US EPA, as incorporated by reference in Section R315-101-12;

(iv) US EPA "Guidance for Developing Ecological Screening Levels," US EPA, as incorporated by reference in Section R315-101-12; and

(v) any other sources as approved by the director.

(8) Appropriate sources of exposure factor information and toxicological parameters may include the following:

(i) "Wildlife Exposure Factors Handbook," US EPA, as incorporated by reference in Section R315-101-12;

(ii) "Toxicological Benchmarks for Wildlife," Oak Ridge National Laboratory (ORNL), as incorporated by reference in Section R315-101-12;

(iii) Los Alamos National Laboratory (LANL) ECORisk Database;

(iv) US EPA Ecological Soil Screening Levels;

(v) "Guidance for Developing Ecological Soil Screening Levels," US EPA, as incorporated by reference in Section R315-101-12; and

(vi) any other sources as approved by the director.

(9) In the absence of available and acceptable toxicity information, the director may require the development of site-specific toxicity information.

(10) An ecological risk assessment shall be conducted using a tiered evaluation approach as described in Subsections R315-101-5(j)(10)(i) through R315-101-5(j)(10)(x).

(i) A Tier 1 ecological screening risk assessment shall use conservative assumptions and shall include:

(A) a conceptual site model;

(B) an evaluation of fate and transport mechanisms;

(C) an identification of constituents of potential ecological concern;

(D) a characterization of the ecological setting; and

(E) a selection of toxicity endpoints and receptors of ecological significance.

(ii) Tier 1 ecological screening risk assessment - exposure pathways:

(A) each ecological receptor is considered to be exposed to constituents of potential ecological concern in soil in the zero to two feet below ground surface interval. In addition, burrowing animals and deep rooted plants may be considered to be exposed to constituents of potential ecological concern in soils deeper than two feet; and

(B) exposure pathways may include ingestion, inhalation, direct contact for burrowing receptors, exposure through uptake of biota exposed to constituents of potential ecological concern, and plant uptake of constituents of potential ecological concern.

(iii) The exposure assessment for the Tier 1 ecological screening risk assessment shall be conducted by assuming:

(A) the maximum detected concentrations as the exposure point concentration for calculating exposure doses;

(B) the area use factor is equal to one indicating that the home range of the receptor is the entire contaminated area;

(C) the bioavailability of contaminants is equal to 100%;
(D) the maximum reported ingestion rate from literature;
(E) the dietary composition consists of direct ingestion of 100% of the constituents of potential ecological concern levels in soil;

(F) each calculation is performed on a dry-weight basis; and

(G) minimum receptor body weight.

(iv) The toxicity assessment for the Tier 1 ecological screening risk assessment shall be conducted by assuming:

(A) for wildlife, the dose-based toxicity reference values, which are receptor, media, and chemical specific, shall be the applicable protective standards available in peer reviewed literature sources;

(B) the toxicity reference values selected shall be those based on no observed adverse effects levels for evaluation;

(C) the responsible party may use a literature search to determine availability of data for derivation of a toxicity reference value if detected constituents of potential ecological concern have no published toxicity reference values, and shall provide the following:

(I) the responsible party shall provide supporting data to the director for approval of the newly derived toxicity reference value; and

(II) if the responsible party cannot derive a toxicity reference value based on literature, the detected constituents of potential ecological concern shall be addressed qualitatively in the uncertainty analysis of the ecological risk assessment report;

(D) for plants and other invertebrate receptors, such as soil organisms, benthic organisms and aquatic organisms, concentration-based effects benchmarks shall be used;

(I) concentration levels identified in peer reviewed literature sources shall be used as measurement endpoints for evaluation of chemical effects on receptors;

(E) the effects concentration levels shall be the no observed effects concentrations; and

(F) the responsible party may use a literature search to determine availability of data for derivation of effects concentration levels if detected constituents of potential ecological concern have no published effects concentration levels;

(I) the responsible party shall provide supporting data to the director for approval of the newly derived effects concentration levels; and

(II) if the responsible party cannot derive effects concentration levels based on literature, the detected constituents of potential ecological concern shall be addressed qualitatively in the uncertainty analysis of the ecological risk assessment report.

(v) The risk characterization of the Tier 1 ecological screening risk assessment.

(A) For plants and other invertebrate receptors, a screening hazard quotient, shall be calculated as the maximum detected exposure concentration of constituents of potential ecological concern divided by the no observed effects concentration.

(B) For wildlife, a screening hazard quotient shall be calculated as the estimated exposure dose or contaminant intake divided by the no observed adverse effects level-based toxicity reference value.

(C) Tier 1 screening results.

(I) If the calculated screening hazard quotient or hazard index is less than or equal to one, no further evaluation is required.

(II) If the calculated screening hazard quotient or hazard index is greater than one, then there may be the potential for adverse ecological risk from the detected constituents of potential ecological

concern at the site. The responsible party shall either conduct corrective action or conduct further evaluation in a Tier 2 refined ecological risk assessment.

(vi) A Tier 2 refined ecological risk assessment shall:

(A) use constituents of potential ecological concern with screening hazard quotients or hazard indices greater than one for a refined problem formulation; and

(B) use site-specific exposure assumptions in Subsections R315-101-5(j)(10)(ii) and R315-101-5(j)(10)(iii) for the refined evaluation.

(vii) The exposure assessment in the Tier 2 refined ecological risk assessment shall include exposure dose calculated utilizing site-specific exposure assumptions as follows:

(A) exposure point concentration:

(I) calculate exposure point concentration as the 95% upper confidence limit if sufficient data are available in accordance with US EPA ProUCL software; and

(II) if sufficient data are not available to calculate the 95% upper confidence limit, an alternate value, as approved by the director, shall be used as the exposure point concentration;

(B) estimate the site-specific area use factor for each representative receptor by dividing the receptor's average home range by the area of contamination or area of the solid waste management units:

(I) this estimate shall have a value between zero and one;

(C) the bioavailability of constituents of potential ecological concern shall be assumed to be other than 100% based on available literature or other sources as approved by the director;

(D) the ingestion rate for each representative receptor shall be assumed to be the average reported ingestion rate in reported literature or estimated from average body weight using allometric equations;

(E) the dietary composition shall be based on receptor specific percentages of plant, animal, and soil matter;

(i) the non-dietary ingestion of soil shall be assumed to be in addition to the dietary intake rate to add up to 100%, soil and dietary items;

(F) the concentrations of constituents of potential ecological concern in receptor dietary elements, plant and animal matter, shall be predicted by using bio uptake and bioaccumulation models;

(G) each calculation shall be performed on a dry-weight basis;

(H) if a bioaccumulation model is not available, 100% uptake factor shall be assumed;

(I) each equation and variables used to estimate constituents of potential ecological concern in plants shall be listed;

(J) the methodologies for determination of bioaccumulation factors for the constituents of potential ecological concern shall be documented; and

(K) exposure doses for wildlife receptors shall be assessed using bio uptake and bioaccumulation modeling to predict the concentration of constituents of potential ecological concern in animal matter that may be ingested by wildlife receptors.

(viii) The toxicity assessment for a Tier 2 refined ecological risk assessment shall be based on:

(A) the lowest observed adverse effects levels for wildlife receptors and lowest observed effects concentrations for plants and invertebrate receptors; and

(B) the toxicity reference values shall be based on the lowest observed adverse effects levels for each wildlife receptor and shall be based on lowest observed effects concentrations for any other

receptors including invertebrates, with the exception of endangered, threatened and sensitive species for which a no observed adverse effects level applies.

(ix) The risk characterization of the Tier 2 refined ecological risk assessment.

(A) For wildlife vertebrate receptors, a hazard quotient shall be calculated as the ratio of the estimated receptor-specific contaminant intake or dose to the lowest observed adverse effects level-based toxicity reference value.

(B) For plants and other invertebrate receptors, a qualitative discussion of the potential for adverse effects shall be provided in the assessment. The assessment shall be based on plant hazard quotients or hazard indices as well as site observations that were made during a habitat survey.

(C) Hazard quotients shall be summed for the constituents of potential ecological concern with similar receptor-specific modes of toxicity.

(D) Tier 2 assessment results.

(I) If the hazard quotient or the hazard index is less than or equal to one, adverse ecological effects are not expected and no further action is needed.

(II) If the hazard index is greater than one, there is potential for adverse ecological effects to occur at the site and the responsible party shall either conduct corrective action or conduct further evaluation in a Tier 3 refined ecological risk assessment as outlined in Subsection R315-101-5(j)(10)(x).

(x) A Tier 3 refined ecological risk assessment shall be conducted based on:

(A) a site-specific ecological evaluation;

(B) uptake factors, bioaccumulation factors, bioavailability factors, and plant uptake factors determined from the analysis of animal and plant tissue collected at the site;

(C) the evaluation of unique exposure pathways and effects of exposure to various life stages or other assessment endpoints as determined by the director;

(D) the evaluation of habitat suitability including habitat quality; and

(E) the calculation of refined hazard quotients and hazard indices for the constituents of potential ecological concern shall take into account information from Subsections R315-101-5(j)(10)(i) through R315-101-5(j)(10)(x).

(xi) Tier 3 refined ecological risk assessment results and possible outcomes.

(A) If the Tier 3 refined evaluation results in a hazard index greater than one, the responsible party, shall, in conjunction with the results of a Tier 2 refined evaluation, use several lines of evidence and a weight-of-evidence approach to facilitate a final determination regarding the need for corrective action.

(B) Site remediation shall be required if unacceptable or potential significant adverse ecological effects are documented by the risk assessment results.

(C) The director has the discretion to require corrective action at the site based on data and ecological significance as reported.

(11) Results presentation.

An ecological risk assessment report shall be prepared and submitted to the director in accordance with the requirements in Subsection R315-101-5(h).

R315-101-6. Corrective Action.

(a) Corrective action is required at a site when:

(1) the level of risk present at the site is greater than 1×10^{-4} for carcinogens and a hazard index greater than one for non-carcinogens for the risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1) or R315-101-5(g)(2);

(2) the director determines that ecological effects are significant based on the approved assessment conducted in accordance with Subsection R315-101-5(j); or

(3)(i) groundwater contamination is exceeded, on-site or off-site, in accordance with Subsection R315-101-4(f)(15) or groundwater contaminant concentrations have been shown to be above a corrective action level using a statistical corrective action test in accordance with "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities" US EPA Unified Guidance, as incorporated by reference in Section R315-101-12, or the "Groundwater Statistics and Monitoring Compliance Guidance Document," Interstate Technology Regulatory Council (ITRC), as incorporated by reference in Section R315-101-12; or

(ii) residual contamination present at the site poses a potential threat to groundwater in accordance with Subsection R315-101-5(f)(8) and "Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites," US EPA, as incorporated by reference in Section R315-101-12, and "Soil Screening Guidance Technical Background Document," US EPA, as incorporated by reference in Section R315-101-12.

(b) The responsible party shall submit a corrective action work plan that includes the responsible party's proposed remedial option for cleanup of the site for review and approval before implementation of the corrective action activities at the site. Determination of appropriate corrective action measures shall be made in accordance with criteria identified in Subsection R315-101-1(c). Any proposed modifications to the approved plan shall be reviewed and approved by the director before implementation of the proposed modification.

(c) Any corrective action levels proposed shall be protective of the complete exposure pathways or potentially complete exposure pathways for all receptors.

(d) The responsible party shall submit a corrective action report after completion of corrective action activities at the site to the director for review and approval.

(e) The corrective action report shall include a request for a corrective action completeness determination from the director.

R315-101-[6]7. Risk Management: Site Management Plan and Closure Equivalency.

(a) A determination of no further action or corrective action complete without controls or unrestricted land use or risk-based clean closure and no site management shall be approved when:

(1) the level of risk present at the site is equal to or less than 1×10^{-6} as the point of departure for carcinogens and the hazard index is less than or equal to one for non-carcinogens based on the approved risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1);

(2) the director determines that ecological effects as the site are insignificant based on the approved assessment conducted in accordance with Subsection R315-101-5(j); and

(3) current impacts to groundwater are insignificant in accordance with Subsection R315-101-4(f)(15) and residual contamination present at the site possess no future threat to groundwater in accordance with Subsection R315-101-5(f)(8) and "Soil Screening Guidance Technical Background Document," US EPA, as incorporated by reference in Section R315-101-12, or

groundwater contaminant concentrations have been shown to be below a corrective action level using statistical corrective action test in accordance with "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities," US EPA Unified Guidance, as incorporated by reference in Section R315-101-12 or the "Groundwater Statistics and Monitoring Compliance Guidance Document," Interstate Technology Regulatory Council (ITRC) as incorporated by reference in Section R315-101-12, as applicable.](a) A site management plan which is supported by the findings in the approved risk assessment report shall be submitted to the Director within 60 days of approval of the risk assessment report. This plan may be submitted along with the risk assessment report and must include a schedule for implementation.]

(b) A determination of corrective action complete with controls or restricted land use or no further investigation and site management plan shall be approved when:

(1) the level of risk present at the site is greater than 1×10^{-6} but less than 1×10^{-4} for carcinogens and the hazard index is less than or equal to one for non-carcinogens based on the approved risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1) or R315-101-5(g)(2); and

(2) clean closure is not supported by conclusions of either the site investigation or corrective action risk assessment.

[(b) The Director shall review and approve or disapprove of the conclusions of the proposed site management plan. If the Director finds that the site management plan is not adequate for protection of human health and the environment, the responsible party shall then submit a revised site management plan addressing the comments of the Director within an appropriate time frame as specified by the Director. The Director shall review and approve or reject the revised site management plan. Upon draft approval of the site management plan, the Director shall follow the requirements of R315-101-7 prior to issuance of final approval. The approved site management plan shall be implemented according to the approved schedule. If the Director rejects this revised site management plan, the revised plan will be considered deficient for the reasons specified by the Director in a statement of disapproval.](c) The site management plan shall:

(1) be submitted within 60 days of approval of the risk assessment report and include a schedule for implementation;

(2) be supported by the findings in the approved risk assessment report and contain appropriate site management activities;

(3) encompass any activities, controls and conditions necessary to manage the risk to human health and the environment so that acceptable risk levels are not exceeded under current or reasonably anticipated future land use conditions;

(4) ensure that the assumptions made in the estimation of risk and applicable target risk levels are being met; and

(5) ensure that adverse ecological effects are controlled and managed so that documented hazard quotients and indices are less than or equal to one.

[(e)(1) The site management plan may contain a no further action option only if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8);

(2) The requirements of Subsections R315-270-1(e)(5) and (6) shall be deemed met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens

and a Hazard Index of "less than or equal to one" for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If this risk exposure criterion is met, a request for a risk-based closure may be submitted; or

(3) If the risk present at the site is greater than or equal to 1×10^{-6} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based upon the exposure assessment conducted in accordance with R315-101-5.2(b)(1), or the Director determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), a risk-based closure will not be granted. The responsible party shall then submit a site management plan fulfilling the requirements of R315-101-6(d) or (e) as applicable.](d) Appropriate site management activities shall be measures and controls taken to manage and reduce risks greater than 1×10^{-6} but less than 1×10^{-4} under both current and reasonably anticipated future land use conditions, through land use controls, such as institutional controls and engineering controls, groundwater monitoring, post-closure care, or corrective action as determined by the director on a case-by-case basis as defined in Subsection R315-101-13(f).

[(d) If the level of risk present at the site is less than 1×10^{-4} for carcinogens and a hazard index is "less than or equal to one" for the risk assessment conducted in accordance with R315-101-5.2(b)(2) but greater than or equal to 1×10^{-6} for carcinogens or a hazard index is greater than one for a risk assessment conducted in accordance with R315-101-5.2(b)(1) or the Director determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the site management plan may contain, but is not required to contain, procedures for corrective action. The site management plan shall contain appropriate management activities e.g., monitoring, deed notations, site security, or post closure care, as determined on a case-by-case basis in accordance with criteria identified in R315-101-1(b)(4).](e) The site management plan shall be reviewed and approved by the director before implementation of the plan. Before approval, the site management plan shall be subject to the public notice requirements of Section R315-101-10.

[(e) The site management plan must contain procedures for corrective action if the level of risk present at the site is greater than or equal to 1×10^{-4} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(2) or the Director concludes that corrective action is required to mitigate ecological effects based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). For determination of appropriate corrective action the criteria identified in R315-101-1(b)(4) shall be considered.](f)(1) If the director finds that the site management plan is not adequate for protection of human health and the environment, the responsible party shall resubmit a revised site management plan addressing the comments of the director within an appropriate time frame as specified by the director. The director shall review and approve or reject the revised site management plan. The responsible party shall resubmit the site management plan addressing the deficiencies in a time frame specified by the director.

(2) The site management plan shall be implemented in accordance with the approved schedule.

[(f) If hazardous constituents are present only in groundwater at the site, and if the hazardous constituents are listed in Table 1 of Section R315-264-94, the Maximum Concentration Levels listed in Table 1 can be presented in lieu of health risk estimates for

~~these constituents. The RME for Table 1 constituents must be determined in accordance with approved site characterization methods listed in R315-101-4.]~~

~~(g)(1) Upon completion of the requirements in Subsection R315-101-7(a), corrective action shall be considered complete without controls and the land is acceptable for unrestricted use.~~

~~(2) The requirements of Subsections R315-270-1(c)(5) and (6) shall be deemed met if Subsection R315-101-7(a) is met.~~

~~(h) The site management plan shall include a land use control plan that specifies allowable and prohibited use of the site.~~

~~(i) Land use controls shall guarantee that pathways of exposure to contaminants of concern remain incomplete for as long as there are hazardous wastes or hazardous waste constituents remaining that could pose an unacceptable risk to human health and the environment.~~

~~(j) Land use controls shall be reliable, enforceable, and consistent with the risk posed by the contaminants of concern as documented in the approved risk assessment report. Land use controls may include engineering controls such as capping, paving, fencing, signage, site security, and institutional controls, such as post-closure care and land use restrictions, as determined on a case-by-case basis and approved by the director.~~

~~(k) In instances where contamination, including groundwater, has migrated off-site, and the director determines that the contaminant concentration poses a potential risk exceeding the acceptable risk level for residential land use exposure scenario defined in Subsection R315-101-5(g)(1), the responsible party shall:~~

~~(1) Submit a proposed written notice of contamination to the director for approval before its distribution to the off-site property owners affected or potentially affected by the contamination.~~

~~(i) The written notice shall at a minimum, include the following:~~

~~(A) names of the contaminants detected above applicable screening levels;~~

~~(B) the corresponding screening levels;~~

~~(C) the respective detected contaminant concentrations; and~~

~~(D) adverse effects on human health and the environment.~~

~~(2) Notify the off-site property owners, in writing, within 30 days of director approval of written notice.~~

~~(3) Provide the director with a certified mail return receipt, or any other form of delivery that provides confirmation of receipt.~~

~~(4) With the property owner's consent, and with the director's approval, conduct corrective action in accordance with Section R315-101-6 to reduce concentrations of constituents of concern on the property to or below residential land use exposure scenario defined in Subsection R315-101-5(g)(1) or R315-101-4(f)(15) as applicable, if it is determined by the director that the action is necessary for protection of human health and the environment, or that groundwater use is designated as a drinking water source or is potentially a drinking water source; or~~

~~(5) If groundwater contamination has migrated off-site but Subsections R315-101-7(k)(1) through R315-101-7(k)(4) are not applicable, the responsible party shall inform the off-site property owner in writing of the contamination, as required by Subsection R315-101-7(k)(1), and with the property owner's consent, and with the director's approval, conduct corrective action in accordance with Section R315-101-6 to reduce concentrations of contaminants of concern on the off-site property to non-residential land use exposure levels consistent with the requirements of Subsection R315-101-5(g)(2) and the designated groundwater use, and develop a site management plan in accordance with Section R315-101-7. The~~

~~responsible party shall prepare and obtain the director's approval for an environmental covenant concerning the property. The responsible party shall request the property owner to record the environmental covenant and document to the director its efforts to have the environmental covenant recorded.~~

~~(l) If the responsible party cannot gain access to further characterize the off-site property, or to assess and manage risks, or to conduct corrective action on the off-site property, the responsible party shall:~~

~~(1) document each attempt to gain access to the off-site property, and obtain concurrence from the director that the attempts made were reasonable and that no further attempts need to be made;~~

~~(2) meet the applicable target risk levels or some approved groundwater protection standards at the boundary of the site; and~~

~~(3) with a site management plan approved by the director, take the necessary actions to prevent further migration of contaminants of concern beyond the site boundary.~~

~~(m) For impacts to off-site groundwater, surface water bodies and sediments, and other media, the corrective action levels shall be protective of each receptor, human and ecological, for each current and potential future exposure pathway.~~

~~(n) The site management plan in Subsections R315-101-7(k)(5) and R315-101-7(l)(3) addressing off-site and site groundwater contamination respectively, shall include the activities and conditions necessary to address current and potential future impacts to groundwater. The proposed controls and measures shall be consistent with Section R315-101-3 and prevent further groundwater degradation at the site or off-site property so that risks are controlled, reduced or maintained at levels within the acceptable risk range as defined in Subsection R315-101-13(c).~~

~~(o) Once the site management plan as specified in Subsection R315-101-7(b), R315-101-7(k)(5) or R315-101-7(l)(3) as applicable has been approved by the director, the contamination level shall not be allowed to exceed the level of risk specified in the plan. The responsible party has the burden to demonstrate that future levels of contamination at either the site or off-site property or both are either below or within the range of risk levels specified in the site management plan.~~

~~(p) If the responsible party cannot demonstrate that the level of contamination at either the site or off-site property or both is either below or within the range of risk levels specified in the site management plan, then further corrective action may be required as determined by the director to bring the risk levels to within the acceptable risk range as specified in the site management plan. A revised site management plan may be required by the director.~~

~~(q) In instances where contaminated groundwater has been determined by the director as having no complete exposure pathways and there is no migration of the contaminated plume off-site, or when the director has approved a claim of technical impracticability for corrective action, then, instead of meeting specific cleanup levels, the acceptable management goals and remedy, shall be the following:~~

~~(1) source control of releases of contaminants that may pose a threat to human health and the environment;~~

~~(2) protection of human health and the environment from any potential exposure pathways to contaminated groundwater;~~

~~(3) long-term plume containment system for protection of human health and the environment;~~

~~(4) perpetual care obligation of the responsible party;~~

~~(5) periodic groundwater monitoring, unless terminated by the director after an evaluation of the site-specific conditions and risk characteristics, to demonstrate that contaminant levels are not increasing and the groundwater plume is stationary; and,~~

(6) periodic re-evaluation of the technical impracticability decision as part of routine performance monitoring to ensure long-term protection of human health and the environment.

R315-101-8. Contents of a Site Management Plan, Land Use Controls, Environmental Covenants, Restrictions, Controls and Conditions.

(a) The content of the site management plan. The site management plan to be approved by the director shall contain at a minimum:

(1) a legal description of the site including a legal plat map, a copy of the recorded deed showing ownership, and documents showing all liens;

(2) a summary of the media investigations conducted at the site including the characterization, delineation and listing of identified constituents of potential concern and contaminants of concern;

(3) a summary of the completed human health risk assessment and ecological risk assessment performed in accordance with Section R315-101-5;

(4) an implementation schedule of the site management plan within the site;

(5) a description of the groundwater conditions under the site and within the impacted aquifer, as defined in a site characterization report and including activity and use limitations for potable, culinary, domestic, process, irrigation or any other groundwater uses;

(6) a complete list of the persons or entities that have rights of reasonable access to the site at any time after the effective date of the site management plan for activities such as monitoring and compliance with the site management plan, along with any other terms and conditions of the site management plan;

(i) the site management plan shall also indicate that persons with legal interest in land and those subject to the site management plan are required to allow compliance with the site management plan;

(7) provisions that the director, and the director's authorized officers, employees, or representatives may at any reasonable time and upon presentation of appropriate credentials, have access to the site to monitor, sample or determine compliance with the site management plan or environmental covenant;

(8) a list of the contact names and information for site management plan inquiries; and

(9) a general description of any site-specific groundwater monitoring including:

(i) a general overview of the proposal;

(ii) a summary of site groundwater conditions; and

(iii) the current and potential uses of groundwater and the contaminants of concern.

(b) Activities related to monitoring potential contamination of the groundwater at the site shall be conducted under an approved groundwater monitoring plan. The responsible party shall submit a draft plan to the director and shall not proceed with any portion of the plan until the director has given written approval.

(1) Based on the results of the groundwater monitoring, the potential need for additional site management activities shall be evaluated and implemented, if necessary, to protect human health and the environment. Groundwater monitoring shall be the responsibility of the property owner and its assignees.

(c) If an existing groundwater monitoring well is lost, abandoned, destroyed, or needs to be relocated for development purpose, the owner shall replace the wells in an area that provides the

groundwater data required by the site management plan. Any proposal to replace groundwater monitoring wells requires review and approval by the director. If drinking water wells are proposed, the responsible party shall provide prior notice to the director after obtaining either any necessary permits approval or both for the installation of the proposed drinking water wells by the appropriate state, local or other regulatory agencies.

(d) Site management plan modification and termination. The site management plan shall be subject to review and may be terminated or modified as follows.

(1) If groundwater sampling data within the site or off-site property indicates that approved groundwater corrective action levels found in Subsections R315-101-4(f)(15), R315-101-6(a)(3)(i), and R315-101-7(k)(4), as applicable, have been met for the site or impacted off-site property, the responsible party may request modification or termination of the groundwater monitoring program, as follows:

(i) groundwater data shall be evaluated using a statistical corrective action test in accordance with the "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, Unified Guidance," US EPA, or the "Groundwater Statistics and Monitoring Compliance Guidance Document," Interstate Technology Regulatory Council (ITRC), as incorporated by reference in Section R315-101-12;

(ii) a demonstration that future levels of contamination will not exceed the approved groundwater corrective action levels; and

(iii) land use controls, either engineering or institutional or both, shall be relied upon to ensure protection of human health and the environment if the approved corrective action levels are more than the drinking water standards, maximum contaminant levels.

(2) If soil sampling data, including soil vapor, within the site or off-site indicate corrective action levels as found in Section R315-101-6 have been met for the soil portion of the site, the owner may request a modification or termination of the section of the site management plan addressing soil management at the site or at an impacted off-site property.

(3) If the owner or responsible party satisfies Subsections R315-101-8(d)(1) and R315-101-8(d)(2) and, in addition, meets the requirements defined in Subsection R315-101-7(a), the owner may request a corrective action complete without controls determination or a no further action determination.

(4) If Subsection R315-101-8(d)(3) is satisfied, a request for termination of the site management plan and the environmental covenant may be submitted to the director for approval.

(5) The director may require public comment on any modifications or termination of the approved site management plan and environmental covenant in accordance with Section R315-101-10.

(6) The director may require a re-evaluation of the approved risk assessment, the site management plan and the environmental covenant upon receipt of new information or data that brings into question the protectiveness of the existing site management plan.

(e) Land use controls.

(1) The site management plan shall identify land use limitations for the site, such as residential, industrial, commercial, recreational, agricultural or any other comparable use with a similar level of human occupancy and exposure. The site management plan shall also identify the land use controls to be placed upon the site. Any subsequent plans for development of the site shall demonstrate to the director that the level of risk present for the proposed use shall

not exceed the applicable risk levels specified in the site management plan.

(2) The site management plan shall contain as many land use controls, institutional and engineering, as is deemed necessary to protect human health and the environment. Controls may include maintaining pavement, capping, soil excavation restrictions, and groundwater use limitations. Each control shall be approved by the director.

(3) The proposed land use controls shall be developed and included in the site management plan.

(4) Land use controls shall be used at any site where cumulative carcinogenic risk exceeds a level of 1×10^{-6} but is less than 1×10^{-4} after cleanup or as indicated by the approved risk assessment report.

(5) Land use controls shall ensure that pathways of exposure to contaminants of concern remain incomplete for as long as there are contaminants of concern remaining that could pose an unacceptable risk to human health or the environment.

(6) Land use controls shall be enforceable pursuant to Section 57-25-111 and consistent with the risks posed by the contaminants of concern reported in the approved risk assessment report. The responsible party, or a subsequent land owner who assumes the responsibility of maintaining land use controls, shall be responsible for reimbursing the agency for any costs associated with periodic administrative oversight to ensure that land use controls are maintained and are in compliance with the site management plan. Costs shall not exceed the authorized statutory rate for technical oversight by the agency at the time of service.

(f) An environmental covenant. An environmental covenant pursuant to Sections 57-25-101 through 57-25-114 shall be required for each site unless it has been documented that any contaminants of interest at the site are at or below background levels or the following requirements have been met:

(1) the level of risk is less than or equal to 1×10^{-6} for carcinogens and the hazard index is less than or equal to one for non-carcinogens pursuant to the risk assessment conducted assuming the land use exposure scenario defined in Subsection R315-101-5(g)(1);

(2) the ecological effects have been determined to be insignificant; and

(3) there are no current or potential future impacts to groundwater.

(g) The content of the environmental covenant. The environmental covenant shall contain at a minimum:

(1) a brief narrative description of the contamination and remedy;

(2) a list of the constituents of potential concern and contaminants of concern;

(3) a list of the exposure pathways;

(4) the limits of exposure;

(5) the locations and extent of the contamination;

(6) a brief narrative description of land use limitations for the site;

(7) any groundwater use limitations;

(8) any ground surface use limitations; and

(9) any worker safety limitations.

(h) For all legal interests in the subject property created after the recording of the environmental covenant and for all interests voluntarily subordinated to the environmental covenant the environmental covenant shall indicate that persons with legal interest in land and those subject to the site management plan are required to maintain compliance with the site management plan.

(i) The environmental covenant shall include provisions that the director, and the director's authorized officers, employees, or representatives may at any reasonable time and upon presentation of appropriate credentials, have access to the site to monitor, sample or determine compliance with the site management plan or the environmental covenant.

(j) The terms and conditions of the land use controls established on the property shall be consistent with the environmental covenant recorded for the site.

(k) Within 30 days of the director signing the environmental covenant, the owner shall record the approved environmental covenant with the county recorder's office, and within 30 days of recording shall submit a copy of the recorded document to the director.

(l) Restrictions, controls and conditions. Restrictions, controls and conditions specified in the environmental covenant and the site management plan shall be enforceable by the director under Section 57-25-111 and Rule R315-101.

R315-101-9. Owner Responsibilities.

(a) The owner or responsible party shall ensure compliance with the environmental covenant and the land use restrictions such as groundwater use restrictions, soil removal restrictions, hazard notifications, implementation of the groundwater monitoring program and any other restrictions or conditions cited in the site management plan. Documentation of compliance with the site management plan requirements shall be submitted to the director upon request.

(b) The owner or responsible party shall notify present and future workers at the site of the residual risk at the site and the existence of the site management plan. This includes site workers present for a typical work week and construction workers who may be temporary. If the site management plan specifies controls to prevent workers from exposure, the owner or responsible party shall provide those controls.

(c) Within 48 hours of becoming aware of a deviation from the site management plan the owner or responsible party shall notify the director of the deviation. The owner or responsible party shall submit to the director a written report within 30 days detailing the nature of the deviation and an evaluation of whether the situation and existing site management practices compromise the level of protection afforded by the original site management plan requirements and whether an alternate site management plan is needed to provide a comparable level of protection. Any proposed modification to the site management plan requirements shall require director approval.

(d) The environmental covenant shall run with the land and shall be binding on the current and all subsequent owners. The site management plan requirements shall be imposed and enforced on the current owner through an environmental covenant. Additionally, after the environmental covenant is recorded in the appropriate county recorder's office, each deed, title or other instrument conveying an interest in the property executed by the owner or the owner's successors in title to the property shall include a notice stating that the property is subject to the site management plan and environmental covenant, and shall reference the recorded location of the site management plan and environmental covenant and the restrictions applicable to the property in the site management plan.

(e) In instances where groundwater contamination has migrated off-site, and the director determines that the contaminant concentration poses a potential risk, the responsible party shall notify

the impacted off-site property owners in accordance with Subsections R315-101-7(k) and R315-101-7(l).

(f) The responsible party, with the approval of the director, shall comply with Subsection R315-101-7(k)(4), R315-101-7(k)(5) or R315-101-7(l) as applicable.

R315-101-7]10. Public Participation.

(a) The [D]director may provide for public participation in [aH]each phase[s] of the cleanup action process, as defined in Sections R315-101-4 through R315-101-[6]7. [~~As directed by the Director and based on the circumstances and level of public interest at the site, pertinent work plans shall describe how information will be made available to the public through, for example, fact sheets or information repositories and, where appropriate, contain proposed time frames for public input through, for example, public meetings, hearings, or comment periods.~~]

(b) Before approving the site management plan, [F]the [D]director shall [~~also~~] provide public notice[~~, a~~] for public comment periods[~~]~~ and public hearings[~~(#)~~] for the site management plan in accordance with Sections R315-124-10 through R315-124-12 and R315-124-17.

R315-101-[8]11. [~~Cleanup/Management Action~~]Administrative Oversight.

(a) [~~Upon approval of the site management plan by the Director, all remedial activities at the site shall proceed according to the schedule established in the approved site management plan using the method(s) described therein~~]The director or the director's representatives shall have access to the site as described in Section R315-260-5 and at any time when activity pursuant to Rule R315-101 is taking place. The director or the director's representatives may collect environmental samples or document any visit to the site by photographic, or videographic or some other reasonable means.

(b) [~~Cleanup/Management Report.~~]The Cleanup/Management Report shall detail remediation, treatment, and monitoring activities undertaken at the site by the responsible party as required by the approved site management plan. If the Cleanup/Management Report provides analytical data as evidence that levels of contamination at the site meet the requirements established in the site management plan for a risk-based closure or no further action as defined in R315-101-6(e)(2), the responsible party shall submit a certification of completion as outlined in R315-101-8(e), or request risk-based closure as outlined in Subsection R315-270-1(e)(6), whichever is applicable]The director shall send an invoice to the responsible party for review of plans, reports or other technical documents submitted, contractor costs, laboratory costs and time spent on correspondence, telephone calls, meetings, field work, and any associated activities to meet the requirements of Rule R315-101.

(c) [~~Certification of Completion. Within 60 days of the completion of all activities documented in the Cleanup/Management Report, a Certification of Completion of Cleanup/Management Action shall be submitted to the Director by registered mail. The certification of completion shall state the site has been managed in accordance with the specifications in the approved Site Management Plan and shall be signed by the responsible party and by an independent Utah registered professional engineer~~]The owner shall pay any invoices it receives from the director in accordance with the instructions on the invoice.

(d) [Oversight.

(1) The Director or his representatives shall have access to the site as described in Section R315-260-5 and at all times when

activity pursuant to R315-101 is taking place. The Director or his representatives may take samples or make records of any visit to the site by photographic, electronic, videotape or any other reasonable means.

(2) The Director shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(3) The responsible party shall notify the Director at least seven days prior to any sampling event or remediation activity]The responsible party shall notify the director at least seven days before any field work such as a sampling event or remediation activity.

(e) Information submitted to the director shall be signed by the responsible party.

R315-101-12. Documents Incorporated by Reference.

For purposes of Rule R315-101 regarding cleanup action and Risk-Based Closure Standards, the following documents are incorporated by reference.

(a) Interstate Technology Regulatory Council (ITRC), December 2013, "Groundwater Statistics and Monitoring Compliance" Guidance Document.

(b) Los Alamos National Laboratory (LANL), 2011, "ECORisk Database."

(c) Oakridge National Laboratory (ORNL), 1996, "Toxicological Benchmarks for Wildlife: 1996 Revision." ES/ER/TM-86/R3.

(d) Oakridge National Laboratory (ORNL), May 1998, "A Guide to the ORNL Ecotoxicological Screening Benchmarks: Background, Development, and Application," ORNL/TM-13615.

(e) United States Environmental Protection Agency (US EPA), 1986, "Guidelines for the Health Risk Assessment of Chemical Mixtures," Risk Assessment Forum, EPA/630/R-98/002.

(f) United States Environmental Protection Agency (US EPA), 1989, "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part A)", Office of Emergency and Remedial Response EPA/504/1-89/002, Interim Final.

(g) United States Environmental Protection Agency (US EPA), March 25, 1991, "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual Supplemental Guidance Standard Default Exposure Factors." Interim Final, OSWER Directive 9285.6-03.

(h) United States Environmental Protection Agency (US EPA), December 1991, "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals)," Office of Emergency and Remedial Response EPA/504/1-89/003, Interim Final.

(i) United States Environmental Protection Agency (US EPA), December 1993, "Wildlife Exposure Factors Handbook, Volume I of II," EPA/600/R-93/187.

(j) United States Environmental Protection Agency (US EPA), May 1992, "Supplemental Guidance to RAGS: Calculating the Concentration Term," Office of Solid Waste and Emergency Response, Washington, D.C. OSWER Directive 9285.7-081.

(k) United States Environmental Protection Agency (US EPA), February 1992, "Framework for Ecological Risk Assessment," EPA/630/R-92/001.

(l) United States Environmental Protection Agency (US EPA), December 1993, "Wildlife Exposure Factors Handbook, Appendix: Literature Review Database, Volume II of II" EPA/600/R-93/187.

(m) United States Environmental Protection Agency (US EPA), May 1996, "Soil Screening Guidance Technical Background Document," EPA/540/R95/128.

(n) United States Environmental Protection Agency (US EPA), June 1997, "Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments," Interim Final, EPA 540-R-97-006, OSWER 9285.7-25, PB97-963211.

(o) United States Environmental Protection Agency (US EPA), April 1998, "Guidelines for Ecological Risk Assessment."

(p) United States Environmental Protection Agency (US EPA), August 2000, "Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures," EPA/630/R-00/002, August Risk Assessment Forum Technical Panel.

(q) United States Environmental Protection Agency (US EPA), December 2001, "Risk Assessment Guidance for Superfund: Volume 1 Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," Final, OSWER 9285.7-47.

(r) United States Environmental Protection Agency (US EPA), March 2001, "EPA Requirements for Quality Management Plans," EPA QA/R-2, EPA/240/B-01/002.

(s) United States Environmental Protection Agency (US EPA), December 2001, "Risk Assessment Guidance for Superfund: Volume III - Part A, Process for Conducting Probabilistic Risk Assessment," EPA 540-OR-02-002 OSWER 9285.7-45 PB 2002 963302.

(t) United States Environmental Protection Agency (US EPA), December 2002, "Supplemental Guidance for Developing Soil Screening Levels for Superfund Sites," OSWER 9355.4-24.

(u) United States Environmental Protection Agency (US EPA), December 2002, "Guidance for Quality Assurance Project Plans," EPA QA/G-5, EPA/240/R-02/009, OSWER 2002.

(v) United States Environmental Protection Agency (US EPA), December 2002(a), "Calculating Upper Confidence Limits for Exposure Point Concentrations at Hazardous Waste Sites."

(w) United States Environmental Protection Agency (US EPA), February 2005, "Guidance for Developing Ecological Soil Screening Levels," Office of Solid Waste and Emergency Response OSWER Directive 9285.7-55.

(x) United States Environmental Protection Agency (US EPA), December 2003, "Human Health Toxicity Values in Superfund Risk Assessment," Office of Solid Waste and Emergency Response, OSWER Directive 9285.7-53.

(y) United States Environmental Protection Agency (US EPA), February 2004, "User's Guide for Evaluating Subsurface Vapor Intrusion into Buildings."

(z) United States Environmental Protection Agency (US EPA), July 2004, "Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Part E, Supplemental Guidance for Dermal Risk Assessment)," EPA/540/R/99/005, Final.

(aa) United States Environmental Protection Agency (US EPA), March 2005(b), "Guidelines for Carcinogen Risk Assessment," EPA/630/P-03/001F.

(bb) United States Environmental Protection Agency (US EPA), March 2005(c), "Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens," EPA/630/R-03/003F.

(cc) United States Environmental Protection Agency (US EPA), February 2006, "Guidance on Systematic Planning Using the Data Quality Objectives Process," EPA/240/B-06/001.

(dd) United States Environmental Protection Agency (US EPA), January 2009, "Risk Assessment Guidance for Superfund Volume 1: Human Health Evaluation Manual (Part F, Supplemental Guidance for Inhalation Risk Assessment)," EPA/540/R/070/002, OSWER 9285.7-82.

(ee) United States Environmental Protection Agency (US EPA), March 2009, "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, Unified Guidance," Final, EPA 530/R-09-007.

(ff) United States Environmental Protection Agency (US EPA), December 1991, "Risk Assessment Guidance for Super Fund Volume 1: Human Health Evaluation Manual (Part C, Risk Evaluation of Remedial Alternatives)," Office of Emergency and Remedial Response EPA/540/R-92/004, Interim.

(gg) United States Environmental Protection Agency (US EPA), September 2011, "Exposure Factors Handbook: 2011 Edition," Office of Research and Development, EPA/600/R-090/052F.

(hh) United States Environmental Protection Agency (US EPA), February 2012, "Superfund Vapor Intrusion FAQs."

(ii) United States Environmental Protection Agency (US EPA), October 2015, "ProUCL Version 5.1 Technical Guide Statistical Software for Environmental Applications for Data Sets with and without Nondetect Observations," EPA/600/R-07/041.

(jj) United States Environmental Protection Agency (US EPA), February 2014, "Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors," OSWER Directive 9200.1-20.

(kk) United States Environmental Protection Agency (US EPA), May 2014, "Vapor Intrusion Screening Level (VISL) Calculator User's Guide."

(ll) United States Environmental Protection Agency (US EPA), June 2015, "OSWER Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air," OSWER 9200.2-154.

(mm) United States Environmental Protection Agency (US EPA), June 2015, "Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites."

(nn) United States Environmental Protection Agency (US EPA), March 2005, "Update of Ecological Soil Screening Level (Eco-SSL) Guidance and Contaminant Specific Documents."

(oo) United States Environmental Protection Agency (US EPA), September 1986, "Guidelines for Mutagenicity Risk Assessment", EPA/630/R-98/003.

(pp) United States Environmental Protection Agency (US EPA), September 1995, "Establishing Background Levels," OSWER Directive 9285.7-19FS, EPA/540/F-94/030.

R315-101-13. Definitions.

Terms used in Rule R315-101 regarding cleanup action and Risk-Based Closure Standards are defined as follows:

(a) "95% Upper Confidence Limit or 95% UCL" means an estimate of the arithmetic average concentration for a contaminant and it provides reasonable confidence that the true site average will not be underestimated.

(b) "95% Upper Tolerance Limit or 95% UTL" means a value not to be exceeded of possible background concentration values and so provides a reasonable upper limit on what is likely to be observed in the background with 95% confidence.

(c) "Acceptable Risk Range" means cancer risk greater than 1×10^{-6} but less than or equal 1×10^{-4} or a hazard index less than or equal to one with justifiable, reasonable and practicable measures in place to reduce and control risk within the range.

(d) "Action Level" means the existence of a contaminant concentration in the environment that is high enough to warrant an action or trigger a response action under the National Oil and Hazardous Substances Contingency Plan.

(e) "Adverse Effect" means any effect that causes harm to the normal functioning of plants or animals due to exposure to a chemical contaminant.

(f) "Appropriate Site Management Activities" means measures that are reasonable and practical that will be taken to control and reduce risks greater than 1×10^{-6} and less than 1×10^{-4} for carcinogen and hazard index equal to or less than one for non-carcinogens under both current and reasonably anticipated future land use conditions, for example, institutional controls, engineering controls, groundwater monitoring, post-closure care, or corrective action and ensuring that assumptions made in the estimation of cancer risk and non-cancer hazard in the risk assessment report are not violated.

(g) "Area of Contamination" means a hazardous waste management unit or a solid waste management unit or an area where a release has occurred.

(h) "Assessment Endpoints" means an explicit expression of environmental value that is to be protected. It is the part of the ecosystem that should be protected at a superfund site and it is generally some characteristic of a species of plant or animal, for example, reproduction, growth, that may be described numerically.

(i) "Background" means substances or locations that are not influenced by releases from a site and are naturally occurring in the environment in forms that have not been influenced by human activity or are natural and human-made substances present in the environment as a result of anthropogenic activities and not related to the site.

(j) "The boundary" means the furthest extent where contamination from a defined source has migrated in any medium when the release is first identified.

(k) "Cancer Risk" means the probability that an individual with contract cancer after lifetime exposure to a carcinogen.

(l) "Cleanup" means the range of corrective action activities that occur in the context of addressing environmental contamination at RCRA sites to lower contaminant concentration or decrease chemical toxicity. Activities may include waste removal, contaminated media removal or source reduction, such as excavation or pumping, in-place treatment of waste or contaminated media, such as bioremediation, containment of waste or contaminated media, such as barrier walls, low permeability covers, liners or capping, or various combination of these approaches.

(m) "Concentration Term - 95% Upper Confidence Limit" means the intake variable and it is an estimate of the arithmetic average concentration for a contaminant based on a set of site sampling results. Because of the uncertainty associated with estimating the true average concentration at a site, the 95% Upper Confidence Limit of the arithmetic mean is used to represent this variable and provides reasonable confidence that the true site average will not be underestimated.

(n) "Complete Exposure Pathway" means how a contaminant may be traced or expected to travel from a source to a plant or animal that may be affected by that chemical and shall meet the following:

- (1) the presence of a source and transport;
- (2) exposure point or contact (receptor); and
- (3) exposure route. Otherwise exposure is incomplete.

(o) "Conceptual Site Model" means a written, illustrative, or both, representation of a site that documents the physical, chemical

and biological processes that control the transport, migration, actual or potential, or both impacts of contamination in soil, air, ground water, surface water, sediments, to human or ecological receptors, or both, exposure pathways, at a site or at a reasonably anticipated site under both current and potential future land use scenarios.

(p) "Contaminate" means to make a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in Section R315-261-1092, which incorporates by reference 40 CFR 261, Appendix VIII.

(q) "Contaminants of Concern" means Constituents of Potential Concern that significantly contribute to a pathway in a land use scenario for a receptor that either exceeds a cumulative cancer risk of 1×10^{-4} or exceeds a non-cancer hazard index of one.

(r) "Contaminants of Interest" means chemicals detected at the site during the site characterization process that may pose threat to human health or the environment.

(s) "Constituents of Potential Concern" means constituents detected in a medium that are selected to be addressed in the risk assessment process because contact with humans may result in adverse effects.

(t) "Constituents of Potential Ecological Concern" means any constituent that is shown to pose possible ecological risk at a site. It is generally a constituent that may or may not be causing risk or adverse effects to plants and animals at a site.

(u) "Corrective Action" means the cleaning up of environmental problems caused by the mismanagement of wastes, or the cleanup process or program under RCRA and any activities related to the investigation, characterization, and cleanup of release of hazardous waste or hazardous constituents from solid waste management units or hazardous waste management units at a permitted or interim status treatment storage or disposal facilities or voluntary cleanup sites or brownfield sites.

(v) "Corrective Action Complete With Controls" means a condition of a solid waste management unit, a hazardous waste management unit, an area of contamination or a contaminated site where site characterization or risk assessment indicate corrective action is required and completed and the results of the risk assessment meet the closure standards and requirements specified in Subsection R315-101-7(b), or a condition of a solid waste management unit, a hazardous waste management unit, area of contamination or a contaminated site where site characterization or risk assessment indicate corrective action is not required but also meets the closure standards and requirements specified in Subsection R315-101-7(b).

(w) "Corrective Action Complete Without Controls" means a condition of a solid waste management unit, a hazardous waste management unit, area of contamination or a contaminated site where site characterization or risk assessment indicate corrective action is required and completed and the results of the risk assessment meet the closure standards and requirements equivalent to a no further action or meeting the requirements of Subsection R315-101-7(a) or a condition of a solid waste management unit, a hazardous waste management unit, area of contamination or a contaminated site when site characterization or risk assessment indicate corrective action is not required but also meets the closure standards and requirements equivalent to a no further action or meeting the requirements of Subsection R315-101-7(a).

(x) "Corrective Action Level" means the concentration of a contaminant in a medium after cleanup of a site that is protective of human health and the environment.

(y) "Data Quality Objectives" means qualitative and quantitative statements of the quality of data needed to support specific decisions or regulatory actions.

(z) "Dilution Attenuation Factor" means the ratio of the contaminant concentration in soil leachate to the concentration in groundwater at the receptor point.

(aa) "Environment" means the surroundings or conditions in which a person, animal, or plant lives or operates.

(bb) "Exposure" means contact of an organism with a chemical or physical agent and it is the amount of the agent available at the exchange boundaries of the organism.

(cc) "Exposure Pathway" means the course a chemical or physical agent takes from a source to an exposed organism.

(dd) "Exposure Point Concentration" means either a statistical derivation of measured data or modeled data that represents an estimate of the chemical concentration available from a particular medium or route of exposure. The exposure point concentration value is used to quantify potential cancer risks and non-cancer hazards.

(ee) "Groundwater Cleanup Levels" means site-specific groundwater chemical concentration levels based on groundwater use designation and exposure pathway established to ensure the protection of human health and the environment when defining groundwater cleanup objectives.

(ff) "Groundwater Use" means the current or reasonably expected maximum beneficial use of groundwater that warrants the most stringent cleanup levels, including drinking or other uses.

(gg) "Hazard Index" means the sum of hazard quotients.

(hh) "Hazard Quotient" means the ratio of exposed dose to some reference dose or reference concentration.

(ii) "Lowest Observed Adverse Effects Level or Lowest Observed Adverse Effects Concentration" means the lowest level of a chemical stressor evaluated in a toxicity test that shows harmful effects on a plant or animal. A Lowest Observed Adverse Effects Level is based on dose of a chemical ingested while Lowest Observed Adverse Effects Concentration refers to direct exposure to a chemical such as through the skin.

(ji) "Maximum Contaminant Level" means the highest level of a contaminant that is allowed in drinking water and is set as close to the "Maximum Contaminant Level Goal" as feasible using the best available treatment technology and taking cost into consideration. Maximum Contaminant Levels are enforceable standards.

(kk) "Maximum Contaminant Level Goal" means the level of a contaminant in drinking water below which there is no known or expected risk to health. Maximum Contaminant Level Goals allow for a margin of safety and are non-enforceable public health goals.

(ll) "Measures of Effects" means quantitative measurements of effects expressed as statistical or numerical assessment endpoint summaries of the observations that make up the measurement.

(mm) "Measurement End Point" means a measurable ecological characteristic that is related to the valued characteristic chosen as the assessment endpoint and it is a measure of biological effects such as death, reproduction, or growth, of a particular species.

(nn) "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other similar resources.

(oo) "No Further Action" means the state of a solid waste management unit, a hazardous waste management unit, or a contaminated site at closure meeting the requirements in Subsection R315-101-7(a) and it is equivalent to corrective action complete without controls if the site was under corrective action activities. No further action is equivalent to unrestricted land use.

(pp) "No Observed Adverse Effects Level or No Observed Adverse Effects Concentration" means the highest level of a chemical stressor in a toxicity test that did not cause a harmful effect in a plant or animal. A No Observed Adverse Effects Level refers to a dose of chemical that is ingested, while a No Observed Adverse Effects Concentration refers to direct exposure to a chemical such as through the skin.

(qq) "Point of Departure" means the target risk level that risk to an individual is considered insignificant.

(rr) "Potentially Complete Exposure Pathway" means a pathway that, due to current site conditions is incomplete, but could become complete at a future time because of changing site practices. For example the ingestion pathway of groundwater from a residential well in a high total dissolved solids aquifer. This pathway could be complete if treatment technologies like reverse osmosis become economically feasible and are observed to be employed successfully in that aquifer.

(ss) "Reasonable Maximum Exposure" means the highest exposure that is reasonably expected to occur at a site. Reasonable Maximum Exposure combines upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(tt) "Regional Screening Levels" means risk-based chemical concentrations derived from standardized equations combining exposure assumptions with EPA chemical-specific toxicity values and target risk levels that are used for site screening and initial cleanup goals.

(uu) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(vv) "Responsible Party" means the owner or operator of a site, or any other person responsible for the release of hazardous waste or hazardous constituents.

(ww) "Risk-Based Clean Closure" means closure of a site where hazardous waste was managed or any medium that has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, in Rule R315-101, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring by the responsible party nor any notice of hazardous waste management on the record of title to the property.

(xx) "Risk-Based Concentration" means the concentration of a contaminant the values of which are derived from equations combining toxicity factors with standard exposure scenarios to calculate chemical concentrations corresponding to some fixed levels of risks in any medium, such as water, air, fish tissue, sediment, and soil.

(yy) "Robust Statistic" means a statistic that is resistant to errors in the results, produced by deviations from assumptions, such as, normality. This means that the limits are not susceptible to outliers, or distributional assumptions. For example, if the limits are centered on the median, instead of on the mean, or on a modified, "robust mean," and constructed with suitable weighting, or influence, or function, they could be considered "robust."

(zz) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

(aaa) "Site Specific Screening Value" means contaminant screening values derived for media, such as soil, sediment, water, at a site based on relevant site assumptions and factors.

(bbb) "Source Control" means a range of actions, for example, removal, treatment in place, and containment, designed to protect human health and the environment by eliminating or minimizing migration of or exposure to significant contamination.

(ccc) "Target Risk" means any acceptable specified risk level. The preferred target risk is 1×10^{-6} which is at the protective end of the acceptable risk range for screening of contaminants in risk assessment.

KEY: hazardous waste

Date of Last Change: ~~April 25, 2013~~

Notice of Continuation: January 14, 2021

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R414-305-9	Filing ID: 54770
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Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N1460 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
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R414-305-9. Transfer of Resources for Institutional Medicaid and Home and Community Based Services Waivers
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this change is to show how the state calculates the statewide average private-pay rate for nursing home care.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the

substantive differences between the repealed rule and the reenacted rule):

This amendment specifies the procedure and formula used to calculate the statewide average private-pay rate for nursing home care.

Fiscal Information

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

A) State budget:

There is an annual increase of about \$688,685 based on Medicaid paying long-term care services and support to its members.

B) Local governments:

There is no impact on local governments as they neither determine nor monitor eligibility under the Medicaid program.

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

This change impacts members only. It creates neither costs nor revenue to small businesses.

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

This change impacts members only. It creates neither costs nor revenue to non-small businesses.

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

There is an out-of-pocket savings to Medicaid members based on the total figure of \$688,685, due to the state paying long-term care services and support.

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

There are no compliance costs as this change only results in out-of-pockets savings to Medicaid members.

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	\$688,685	\$0	\$0
Government			

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	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	\$688,685	\$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 S. Gruber, has reviewed and approved this fiscal analysis. This amendment does not affect business costs nor revenue, but results in out-of-pocket savings to Medicaid members.

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 26B-1-204	Section 26-18-3	42 U.S.C. 1396p
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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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
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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:	Tracy S. Gruber, Executive Director	Date:	07/24/2022
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-305. Resources.

R414-305-9. Transfer of Resources for Institutional Medicaid and Home and Community[-]Based Services Waivers.

(1) The eligibility agency shall apply [the provisions of] 42 U.S.C. 1396p(c) and (e) to determine if a penalty period applies for a transfer of assets for less than fair market value.

(2) The transfer requirements of 42 U.S.C. 1396p(c) and (e) apply if an individual or the individual's spouse transfers the home, life estate, assets disregarded for eligibility purposes pursuant to Subsection R414-305-3(28), or any other asset on or after the look-back date based on an application for long-term care Medicaid services.

(3) If an individual or the individual's spouse transfers assets in more than one month after February 7, 2006, the uncompensated value of all transfers including fractional transfers are combined to determine the penalty period. The eligibility agency shall apply partial month penalty periods for transferred amounts that are less than the monthly average private-pay rate for nursing home services.

(4) In accordance with 42 U.S.C. 1396p(c), the penalty period for a transfer of assets that occurs after February 7, 2006, begins the first day of the month during or after which assets are transferred, or the date on which the individual is eligible for Medicaid coverage and would otherwise receive institutional level care based on an approved application for Medicaid, but for the application of the penalty period, whichever is later.

(a) If a previous penalty period is in effect on the date [that] the new penalty period begins, the new penalty period begins immediately after the previous one ends.

(b) The eligibility agency shall apply penalty periods consecutively so [that] they do not overlap.

(5) If assets are transferred during any penalty period, the penalty period for those transfers does not begin until the previous penalty period expires.

(6) If a transfer occurs, or the eligibility agency discovers an unreported transfer after the agency approves an individual for Medicaid for nursing home or home and community-based services, the penalty period shall begin on the first day of the month after the month that the individual transfers the asset.

(7) In determining [F] the statewide average private-pay rate for nursing home care [in Utah] that the eligibility agency [shall] uses to calculate the penalty period for transfers, [is \$4,526 per month.] the Department uses the audited and finalized facility cost profile report from the previous state fiscal year, which it finalizes in May of the current fiscal year. The Department then calculates the statewide average private-pay rate using the total facilities private revenue divided by the total private days to get the revenue for each day, which is multiplied by 365 and then divided by 12. The current amount is found in Table II-A at this address: <https://bepmanuals.health.utah.gov/Medicaidpolicy/DOHMedicaid.htm>.

(8) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual, a binding written agreement must be in place which establishes that the resource transferred may only be used to benefit the spouse, disabled

child, or disabled individual, and must be actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in the agreement that benefit another person at any time nullify the sole benefit provision. An excluded trust established under 42 U.S.C. 1396p(d)(4) that meets the criteria in Section R414-305-7 does not have to meet the actuarially sound test.

(9) The eligibility agency may not impose a penalty period if the total value of a whole life insurance policy is:

- (a) irrevocably assigned to the [S]state;
- (b) the recipient is the owner of and the insured in the policy; and
- (c) no further premium payments are necessary for the policy to remain in effect.

(10) When the individual dies, the [S]state shall distribute the benefits of the policy as follows:

(a) The [S]state may distribute up to \$7,000 to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and the burial and funeral funds for the individual cannot exceed \$7,000.

(b) The [S]state may distribute an amount that does not exceed the total amount of previously unreimbursed medical assistance correctly paid on behalf of the individual.

(c) The [S]state may distribute to a remainder beneficiary, named by the individual, any amount that remains after payments are made as defined in [Subsection R414-305-9(9)(d)(i) and Subsection R414-305-9(9)(d)(ii)] Subsection (10)(a)(b).

(11) If the eligibility agency determines that a penalty period applies for an otherwise eligible institutionalized person, the agency shall notify the individual that the Department may not pay the costs for nursing home or other long-term care services during the penalty period. The notice shall include when the penalty period begins and ends.

(a) The individual may request a waiver of the penalty period based on undue hardship.

(b) The individual must send a written request for a waiver of the penalty period due to undue hardship to the eligibility agency within 30 days of the date printed on the penalty period notice.

(c) The request must include an explanation of why the individual believes undue hardship exists.

(d) The eligibility agency shall [make a decision] decide on the undue hardship request within 30 days of receipt [of the request].

(12) An individual who claims an undue hardship as a result of a penalty period for a transfer of resources must meet both of the following conditions:

(a) The individual or the person who transferred the resources may not access the asset immediately; however, the eligibility agency shall require the individual to exhaust all reasonable means including legal remedies to regain possession of the transferred resource.

(b) The agency may determine [that] it is unreasonable to require the individual to [take action] act if a knowledgeable source confirms [that] the individual's efforts cannot succeed.

(c) The agency may determine that it is unreasonable to require the individual to take action based on evidence that the individual's action is more costly than the value of the resource.

(d) Application of the penalty period for a transfer of resources deprives the individual of medical care, endangers the individual's life or health, or deprives the individual of food, clothing, shelter, or other necessities of life.

(13) If the eligibility agency waives the penalty period based on undue hardship, the agency shall notify the individual. The

Department shall provide Medicaid coverage on the condition that the individual takes all reasonable steps to regain the transferred assets. The eligibility agency shall notify the individual of the date that the individual must provide verifications of the steps taken. The individual must, within the time frames set by the agency, verify to the agency all reasonable actions. The agency shall review the undue hardship waiver and the actions of the individual to try to regain the transferred assets. The time period for the review may not exceed six months. Upon review, the agency shall decide whether:

(a) [F]the individual must take additional steps and whether undue hardship still exists, in which case the agency shall notify the individual of the continuation of undue hardship and the need to take additional steps to recover the assets;

(b) [F]the individual has taken all reasonable steps without success, in which case the agency shall notify the individual that it requires no further action. If the individual continues to meet eligibility criteria, the eligibility agency may not apply the penalty period; or

(c) [F]the individual has not taken all reasonable steps, in which case the eligibility agency shall discontinue the undue hardship waiver. The eligibility agency shall then apply the penalty period and the individual is responsible to repay Medicaid for services and benefits [that] the individual received during the months [that] in which the undue hardship waiver was in place.

(14) Based on a review of the facts about what happened to the assets, whether the individual has taken reasonable steps to recover or regain the assets, the results of those steps, and the likelihood that additional steps will prove unsuccessful or too costly, the eligibility agency may determine that the individual cannot recover or regain the transferred resource. If the agency decides [that] the assets cannot be recovered and that applying the penalty period may result in undue hardship, the agency may not apply a penalty period or shall end a penalty period that has already begun.

(15) The eligibility agency shall base its decision that undue hardship exists upon the medical condition and the financial situation of the individual. The agency shall compare the income and resources of the individual, individual's spouse, and parents of an unemancipated individual to the cost of providing medical care and daily living expenses to decide whether the financial situation creates an undue hardship. The agency shall send written notice of its decision on the undue hardship request. The individual has 90 days from the date printed on the notice of decision to file a request for a fair hearing.

(16) The eligibility agency shall consider the portion of an irrevocable burial trust that exceeds \$7,000 a transfer of resources. The agency shall deduct the value of any fully paid burial plot from the burial trust first before determining the transferred amount.

KEY: Medicaid, resources

Date of Last Change: 2022[September 13, 2017]

Notice of Continuation: January 8, 2018

Authorizing, and Implemented or Interpreted Law: 26B-1-[S]204; 26-18-3; Pub. L. No. 111-148

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R657-28

Filing ID: 54870

Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room number:	Suite 2110
Building:	Department of Natural Resources
Street address:	1594 W North Temple
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 146301
City, state and zip:	Salt Lake City, UT 84114-6301
Contact persons:	
Name:	Phone: Email:
Staci Coons	801-450-3093 stacicoons@utah.gov

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

General Information

2. Rule or section catchline:
R657-28. Use of Division Lands
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to the use of DWR lands.
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 proposed amendments to this rule: 1) restructures the rule, condensing information by subject and moving from 32 sections to 9 sections; 2) removes obsolete or outdated practices from the entire rule; 3) adds definitions to improve clarity, including "lease", "special use permit", "termed easement" and "wood product permit"; 4) adds a definition for "motorized vehicle", this definition now includes Class II and Class III electronic bicycles, which have a throttle; 5) modifies the unlawful uses section to remove all unlawful uses already covered in statute Section 23-21-7; 6) adds additional language to unlawful uses that are not already described in Utah Code, such as posted closures, additional structures, and occupying DWR lands for residential purposes; 7) modifies the unlawful use of motorized vehicles except as authorized, this includes the use of e-bike; 8) consolidates Domestic Livestock Grazing into one section;

9) improves contractual language for the Domestic Grazing section;
10) defines the solicitation procedure for the DWR, adds additional flexibility to improve the selection process;
11) consolidates wood products, seed harvesting, and extraction of sand, gravel, cinders and ornamental rock into one section called Saleable Products;
12) minor changes to language throughout rule to provide consistency;
13) clarifies expectations for the DWR and applicants for agricultural leases;
14) clarifies the process for "right-of-way leases", "leases", and "special use permits";
15) adds a late fee for applicants who fail to submit a request 30 days prior to the proposed activity;
16) clarifies the application process, approval process and compensation requirement for termed easement and lease section;
17) removes language specific to each permit or agreement allowing flexibility to address issues on a case-by-case basis; and
18) additional corrections to language and formatting as needed.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This amendment reorganizes and restructures the division lands use rule and clarifies current processes and restrictions therefore, DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.
B) Local governments:
Since this amendment restructures an already established rule, this should have little to no effect on local governments. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by this rule. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
This amendment restructures an already established rule, therefore, this rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses because this rule does not create a situation requiring services from them.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

This amendment restructures an already established rule, therefore, this rule does not impose any additional financial requirements on non-small businesses, nor generate a cost or saving impact to non-small businesses because this rule does not create a situation requiring services from them.

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

This amendment restructures an already established rule, therefore, this rule does not impose any additional financial requirements on other persons, nor generate a cost or saving impact to other persons because the rule does not create a situation requiring services from them.

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

The DWR determines that this amendment will not create additional costs for those individuals who participate in authorized uses on DWR lands in Utah.

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 Natural Resources, Joel Ferry, 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 23-14-8		
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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: 10/31/2022

9. This rule change MAY become effective on: 11/07/2022

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

Agency Authorization Information

Agency head or designee and title:	J. Shirley, Division Director	Date:	09/12/2022
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R657. Natural Resources, Wildlife Resources.

R657-28. Use of Division Lands.

R657-28-1. Purpose and Authority.

(1) Pursuant to ~~[Utah Code Section 23-14-8 and Section 23-21-2.1]~~ Title 23, Chapter 21 Lands and Waters for Wildlife Purposes and Subsection 23-14-8(3), this rule defines:

(a) ~~[lawful uses and activities on]~~ management objectives for division lands; ~~and~~

(b) ~~[the]~~ unlawful uses and activities on division lands;

(c) application procedures and administration on division lands for ~~[rights-of-way; grazing]~~ special use permits; ~~[agricultural leases]~~ termed easements; leases; ~~[special use]~~ grazing permits; seed harvesting; wood products removal; water uses; and sand, gravel, and cinder extraction.

(2) The division may approve a land use only if, in the opinion of the division, such use:

_____ (a) does not unreasonably conflict with the intended use or purpose of the land property or is not detrimental to wildlife or wildlife habitat; and or

_____ (b) the impacts can be avoided, minimized, rectified, mitigated or compensated.

(3) The division may not authorize a land use under this rule without first obtaining the written approval of the persons or entities, if any, holding contractual, funding or proprietary interests in the subject property.

(4) ~~[Nothing]~~ Notwithstanding Subsection 23-21-2(6), nothing in this rule shall prevent the division from closing division lands to public use or activity if the division determines that the disturbance from the use or activity is detrimental to wildlife or wildlife habitat.

~~_____~~ (5) ~~The division's habitat section is primarily responsible for the management responsibilities of division lands and waters, including the processing of all contracts, permits, and other agreements.~~

R657-28-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) ~~["Agricultural lease" means any lease given for purposes of cultivating crops of any kind.]~~

~~_____~~ (b) "Christmas tree" means any pinyon or juniper tree; or other species that the division may so designate on a subject property; or any part thereof cut and removed from the place where it was grown, without the foliage being removed.

(e) (b) "Commercial gain" means compensation in money, services, or other valuable consideration as part of a scheme or effort to generate income or financial advantage.

(d) ~~"Compensatory Mitigation" means the replacement or substitution of resources or environments cumulatively impacted by a proposed action or cumulative proposed actions.~~

~~_____~~ (e) (c) "Cord" means a unit of cut firewood equal to a stack 4x4x8 feet or 128 cubic feet.

(f) (d) "Division lands" means all land and ~~[waters]~~ water owned by the division, or managed by the division under ~~[written]~~ contractual agreement. When lands or waters owned by other parties are managed by the division under ~~[written]~~ contractual agreement, and the terms of the agreement conflict with this ~~[Rule]~~ rule, the agreement shall govern.

(g) (e) "Firewood" means any portion of a dead and fallen tree not included in any other definition of this section.

(h) (f) "Grassbank" means forage reserved on a particular division property to be used as in-kind trade for conservation actions on public or private lands, emergency forage for division-approved grazing permittees, or any other purpose designated by the division.

(i) (g) ~~"In-[Kind Compensation]"~~ kind compensation means anything paid or given in goods, commodities, or services in lieu of ~~[money]~~ monetary payment, that is done on, affixed to, invested in, or beneficial to division ~~[property]~~ lands for ~~[the purpose of]~~ wildlife habitat maintenance or improvement, or other wildlife-related projects.

(j) (h) "Lease" means ~~[an]~~ a legal agreement ~~[that authorizes]~~ authorizing the right to occupy or use ~~[of]~~ division ~~[land]~~ lands for a specified ~~[term]~~ purpose ~~[and for a specified fee or in-kind compensation, or a combination thereof]~~ period.

(k) (i) "Livestock Operator" means any individual or entity that owns or manages domestic livestock. (j) "Motorized vehicles" means a vehicle capable of self-propelling, including cars, trucks,

motorhomes, off-highway vehicles (OHV), and class II and III electric bicycles.

(l) (j) "Organized ~~[Event]"~~ event" means any event in which registration fees are collected, commercial gain may occur, prizes are awarded for competition, an enrollment or participation list is created, is advertised, or a group is assembled as part of a club or organizational activity.

(m) (k) "Ornamental" means any coniferous or deciduous tree that is less than 20 feet in height and has a trunk of no more than 6 inches in diameter at breast height, which is removed from a natural setting, generally with roots attached, for transplant to a different location.

(n) (l) "Post" means a portion of a tree or tree stem, generally a Utah juniper, which is less than 10 feet in length and 6 inches in tip diameter.

(o) (e) "Right of way Lease" means a lease for an easement or right of way for a specific use of division land including, but not limited to, utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails.

~~_____~~ (p) (m) "Sand, Gravel, Cinders, and Ornamental Rock" means common varieties of sand, gravel, volcanic cinder, or ornamental rock separate and distinct from the mineral estate on division lands.

(q) (n) "Seed Harvesting" means the gathering of any seed on division property for any purpose.

(r) (o) "Special use permit" means a temporary authorization for a specific, non-depleting land use ~~[including seismic or land surveys, research sites, organized activity, or time-certain physical access]~~ to division lands. This contract vehicle is of a lesser order than a lease or termed easement, is generally associated with a temporary event of short duration, and does not convey any proprietary or other rights or the use to the holder other than those specifically granted in the permit authorization.

(s) (p) "Termed easement" means a legal right to construct on, cross, access, or otherwise use division lands for a limited, specified period, including rights-of-way.

(t) (q) "Wood product ~~[permit]"~~ permit" means a temporary authorization for the harvesting of any tree, or portion of a tree, including Christmas trees, posts, ornamentals, and firewood.

R657-28-3. Management of Division Lands.

_____ (1) The division manages division lands and water rights to:

~~_____~~ ~~[The division manages division lands and water rights to]~~ (a) directly or indirectly protect and improve wildlife habitats and watersheds;

_____ (b) increase fish and game populations to meet wildlife management plan objectives and expand fishing and hunting opportunities;

_____ (c) conserve, protect, and recover ~~[sensitive]~~ wildlife species in need of conservation and their habitats; and

_____ (d) provide wildlife-related recreational opportunities.

_____ (2) It is not a primary objective for these properties to be managed for other non-wildlife uses.

_____ (3) Division lands are managed in accordance with the Habitat Management Plan (HMP) requirements as outlined in Subsection 23-21-2(1).

R657-28-4. Unlawful Uses and Activities on Division Lands.

_____ (1) Unlawful uses and activities on division lands are listed in Section 23-21-7.

~~([1]2) [Except]~~ In addition, except as authorized by statute, rule, contractual agreement, grazing permit, termed easement, lease, or special use permit, [certificates of registration, or public notice,] a person may not, on division [land, may not] lands:

~~(a) [remove, extract, use, consume or destroy any improvement or cultural or historic resource;~~

~~(b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental rock, or other common mineral resource, or vegetation resource;~~

~~(c) allow livestock to graze, except as allowed by permit;~~

~~(d) remove any plant or portion thereof for purposes of commercial gain;~~

~~(e) enter, use, or occupy division land when posted against such entry, use, or occupancy;~~

~~(f) [enter, use] or occupy division lands when posted for a closure; [land in group sizes greater than twenty five (25) people;]~~

~~(g) enter, use, or occupy division land while engaged in an organized event;]~~

~~(h) [b] use, occupy, destroy, move[;] or construct any structure including fences, water control devices, powerlines, pipelines, roads, surveys and section markers, [or] signs, trails, sheds, shacks or blinds;~~

~~(i) prohibit, prevent, or obstruct public entry on division lands when such public entry is authorized by the division;~~

~~(j) attempt to manage or control division lands in a manner inconsistent with division management plans, rules, or policies;~~

~~(k) solicit, promote, negotiate, barter, sell or trade any product or service on, or obtained from, division lands for commercial gain;]~~

~~(l) [c] park a [motor] motorized vehicle or trailer or camp for more than [14] ten consecutive days, including parking more than ten days within any thirty day period, unless the area is posted for a different duration;~~

~~(m) light a fire without adequate provision to prevent spreading or leave a fire unattended;]~~

~~(n) use fireworks, explosives, poisons, herbicides, insecticides, or pesticides;]~~ (d) take possession of, occupy, or otherwise use division lands for residential purposes; or

~~(o) [e] use motorized vehicles [of any kind], as defined in Section R657-28-2, including cars, trucks, motorhomes, OHV, and class II and III electric bicycles, except as authorized by declaration, management plan, or posting[; or~~

~~(p) use division lands for any purpose that otherwise violates applicable land use restrictions imposed in statute, rule, or by the division.~~

(2) A person or entity which unlawfully uses division lands is liable for damages in the amount of:

(a) the value of the resource removed, destroyed, or extracted;

(b) the amount of damage committed;

(c) the value of any losses suffered as a result of interference with authorized activities; and

(d) the consideration which would have been charged by the division for use of the land during the period of trespass, whichever is greater.

(3) The division's law enforcement section shall be primarily responsible for the investigation of any unlawful use of, or activity on, division lands.

(4) The division's law enforcement section shall be primarily responsible for the investigation of facts pertinent to filing for judicial remedy related to any unlawful use of, or activity on, division lands.

~~(5) The provisions of this Section do not apply to division employees or division volunteers while in the performance of their duties.~~

~~(6) Except as otherwise provided by statute, the criminal penalty for a violation of any provision of this Section is prescribed in Section 23-13-11.~~

R657-28-5. Domestic Livestock Grazing[~~on Division Lands~~].

(1) The division may ~~[use]~~ issue a grazing permit for domestic livestock grazing to manage vegetation on division lands if the division determines domestic livestock prescribed grazing is necessary for the maintenance or improvement of wildlife habitat~~[on particular division properties]~~.

(2) Domestic livestock grazing on division lands shall occur only under the permission, provisions, and authority given in a grazing permit issued by the division.

(3) Grazing permits may be issued by the division through a proposal solicitation~~[process in accordance with R657-28-20]~~ to achieve the division's vegetation or [wildlife] habitat management goals.

~~([4]—)~~ (a) Proposals for grazing permits may be solicited through publication on the division website or in one or more newspapers of general circulation in the county in which the grazing permit is offered. Notification may be sent to landowners adjoining the subject division lands, and to livestock operators having federal permits to graze a federal allotment adjacent to division lands.

(b) At the conclusion of the advertising process, the division shall review and select the preferred applicant using any of the following criteria. The division shall have full discretion to select which criteria to use.

(i) Resources available to applicant that can be used to control livestock movement on the subject division lands;

(ii) Applicant's ability to meet grazing permit or prescribed management objectives;

(iii) Benefits to wildlife and wildlife habitat that could be expected from applicant's proposal;

(iv) Applicant's demonstrated sound range and agricultural management practices on applicant's property or other property used by applicant;

(v) Applicant's knowledge of principles of range science, range management, or agriculture;

(vi) Applicant's prior history of satisfactory or unsatisfactory use of division lands;

(vii) Applicant's right to the use of adjoining or nearby properties with which management of division lands may be coordinated;

(viii) Proximity of applicant's property to division lands;

(ix) Functionality of subject division lands perimeter fences in controlling livestock movement on or off the subject property;

(x) The size of area upon which the applicant can achieve the division's wildlife or vegetation management goals, thereby reducing the division's administrative costs;

(xi) Amount or value of the compensation offered to the division, including the satisfaction of a minimum quantity or quality of compensation, whether monetary, in-kind, or both, if minimum standards are required by the division.

(c) The division shall have full authority to:

(i) Offer counter-proposals;

(ii) Negotiate with any or all applicants to create a proposal which best satisfies the vegetation or wildlife management objectives of the division;

(iii) Terminate the negotiation process entirely;

(iv) Require the respondents to meet privately with the division and present its proposal for the grazing permit application. The division may request parties other than those responding to the initial solicitation to meet with the division; or

(v) Offer the opportunity to current permittees re-applying for the same permit at the conclusion of the available 10 years of renewals to match any better offer received during the solicitation process. This right is to be exercised at the sole discretion of the agency and is intended to assist keeping exemplary grazers on the landscape when they have already demonstrated an exemplary grazing history.

(d) Any party in default on a previous obligation to the division may be disqualified from obtaining a grazing permit from the division.

(e) In the event an unanticipated prescribed grazing treatment is necessary for ~~a~~ division ~~property~~ lands, the division ~~reserves the right to~~ may enter into a contract with any livestock operator the division determines can provide the prescribed grazing treatment in a timely manner without soliciting competitive proposals; however, grazing permits issued under this paragraph shall not contain an option to renew and the duration shall be limited to the current grazing season ~~in duration~~.

~~(5) Grazing permits issued by the division shall include:~~

~~(a) The name, and a map, of the subject property to be grazed;~~

~~(b) A description of the desired vegetation community structure sought through the use of domestic livestock grazing;~~

~~(c) Identification of the type of domestic livestock needed to achieve the desired vegetation community structure;~~

~~(d) Identification of the key forage species for which utilization is to be measured;~~

~~(e) A description of the timing and intensity of utilization sought on key forage species that will achieve the desired vegetation community structure;~~

~~(f) The division's best estimate of the stocking density, period of grazing, and authorized forage harvesting stated in animal unit months that will achieve its vegetation management goals;~~

~~(g) A statement that the division may unilaterally suspend the grazing period if utilization goals for key forage species are met or exceeded prior to the end of the grazing period stated in the permit, or if events such as drought or fire make suspension necessary in order to prevent harm to the vegetation or wildlife resources.~~

~~(h) Identification of a reserved grass bank, if any, that the division may at its option offer as emergency forage for a permittee if the period of grazing set forth in the permit is suspended by the division.~~

~~(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the permittee and the division.~~

~~(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land.~~

~~(k) A statement assuring public access to division property by the permittee.~~

~~(l) A statement that the permittee is solely responsible for fence maintenance and control of permittee's livestock during the period of the permit.~~

~~(6)f) Grazing permits may be issued to grazing permittees of adjacent public lands when division lands lack infrastructure such as fencing to manage grazing separately from bordering public lands, such as Bureau of Land Management, U.S. Forest Service, or State Institutional Trust Lands.~~

~~(4) The division may~~~~at its option~~ suspend domestic livestock grazing authorized under any grazing permit ~~prior to~~~~before~~ expiration of the grazing permit's grazing period if the division determines the desired degree of utilization on the key forage species has been achieved.

~~(1a) The division shall attempt to verbally notify the livestock operator and send written notification that utilization goals have been achieved and that domestic livestock grazing is suspended.~~

~~(b) The livestock operator shall remove its domestic animals within seven (7) days of the postmark date on the written notification of suspension.~~

~~(c) Animals remaining on division lands after the seven (7) day period will be considered in trespass.~~

~~(7)5) Compensation received by the division for grazing permits may be in-kind compensation or monetary, or a combination of both, as specified by the division.~~

~~(8)a) The permittee is obligated to satisfy its compensation obligations regardless of whether the permittee uses the grazing permit or whether the provisions of the grazing permit have been changed by the division.~~

~~(9) Compensation due from the permittee shall be prorated in cases where the division suspends the period of grazing or animal unit months set forth in the permit.~~

~~(10)b) The division may require compensation to be paid prior to before livestock being placed on division land each year.~~

~~R657-28-6. Grazing of Domestic Livestock on Division Lands—Grazing Permits—Termination of Grazing Permit.]~~

~~(6) The division may terminate a grazing permit for non-compliance or for failure to abide by any terms and conditions in a signed permit.~~

~~(1)a) The division may unilaterally terminate a grazing permit at any time if the permittee has managed the permittee's livestock in a manner that breaches the provisions of the grazing permit.~~

~~(a) If Additionally, if the livestock management of a permittee is sufficiently egregious as to defeat the vegetation management goals of a grazing permit, that livestock operator may be disqualified from applying in the future for grazing permits on division property lands.~~

~~(b) The division shall notify in writing any livestock operator disqualified from obtaining grazing permits in the future.~~

~~(2)c) The division shall determine the degree to which a permittee has complied with the provisions of the grazing permit, and shall report to the permittee whether compliance was satisfactory or unsatisfactory.~~

~~R657-28-7. Grazing of Domestic Livestock on Division Lands—Grazing Permits—Option to Renew.]~~

~~(d) A permittee who is out of compliance with the division may have their permit terminated.~~

~~(7) Grazing permit duration and renewals:~~

~~(a) Grazing~~~~(1) Permits~~ permits shall be issued for a term no greater than one year.

~~(2)b) Permittees who receive a satisfactory review for in good standing with the previous year division may have the option to renew the grazing permit for the coming year provided the division~~

determines continued livestock grazing is necessary to maintain or improve wildlife habitat[; except the division may at its discretion:

~~_____ (a) Alter the provisions of the permit contract describing key forage species, timing, intensity, location, and duration of domestic livestock grazing if the division determines that such alteration will better achieve its vegetation management goals;~~

~~_____ (b) Identify a different in-kind compensation on division property that is reasonably comparable in value to the in-kind compensation of the original grazing permit~~

~~_____ (i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the permit to competitive bidding].~~

~~_____ (c) Withdraw the subject property from domestic livestock grazing for any reason whatsoever.~~

~~_____ (3) Should the terms of the original grazing permit be changed by the division, the permittee shall have the option to renew the permit.~~

~~_____ (4) A permittee may hold a grazing permit [on a subject division property] for a maximum period of ten years through the exercising of an option to renew[; except the division may put the permit out to competitive proposal solicitation at the conclusion of the fifth year;~~

~~_____ (5) The permittee having the grazing permit for the preceding ten years on a subject division property is entitled to submit a proposal for grazing the same division property if the permittee has not been disqualified from consideration as a permittee on division lands] at which point a new solicitation may be issued if the division determines continued livestock grazing is necessary to maintain or improve wildlife habitat.~~

~~_____ ([6]d) The division [reserves the right to] may issue grazing permits without options to renew, or with options to renew for a shorter aggregate term.~~

[

~~R657-28-8. Grazing of Domestic Livestock on Division Lands—Grazing Permits—Legal Effect.~~

~~_____ (1) Grazing permits transfer no right, title, or interest in any lands or resources held by the division, nor any exclusive right of possession, and grant only the authorized utilization of forage.~~

~~_____ (2) Permittees have no property rights in a] _____ (8) The division may amend or alter the provisions of the grazing permit contract.~~

[

~~R657-28-9. Grazing of Domestic Livestock on Division Lands—Grazing Permits—Range Improvement Projects.~~

~~_____ (1) No range improvement project, including, but not limited to, the building of fences or corrals; structures used to impound, divert, or convey water claimed solely under a division water right; prescribed burning; seeding; chaining; harrowing; irrigation; etc., shall be conducted on division lands] _____ (9)~~

~~Grazing permits are non-transferable without the [express] prior written consent of the division.~~

~~_____ (2) Range improvements, including fences, corrals, water works, etc., constructed on division property by permittee and which are affixed to the property shall be property of the division.~~

~~_____ (3) Permittee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the permittee.~~

~~_____ (4) All permittees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.~~

~~R657-28-10. Grazing of Domestic Livestock on Division Lands—Trespass.~~

~~_____ (1) Unauthorized livestock management activities on division land shall be considered trespass. These activities include, but are not limited to:~~

~~_____ (a) The use of forage at times and at places not authorized in a permit.~~

~~_____ (b) The placement of numbers of livestock on division land which, if left on the division land for the length of time allowed in the permit, would result in forage utilization in excess of that authorized by the permit.~~

~~_____ (c) Grazing.] _____ (10) Issuance of grazing permits does not convey or grant any property right of division lands to the permittees.~~

~~_____ (11) Trailing and staging [or trailing] livestock [on or] across or on division [land without a valid permit or publicly-recorded right of entry.] lands;~~

~~_____ (d) The dumping of garbage or any other material on the division land.~~

~~_____ (2) The permittee shall cooperate with the division in seeking judicial remedy against owners of trespass livestock on division lands for lost forage or other values.~~

~~R657-28-11. Grazing of Domestic Livestock on Division Lands—Trailing and Staging Livestock Across or On Division Lands.]~~

~~_____ ([1]a) Unless a party has a recorded right-of-way to trail livestock across division lands, prior written approval must be obtained from the division for trailing livestock across division lands.~~

~~_____ ([2]b) The authorization to trail livestock across division [land] lands shall restrict and limit the route, the number and type of animals, and the time and duration, [c] not to exceed two consecutive days[.]~~

~~_____ ([3]c) Staging of livestock on division lands is prohibited without the prior written consent of the division[~~

~~R657-28-12. Grazing of Domestic Livestock on Division Lands—Grassbanks.]~~

~~_____ ([4]12) The division may designate specific properties [as grassbanks for purposes] or portions of:]~~

~~_____ (c) a property] [Trading forage for habitat conservation actions on private or public lands;] as a grassbank.~~

~~_____ (b) Providing emergency forage for a division grazing permittee when goals of domestic livestock impacts to vegetation have been achieved prior to the expiration of a permit's grazing period; or~~

~~_____ (c) Any other purpose the division may identify.~~

~~_____ (2) Provisions required for a grazing permit under R657-28-5(5) shall be defined for grassbank properties prior to their forage reserves being used.~~

~~_____ (3) Nothing herein shall be construed to obligate the division to provide a grassbank or forage reserve when a grazing permittee is required by the division to suspend grazing prior to the expiration of the grazing period described in the permit, nor shall the division be required to utilize forage reserves under any other circumstance unless previously agreed to in writing by the division.]~~

~~[R657-28-13. Wood Products—General Restrictions.] R657-28-6. Salable Products.~~

~~_____ (1) Wood product permits, as defined in Section R657-28-2, may be issued by the division to applicants who wish to utilize division lands for the removal of trees and wood, when such actions will be beneficial to wildlife and the management of division lands.~~

~~[(1)a] A [person may not cut or remove any] wood product [from division lands without obtaining the proper permit, tag, or contract and having the permit, tag, or contract in possession.] permit may specify:~~

~~[(2)i] A [wood products collection contract or permit may be issued for a] designated area [and a specified] for collection:~~

~~(ii) The allowed period [of time] for:~~

~~(a) Removing trees] collection;~~

~~[(b) Harvesting Christmas trees; or~~

~~(c) Collecting firewood, posts, or ornamentals.~~

~~(3) A person may not cut or remove wood products during any period of time, or on any area not specified on the permit.~~

~~(4) Permits are nontransferable and nonrefundable.]iii) The species of trees that may be collected; and~~

~~[(5)iv) Permittees must accompany wood products from the cutting site.~~

~~[(6) Permits are available at the Salt Lake and regional offices.~~

~~(7)b) The division may set a maximum number of permits, per person or total permits, to harvest wood products on division lands.~~

~~[~~
R657-28-14. Wood Products — Firewood Permits.

~~(c) Wood product permits are non-transferable and non-refundable.~~

~~(d) The division may require compensation for wood product permits issued on division lands.~~

~~(i) The fee for firewood, Christmas tree, ornamental, and post permits is as defined in the fee schedule set forth by the Utah Legislature.~~

~~(ii) Compensation received by the division may be monetary, in-kind, or both.~~

~~(e) The division may terminate a wood product permit for non-compliance or for failure to abide by any terms and conditions in a signed wood product permit.~~

~~(2) Firewood, as defined in Section R657-28-2, may be collected on division lands.~~

~~[(1)a] A person may purchase one permit per year to collect firewood on division lands.~~

~~[(2)b] A firewood permit allows a person to collect up to [2]two cords of wood under the following conditions:~~

~~[(a)i] Firewood collection is limited to felled trees [on chained areas, except in]after tree removal projects or standing dead trees, unless otherwise designated[live tree removal areas].~~

~~[(b)ii] A living or dead tree containing a nesting cavity may not be felled or collected.~~

~~(3) [Firewood]Christmas trees, as defined in Section R657-28-2, may be collected [from May 1 through November 30 or as otherwise specified in the permit]on division lands.~~

~~[(4) The fee for a firewood permit is that which is set by the Utah Legislature yearly.]~~

R657-28-15. Wood Products — Christmas Tree Permits.

~~(1)a) A person may purchase one permit per year to cut a Christmas tree on division lands.~~

~~[(2)b] A tag will be issued with each Christmas tree permit.~~

~~[(3)c] The division may designate which division lands are open to Christmas tree harvesting.~~

~~(d) Only pinyon pine, Rocky Mountain juniper, or Utah juniper, or other species designated by the division on a specific property may be cut and removed.~~

~~[(4)e] The tag must be visibly attached to the tree before it is transported from the cutting site.~~

~~[(5) The fee for a Christmas tree permit is that which is set by the Utah Legislature yearly.~~

~~(6)f) The Christmas tree permit fee may be waived for any person who possesses a current Utah hunting or fishing license.~~

~~[(7)g] Division lands are not accessible for Christmas tree permit collection when division lands are closed. Closures may vary by property.[closed from December 1 through April 30 or as otherwise specified in the permit.]~~

~~[~~
R657-28-16. Wood Products — Ornamentals and Posts.

~~(4) Ornamentals, as defined in Section R657-28-2, may be collected on division lands.~~

~~[(1)a] A person may purchase one permit per year to remove ornamentals [or]on division lands.~~

~~(b) A person may harvest up to six ornamentals per permit.~~

~~(5) Posts, as defined in Section R657-28-2, may be collected on division lands.~~

~~(a) A person may purchase one permit per year to cut posts on division lands.~~

~~[(2)b] A person may harvest [ornamentals]up to [an aggregate value of \$60 per permit.~~

~~(3) A person may harvest]25 posts [up to an aggregate value of \$50.]per permit.~~

~~[(4) The value of ornamentals and posts are those values determined yearly by the Utah Legislature; compensation](6) Wood product contracts may be issued by the division for removing quantities of wood products over those specified in this rule.~~

~~(a) Wood product contracts may be issued under a first-come, first-served basis or a competitive bid process if multiple entities express interest in a particular wood resource.~~

~~(i) The division shall notify all parties by mail or email who have provided contact information and who have previously indicated their desire to be contacted regarding wood collection opportunities on division lands.~~

~~(ii) Negotiated compensation shall reflect a fair market value of the opportunity provided.~~

~~(b) Compensation received by the division may be monetary, in-kind, or both.~~

~~[~~
R657-28-17. Wood Products — Contract Agreements.

~~(1) Contracts may be issued by the division for removing quantities of wood products in excess of those specified in this rule.~~

~~(2) Contracts shall be awarded through the competitive proposal solicitation process described in R657-28-20.~~

~~(3) Compensation may be either in kind, monetary, or both.~~

R657-28-18. Seed Harvesting.

~~(c) The division must receive a copy of the applicant's Commercial General Liability insurance, which will be no less than one million dollars per person per occurrence and three million dollars aggregate, and must list Utah Division of Wildlife Resources as a co-insured party.~~

~~[(1)2] The division may issue seed harvesting permits, as defined in Section R657-28-2, that grant a permittee exclusive rights to harvest all seeds for a specified species for a single growing season on the division property specified in the permit.~~

~~[(2)a] Seed harvesting permits may be issued under a [competitive bid process or on a]first-come, first-served basis or a competitive bid process.~~

([a]b) The division may solicit competitive bids for seed harvesting permits for locations the division determines may provide opportunities for seed harvesting if such determination is made at least three weeks in advance of the anticipated onset of harvest.

([i]c) The division shall notify all parties by mail or ~~[electronic mail]~~email who have provided contact information and who have previously indicated their desire to be contacted regarding seed harvesting opportunities on division lands.

([ii]d) The bid award and seed harvesting permit shall be issued at least two weeks in advance of the anticipated onset of harvest.

~~([b] The division may issue seed harvesting permits on a first come, first served basis for locations the division determines may provide opportunities for seed harvesting if such determination is made after three weeks prior to the anticipated onset of harvest.~~

~~(i)e~~ Negotiated compensation shall reflect a fair market value of the opportunity provided.

([ii]i) ~~[In order to]~~To determine a fair market value of the seed harvesting opportunity, the division may rely upon, but not be limited to, one or more of the following:

(A) results of competitive bids for seed harvesting permits on other division ~~[properties]~~lands;

(B) market information obtained from other landowners, ~~[including the division's own seed requisitions, or other state agencies;~~

(C) ~~[market information provided by a seed harvester's competitors; or~~

~~(D)]~~market information provided by seed wholesalers or retailers;~~[ete.]~~

([3]ii) Compensation received by the division may be either a percentage of the final cleaned seeds harvested or other in-kind compensation, monetary compensation, or a combination thereof.

~~(a)f~~ The division must receive a copy of the applicant's Commercial General Liability insurance, which will be no less than one million dollars per person per occurrence and three million dollars aggregate, and must list Utah Division of Wildlife Resources as a co-insured party.

(g) All seed delivered to the division ~~[as compensation shall meet standards set forth in the Federal Seed Act (Title 7, Ch. 37), the]~~must be tagged in accordance with Utah State Seed ~~[Act]Laws [(Utah Code) Title 4, Chapter 16], [and] Utah Seed [Law (]Act and Utah Administrative [Rule]Code R68-8[)]. All seed shall comply with Utah State Noxious Weed Seeds and Weed Seed Restrictions. All seed shall also comply with the Federal Seed Act, 7 U.S.C. Section 1551-1610 and shall also meet minimum germination and purity standards determined by the division.~~

~~(4) Permittees shall compensate the division in whole regardless of whether seeds are harvested, unless harvest was precluded by circumstances beyond the permittee's control.~~

~~(5)h~~ If the permittee breaches the provisions of the permit, the permit may be terminated and the permittee disqualified from bidding on future seed harvesting permits. The division shall notify the permittee in writing of any breach of the terms of the permit.

~~(6) Methods of harvest that in the judgment of the division may kill or seriously injure source plants are expressly prohibited.~~

~~(7) The permittee may post the specified division property as prohibited against unauthorized seed harvesting provided the posting prohibits harvesting of only those seed species which the permittee is granted exclusive right to harvest. Permittee must remove signs after harvest of seed.~~

~~R657-28-19. Agricultural Leases.~~

~~(1) The division may lease lands or water rights for purposes of cultivated crop production only when the division determines that such a lease would provide a net benefit for wildlife or would facilitate wildlife management activities that would provide a net benefit for wildlife.~~

~~(2) Leases may be issued for a term no greater than one year, with an option to renew in accordance with Subsection (10).~~

~~(3) Compensation received by the division for agricultural leases may be either a fixed rate per acre or in-kind or a combination of both as specified by the division, providing that the value received is customary and reasonable.~~

~~(4) The lessee is obligated to satisfy its compensation obligations regardless of whether the lessee uses the lease.~~

~~(5) The division may require the lessee to acquire crop insurance if the division is to receive a share of the harvested crop.~~

~~(6) At the time of initial lease payment, the lessee may be required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the lease.~~

~~(7) Agricultural leases may be issued by the division through a competitive proposal solicitation process set forth in R657-28-20.~~

~~(8) Agricultural Leases issued by the division shall include:~~

~~(a) The name, and a map, of the subject property to be leased;~~

~~(b) A description of the vegetation management goals to be achieved, including type of crop to be grown and a description of crop residue, if any, to be left after harvest to benefit wildlife; or any other vegetation parameter desired for the subject lease property;~~

~~(c) A description of the benefit expected for wildlife;~~

~~(d) A description of the rights of the lessee and the division;~~

~~(e) The type and amount of compensation to be delivered to the division, and the date compensation is due;~~

~~(f) A provision for adjusting the base rental fee, if any, over the life of the lease to reflect changes in the market value of the lease;~~

~~(g) A statement describing how reporting is to be made of the quantity of crop harvested if a crop share is identified as in-kind compensation;~~

~~(h) A statement that the division may unilaterally terminate the lease if lessee breaches the terms of the lease contract;~~

~~(i) Identification of the type of compensation required by the division. Description of the compensation required shall be sufficiently specific as to be clearly understood by the lessee and the division;~~

~~(j) Requirement that all applications to appropriate water on division land be filed only with the permission of the division, filed in the name of the division, and that express written consent from the division is needed prior to the conveyance of water off division land;~~

~~(k) A statement assuring non-motorized public access to division property by the lessee;~~

~~(l) A statement that the lessee is solely responsible for fence maintenance of the leased property;~~

~~(m) A statement that the division is held harmless and indemnified for acts of God or any and all losses due to domestic livestock or public or wildlife use of the subject property during the period of the lease;~~

~~(n) A statement indemnifying the state from all actions of the lessee;~~

~~(c) Lessee's consent to suit or arbitration arising under terms of the lease or as a result of operations carried on under the lease;~~

~~(9) The division shall determine the degree to which a lessee has complied with the provisions of the lease, and shall report to the lessee whether compliance was satisfactory or unsatisfactory.~~

~~(10) Lessees who receive a satisfactory review for the previous year may have the option to renew the lease for the coming year provided the division determines the lease continues to provide a net benefit for wildlife or facilitates wildlife management activities that provide a net benefit for wildlife; except the division may at its discretion;~~

~~(a) Withdraw the subject property from lease if the division determines the lease has failed to benefit wildlife or facilitate wildlife management goals;~~

~~(b) Alter the non-compensatory provisions of the lease if the division determines that such alteration will better achieve its wildlife management goals;~~

~~(c) Identify a different in-kind compensation on division property that is reasonably comparable in value to the market-adjusted in-kind compensation of the original lease;~~

~~(i) the division may negotiate the terms of the new in-kind compensation, and total compensation due the division without opening the lease to competitive proposal solicitation.~~

~~(d) Should the terms of the original lease agreement be changed by the division, the lessee shall have the option to renew the lease.~~

~~(i) A lessee may hold a lease on a subject division property for a maximum period of ten years through the exercising of an option to renew; except the division may put the lease out to competitive proposal solicitation at the conclusion of the fifth year;~~

~~(ii) The lessee having the lease for the preceding ten years on a subject division property is entitled to submit a competitive proposal on the same division property if the lessee has not been disqualified from consideration as a lessee on division lands.~~

~~(e) The division reserves the right to issue leases without options to renew, or with options to renew for a shorter aggregate term.~~

~~(11) No improvement, including the building of fences, corrals, and water structures used to impound, divert, or convey water claimed solely under a division water right; or management practice, including prescribed burning, seeding, chaining, harrowing, irrigation, etc.; shall be constructed or conducted on division lands without the express written consent of the division.~~

~~(12) All improvements, including fences, corrals, water structures, etc., constructed on division property by lessee and which are affixed to the property shall be property of the division.~~

~~(a) Lessee shall not be compensated for such improvements unless previously agreed upon in writing between the division and the lessee.~~

~~(13) All lessees are prohibited from filing an application to appropriate water on division lands unless the application is approved by the division in writing and is filed in the name of the State of Utah, Utah Division of Wildlife Resources.~~

~~R657-28-20. Competitive Proposal Solicitation Process.~~

~~(1) Grazing permits, leases, or wood harvesting contracts may be issued by the division through a competitive proposal solicitation process to achieve the division's vegetation or wildlife management goals. The division may use the process described herein for the removal of other natural resources from division lands for commercial gain by any party.~~

~~(2) Proposals for grazing permits, leases, or wood harvesting contracts will be solicited 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 or lease is offered at least 30 days or more in advance of the deadline for proposal submittals. At least 30 days prior to the deadline for proposal submittals, notification will be sent to landowners adjoining the subject division property, and to livestock operators having federal permits to graze a federal allotment adjacent to division property.~~

~~(a) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the subject permit, lease, or wood harvesting contract. The division shall also identify the desired form of compensation, whether monetary, in-kind, or both.~~

~~(b) The division shall make available at an applicant's request additional information, including information describing the division's management objectives for the subject property to be achieved through a grazing permit, lease, or wood harvesting contract, that would assist an applicant in making a reasonably informed proposal.~~

~~(3) At the conclusion of the advertising process, the division shall review and select the preferred applicant using either of the following processes. The division shall have full discretion to select which process to use:~~

~~(a) The division shall allow all applicants at least 20 days from the date of mailing of notice to submit a sealed proposal. Applicants not submitting a proposal within the prescribed time period shall have their proposals rejected. Competing proposals are evaluated using the following criteria where applicable:~~

~~(i) Resources available to applicant that can be used to control livestock movement on the subject division property;~~

~~(ii) Applicant's ability to meet lease or prescribed management objectives;~~

~~(iii) Benefits to wildlife and wildlife habitat that could be expected from applicant's proposal;~~

~~(iv) Applicant's demonstrated sound range and agricultural management practices on applicant's property or other property used by applicant;~~

~~(v) Applicant's knowledge of principles of range science, range management, or agriculture;~~

~~(vi) Applicant's prior history of satisfactory or unsatisfactory use of division lands;~~

~~(vii) Applicant's right to the use of adjoining or nearby properties with which management of a division property may be coordinated;~~

~~(viii) Proximity of applicant's property to division property;~~

~~(ix) Functionality of subject division property's perimeter fences in controlling livestock movement on or off the subject property;~~

~~(x) The size of area upon which the applicant can achieve the division's wildlife or vegetation management goals, thereby reducing the division's grazing permit, lease, or wood harvesting contract administrative costs;~~

~~(xi) Amount or value of the compensation offered to the division, including the satisfaction of a minimum quantity or quality of compensation, whether monetary, in-kind, or both, if minimum standards are required by the division.~~

~~(b) The division may invite each qualified applicant to meet privately with the division and present its proposal for the~~

subject property's grazing permit, lease, or wood harvesting contract. The division may request parties other than those responding to the initial solicitation to meet with the division. The division shall have full authority to:

- _____ (i) Offer counter proposals;
- _____ (ii) Negotiate with any or all of the applicants to create a proposal which best satisfies the vegetation or wildlife management objectives of the division;
- _____ (iii) Terminate the negotiation process entirely; or
- _____ (iv) Require the respondents to proceed through the process described in Subsection (3)(a).

_____ (v) The division may select the preferred applicant based on criteria delineated in Subsection (3)(a)(i) through (xi), or may withdraw the property from consideration for grazing, leasing, or wood harvesting.

_____ (4) Any party in default on a previous obligation to the division may be disqualified from obtaining a grazing permit, special use permit, lease, or wood harvesting contract from the division.

R657-28-21. Applications to Appropriate Water on Division Lands.

_____ No party possessing a right of way lease, grazing permit, agricultural lease, non-agricultural lease, special use permit, contract or other form of authorization issued by the division to use division lands shall apply to appropriate water from the surface or subsurface of division lands without first obtaining written permission from the division, and the application is filed in the name of the State of Utah, Division of Wildlife Resources. All water structures, including impoundment, diversion and conveyance structures or works, used to impound, divert or convey water claimed solely under a division water right shall be the property of the division.

R657-28-22. Extraction of Sand, Gravel, Cinders, and Ornamental Rock on Division Lands.

_____ (1) The division shall not [j] Allowed methods of harvest may be specified in the permit.

_____ (8) The division may sell, lease, or otherwise permit the excavation or extraction of any sand, gravel, cinders, ornamental rock, as defined in Section R657-28-2, or other common mineral resource on division lands by any private or public entity [except] when the division determines that such sale, lease, excavation or extraction is consistent with the purposes for which the land was acquired and provides a net-benefit to wildlife.

_____ ([2]a) The division shall receive fair market value for all sand, gravel, cinders, ornamental rock, or other common mineral resources removed from division property.

_____ ([3] Following the completion of excavations, the division 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 division, stabilization, closure, or removal of access roads as determined by the division, replacement of natural topsoils, revegetation using a seed mixture and rate of application as specified by the division, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents. [b] Reclamation practice shall adhere to Section R647-3-109 unless otherwise specified by the division.

_____ ([4]c) Bonding in an amount equal to two-times the estimated cost of reclamation, as determined by the division, shall be required [by the division] [prior to] before authorizing the sale, lease,

excavation or extraction of any sand, gravel, cinders, ornamental rock, or other common mineral resource on division lands.

_____ ([5]d) Nothing [herein] in this rule shall be construed as [superseding] superseding the division's legal obligations to obtain approval from [the U.S. Fish and Wildlife Service or] any [other] party possessing a legal interest in the property [prior to] before authorizing the extraction or excavation of sand, gravel, cinders, ornamental rock, or other common mineral resource on division property.

R[657-28-23. Rights of Way Leases, Non-Agricultural Leases of Division Lands, Special Use Permits—Application Procedures—Required Information—Conditional Approval]657-28-7. Water.

_____ ([1- To] (1) No party possessing a termed easement, lease, grazing permit, special use permit, contract or other form of authorization issued by the division to use division lands shall apply to appropriate water from the surface or subsurface of division lands without first obtaining written permission from the division, and the application is filed in the name of Utah, Division of Wildlife Resources.

_____ (2) Any other party that possesses a water right in which its point of diversion or place of use is located on division lands must apply for [a right of way] and receive any necessary lease, termed easement, grazing permit, special use permit, contract or [non-agricultural lease] other form of authorization from the division [lands, a person shall] before any trespass, conveyance structures, impoundments, or any land disturbance is initiated to perfect the right.

_____ [(a) complete and submit an application provided by the division to the regional supervisor in the appropriate division regional office;

_____ (b) pay a nonrefundable application fee;

_____ (c) submit the application and application fee at least 120 days prior to the proposed construction or occupancy date; and

_____ (d) include the following information with the application:

_____ (i) A 7.5-minute topographic map or aerial photo showing the proposed project area. Map scale may be larger but must identify township and range sections, UTM coordinates, and give appropriate scale.

_____ (ii) Evidence of an ownership or leasehold interest in the mineral estate where development of that estate is the purpose for applicant's seeking a right of way lease. (3) All water structures, including impoundments, diversions and conveyance structures or works, used to impound, divert or convey water claimed solely under a division water right shall be the property of the division, unless otherwise agreed upon through an agreement.

R657-28-8. Special Use Permits.

_____ (1) As defined in Section R657-28-2, the division may issue a special use permit to applicants who wish to utilize division lands for temporary, non-depleting activities.

_____ (a) Special use permits will be required for research, seismic testing, surveys, organized events, commercial gain, or other special activity or use.

_____ (b) The division may not issue a special use permit on division lands if the use would interfere with the authorized purpose for which the property was acquired.

_____ (c) The division may issue exclusive or non-exclusive special use permits on division lands when the division deems it consistent with Title 23 Wildlife Resources Code of Utah and division rules and policies.

(d) Special use permits may not exceed one year from the date of issuance.

(e) At the discretion of the division, special use permit requirements may be waived for volunteers or contractors hired at the request of the division to complete work that falls within the definition of a special use permit[~~-, or lease~~].

(iii) A project plan that includes:

(A) project alternatives, including alternatives which do not affect the division;

(B) a description of the activity to occur, or infrastructure to be constructed, including site location, construction footprint, above and below ground construction, infrastructure's functional relationship to existing or future infrastructure, etc. The description should be sufficiently detailed as to provide an accurate and complete representation of the proposed action;

(C) identification of adverse impacts to wildlife and wildlife habitat associated with the proposed use and how they will be avoided, minimized, or mitigated; and

(D) project alternatives that do not affect division land which were considered but rejected, and the specific reasons those alternatives were rejected[2] Applicants who wish to obtain a special use permit on division lands will follow the division's application process.

(a) Applicants shall submit a complete application to the division at least 30 days before the proposed use start date.

(i) When an application is submitted less than 30 days before the proposed use start date, the application will be deemed untimely and the request shall state the grounds for its untimeliness. If the division determines that the untimeliness should be excused because of urgency, unexpected circumstances, or other reasons, the request may be processed and charged a late fee as defined in Subsection 4(b).

(2)[b] [Upon receiving]As part of the application[~~-,~~] process, applications will include:

(i) A non-refundable application fee, [and the information required in Subsection (1)(d)]as defined in the fee schedule set forth by the Utah Legislature,

(ii) A completed division special use permit application with required signatures, and[~~director or the director's designee may either deny the application or grant a conditional approval within 60 days.~~]

(3) If the application is denied, the director shall provide a written notice to the applicant.

(4) Before final approval is granted the division may require the applicant to provide the following additional information:

(a) A certified copy of a survey of the area affected by the proposed project prepared by a licensed surveyor. A centerline survey describing the proposed right of way lease and its width is adequate for a pipeline, road, power line, or similar use.

(b) An electronic file depicting the lease that is compatible with, and requires no editing for, accurate downloading into geographic systems information software used[~~]~~(iii) A copy of the applicant's Commercial General Liability insurance, which will be no less than one million dollars per person per occurrence and three million dollars aggregate, and must list Utah Division of Wildlife Resources as a co-insured party.

(A) The division may waive or alter this requirement for state and local government agencies, public universities, or as deemed appropriate by the division.

(e) Evidence that the applicant has given the State Historic Preservation Officer a reasonable opportunity to review and

comment on the proposed project as required by Utah Code Section 9-8-404.

(d) A biological assessment, including an analysis of the potential direct, indirect, and cumulative effects the proposed project may have on wildlife, wildlife habitat, and public recreational use opportunities.

(e) A survey of threatened, endangered and candidate plant and animal species, Utah wildlife sensitive species, and Utah species of special concern conducted on and adjacent to the proposed project.

(f) Proof that the applicant has secured all the permits and authorizations required for the project under State, Federal, and local laws.

(g) Proof that the applicant has complied with the provisions of the National Environmental Policy Act, where applicable, including preparation of all environmental assessments, environmental impact statements, or other reports required by the administering federal agency.

R657-28-24. Rights-of-Way Leases, Leases of Division Lands, Special Use Permits—Final Determination—Project Review—Contract Provisions.

(1) Within 60[3] The division's review process will begin once a complete application is received.

(a) The division will have 30 days to complete a review of[receiving] the application[~~-fee~~] and [information required in Section R657-28-23, or 60 days of granting conditional approval, whichever is greater,]either approve or deny the request. The division [director or]will consider the [director's designee shall make a final determination to affirm or modify the conditional approval or deny]following in its review of the application[~~-,~~]

(2) The director or the director's designee shall deny an application if:

(a) the application does not include the information requested by the division;

(b)i) the potential impact to wildlife, wildlife habitat, public recreation, or cultural [or]and historic resources[~~-is unacceptable~~];

(e)ii) the applicant[~~has not, in the opinion of the division, adequately considered~~]s consideration for ways to avoid or minimize impacts [or proposed adequate compensatory mitigation plans for unavoidable impacts, including cumulative impacts]to wildlife, wildlife habitat, or public recreation;

(d)iii) [there are, in the opinion of the division,]the applicant's ability to use alternative locations reasonably available on lands not owned by the division for the requested use[~~-, including organized events that may harm~~];

(iv) third party contractual or legal oversight rights;

(v) whether or not the applicant is in default on any previous obligation to the division;

(vi) whether or not the application is submitted less than 30 days before the proposed use start date; and

(vii) other criteria as may be necessary to evaluate the application.

(b) If the application is approved, the division will notify the applicant of required permit terms and conditions, and compensation requirements. If the application is denied, the division will provide a written notice to the applicant.

(4) The division may require compensation for special use permits issued on division lands.

(a) The compensation for a special use permit shall be identified before issuance of the special use permit and will be generally based upon the following factors:

- (i) fee schedule set forth by the Utah Legislature;
- (ii) the administrative cost incurred to the division in reviewing, preparing, and administering the special use permit;
- (iii) the fair market value of the use;
- (iv) impacts to wildlife ~~[or]~~and wildlife habitat~~[-utilities, telecommunications structures, transmission lines, canals, ditches, pipelines, tunnels, fences, roads, and trails];~~~~[-or]~~
- ~~[(e) if the applicant's project affects property in which a]~~(v) impacts to public access; and
- (vi) impacts to public opportunities to engage in wildlife-related activities.
- (b) The division may charge a late fee up to \$100, per Subsection 2(a)(i) when an applicant has not submitted an application within 30 days of the proposed start date of the activity.
- (c) In lieu of monetary compensation, the division may suggest and accept in-kind compensation in the form of:
 - (i) land enhancements,
 - (ii) habitat maintenance or improvements,
 - (iii) data reports,
 - (iv) or other forms of compensation that are beneficial to wildlife management and the division's statutory responsibilities. The in-kind compensation must be greater than or equal to the monetary fees that would have been paid to the division.
- (d) In special circumstances, the division may waive compensation requirements for uses that directly promote or enhance the mission of the division.
- (5) Special use permits are non-transferable.
- (6) The division may terminate a special use permit for non-compliance or for failure to abide by any terms and conditions in a signed special use permit.

R657-28-9. Termed Easements and Leases.

- (1) As defined in Section R657-28-2, the division may issue a termed easement or lease to applicants who wish to obtain a legal right to use division lands.
 - (a) A termed easement or lease will be required for power lines, pipelines, roadways, communication lines, and structures.
 - (b) The division may issue exclusive or non-exclusive termed easements or leases on division lands when the division finds it consistent with:
 - (i) Title 23 Wildlife Resources Code of Utah;
 - (ii) division rules and policies;
 - (iii) the relevant Habitat Management Plan; and
 - (iv) any requirements imposed by funding sources used to acquire the property.
 - (c) Pursuant to Subsection 78B-2-216(2), no termed easement, lease, or other interest in division lands may be acquired by prescription, by adverse possession, nor by any other legal doctrine except as provided by statute.
 - (d) Termed easements and leases may not exceed 30 years from the date of issuance.
 - (e) The division may only issue non-termed easements and leases when required by law.
- (2) Applicants who wish to obtain a termed easement or lease on division lands will follow the division's application process.
 - (a) Applicants shall submit a complete termed easement or lease application to the division at least 180 days before the proposed use start date. The filing of an application is deemed to constitute the applicant's offer to acquire a termed easement or lease under the conditions contained in the conveyance document and division rules.
 - (b) As part of the application process, applications will include:
 - (i) A non-refundable application fee, as defined in the fee schedule set forth by the Utah Legislature;
 - (ii) A completed termed easement or lease application with required signatures; and
 - (iii) All items listed under Step One of the application packet.
 - (3) The division's review process will begin once all items listed in Subsection 2(b) are received.
 - (a) The division will have 60 days to complete a review of the application and either grant conditional approval or deny the request. The division will consider the following in its review of the application:
 - (i) the potential impact to wildlife, wildlife habitat, public recreation, or cultural and historic resources;
 - (ii) the applicant's consideration for ways to avoid or minimize impacts to wildlife, wildlife habitat, or public recreation;
 - (iii) the applicant's ability to use alternative locations reasonably available on lands not owned by the division for the requested use;
 - (iv) third party ~~[has]~~contractual or legal oversight rights~~[-and the project is rejected by that party];~~
 - ~~[(f)]~~(v) whether or not the applicant is in default on any previous obligation to the division~~[-];~~
 - ~~[(3)]~~(vi) other criteria as may be necessary to evaluate the application.
 - (b) If the application is granted conditional approval, the division will notify the applicant and provide a list of the required items listed under Step Two of the termed easement or lease application packet.
 - (i) The division may not issue a termed easement or lease without first obtaining required written permission from entities who have provided funding assistance when the property was acquired, or any other entity who may have legal rights or restrictions on the property. The division may require additional Step Two items to be carried out to fulfill these requirements.
 - (ii) The signed application is authorization for the division to bill the applicant for costs incurred toward the issuance of the termed easement or lease, including the administrative cost incurred to the division in reviewing, preparing, and administering the contract, NEPA requirements, appraisal and appraisal review, and land surveys. All costs incurred by the division will be reimbursed by the applicant within 30 days of being invoiced.
 - (iii) If the application is denied, the division ~~[shall]~~will provide a written notice to the applicant.
 - (4) ~~[A right of way lease or other form of lease may include provisions requiring the applicant to:~~
 - ~~(a) Restore all structures including fences, roads, and existing facilities, and regrade as nearly as practical to the pre-project grade and contour, and revegetate the impacted area to division specifications;~~
 - ~~(b) Adhere to the terms of the applicant's approved project plan prescribed in Subsection R657-28-23(1)(d)(iii); and~~
 - ~~(c) Pay for surveys, environmental assessments, environmental impact statements, appraisals, restoration, revegetation, compensatory mitigation, and all other expenses associated with the project.~~
 - ~~(5) A special use permit shall include any applicable provision prescribed in Subsection (4).~~
 - ~~(6) A right of way lease or division land lease may be granted for a maximum of 30 years from the date of signing; however, the division explicitly reserves the right to grant leases for shorter periods.~~

~~(7) The termination date for a lease will be determined by the division after assessing the activity applied for and the needs of the lessee.~~

~~(8) A special use permit may only be granted for a maximum period of one year from the date of signing.~~

~~R657-28-25. Right of Way Leases, Division Land Leases, Special Use Permits—Compensation.~~

~~(1) The division shall receive]The division will require compensation for [all right-of-way]termed easements and leases[7] issued on division [land leases, and special use permits consistent with the following requirements:~~

~~(a)]lands. Compensation may [be based on]include use fees, administrative costs, and mitigation costs and shall be identified before issuance of the termed easement or lease.~~

~~(a) The compensation for use fees will be generally based upon the following factors, determined by whichever is highest:~~

~~(i) the cost incurred to the division in evaluating and preparing the right of way lease, division land lease, or special use permit;~~

~~(ii) the cost incurred by the division in administering the right of way lease, division land lease, or special use permit ;~~

~~(iii) the]i appraised value of the [affected-]property being utilized;~~

~~(iv)](ii) fee schedule set forth by the Utah Legislature; or~~

~~(iii) the fair market value of the use[5].~~

~~[(v) fee schedule set forth by the Utah Legislature](b) The compensation for the administrative cost shall be identified based on the personnel time incurred to the division in reviewing, preparing, and administering the termed easement or lease;~~

~~(c) The division may require compensation for mitigation for impacts to or loss of wildlife, habitat, and public access, and will be generally based upon the following factors:~~

~~(i) number of acres impacted;~~

~~(ii) species impacted;~~

~~(i)](iii) impacts to wildlife and wildlife habitat;~~

~~(i)](iv) impacts to public access; and~~

~~(i)](v) impacts to public opportunities to engage in wildlife-related activities.~~

~~[(b)](d) The division may not issue a termed easement or lease for less than \$500.~~

~~(e) In lieu of monetary compensation, the division may accept in-kind compensation in the form of[, but not limited to,]:~~

~~(i) land enhancements,~~

~~(ii) habitat maintenance or improvements, [land exchange, public access for wildlife related activities,]and[or]~~

~~(iii) other forms of compensation that are beneficial to wildlife management and the division's statutory responsibilities. The in-kind compensation must be greater than or equal to the monetary fees that would have been paid to the division.~~

~~[(2) Every right-of-way lease, division land lease, and special use permit shall be documented in writing and contain the following information:~~

~~(a) the names of the parties and other persons involved in the transaction;~~

~~(b) the signature of the parties and other persons involved in the transaction. The individual signing on behalf of the applicant must provide evidence he/she is authorized to sign on the applicant's behalf;~~

~~(c) a detailed description of the compensation, including compensatory mitigation;~~

~~(d) a detailed description of the location, terms, and conditions of the right of way lease, division land lease, or special use permit;~~

~~(e) a statement that the parties and signatories to the transaction enter therein voluntarily and mutually agree to its terms and conditions;~~

~~(f) the commencement and termination date of the right-of-way lease, division land lease, or special use permit.~~

~~R657-28-26. Termination of Right of Way Leases, Division Land and Water Leases, Grazing Permits, and Special Use Permits.~~

~~(1) Unless specified elsewhere in this Rule, the provisions of this section set forth the process for the termination of grazing permits, special use permits, and leases. If provisions of this section are in conflict with provisions in other sections of this Rule, those other sections shall govern.~~

~~(2) A person may request termination of their grazing permit or lease by submitting a written request to the division at least 60 days prior to the requested date of termination.~~

~~(3) A person may request termination of their special use permit by submitting a written request to the division at least 10 days prior to the beginning date of the special use permit.~~

~~(4) The division is under no obligation to grant a requested termination of a grazing permit, special use permit, or lease, and retains the right to pursue specific performance of any contract into which it has entered.~~

~~(5) The division may not grant a grazing permit, special use permit, or lease termination request until the required reclamation and any compensatory mitigation for impacts incurred by the project are completed.~~

~~(6) The division may unilaterally terminate any grazing permit, special use permit, or lease and require full reclamation of disturbed areas where the holder violates any of the conditions of the grazing permit, special use permit, or lease.~~

~~(7) Before terminating a grazing permit, special use permit, or lease the division shall:~~

~~(a) Give written notice of the intended division action to the holder of the permit or lease by certified mail;~~

~~(b) Document noncompliance; and~~

~~(c) Allow the holder of the lease or permit 30 days to remedy the violation and comply with the terms set therein.~~

~~(8) Any party breaching an agreement or contract with the division, or being in default on an obligation to the division, may be disqualified from securing a grazing permit, special use permit, or lease from the division or otherwise applying for the ability to remove any natural resource from division lands in the future. The division shall notify the party in writing of the party's disqualification.~~

~~R657-28-27. Renewal of Right of Way Leases and Non-Agricultural Division Land Leases.~~

~~(1) A person may apply to renew a right of way lease or division land lease by:~~

~~(a) submitting a written request to the division;~~

~~(b) updating the original application; and~~

~~(c) paying a renewal fee.~~

~~(2) A renewal may be requested no earlier than 120 days and no later than 60 days prior to the expiration date of the right of way lease or division land lease.~~

~~(3) A renewal shall be granted under the division's laws, rules, and policies in effect at the time of renewal.~~

~~(4) A request for a change in the size or use of an area or for an additional area or use shall be applied for as a new right of way lease or division land lease.~~

~~(5) The division may deny renewal of a right of way lease or division land lease for any of the following reasons:~~

~~(a) Unacceptable impacts to wildlife, wildlife habitat, public recreation, or cultural or historic resources;~~

~~(b) Continuation of the right of way lease or division land lease is, in the opinion of the division, incompatible with the intended uses of the land;~~

~~(c) The person has not complied with terms and conditions of the lease contract; or~~

~~(d) The management goals for the area have changed to the extent that the right of way lease or division land lease is no longer compatible.~~

~~(6) The division shall provide a~~ (5) Before the issuance of a termed easement or lease, or for good cause shown at any time during the term of the termed easement or lease, the division may require the applicant or permittee to post with the division a bond to assure compliance with all terms and conditions of the termed easement or lease.

(a) The bond amount will be equal to or greater than 125% of the estimated construction costs of the authorized improvements, less materials, assessed by a certified engineer.

(b) Bonds posted on termed easements or leases may be used for payment of all monies, rentals, royalties due to the division, reclamation costs, and for compliance with all other terms, conditions, and rules pertaining to the termed easement or lease.

(c) Bonds may be increased or decreased in reasonable amounts, at any time as the division may decide, provided the division provides written notice[~~to the applicant~~] stating the increase or decrease and the reasons for [~~denial~~]the increase or decrease.

(7) Nothing herein shall be construed as limiting the division in seeking agreement from the U.S. Fish and Wildlife Service, or any other party with a contractual or property interest in the division's property.

R657-28-28. Sublease, Conveyance, or Assignment of Grazing Permits; Special Use Permits; Seed Harvesting Permits; Wood Products Harvesting Permits; Right of Way, Agricultural, and Division Land Leases; and Contracts for the Removal of Natural Resource.

~~(1) Leases, grazing permits, special use permits, seed harvesting permits, any form of wood products harvesting permit, or contracted rights to remove natural resources of any kind]~~ d) Bonds may be accepted in any of the following forms at the discretion of the division:

(i) Surety bond with an approved corporate surety registered in Utah.

(ii) Other forms of surety may be acceptable to the division.

(6) A termed easement or lease may not be assigned, partially assigned, sub-permitted, leased, sub-leased, mortgaged, pledged or otherwise transferred, disposed, or encumbered in any fashion without the prior written consent of the division.

(2)a) A sublease[~~, conveyance,~~] or assignment may be [made]granted only to a person, firm, association, or corporation qualified to do business in the state[~~of Utah~~], and which is not in default under the laws of the state [~~of Utah~~]relative to qualification to do business within the state, and is not in default on any previous obligation to the division.

~~(3) A sublease, conveyance, or assignment may not be approved without reimbursement for the division's administrative costs associated with said sublease, conveyance, or assignment; and payment of:~~

~~(a) the difference between what was originally paid for the permit, lease, or contract and what the division would charge for the permit, lease, or contract at the time the application for sublease, conveyance, or assignment is submitted; or~~

~~(b) an alternate fee established by, and at the discretion of, the division.~~

~~(4) b) A sublease[~~, conveyance,~~] or assignment shall take effect on the date of the [approval]issuance of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.~~

~~(5) A sublease, conveyance, or assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the permit or lease contract number, land involved, and the name and address of the assignee and shall include any agreement which transfers control of the lease to a third party. A copy of the documents subleasing, conveying, or assigning the interest shall be given to the division.~~

~~(6) A)c) Applicants who wish to obtain a sublease or assignment of an existing agreement on division lands will follow the division's application process.~~

(i) Applicants shall submit a complete application to the division at least 90 days before the proposed sublease or assignment takes effect.

(ii) As part of the application process, applications will include:

(A) A non-refundable application fee, as defined in the fee schedule set forth by the Utah Legislature,

(B) A completed application with required signatures, and

(C) All items listed under Step One of the application packet.

(d) The division will require compensation for sublease or assignment of a termed easement or lease. Compensation may include:

(i) the difference between what was originally paid for the termed easement or lease and what the division would charge for the termed easement or lease when the application for sublease or assignment is submitted; or

(ii) an alternate fee established by, and at the discretion of the division; and

(iii) the administrative cost incurred to the division in reviewing, preparing, and administering the sublease[~~, conveyance,~~] or assignment[~~shall be executed according to~~].

(e) The division [proceeds.

~~(7) A sublease, conveyance, or assignment is not effective until approval is given by]~~ may terminate a termed easement or for failure to follow the division[~~Any sublease, conveyance, or~~]'s assignment process.[made without such approval is void.]

[

R657-28-29. Abandonment of Right of Way Leases.

~~(1) If within 365 days of the date of execution of right of way lease a lessee fails to construct and install the infrastructure which necessitated lessee's acquisition of a right of way lease, or the lessee otherwise fails to use all or any portion of a right of way, that portion of the right of way so unused shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right of way shall be terminated with no compensation due from the~~

division. (2) If proof of lessee's use of all or a portion of a right of way lease cannot be provided for any contiguous three year period, that portion of the right of way for which proof of use cannot be provided shall be deemed to be abandoned and the lessee's leasehold interest in said portion of the right of way shall be terminated with no compensation due from the division.

(2) In order to facilitate the determination of an abandonment of right of way leases, the lessee shall pay an administrative charge every three years during the term of the lease unless otherwise stated in the lease contract.

R657-28-30. Bonding.

(1) Prior to approval and issuance of a right of way lease, division land lease, or special use permit; (7) The division may terminate any termed easement or lease, in whole or in part, for:

(a) non-use or abandonment if the permittee fails to begin construction within 365 days of issuance;

(b) non-use or abandonment if the permittee fails to utilize the termed easement or lease for three consecutive years; or

(c) non-compliance or for failure to abide by any terms and conditions in a signed agreement, division administrative rules, or Utah Code.

(8) A termed easement or lease may be voluntarily terminated or canceled at the request of the permittee. In such cases, the division will not be responsible for reimbursement of any portion of the fees collected.

(9) A termed easement or lease may be renewed by the division [may require] if the applicant [to post a surety bond in an amount determined by] is in good standing with the division[-

(2) Only bonds issued by insurers listed in U.S. Treasury Department Circular 570, or], other state agencies and with local and state laws and regulations, and when the division deems it consistent with Title 23 Wildlife Resources Code of Utah and division rules and policies.[a financial rating assigned by the A.M. Best Company Insurance Guide of A or higher with respect to property and casualty sureties, shall be accepted by the division.]

[(3) The division may use the surety bond to pay for reclamation, compensatory mitigation, payment of any money owed the division, or any other unpaid obligation of right of way lessee, division land lessee, or special use permit holder according to the terms and conditions set therein. Should the amount of bond fail to cover the cost of reclamation, mitigation, or other contractual obligations, the party shall remain liable for any additional costs over and above the bonded amount.

(4) The division may require a reasonable increase from time to time in the amount of the bond after providing right of way lessee, division land lessee, or special use permit holder 30 days written notice.

(5) The bond shall be in effect even if the lessee or permittee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

(6) Following termination of a right of way lease, division land lease or special use permit; and satisfaction of the contractual obligations of the holder; the division shall release any unused bonds back to the lessee or permit holder within six months)(a) A request for a renewal of an existing termed easement or lease with the same size and use may be issued by the division. The applicant shall submit an application and will be subject to current requirements for compensation, terms and conditions.

(b) A request for a modification in the size, use, or any other alteration to infrastructure use shall be applied for as a new termed easement or lease.

(c) The division may not renew a termed easement or lease without first obtaining written permission from entities who have provided funding assistance when the property was purchased, or any other entity who may have legal rights or restrictions on the property. The division may require additional application items to be carried out to fulfill these requirements.

KEY: wildlife, right-of-way, leases, land use, wood

Date of Last Change: 2022[August 7, 2007]

Notice of Continuation: June 13, 2022

Authorizing, and Implemented or Interpreted Law: 23-1[3]4-8

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number:	R765-901	Filing ID: 54859
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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
Alison A. Adams	801-643-5535	Alison.Adams@ushe.edu
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu

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

General Information

2. Rule or section catchline:

R765-901. Talent Ready Utah Program

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

The purpose of this rule is to replace Rule R357-28 with a rule that provides for the administration of the Talent Ready Utah Program by the Utah Board of Higher Education.

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

The rule is similar to Rule R357-28 and provides for: a) the method and deadlines for applying for funding under the Talent Ready Utah Program; b) the distribution of funding under the said program; and c) the reporting requirements of each entity receiving funding under the program.

Fiscal Information

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

A) State budget:

Enactment of this rule likely will not materially impact state revenue because the rule applies to the administration of funding under the Talent Ready Utah Program by the Utah Board of Higher Education and does not require any additional funding outside of that statutorily created program.

B) Local governments:

Enactment of this rule likely will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for small businesses. This rule only applies to those small businesses that are eligible and choose to participate in the Talent Ready Utah Program.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for non-small businesses. This rule only applies to those non-small businesses that are eligible and choose to participate in the Talent Ready Utah Program.

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

Enactment of this rule likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because the rule applies only to the administration of the Talent Ready Utah Program. Those persons who choose to participate in the program will be subject to the rules of the program, but will not otherwise have their regulatory burden affected by this rule.

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

Since this rule applies only to those persons who choose to participate in the Talent Ready Utah Program, the rule does not create any 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 Commissioner of the Board of Higher Education, David R. Woolstenhulme, 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 53B-34-107(7)		
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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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
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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:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	09/06/2022
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R765. Higher Education (Utah Board of), Administration.

R765-901. Talent Ready Utah Program.

R765-901-1. Title.

This rule is known as the "Talent Ready Utah Program Rule."

R765-901-2. Purpose.

The purpose of this rule is to provide for the administration of the Talent Ready Utah Program, which is a program created to support a system of youth apprenticeships, pre-apprenticeship, adult apprenticeship, and work-based learning opportunities tailored to the specific workforce needs of high demand industries.

R765-901-3. Authorization.

This rule is authorized by Subsection 53B-34-107(7).

R765-901-4. Definitions.

The following terms are defined:

(1) "Board" means the Utah Board of Higher Education.

(2) "Coordinator" means a full-time employee who is hired by an education partner under Subsection 53B-33-107(5) to develop apprentice programs or work-based learning programs and is responsible for regular reporting to and receiving training from the director of the talent program.

(3) "Educational administration" means any institutional administration percentage costs associated with a TRU grant.

(4) "Education partner" means a public high school or institution in the state system of higher education that partners with a participating employer and has received a TRU grant.

(5) "High demand industry" means an industry in which there are hard to fill jobs with a lack of skilled labor employees or a large number of skilled labor positions.

(6) "Talent board" means the Talent, Education, and Industry Alignment Board created in Section 53B-34-102.

(6) "Talent program" means the Talent Ready Utah Program created in Section 53B-34-103.

(7) "TRU grant" means the competitive grants awarded and administered under Section 53B-34-107 and this rule.

R765-901-5. Method for Selecting Education Partners.

(1) Subject to available funds, the talent program shall accept proposals for TRU grants on a rolling basis.

(2) Proposals shall be submitted in a form and manner specified by the talent program.

(3) The talent board shall review and prioritize each proposal received and determine whether the proposal should be funded, using the following criteria:

(i) the quality and completeness of the elements of the proposal described in Subsection 53B-34-107(3)(a);

(ii) the quality of the optional elements of the proposal described in Subsection 53B-34-107(3)(b);

(iii) to what extent the proposal would expand the capacity to meet state or regional workforce needs; and

(iv) other relevant criteria as determined by talent board.

R765-901-6. Grant Amount, Award, and Required Contract.

(1) The talent program shall have the discretion to limit the maximum amount of funding that may be awarded for each TRU grant.

(2) Upon award of a TRU grant, and before disbursement of any funds, an education partner shall enter into a contract with the talent program governing the use of TRU grant funding.

(3) Unless otherwise addressed in the terms and conditions of the contract, each education partner shall maintain eligibility status for the TRU award until the:

(a) partnership is complete;

(b) scope of work requirements have been met;

(c) final disbursement of funding has been made; and

(d) reporting requirements have been met.

(4) Any misrepresentation to the talent program may result in:

(a) forfeiture of TRU grant funding;

(b) repayment of funding received; and

(c) disqualification from continued funding.

(5) The talent program reserves the right to audit the use of any TRU grant funding.

(6) TRU grant funding may not be used to provide a primary benefit to a participating employer's operations outside the state.

R765-901-7. Contract Modifications.

(1) Each education partner may request a modification to the terms of a contract.

(2) The talent program may deny a modification request for any reason.

(3) The talent program shall have discretion to agree to reasonable, non-substantive changes that may include:

(a) changes to timelines within the scope of work;

(b) corrections to clerical errors in the proposal materials; and

(c) technical changes to conditions that do not alter the budget, participating employer's eligibility status, or violate any state or federal law.

(4) Substantive changes must be approved by the talent program in consultation with the talent board.

(5) Approved changes shall be made in writing and through an amendment modifying the terms of the contract.

(6) At the discretion of the talent program, an education partner's refusal or failure to sign the contract within 90 days of receipt of the contract may constitute a rejection of the TRU grant and a waiver of any rights and benefits.

R765-901-8. Funding Distribution.

(1) The talent program shall reimburse the education partner for no more than the total amount specified in the contract.

(2) Payment shall be made for those costs authorized and approved by the talent program in accordance with the terms and conditions provided in the contract and as reasonably requested.

(3) Failure to successfully complete the scope of work requirements may result in:

(a) repayment of the grant funding received;

(b) termination of the contract; or

(c) disqualification of continued funding.

R765-901-9. Reporting and Cooperation Requirements.

(1) The education partner shall report to the talent program annually and on a regular basis as reasonably requested by the talent program.

(2) At a minimum, the education partner shall provide documentation of the following:

(a) the number of participants in the program;

(b) the number of participants who have completed each phase offered by the program;

(c) the number of participants who have been hired by a business participating in the program; and

(d) any additional data as required and outlined in the terms of the contract.

(3) Each education partner shall submit to any audit requested to verify reported data including a third-party audit at the request of the talent program.

R765-901-10. Coordinator Duties and Responsibilities.

(1) Each coordinator shall:

(a) oversee youth apprenticeship program, pre-apprenticeship, and adult apprenticeship expansion for dedicated career and technical education region;

(b) coordinate with potential participating employers;

(c) understand both registered and non-registered apprenticeship efforts in the area;

(d) hold and convene working group meetings for each partnership;

(e) prepare marketing materials for featured programs;

(f) coordinate student outreach efforts between industry and education partners;

(g) apply for funding opportunities where available;

(h) learn best practices from other states;

(i) facilitate memorandum of understanding discussions for local partnerships;

(j) organize training and marketing events;

(k) develop strong relationships with education and industry partners; and

(l) any other duties as determined by the talent program.

(2) Each coordinator shall be responsible for the following interactions with the talent program:

(a) monthly calls with the talent program director;

(b) monthly group conversations or training sessions with other coordinators;

(c) yearly tracking report due at end of fiscal year;

(d) collaboration on program replication and expansion;

(e) involving the talent program director in prospective partnership discussions;

(f) shared marketing effort;

(g) using established messaging for program and shared marketing material when applicable; and

(h) sharing success stories and events with the center.

KEY: Utah Board of Higher Education, talent education and industry alignment, talent program

Date of Last Change: 2022

Authorizing, and Implemented or Interpreted Law: 53B-34-107(7)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number: R765-902

Filing ID: 54857

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
Alison A. Adams	801-643-5535	Alison.Adams@ushe.edu
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu

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

General Information

2. Rule or section catchline:

R765-902. Utah Works Program

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

The purpose of this rule is to replace Rule R357-24 with a rule that provides for the administration of the Utah Works Program by the Utah Board of Higher Education.

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

The rule is similar to Rule R357-24 and provides for the development and administration of the Utah Works Program.

Fiscal Information

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

A) State budget:

Enactment of this rule likely will not materially impact state revenue because this rule applies to the administration of the Utah Works Program by the Utah Board of Higher Education and does not require any additional funding outside of that statutorily created program.

B) Local governments:

Enactment of this rule likely will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for small businesses. This rule only applies to those small businesses that are eligible and choose to participate in the Utah Works Program.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for non-small businesses. This rule only applies only to those non-small businesses that are eligible and choose to participate in the Utah Works Program.

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

Enactment of this rule likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because the rule applies only to the administration of the Utah Works Program. Those persons who choose to participate in the program will be subject to the rules of the program, but will not otherwise have their regulatory burden affected by this rule.

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

Since this rule only applies to those persons who choose to participate in the Utah Works Program, this rule does not create any 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 Commissioner of the Board of Higher Education, David R. Woolstenhulme, 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 53B-34-108(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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
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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:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	09/06/2022
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R765. Higher Education (Utah Board of), Administration.**R765-902. Utah Works Program.****R765-902-1. Title.**

This rule is known as the "Utah Works Program Rule."

R765-902-2. Purpose and Goals.

(1) The Utah Works Program promotes partnerships between companies and post-secondary institutions to fill high demand positions and provide skills training. This program teams industry, post-secondary institutions, and state agencies to address specific workforce gaps identified by companies.

(2) The goal of UWP is to accelerate hiring and skills training that will lead to economic growth.

R765-687-3. Authority.

This rule is authorized by Subsection 53B-34-108(4).

R765-902-4. Definitions.

The following terms are defined:

(1) "Applicant" means a collaboration between one or more companies and one or more post-secondary institutions for a particular hiring program.

(2) "Awardee" means an applicant that has been awarded a UWP grant.

(3) "Board" means the Utah Board of Higher Education.

(4) "Collaboration" means the strategic coordination between a company and post-secondary institution to address a skilled labor gap.

(5) "Company" means a corporation, limited liability company, partnership, association, or other business entity and may include a federal military installation when such entity otherwise meets UWP eligibility requirements and does not include an individual, sole proprietorship, or educational institution.

(6) "Company representative" means a representative from a company that is designated to support the efforts of the collaboration.

(7) "High demand position" means a position in which there are hard to fill jobs with a lack of skilled labor employees or a large number of skilled labor positions needed in a short amount of time.

(8) "Pre-hire program" means an applicant's plan to vet potential hires before the skills training. The pre-hire program will typically consist of a training lasting from two days to two weeks.

(9) "Post-secondary institution" means an institution of higher education described in Section 53B-1-102.

(10) "Skilled labor" means jobs that require skills training and a level of skill.

(11) "Skilled labor gap" means the disparity between a company's existing or future skill needs.

(12) "Skills training program" means a training plan developed and agreed upon between the post-secondary institution and a company.

(13) "TRU" means the Talent Ready Utah Program created in Section 53B-34-103.

(14) "UWP" means the Utah Works Program.

(15) "UWP grant" means the competitive grants awarded and administered under this rule.

R765-902-105. Eligibility Criteria.

(1) Each proposal must be jointly developed by a company and a post-secondary institution.

(2) Each proposal must satisfy the requirements of Rule R765-106, and as otherwise specified by TRU.

(3) Each company representative must certify that:

(a) the company has a skilled labor gap;

(b) the proposed post-secondary institution partnership will meet that gap need;

(c) the company has significant one time or ongoing hiring demands; and

(d) the company commits to provide a cost-share contribution as outlined in Subsection R765-105(5).

(4) Each company must have a substantial presence in Utah. substantial presence, for purposes of UWP requires:

(a) the company must be properly registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing; and

(b) the company must be properly licensed in the appropriate city or county.

(5) TRU shall, according to its judgment and discretion, determine whether a company has a substantial presence for purposes of a UWP grant by weighing:

(a) likelihood that the company will maintain a significant presence in the state;

(b) a commitment of capital expenditure and new job creation in the state; and

(c) the degree to which the company's operations positively impact the state's workforce.

(6) Each company must fulfill the following cost-sharing requirements:

(a) provide a company representative to support the collaboration;

(b) provide an "in-kind" contribution, approved by TRU, which may include:

(i) company representative's time spent on the collaboration;
(ii) materials and equipment;
(iii) work or research space;
(iv) travel and other company expenses budgeted for the collaboration; or
(v) other contributions approved by TRU; and
(c) make available for audit reported cost-share activities.
(7) Each Applicant may coordinate with the Department of Workforce Services when building pre-hire program objectives.

R765-902-106. Proposal and Submission Process.

(1) TRU will accept proposals for UWP grants on an ongoing basis subject to available funds.
(2) Each applicant shall submit a proposal in a form and manner specified by TRU.
(3) The proposal must include:
(a) a description of the applicant's eligibility;
(b) a detailed description of pre-hire program, if applicable, and skills training program;
(c) description of skilled labor positions;
(d) projected number of individuals who will start the program, finish the program and be successfully hired;
(e) an executed collaboration agreement between the company and post-secondary institution; and
(f) an outlined budget for total program cost, including:
(i) a description of any funds already secured for activities related to the program;
(ii) breakdown of costs to complete the scope of work;
(iii) an itemized budget detailing planned use of grant funds, including how the funding will be allocated, tracked, and reported.
(4) Each awardee must use grant funds for expenses specific to the program and may include:
(a) instructors;
(b) marketing;
(c) equipment;
(d) equipment maintenance;
(e) tuition reimbursements;
(f) curriculum and program development;
(g) program management;
(h) US security clearances; and
(i) travel for training from rural areas as approved by TRU.
(5) Each completed proposal shall be reviewed and each awardee selected via the criteria and method outlined in this rule.

R765-902-107. Method for Selecting Awardees.

(1) TRU shall evaluate grant proposals and recommend grant amounts.
(2) TRU shall, according to its discretion and judgment, review the applicant's proposal by considering:
(a) statewide or regional importance of the industry to Utah's economy;
(b) relative size of the sector, its stability, and growth potential;
(c) characteristics of the state's workforce including education and training;
(d) the current availability of other sources of funding;
(e) the potential for the industry to develop new jobs and business opportunities in the state;

(f) likelihood that skilled labor in this sector will result in the creation of a company in Utah or growth of existing Utah company;
(g) number of positions to be trained and filled;
(h) impact on the local economy; and
(i) any other factor TRU deems relevant, considering the mission of UWP and the purpose of the UWP grant.
(3) The criteria shall be designed to assess each proposal and may include:
(a) completeness of proposal;
(b) thorough pre-hire program and skills training program;
(c) reasonableness of proposal;
(d) reasonableness of the proposed timeline;
(e) reasonableness of the proposed budget;
(f) availability of UWP grant funds;
(g) potential for economic impact, as measured by:
(i) skilled labor gap mitigation;
(ii) meeting target head count;
(iii) potential revenue due to expansion of current business or development of new businesses;
(iv) projected time to fill job needs;
(v) market need or industry impact; and
(vi) any other factor of the applicant's ability to produce measurable and timely benefits to the state; and
(h) any factor relating to eligibility requirements.
(4) UWP grants must be used to mitigate gaps and meet company hiring demands. The program proposals referenced in Rule R765-106 must identify specific pre-hire program and skills training.
(5) In the event of a favorable recommendation by TRU the proposal will be reviewed by the Talent, Education, and Industry Alignment Board using the same criteria.
(6) An applicant will become an awardee only upon approval by TRU and the Talent, Education, and Industry Alignment Board.

R765-902-108. Grant Amount, Award, and Required Contract.

(1) TRU shall have the discretion to limit the maximum amount of funding that may be awarded for each UWP grant based on available funds, scope of the collaboration, and quality of proposal.
(2) TRU reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any proposals based on the eligibility and evaluation criteria set forth in this rule Utah law, and according to the judgment and discretion of TRU. TRU also reserves the right to certify any agreements between post-secondary institution and company on IP terms and confidentiality.
(3) Upon award of a UWP grant, and before disbursement of any funds, awardee must enter into a contract with the board governing the use of UWP grant funding.
(4) Unless addressed in the terms and conditions of the contract between awardee and the board the following provisions shall apply:
(a) UWP grant funding may not be used to provide a primary benefit to any state other than Utah.
(b) Subject to TRU approval, TRU may, via supplemental contract, allocate grant funds directly to an awardee company to pay for the cost of U.S. security clearances for UWP grant program hires where a U.S. security clearance is required as a condition of the position.

(c) For any other eligibility requirements, awardees must maintain eligibility status for UWP program until the collaboration is complete, scope of work requirements have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Any misrepresentation to TRU or violations of this rule may result in forfeiture of UWP grant funding and require repayment of the funding received as part of UWP grant or disqualification from continued funding.

(6) TRU reserves the right to audit the use of any UWP grant funding.

R765-902-109. Contract Modifications.

(1) Each awardee may request a modification to the terms of a UWP contract.

(2) TRU may deny a modification request for any reason.

(3) TRU shall have discretion to agree to reasonable, nonsubstantive changes which may include:

(a) changes to timelines within the scope of work;

(b) corrections to clerical errors in the proposal materials; and

(c) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law.

(4) Substantive changes must be approved by TRU in consultation with the Talent, Education, and Industry Alignment Board.

(5) Approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

(6) The awardee's refusal or failure to sign the contract within 90 days of receipt of contract constitutes a rejection of the UWP grant and a waiver of any rights and benefits.

R765-902-110. Funding Distribution.

(1) TRU shall reimburse the awardee for no more than the total amount specified in the contract.

(2) Payment shall only be made for those costs authorized and approved by TRU after providing sufficient documentation in accordance with the terms and conditions provided in the contract.

(3) After execution of the contract between the board and awardee:

(a) the awardee may receive up to 50% of the total grant amount, subject to TRU approval; and

(b) the remaining funds shall be disbursed on a reimbursement basis, as outlined in scope of work and after company provides sufficient evidence of initial expenditures.

(4) Failure to successfully complete the scope of work requirements may result in a recapture of any of the grant funding and will be grounds to terminate the contract and any future funding.

R765-902-111. Reporting and Cooperation Requirements.

(1) Each awardee shall report to TRU and provide the following documentation evidencing metrics for inclusion in the annual report described in Subsection 53B-34-108(5):

(a) the number of participants in the program;

(b) how program participants learned about or were referred to the program;

(c) the number of participants who have completed training offered by the program;

(d) the number of participants who have been hired by a business participating in the program; and

(e) any additional data needed as required and outlined in the terms of the contract.

(2) Each awardee shall submit to any audit, by TRU or a third-party, to verify reported data.

KEY: Utah Board of Higher Education, talent education and industry alignment, works program

Date of Last Change: 2022

Authorizing, and Implemented or Interpreted Law: 53B-34-103; 53B-34-108

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number: R765-1001

Filing ID: 54858

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
Alison A. Adams	801-643-5535	Alison.Adams@ushe.edu
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu

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

General Information

2. Rule or section catchline:

R765-1001. Utah Data Research Center

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

The purpose of this rule is to replace Rule R982-800 with a rule that provides for the administration of the Utah Data Research Center by the Utah Board of Higher Education.

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 similar to Rule R982-800 and provides for: a) the procedures for submitting a data research request under Section 53B-33-302; b) the criteria to determine how to prioritize data research requests; and c) the minimum standards for information a person is required to include in a data research request.

Fiscal Information

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

A) State budget:

Enactment of this rule likely will not materially impact state revenue because this rule applies to the administration of the Utah Data Research Center by the Utah Board of Higher Education.

B) Local governments:

Enactment of this rule likely will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes for small businesses.

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

Enactment of this rule likely will not result in direct expenditures from tax or fee changes 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**):

Enactment of this rule likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because this rule applies only to the administration of the Utah Data Research Center.

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

The rule does not create any compliance costs for affected persons since it provides only for the administration of the Utah Data Research Center.

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 Board of Higher Education, David R. Woolstenhulme, 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 53B-33-302(9)		
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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:	10/31/2022
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9. This rule change MAY become effective on:	11/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	09/06/2022
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R765. Higher Education (Board of), Administration.**R765-1001. Utah Data Research Center.****R765-1001-1. Authority.**

This rule is authorized by Subsection 53B-33-302(9).

R765-1001-2. Background; Definitions.

(1) This rule governs data research requests made to the Utah Data Research Center established pursuant to Section 53B-33-301.

(2) The following definitions apply:

(a) "Advisory board" means the Utah Data Research Advisory Board created in Section 53B-33-202.

(b) "Board" means the Utah Board of Higher Education.

(c) "Center" means the Utah Data Research Center created in Section 53B-33-201.

(d) "Director" means the director of the Center.

(e) "Primary requester" means one of the following:

(i) a legislative committee or a legislative staff office;

(ii) the governor or an executive branch agency;

(iii) the State Board of Education; or

(iv) the Utah Board of Higher Education.

(f) "Ancillary requester" means one of the following:

(i) a state government entity that is not a primary requester;

(ii) a political subdivision of the state;

(iii) a private entity; or

(iv) a member of the public.

(g) "Requester" means a person making a data research request.

R765-1001-3. Data Research Request Procedures.

(1) Data research requests shall be submitted via an electronic form available on the center's website.

(2) Each data research request must include the information set forth in Section R765-1001-4. If the requester fails to include that information:

(a) in the case of a primary requester, the center shall seek the necessary additional information and clarification from the requester, and may decline to act on the request until the necessary additional information and clarification is received;

(b) in the case of an ancillary requester, the center may:

(i) seek the necessary additional information and clarification from the requester, and may decline to act on the request until the necessary additional information and clarification is received; or

(ii) deny the request and provide to the requester the reasons for the denial of the request.

(3)(a) If the center accepts a data research request from an ancillary requester, the center shall submit to the ancillary requester a payment agreement setting forth at least the following:

(i) the reasonable estimated cost of completing the data research request; and

(ii) the obligation of the ancillary requester to pay the full cost of completing the data research request, even if the full cost differs from the reasonable estimated cost.

(b) The ancillary requester shall execute the payment agreement and return it to the center. If the ancillary requester fails or refuses to execute and return the payment agreement, the center may decline the data research request.

R765-1001-4. Criteria for Priority of Data Research Requests.

(1) The director, with consultation by the advisory board, shall use the following criteria to determine the priority of the data research requests the center receives:

(a) the type of requester;

(b) the potential of the requester's research to lead to meaningful policy changes or other meaningful impacts for members of the general public; and

(c) the availability of the data being requested.

(2) The director, with consultation by the advisory board, shall evaluate the criteria described in Subsection (1) and assign a numerical score for each data research request. The data research request with the highest score shall be given the highest priority. Remaining data research requests are sorted in order thereafter.

(3) The director, with consultation by the advisory board, may, in the director's discretion, deviate from the criteria described in Subsection (1) if the requester makes a showing of compelling public interest sufficient to justify deviating from the criteria.

R765-1001-5. Information Required for Data Research Requests.

(1) The following information shall be included in each data research request:

(a) the name of the requester;

(b) the agency or organization with which the requester is affiliated, if any;

(c) the requester's thesis, together with the research questions the requester is seeking to answer, described in sufficient detail to allow the center to properly evaluate the request;

(d) a specific description of the data the requester is seeking, including the date ranges and the variables being studied; and

(e) any applicable timeframes or deadlines by which the requester seeks to obtain the data being requested.

(2) The center may request other information in addition to the information listed in Subsection (1).

KEY: Utah Board of Higher Education, Utah Data Research Advisory Board, data research program

Date of Last Change: 2022

Authorizing, and Implemented or Interpreted Law: 53B-33-302

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Rule or Section Number:	R986-300-307	Filing ID: 54872

Agency Information

1. Department:	Workforce Services	
Agency:	Employment 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:
R986-300-307. Refugee Transitional Cash Assistance
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The amendment adds a new section adopting a program providing Refugee Transitional Cash Assistance (RTCA).
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 proposed new Section R986-300-307 establishes eligibility and program administration guidelines for the new Refugee Transitional Cash Assistance program for eligible refugees.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The rule change will not have any fiscal impact on state revenues or expenditures. No additional state revenue is required. Administration of the RTCA program will not require additional staff. The program will be funded entirely with federal funds.

B) Local governments:																
The rule change will not have any fiscal impact on local governments' revenues or expenditures. This amendment requires no action or expenditure by local governments.																
C) Small businesses ("small business" means a business employing 1-49 persons):																
There are no anticipated costs or savings to small businesses. This amendment requires no action or expenditure by small businesses.																
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):																
There are no anticipated costs or savings to non-small businesses. This amendment requires no action or expenditure by 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 to other persons as the amendment requires no action or expenditure by any person. The Department of Workforce Services (Department) anticipates there will be a fiscal benefit to potentially eligible recipients. The Department estimates that 370 refugees will be eligible for the RTCA program over the next three years, with the majority of those individuals being eligible in fiscal year 2023. The Department estimates that \$134,055 of RTCA funds will be provided in fiscal year 2023, and \$63,000 each for fiscal years 2024 and 2025.																
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):																
This amendment is not expected to cause any compliance costs for affected persons because it does not create any new administrative fees or requirements for financial assistance recipients.																
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																
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2023</th> <th>FY2024</th> <th>FY2025</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2023	FY2024	FY2025	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0
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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	\$134,055	\$63,000	\$63,000
Total Fiscal Benefits	\$134,055	\$63,000	\$63,000
Net Fiscal Benefits	\$134,055	\$63,000	\$63,000

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:

Section 35A-3-103	45 CFR 400.65 through 400.68	
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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:	10/31/2022
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9. This rule change MAY become effective on:	12/01/2022
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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:	09/12/2022
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R986. Workforce Services, Employment Development.

R986-300. Refugee Resettlement Program.

R986-300-307. Refugee Transitional Cash Assistance.

(1) Refugee Transitional Cash Assistance (RTCA), is offered to help refugees stabilize employment.

(2)(a) To be eligible for RTCA a client must:

(i) have been eligible for and have received Refugee Cash Assistance (RCA) during the month immediately preceding the month during which RTCA is requested or granted;

(ii) be employed an average of 30 hours per week;

(iii) if RTCA is provided to a client in a two earner household, both earners must be employed an average of 30 hours per week; and

(iv) RCA assistance must have been closed due to earned or earned and unearned income and not for nonparticipation under Section R986-300-305.

(b) If the client has a closure pending due to nonparticipation as provided in Section R986-300-305, the client is not eligible for RTCA.

(3) RTCA is only available if the customer verifies employment and RCA eligibility at the minimum levels required in Subsection R986-300-307(2)(a).

(4)(a) The RTCA benefit is available for a maximum of three months in a 12 month period.

(b) The three months do not need to be consecutive.

(c) The assistance payment for the first two months of RTCA is based on household size. All household income, earned and unearned, is disregarded.

(d) Payment for the third month is one half of the payment available in Subsection R986-300-307(4)(a).

(5) To receive the second and third month of the RTCA benefit, the client must remain employed as described in Subsection R986-300-307(2)(a) or have had an open RCA case that closed during the prior month due to earned or earned and unearned income.

(6) If initial verification is provided and a client is paid one month of RTCA but the client does not provide documentation to support that initial verification, no further payments will be made. Under these circumstances, the one month payment will not result in an overpayment.

KEY: refugee resettlement program, SNAP

Date of Last Change: [September 7], 2022

Notice of Continuation: August 31, 2020

Authorizing, and Implemented or Interpreted Law: 35A-3-103; 45 CFR 400.65 through 400.68

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at adminrules.utah.gov. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-420	Filing ID: 50413
Effective Date:	09/15/2022	

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact 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:
R277-420. Aiding Financially Distressed School Districts
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and

state law; and Subsection 53G-7-306(5), which requires the Board to develop standards for defining and aiding financially distressed school districts.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because this rule specifies eligibility requirements and procedures for nonrecurring or nonroutine interfund transfers for financially distressed school districts. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-422	Filing ID: 50411
Effective Date:	09/15/2022	

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S

City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact 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:
R277-422. State Supported Voted Local Levy, Board Local Levy and Reading Improvement Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53E-3-501(1)(e), which directs the Board to establish rules for: (i) school productivity and cost effectiveness measures; (ii) federal programs; (iii) school budget formats; and (iv) financial, statistical, and student accounting requirements.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it specifies requirements, timelines, and clarifications for the state-supported voted local levy, the board local levy; and the reading improvement program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	R277-426	Filing ID: 50420
Effective Date:	09/15/2022	

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact 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:
R277-426. Definition of Private and Non-Profit Schools for Federal Program 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:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53E-3-501(3), which allows the Board to administer federal funds and to distribute them to eligible applicants.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it defines requirements that private, non-public, and non-profit schools must meet in conjunction with federal program criteria to receive services under federal laws requiring the public education system to serve students in these schools. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-454	Filing ID:	50429
Effective Date:	09/15/2022		

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact 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:
R277-454. Construction Management of School Building Projects
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution, and state law Section 53E-3-705 which requires the Board to prepare an annual school plant capital outlay report of all LEAs, which includes information on the number and size of building projects completed and under construction.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because this rule specifies the standards local boards of education shall follow in using construction management for school construction projects. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-469	Filing ID:	50431
Effective Date:	09/15/2022		

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact 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:
R277-469. Instructional Materials Commission Operating Procedures
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law, and Section 53E-4-408, which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the

alignment of the primary instructional materials and requirements for the detailed summary of the evaluation.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because this rule provides: definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools; guidance on mapping and alignment of primary instructional materials to the Core consistent with Utah law; and associated rules for purchasing and distribution of instructional materials within the state. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-474	Filing ID:	53786
Effective Date:	09/15/2022		

Agency Information

1. Department:	Education	
Agency:	Administration	
Building:	Board of Education	
Street address:	250 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact 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:
R277-474. School Instruction and Sex Education

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsections 53G-10-402(2), (4) and (5), which direct the Board to adopt rules to allow local boards to adopt sex education materials or programs as described in this rule and provide sex education instruction as provided in Section 53G-10-402.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There were no public comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary because this rule specifies requirements for LEAs and individual educators to select instructional materials about sex education and maturation, provide notice to parents of proposed sex education and maturation discussions and instruction; and provides direction to public education employees regarding instruction and discussion of maturation and sex education with students. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-496	Filing ID:	50453
Effective Date:	09/15/2022		

Agency Information

1. Department:	Education		
Agency:	Administration		
Building:	Board of Education		
Street address:	250 E 500 S		
City, state and zip:	Salt Lake City, UT 84111		
Mailing address:	PO Box 144200		
City, state and zip:	Salt Lake City, UT 84114-4200		

Contact 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:
R277-496. K-3 Software Reading Licenses
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law, and Subsection 53F-4-203(2), which directs the Board to distribute software licenses for the early interactive reading software program to LEAs that apply for the licenses.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it establishes criteria and procedures to administer the K-3 reading software program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-522	Filing ID:	50476
Effective Date:	09/15/2022		

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education
Street address:	250 E 500 S

City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 144200	
City, state and zip:	Salt Lake City, UT 84114-4200	
Contact 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:
R277-522. Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; Subsection 53E-6-103(2)(a)(iii), which finds that the implementation of progressive strategies regarding induction, professional development and evaluation are essential in creating successful teachers; and Section 53E-6-301, which directs the Board to establish rules for the training and experience required of educator license applicants.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it outlines the required entry years enhancements of professional and emotional support for Level 1 teachers to develop successful teaching skills and strategies with assistance from experienced colleagues. Therefore, this rule should be continued. This program will be sunset at the end of this school year.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R331-17	Filing ID: 50818
Effective Date:	09/15/2022	

Agency Information

1. Department:	Financial Institutions	
Agency:	Administration	
Room number:	201	
Street address:	324 S State St	
City, state and zip:	Salt Lake City, UT 84111-2393	
Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R331-17. Publication and Disclosure of Acquisition of Control, Merger, or Consolidation Applications to the Department of Financial Institutions
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 7-1-301(5) authorizes the commissioner to grant applications of approval for new institutions, branches, relocations, mergers, consolidations, changes of control, and other applications. Section 7-1-703 places restrictions on acquisition of institutions and holding companies. Section 7-1-704 states that an institution subject to the jurisdiction of the Department of Financial Institutions (Department) may maintain an office in this state or engage in activities of a financial institution in this state only if it is authorized to do so by the department. Section 7-1-705 lists the criteria necessary to file an application with the Department, as well as what is required for approval and grounds for disapproval.
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 supporting or opposing written comments have been received by the agency concerning this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule applies to all applicants to the Department for change of control, acquisition of, merger, or consolidation with any financial institution chartered by the state. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R333-5	Filing ID: 50805
Effective Date:	09/08/2022	

Agency Information

1. Department:	Financial Institutions	
Agency:	Banks	
Room number:	201	
Street address:	324 S State St	
City, state and zip:	Salt Lake City, UT 84111-2393	
Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R333-5. Discount Securities Brokerage Service by Banks
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 7-1-301(3)(a) grants the commissioner power to authorize a state-chartered depository institution all rights, powers, privileges, benefits, or immunities it would possess if it were chartered under the laws of the United States. Section 7-3-3.2 authorizes banks to engage in the business of purchasing, selling, underwriting, and dealing in securities subject to the limitations of this section.

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 supporting or opposing written comments have been received by the agency concerning this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule limits securities activities to "discount brokerage" services and gives state-chartered banks competitive equality with national banks which have their principal office in this state by granting the same rights and privileges to state chartered bank as are enjoyed by Utah's national banks. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/08/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R333-8	Filing ID:	50808
Effective Date:	09/08/2022		

Agency Information

1. Department:	Financial Institutions		
Agency:	Banks		
Room number:	201		
Street address:	324 S State St		
City, state and zip:	Salt Lake City, UT 84111-2393		
Mailing address:	PO Box 146800		
City, state and zip:	Salt Lake City, UT 84114-6800		
Contact persons:			
Name:	Phone:	Email:	
Paul Allred	801-538-8855	pallred@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:
R333-8. Authority for Banks to Issue Subordinated Capital Notes or Debentures

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 7-1-301(8)(v) authorizes the commissioner to put "limitations on the amount and type of borrowings by each class of financial institution in relation to the amount of its capital and the character and condition of its assets and its deposits and other liabilities". Section 7-3-28 covers the issuance of capital notes or debentures, when they shall be subordinated, that they may not exceed certain limitations, that the amount for not maturing within one year will be added to the capital of the bank, and other regulations for protection.

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 supporting or opposing written comments have been received by the agency concerning this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule establishes the criteria and procedures for issuance of subordinated capital notes or debentures and limitations on the total amount of such instruments which may be outstanding in order to protect the bank's depositors and shareholders. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/08/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R333-9	Filing ID:	50821
Effective Date:	09/08/2022		

Agency Information

1. Department:	Financial Institutions		
Agency:	Banks		
Room number:	201		
Street address:	324 S State St		
City, state and zip:	Salt Lake City, UT 84111-2393		
Mailing address:	PO Box 146800		
City, state and zip:	Salt Lake City, UT 84114-6800		

Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R333-9. Indemnification of Directors, Officers, and Employees
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 7-1-301(4) authorizes the commissioner to safeguard the interest of shareholders, members, depositors, and other customers of institutions. Section 7-3-13 restricts changes in the articles of incorporation if the change would result in the impairment of the rights, remedies, or securities of depositors and other creditors.
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 supporting or opposing written comments have been received by the agency concerning this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule defines, clarifies, and limits the extent to which a state-chartered bank may provide in its articles of incorporation or bylaws for the indemnification of directors, officers, and employees. This rule also deters acts that could threaten the safety and soundness of banks by specifically prohibiting the indemnification of directors, officers, and employees. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/08/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R333-10	Filing ID:	50813
Effective Date:	09/08/2022		

Agency Information

1. Department:	Financial Institutions	
Agency:	Banks	
Room number:	201	
Street address:	324 S State St	
City, state and zip:	Salt Lake City, UT 84111-2393	
Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R333-10. Securities Activities of Subsidiaries and Affiliates of State-Chartered Banks
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 7-3-3.2 authorizes banks to engage in the business of purchasing, selling, underwriting, and dealing in securities subject to the limitations of this section. Section 7-3-21 outlines the conditions of stock ownership by banks.
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 supporting or opposing written comments have been received by the agency concerning this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule establishes safeguards to ensure that subsidiaries or affiliates engaged in securities activities do not endanger the safety and soundness of the state-chartered banks. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/08/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R333-12	Filing ID: 50815
Effective Date:	09/15/2022	

Agency Information

1. Department:	Financial Institutions	
Agency:	Banks	
Room number:	201	
Street address:	324 S State St	
City, state and zip:	Salt Lake City, UT 84111-2393	
Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R333-12. Investment by State-Chartered Banks in Real Property Other Than Bank Premises
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 7-1-301 authorizes rulemaking authority to the commissioner. Section 7-3-18 permits a bank to purchase, hold, and convey real estate, other than bank premises, only for those purposes and in a manner prescribed by the Commissioner by regulation.
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 supporting or opposing written comments have been received by the agency concerning this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule authorizes state-chartered banks with sufficient capital to invest in real property, other than bank premises, as prescribed by the commissioner by regulation. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R335-1	Filing ID: 50816
Effective Date:	09/13/2022	

Agency Information

1. Department:	Financial Institutions	
Agency:	Consumer Credit	
Room number:	201	
Street address:	324 S State St	
City, state and zip:	Salt Lake City, UT 84111-2393	
Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R335-1. Rule Prohibiting Negative Amortizing Wrap Loans
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 70C-8-102(1)(e) authorizes the Department of Financial Institutions to adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title. This rule applies to all extensions of credit subject to Title 70C, Utah Consumer Credit Code, which furthers consumer understanding of credit transactions, prohibits certain unfair practices, and avoids duplication of laws and regulations pertaining to consumer credit between state and federal authorities.
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 supporting or opposing written comments have been received by the agency concerning 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 purpose for this rule is to prohibit wrap loans that will not fully service all obligations wrapped by the loan. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/13/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R335-2	Filing ID:	50825
Effective Date:	09/13/2022		

Agency Information

1. Department:	Financial Institutions	
Agency:	Consumer Credit	
Room number:	201	
Street address:	324 S State St	
City, state and zip:	Salt Lake City, UT 84111-2393	
Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R335-2. Rule Prescribing Allowable Terms and Disclosure Requirements for Variable and Adjustable Interest Rates in Consumer Credit Contracts
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 70C-8-102(1)(e) authorizes the Department of Financial Institutions to adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title. This rule applies to all extensions of credit subject to Title 70C, Utah Consumer Credit Code, which furthers consumer understanding of credit transactions, prohibits certain unfair practices, and avoids duplication of laws and

regulations pertaining to consumer credit between state and federal authorities.

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 supporting or opposing written comments have been received by the agency concerning 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 purpose for this rule is to distinguish variable or adjustable interest rates from other kinds of rate formulas or provisions, to specify what must be included in rate formulas represented to be variable or adjustable and to specify certain disclosure requirements under state and federal law applicable to variable or adjustable rate and other formulas. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/13/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R335-4	Filing ID:	50830
Effective Date:	09/13/2022		

Agency Information

1. Department:	Financial Institutions	
Agency:	Consumer Credit	
Room number:	201	
Street address:	324 S State St	
City, state and zip:	Salt Lake City, UT 84111-2393	
Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R335-4. Notice Concerning Refund of Unearned Credit Insurance Premiums Upon Prepayment of a Consumer Debt
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 70C-8-102(1)(e) authorizes the Department of Financial Institutions to adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title. This rule applies to all extensions of credit subject to Title 70C, Utah Consumer Credit Code, which furthers consumer understanding of credit transactions, prohibits certain unfair practices, and avoids duplication of laws and regulations pertaining to consumer credit between state and federal authorities.
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 supporting or opposing written comments have been received by the agency concerning 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 purpose for this rule is to require all consumer creditors, including assignees or other successors in interest, to notify a borrower when a debtor may be entitled to a separate refund of unearned credit insurance premiums. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/13/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R339-4	Filing ID:	50824
Effective Date:	09/15/2022		

Agency Information

1. Department:	Financial Institutions
Agency:	Industrial Loan Corporations
Room number:	201
Street address:	324 S State St
City, state and zip:	Salt Lake City, UT 84111-2393

Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R339-4. Authority for Industrial Loan Corporations to Issue Subordinated Capital Notes or Debentures
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 7-1-301(8) authorizes the commissioner to establish reasonable classes of financial institutions and types of investments for the deposits and other funds, as well as eligible obligations, reserves, and other accounts to be included in the computation of capital. Subsection 7-1-301(13) authorizes the commissioner to regulate the issuance, advertising, offer for sale, and sale of a security.
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 supporting or opposing written comments have been received by the agency concerning this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule construes, applies, and elaborates on Rule R331-5 as it applies to industrial loan corporations in the issuance of subordinated capital notes or debentures. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R339-6	Filing ID:	50834
Effective Date:	09/15/2022		

Agency Information

1. Department:	Financial Institutions	
Agency:	Industrial Loan Corporations	
Room number:	201	
Street address:	324 S State St	
City, state and zip:	Salt Lake City, UT 84111-2393	
Mailing address:	PO Box 146800	
City, state and zip:	Salt Lake City, UT 84114-6800	
Contact persons:		
Name:	Phone:	Email:
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R339-6. Rule Clarifying Industrial Loan Corporation Investments
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 7-1-301(8) authorizes the commissioner to establish reasonable classes of financial institutions and types of investments for the deposits and other funds. Section 7-8-13 allows industrial loan corporations to purchase, hold, and convey real estate, other than the premises used in the conduct of its business. Section 7-8-14 lists the types of investments in property industrial loan corporations may invest in including real property and any interest in real property, stock, bonds, debentures, etc.
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 supporting or opposing written comments have been received by the agency concerning this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule defines acceptable investments for the funds of an industrial loan corporation and defines and clarifies investments in real estate. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Darryle Rude, Commissioner	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R414-2A	Filing ID:	53579
Effective Date:	09/14/2022		

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact 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:
R414-2A. Inpatient Hospital Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26-18-3 requires the Department of Health and Human Services (Department) to implement the Medicaid program through administrative rules. Additionally, 42 CFR 440.10 authorizes the provision of inpatient hospital services.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
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 provisions for member eligibility, hospital admissions, the Prepaid Mental Health Plan, service coverage, provider-preventable conditions, reporting, utilization, cost sharing, and reimbursement. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R414-3A	Filing ID:	50958
Effective Date:	09/14/2022		

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact 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:
R414-3A. Outpatient Hospital Services
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 26-18-3 requires the Department of Health and Human Services (Department) to implement the Medicaid

program through administrative rules. Additionally, 42 CFR 440.20 authorizes the provision of outpatient hospital services.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

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 provisions for member eligibility, program access, service coverage, prior authorization, cost sharing, and reimbursement. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R460-1	Filing ID:	51138
Effective Date:	09/14/2022		

Agency Information

1. Department:	Housing Corporation		
Agency:	Administration		
Street address:	2479 Lake Park Boulevard		
City, state and zip:	West Valley City, UT 84120		
Contact persons:			
Name:	Phone:	Email:	
Jonathan Hanks	801-902-8221	jhanks@uthc.org	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:
R460-1. Authority and Purpose
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 63H, Chapter 8, as amended (the Act), is the enabling legislation of the Utah Housing Corporation (UHC).

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Section 63H-8-301 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 63H-8-302 of the Act states that UHC "shall make rules or adopt policies and procedures" governing the activities authorized by its enabling legislation.

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:

UHC has received no comments, either orally or in writing, supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to provide a clear statement to the public and any entity with which UHC may conduct business of the rulemaking authority and responsibility granted to UHC by statute. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	David Damschen, CEO	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R460-2	Filing ID:	51139
Effective Date:	09/14/2022		

Agency Information

1. Department:	Housing Corporation	
Agency:	Administration	
Street address:	2479 Lake Park Boulevard	
City, state and zip:	West Valley City, UT 84120	
Contact persons:		
Name:	Phone:	Email:
Jonathan Hanks	801-902-8221	jhanks@uthc.org
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R460-2. Definitions of Terms Used throughout R460
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 63H, Chapter 8, as amended (the Act), is the enabling legislation of the Utah Housing Corporation (UHC). Section 63H-8-301 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 63H-8-302 of the Act states that UHC "shall make rules or adopt policies and procedures" governing the activities authorized by its enabling legislation.

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:

UHC has received no comments, either orally or in writing, supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to provide the public with clear definitions of terms used in UHC's rules. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	David Damschen, CEO	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R460-3	Filing ID:	51153
Effective Date:	09/14/2022		

Agency Information

1. Department:	Housing Corporation		
Agency:	Administration		
Street address:	2479 Lake Park Boulevard		
City, state and zip:	West Valley City, UT 84120		
Contact persons:			
Name:	Phone:	Email:	
Jonathan Hanks	801-902-8221	jhanks@uthc.org	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:
R460-3. Programs of UHC
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 63H, Chapter 8, as amended (the Act), is the enabling legislation of the Utah Housing Corporation (UHC). Section 63H-8-301 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 63H-8-302 of the Act states that UHC "shall make rules or adopt policies and procedures" governing the activities authorized by its enabling legislation.

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:

UHC has received no comments, either orally or in writing, supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to provide the public with a clear statement of the programs available from UHC and the general purpose and scope of each of those programs that have been created under authority granted to UHC by statute. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	David Damschen, CEO	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R460-4	Filing ID:	51141
Effective Date:	09/14/2022		

Agency Information

1. Department:	Housing Corporation		
Agency:	Administration		
Street address:	2479 Lake Park Boulevard		
City, state and zip:	West Valley City, UT 84120		
Contact persons:			
Name:	Phone:	Email:	
Jonathan Hanks	801-902-8221	jhanks@uthc.org	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:
R460-4. Additional Servicing Rules (Reserved)

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 63H, Chapter 8, as amended (the Act), is the enabling legislation of the Utah Housing Corporation (UHC). Section 63H-8-301 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 63H-8-302 of the Act states that UHC "shall make rules or adopt policies and procedures" governing the activities authorized by its enabling legislation.

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:

UHC has received no comments, either orally or in writing, supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The justification for this rule, even though it is only "reserved", is that the mortgage servicing world continues to evolve. A few state housing finance agencies have begun servicing loans for other state housing finance agencies over the last few years. UHC services all of its own loans and may, at a future date, add language to this rule to allow it to service loans for properties located outside the state of Utah. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	David Damschen, CEO	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R460-5	Filing ID:	51140
Effective Date:	09/14/2022		

Agency Information

1. Department:	Housing Corporation	
Agency:	Administration	
Street address:	2479 Lake Park Boulevard	
City, state and zip:	West Valley City, UT 84120	
Contact persons:		
Name:	Phone:	Email:
Jonathan Hanks	801-902-8221	jhanks@uthc.org
Please address questions regarding information on this notice to the agency.		

General Information**2. Rule catchline:**

R460-5. Termination of Eligibility to Participate in Programs

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 63H, Chapter 8, as amended (the Act), is the enabling legislation of the Utah Housing Corporation (UHC). Section 63H-8-301 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 63H-8-302 of the Act states that UHC "shall make rules or adopt policies and procedures" governing the activities authorized by its enabling legislation.

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:

UHC has received no comments, either orally or in writing, supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to provide the public with a clear statement of what type of activity and/or behavior by a participant in UHC's programs may lead to the termination of that participant's eligibility to continue to participate in UHC's programs. Therefore, this rule should be continued.

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

General Information**2. Rule catchline:**

R460-6. Adjudicative Proceedings

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 63H, Chapter 8, as amended (the Act), is the enabling legislation of the Utah Housing Corporation (UHC). Section 63H-8-301 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 63H-8-302 of the Act states that UHC shall make rules governing the activities authorized by its enabling legislation.

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:

UHC has received no comments, either orally or in writing, supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to provide the public with a clear statement of the process UHC will follow when UHC determines that an adjudicative proceeding is necessary. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	David Damschen, CEO	Date:	09/14/2022
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Agency Authorization Information

Agency head or designee and title:	David Damschen, CEO	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R460-6	Filing ID:	51151
Effective Date:	09/14/2022		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R460-7	Filing ID:	51145
Effective Date:	09/14/2022		

Agency Information

1. Department:	Housing Corporation		
Agency:	Administration		
Street address:	2479 Lake Park Boulevard		
City, state and zip:	West Valley City, UT 84120		
Contact persons:			
Name:	Phone:	Email:	
Jonathan Hanks	801-902-8221	jhanks@uthc.org	

Agency Information

1. Department:	Housing Corporation	
Agency:	Administration	
Street address:	2479 Lake Park Boulevard	
City, state and zip:	West Valley City, UT 84120	
Contact persons:		
Name:	Phone:	Email:
Jonathan Hanks	801-902-8221	jhanks@uthc.org

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

General Information

2. Rule catchline:

R460-7. Public Petitions For Declaratory Orders

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 63H, Chapter 8, as amended (the Act), is the enabling legislation of the Utah Housing Corporation (UHC). Section 63H-8-301 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 63H-8-302 of the Act states that UHC "shall make rules or adopt policies and procedures" governing the activities authorized by its enabling legislation.

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:

UHC has received no comments, either orally or in writing, supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to provide the public with a clear statement of the procedures required for petitions for declaratory orders with regard to the applicability of rules, statutes, and orders governing or issued by UHC. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	David Damschen, CEO	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R460-8	Filing ID:	51146
Effective Date:	09/14/2022		

Agency Information

1. Department:	Housing Corporation
Agency:	Administration
Street address:	2479 Lake Park Boulevard
City, state and zip:	West Valley City, UT 84120

Contact persons:

Name:	Phone:	Email:
Jonathan Hanks	801-902-8221	jhanks@uthc.org

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

General Information

2. Rule catchline:

R460-8. Americans with Disabilities Act (ADA) Complaint 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:

Title 63H, Chapter 8, as amended (the Act), is the enabling legislation of the Utah Housing Corporation (UHC). Section 63H-8-301 of the Act grants UHC the power to adopt, amend, and repeal rules. Section 63H-8-302 of the Act states that UHC "shall make rules or adopt policies and procedures" governing the activities authorized by its enabling legislation.

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:

UHC has received no comments, either orally or in writing, supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary to provide the public with a clear procedure UHC will follow for the prompt and equitable resolution of any complaints filed under the Americans with Disabilities Act. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	David Damschen, CEO	Date:	09/14/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R592-5	Filing ID:	53654
Effective Date:	09/12/2022		

Agency Information

1. Department:	Insurance
Agency:	Title and Escrow Commission

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 catchline:
R592-5. Title Insurance Product or Service Approval for a Dual Licensed Title Licensee
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 31A-2-404 authorizes the Title and Escrow Commission to make rules regarding title insurance matters in accordance with the Utah Administrative Rulemaking Act, with the concurrence of the insurance commissioner, and with proper notice being given to the Office of Administrative Rules and the Real Estate Commission. Section 31A-2-405 authorizes the Title and Escrow Commission to make rules to implement the filing requirements under Subsection 31A-2-405(2).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department of Insurance has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule sets requirements for a dual licensed title licensee to obtain approval from the Title and Escrow Commission to sell a title insurance product. Therefore, this rule should be continued.
The Title and Escrow Commission, which has rulemaking authority over rules in Title R592, Title and Escrow Commission, voted at its 08/22/2022 meeting to continue this rule by a vote of 5 to 0.

Agency Authorization Information

Agency head or designee and title:	Steve Gooch, Public Information Officer	Date:	09/12/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R600-1	Filing ID:	51476
Effective Date:	09/12/2022		

Agency Information

1. Department:	Labor Commission	
Agency:	Administration	
Room number:	3rd Floor	
Building:	Heber M Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 146600	
City, state and zip:	Salt Lake City, UT 84114-6600	
Contact persons:		
Name:	Phone:	Email:
Chris Hill	801-530-6113	chill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R600-1. Declaratory Order
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 63G-4-503(2) requires all agencies, including the Labor Commission (Commission), to issue rules for declaratory proceedings and orders.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received since the last five-year review of this rule from interested person supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

As required by Subsection 63G-4-503(2), this rule provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the commission. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Jacson R. Maughan, Commissioner	Date:	09/12/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R628-2	Filing ID:	52998
Effective Date:	09/02/2022		

Agency Information

1. Department:	Money Management Council	
Agency:	Administration	
Room number:	Suite 180	
Building:	State Capitol	
Street address:	350 N. State Street	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 142315	
City, state and zip:	Salt Lake City, UT 84114-2315	
Contact persons:		
Name:	Phone:	Email:
Ann Pedroza	801-538-1883	apedroza@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R628-2. Investment of Funds of Public Education Foundations Established Under Section 53E-3-403 or Funds Acquired by Gift, Devise, or Bequest
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is enacted under Subsection 51-7-13(2) which says that rules established by the Money Management Council will govern how these types of funds are invested and Subsection 51-7-18(2)(b) gives the Council rulemaking authority.

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 have been no written comments either supporting or opposing this rule during or since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Foundation funds are held to provide income that is used to fund scholarships and the like, and investing in high-quality longer-term securities and funds allows for that flexibility. With these criteria for foundation funds in a rule the Council is able to respond more quickly to changes in markets. The Council reviewed the Rule in the August 2022 meeting and unanimously voted to continue this rule for five years. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	K Wayne Cushing, Council Chair	Date:	09/02/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R653-2	Filing ID:	52473
Effective Date:	09/09/2022		

Agency Information

1. Department:	Natural Resources	
Agency:	Water Resources	
Room number:	310	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146201	
City, state and zip:	Salt Lake City, UT 84114-6201	
Contact persons:		
Name:	Phone:	Email:
Lanli Pham	801-538-7235	lpham@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R653-2. Financial Assistance from the Board of Water Resources
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 73-10g-105(1)(a) requires the Division of Water Resources (Division) to make rules regarding loans made from available funds for repairing, replacing, or improving underfunded federal water infrastructure projects.
Subsection 3-10g-105(1)(b) requires the Division to make rules regarding loans made from available funds for developing the state's underdeveloped share of the Bear and Colorado rivers.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it allows water users to achieve the highest beneficial use of water resources within the state and also because the statute requires it. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Candice Hasenyager, Director	Date:	09/09/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R653-4	Filing ID: 51714
Effective Date:	09/15/2022	

Agency Information

1. Department:	Natural Resources
Agency:	Water Resources
Room number:	310
Building:	Department of Natural Resources
Street address:	1594 W North Temple
City, state and zip:	Salt Lake City, UT 84116

Mailing address:	PO Box 146201	
City, state and zip:	Salt Lake City, UT 84114-6201	
Contact persons:		
Name:	Phone:	Email:
Lanli Pham	801-538-7235	lpham@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R653-4. Investigation Account
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 73-10-8 authorizes the Division of Water Resources to use the money in the Investigation Account.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because it provides guidelines for the use of the Investigation Account funds to ensure they are used for water development and water resource uses for the state's citizens' best interests. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Candice Hasenyager, Director	Date:	09/15/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R653-5	Filing ID: 51718
Effective Date:	09/09/2022	

Agency Information

1. Department:	Natural Resources
Agency:	Water Resources
Room number:	310

Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146201	
City, state and zip:	Salt Lake City, UT 84114-6201	
Contact persons:		
Name:	Phone:	Email:
Lanli Pham	801-538-7235	lpham@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R653-5. Cloud Seeding
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 73-13-3 grants the Division of Water Resources (Division) sole power and authority over cloud seeding and states that the Division is the only entity to authorize cloud-seeding research, evaluation, or implementation projects to alter precipitation, cloud forms, or meteorological parameters within the state of Utah.
Section 73-15-5 requires the Division to establish criteria for reporting and recordkeeping procedures for cloud-seeding.
Section 73-15-6 requires the Division to establish qualifications for becoming a cloud-seeding contractor in the state of Utah.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary because the Division is still currently conducting cloud seeding projects to increase precipitation throughout the state and also because the statute requires it. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Candice Hasenyager, Director	Date:	09/09/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R653-6	Filing ID:	51710
Effective Date:	09/09/2022		

Agency Information

1. Department:	Natural Resources		
Agency:	Water Resources		
Room number:	310		
Building:	Department of Natural Resources		
Street address:	1594 W North Temple		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 146201		
City, state and zip:	Salt Lake City, UT 84114-6201		
Contact persons:			
Name:	Phone:	Email:	
Lanli Pham	801-538-7235	lpham@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:
R653-6. Privatization Projects
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 73-10d-6(2) requires the Division of Water Resources to establish rules for periodic reporting by any political subdivision that establishes ordinances, franchises, or other forms of regulation.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received since the last five-year review of this rule.

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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 helps municipalities or counties finance the cost of a privatization project for drinking water, water, and wastewater. Also, because the statute requires it. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Candice Hasenyager, Director	Date:	09/09/2022
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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:	R154-1	Filing ID: 50252
New Deadline Date:	01/09/2023	

Agency Information

1. Department:	Commerce	
Agency:	Corporations and Commercial Code	
Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146705	
City, state and zip:	Salt Lake City, UT 84114-6705	
Contact persons:		
Name:	Phone:	Email:
Leigh Veillette	801-530-6162	lveillette@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R154-1. Central Filing System for Agriculture Product Liens
3. Reason for requesting the extension:
The Division of Corporations and Commercial Code needs additional time to submit the five-year review for this rule.

Agency Authorization Information

Agency head or designee and title:	Leigh Veillette, Division Director	Date:	09/12/2022
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NOTICE OF FIVE-YEAR REVIEW EXTENSION

Rule Number:	R653-3	Filing ID: 51712
New Deadline Date:	01/27/2023	

Agency Information

1. Department:	Natural Resources	
Agency:	Water Resources	
Room number:	310	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146201	
City, state and zip:	Salt Lake City, UT 84114-6201	
Contact persons:		
Name:	Phone:	Email:
Lanli Pham	801-538-7235	lpham@utah.gov
Todd Stonely	801-538-7277	toddstonely@utah.gov
Martin Bushman	801-538-7273	martinbushman@agutah.gov

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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

General Information

2. Rule catchline:

R653-3. Selecting Private Consultants

3. Reason for requesting the extension:

The Division of Water Resources needs an extension so this rule does not expire before a repeal can be made effective.

Agency Authorization Information

Agency head or designee and title:	Candice Hasenyager, Director	Date:	09/14/2022
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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

Plant Industry

No. 54754 (Amendment) R68-7: Utah Pesticide Control Rule
Published: 08/01/2022
Effective: 09/07/2022

Commerce

Administration

No. 54760 (Amendment) R151-1: Department of Commerce General Provisions
Published: 08/15/2022
Effective: 09/21/2022

No. 54753 (Amendment) R151-4: Department of Commerce Administrative Procedures Act Rule
Published: 08/01/2022
Effective: 09/07/2022

No. 54761 (Repeal) R151-55: Regulatory Sandbox Program Rule
Published: 08/15/2022
Effective: 09/21/2022

Corporations and Commercial Code

No. 54775 (Amendment) R154-1: Central Filing System for Agricultural Product Liens
Published: 08/15/2022
Effective: 09/21/2022

No. 54776 (Repeal and Reenact) R154-2: Filing Office Rules
Published: 08/15/2022
Effective: 09/21/2022

No. 54777 (Repeal and Reenact) R154-100: Administrative Procedures Act Rule
Published: 08/15/2022
Effective: 09/21/2022

Real Estate

No. 54608 (Amendment) R162-2g: Real Estate Appraiser Licensing and Certification Administrative Rules
Published: 07/01/2022
Effective: 09/14/2022

Education

Administration

No. 54712 (Amendment) R277-609: Standards for LEA Discipline Plans and Emergency Safety Interventions
Published: 07/15/2022
Effective: 09/09/2022

Environmental Quality

Air Quality

No. 54595 (Amendment) R307-401-14: Used Oil Fuel Burned for Energy Recovery
Published: 06/01/2022
Effective: 09/26/2022

No. 54500 (Amendment) R307-508: Oil and Gas Industry: VOC Control Devices
Published: 05/01/2022
Effective: 09/06/2022

No. 54500 (Change in Proposed Rule) R307-508: Oil and Gas Industry: VOC Control Devices
Published: 08/01/2022
Effective: 09/06/2022

No. 54501 (Amendment) R307-509: Oil and Gas Industry: Leak Detection and Repair Requirements
Published: 05/01/2022
Effective: 09/06/2022

No. 54501 (Change in Proposed Rule) R307-509: Oil and Gas Industry: Leak Detection and Repair Requirements
Published: 08/01/2022
Effective: 09/06/2022

NOTICES OF RULE EFFECTIVE DATES

Health and Human Services

Disease Control and Prevention, Environmental Services
No. 54455 (Amendment) R392-110: Food Service
Sanitation in Residential Care Facilities
Published: 04/15/2022
Effective: 09/27/2022

No. 54455 (Change in Proposed Rule) R392-110: Food
Service Sanitation in Residential Care Facilities
Published: 07/15/2022
Effective: 09/27/2022

No. 54718 (Repeal and Reenact) R392-200: Design,
Construction, Operation, Sanitation, and Safety of Schools
Published: 07/15/2022
Effective: 09/27/2022

Health Care Financing, Coverage and Reimbursement Policy
No. 54720 (Amendment) R414-49: Dental, Oral and
Maxillofacial Surgeons and Orthodontia
Published: 07/15/2022
Effective: 09/08/2022

Center for Health Data, Health Care Statistics
No. 54579 (Amendment) R428-2: Health Data Authority
Standards for Health Data
Published: 05/15/2022
Effective: 09/01/2022

Family Health and Preparedness, Licensing
No. 54593 (Amendment) R432-32: Licensing Exemption
for Non-Profit Volunteer End-of-Life Care
Published: 06/01/2022
Effective: 09/08/2022

Administration, Administrative Services, Licensing
No. 54731 (Repeal) R501-2: Core Rules
Published: 07/15/2022
Effective: 09/09/2022

Aging and Adult Services
No. 54292 (Repeal and Reenact) R510-104: Nutrition
Programs
Published: 02/01/2022
Effective: 09/08/2022

No. 54292 (Change in Proposed Rule) R510-104: Nutrition
Programs
Published: 06/15/2022
Effective: 09/08/2022

Natural Resources

State Parks
No. 54773 (Repeal) R651-608: Events of Special Uses
Published: 08/15/2022
Effective: 09/23/2022

No. 54772 (Amendment) R651-635: Commercial Use of
Division Managed Park Areas
Published: 08/15/2022
Effective: 09/23/2022

Public Safety

Highway Patrol
No. 54742 (New Rule) R714-570: Mental Health
Resources for First Responders Grant Funding
Published: 08/01/2022
Effective: 09/07/2022

Workforce Services

Employment Development
No. 54728 (Amendment) R986-300-306: Time Limits
Published: 08/01/2022
Effective: 09/07/2022

No. 54749 (Amendment) R986-700-721: Commercial
Preschool Subsidy
Published: 08/01/2022
Effective: 10/01/2022

No. 54779 (Amendment) R986-700-771: Grants for Child
Care Start-up Costs
Published: 08/15/2022
Effective: 10/01/2022

No. 54778 (Repeal) R986-800: Displaced Homemaker
Program
Published: 08/15/2022
Effective: 09/22/2022

End of the Notices of Rule Effective Dates Section