

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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Utah state bulletin.

Semimonthly.

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EXECUTIVE DOCUMENTS

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

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

EXECUTIVE ORDER 2023-01

Creating a Time-Limited Task Force on State Agency Collaboration and Data Sharing

WHEREAS, Utah is ranked among the highest in the nation for economic strength, growth, employment, fiscal stability, health care, and education;

WHEREAS, notwithstanding these achievements, Utah's residents face significant challenges, examples of which include affordable housing, mental and physical health, high suicide rates among adolescents and teens, increasing rates of early death in adults 65-74, inflation, and environmental challenges including air quality and water supply;

WHEREAS, addressing these and other challenges while maintaining Utah's high quality of life requires a collaborative, flexible, efficient, and citizen-centered state government that is responsive to the needs of Utahns;

WHEREAS, the state of Utah establishes its collaborative, flexible, efficient, and citizen-centered state government through the delegation of many of these responsibilities to its state governmental agencies that are overseen by the governor;

WHEREAS, this delegation of responsibilities allows expertise of individual state agencies to provide high-quality services to the public;

WHEREAS, opportunities exist to strengthen collaboration across state agencies through the sharing of resources, research, evaluation, information, and data among agencies;

WHEREAS, strengthening collaboration and expanding information and data sharing among state agencies will enable state government to better address challenges facing Utahns and provide Utahns the best services possible;

NOW, THEREFORE, I, Spencer J. Cox, governor of the state of Utah, by the authority vested in me by the Constitution and laws of this state, do hereby order the following:

1. Purpose of Order. The purpose of this order is to strengthen state agency collaboration and expand information and data sharing across state agencies to better address challenges facing Utahns and provide Utahns the best services possible.

2. Creation of Task Force on State Agency Collaboration and Data Sharing.

- a. This order establishes a Task Force on State Agency Collaboration and Data Sharing ("Task Force").
- b. The Task Force consists of the following members:
 - i. the executive director of the Department of Health and Human Services, who shall serve as the chair of the Task Force;
 - ii. the executive director of the Governor's Office of Planning and Budget;
 - iii. the executive director of the Utah Department of Workforce Services;
 - iv. the executive director of the Department of Corrections;
 - v. the executive director of the Department of Public Safety;

- vi. the executive director of the Commission on Criminal and Juvenile Justice;
- vii. the executive director of the Utah Department of Government Operations;
- viii. the chief information officer for the state of Utah;
- ix. the Government Operations Privacy Officer; and
- x. the State Homeless Services Coordinator.
- c. The Task Force shall create an action plan ("Action Plan") to accomplish the purpose identified in Paragraph 1 above.
- d. The Task Force shall deliver the Action Plan to the governor by Aug. 30, 2023.
- e. The Task Force may:
 - i. consult with other state agencies or state employees whose expertise will assist the Task Force in its work; and
 - ii. seek legal counsel from the Attorney General's Office.

3. Contents of Action Plan.

- a. The Action Plan created by the Task Force shall include the following:
 - i. Specific objectives that state government can accomplish through strengthened state agency collaboration and expanded sharing of information and data across state agencies;
 - ii. Concrete steps to strengthen collaboration and expand information and data sharing, and a proposed timeline for completion of those steps;
 - iii. Legal, policy, or other barriers to strengthened collaboration and expanded information and data sharing;
 - iv. Consideration of, and compliance with, data privacy and security requirements;
 - v. Whether a formal structure is needed for data sharing across state agencies, and, if so, what the structure should be;
 - vi. Any needed administrative resources to accomplish the purposes of this Order, including the possibility of a state data warehouse;
 - vii. Whether any additional executive orders or directives by the governor are needed to accomplish the purposes of this Order;
 - viii. Whether changes to state law are needed to strengthen state agency collaboration and expand information and data sharing by state agencies;
 - ix. Identification of funding sources to accomplish the purposes of this Order and the recommendations in the Action Plan, including the possibility of braiding funding from several sources;
 - x. Any federal waivers needed for possible funding sources; and
 - xi. Any other information as determined by the Task Force.

THIS ORDER is effective immediately and shall remain in effect through Aug. 30, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 1st day of February, 2023.

(State Seal)

Spencer J. Cox
Governor, State of Utah

ATTEST:

Deidre M. Henderson
Lieutenant Governor, State of Utah

EXECUTIVE ORDER
2023-02

Directing the Utah Division of Forestry, Fire, and State Lands to Raise the Great Salt Lake Causeway Berm

WHEREAS, the Great Salt Lake is owned and managed by the state of Utah as sovereign land held in trust for the public;

WHEREAS, the Great Salt Lake is of regional and hemispheric biological importance due to its role as a major North American migratory bird flyway, as vital shorebird breeding habitat, and due to its size and influence on the climate and ecology;

WHEREAS, when the surface level elevation of the Great Salt Lake is low the Great Salt Lake ecosystem is at grave risk – migratory and shorebirds are vulnerable, wetlands are jeopardized, wildlife habitat decreases, recreation access and opportunities are minimized, search and rescue efforts become more challenging, and mineral extraction is impacted;

WHEREAS, the Great Salt Lake reached a historically low surface level elevation of 4,188.5 feet on Nov. 3, 2022;

WHEREAS, low lake levels are causing a significant increase in salinity creating an unsustainable environment for the Great Salt Lake ecosystem, including an unsustainable environment for brine shrimp, the keystone species of the Great Salt Lake;

WHEREAS, there exists a Union Pacific Railroad Causeway that bisects the Great Salt Lake into what is referred to as the North Arm and South Arm;

WHEREAS, within the Union Pacific Railroad Causeway there is an opening and water flow control berm ("berm") managed by the Utah Division of Forestry, Fire, and State Lands ("Division");

WHEREAS, the berm is currently set at 4,187 feet;

WHEREAS, high levels of precipitation since Nov. 3, 2022, have increased the lake level to a surface level elevation of 4,189.7 feet as of Jan. 26, 2023, and higher than normal levels of snowpack have the potential of further increasing the lake level through spring runoff;

WHEREAS, the three major tributaries (Jordan River, Bear River, and Weber River) of the Great Salt Lake flow into the South Arm;

WHEREAS, capturing spring runoff will increase the lake level and improve salinity levels in the South Arm of the lake;

WHEREAS, the current height of the berm is insufficient to capture continued precipitation and spring runoff in the South Arm of the lake;

NOW, THEREFORE, I, Spencer J. Cox, governor of the state of Utah, by the authority vested in me by the Constitution and laws of this state, hereby order the following:

1. The Division shall increase the berm height to 4,192 feet pursuant to the authority granted to the Division by Title 65A of the Utah Code in order to increase the overall depth and decrease the salinity of the South Arm of the Great Salt Lake.

2. The Department of Natural Resources and the Department of Environmental Quality shall immediately coordinate and prepare a berm management plan and put the plan in place as soon as reasonably possible. The berm management plan shall, among other things, establish a process for future adjustments to berm height.

3. The height increase in Paragraph 1 shall temporarily remain in place until the Division adopts and implements the berm management plan, at which time the berm management plan shall control future adjustments to berm height.

THIS ORDER is effective immediately and shall expire upon adoption and implementation of the berm management plan.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 3rd day of February, 2023.

(State Seal)

Spencer J. Cox
Governor, State of Utah

ATTEST:

Deidre M. Henderson
Lieutenant Governor, State of Utah

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between January 18, 2023, 12:00 a.m., and February 01, 2023, 11:59 p.m. are included in this, the February 15, 2023, 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 March 17, 2023. 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 June 15, 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: Amendment		
Rule or Section Number:	R70-101	Filing ID: 55202

Agency Information

1. Department:	Agriculture and Food	
Agency:	Regulatory Services	
Building:	TSOB South Bldg, Floor 2	
Street address:	4315 S 2700 W	
City, state, and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state, and zip:	Salt Lake City, UT 84114-6500	
Contact persons:		
Name:	Phone:	Email:
Travis Waller	801-982-2250	twaller@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Amber Brown	385-245-5222	ambermbrown@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R70-101. Bedding, Upholstered Furniture, and Quilted Clothing
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Due to increasing online sales, the program has expanded its online retailer's inspections and based on past reviews, the text is needed to clarify online labeling requirements. The online retailer's label requirements are updated to current practice and will provide more transparency in purchasing quilted clothing, bedding, or upholstered furniture from a retailer. The revised text will be aligned with the Utah Rulewriting Manual.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This rule defines an "online retailer" and clarifies an online retailer's label requirements. The clarifying text provides information for a consumer to inspect a label before purchase. This rule clarifies the text and aligns with the Utah Rulewriting Manual.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:																
A) State budget:																
The changes provide clarity for online labeling requirements and will not impact the state budget because the program's administration will not change.																
B) Local governments:																
Local governments do not manage the program, and will not be impacted due to the changes to the clarifying text.																
C) Small businesses ("small business" means a business employing 1-49 persons):																
The changes are clarifying to online sales and labeling requirements and will not impact small businesses' because the compliance costs of the program do not change.																
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):																
The changes are clarifying to online sales and labeling requirements and will not impact non-small businesses' because the compliance costs of the program do 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):																
The changes clarify online sales and labeling requirements and will not impact other persons because the compliance costs of the program do not change.																
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):																
The changes are clarifying to online sales and labeling requirements and will not impact costs because the compliance costs of the program do not change.																
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable budgetary impacts, they will not be included in this table. Inestimable impacts will be included in the narratives above.)																
Regulatory Impact Table																
<table> <tr> <th>Fiscal Cost</th><th>FY2023</th><th>FY2024</th><th>FY2025</th></tr> <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> </table>	Fiscal Cost	FY2023	FY2024	FY2025	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0
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 4-10-103		

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)	Manual of Labeling Laws
Publisher	International Sleep Products Association
Issue Date	05/04/2020
Issue or Version	2021Version

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

Official Title of Materials Incorporated (from title page)	16 CFR Parts 300, 301
Publisher	United States Codes of Federal Regulations
Issue Date	October 19, 2017
Issue or Version	October 19, 2017

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

Official Title of Materials Incorporated (from title page)	16 CFR Part 303
Publisher	United States Codes of Federal Regulations
Issue Date	November 5, 2020
Issue or Version	November 5, 2020

Public Notice Information

8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	03/17/2023

9. This rule change MAY become effective on:	03/24/2023
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:	Commissioner, Craig Buttars	Date:	01/18/2023
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R70. Agriculture and Food, Regulatory Services.

R70-101. Bedding, Upholstered Furniture, and Quilted Clothing.

R70-101-1. Authority and Purpose.

Pursuant to Section 4-10-103, this rule establishes the standards, practices, and procedures for the manufacture, repair, sale, and distribution of bedding, upholstered furniture, quilted clothing products, and filling materials.

R70-101-2. Definitions.

(1) "Clean" means free from stains, dirt, trash, filth, pulp, sludge, oil, grease, fat, skin, epidermis, excreta, vermin, insects, insect eggs, insect carcasses, contamination, hazardous materials, or residual or objectionable substances or odors.

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

(3) "Law Label or Label" means a tag attached to ~~a product~~ bedding or upholstered furniture that provides information about the product to the consumer.

(4) "Manufacture" means the making, processing, or preparing of new or secondhand bedding, upholstered furniture, quilted clothing, or filling material.

(5) "Manufacturer" means a person who makes or has employees make any bedding, upholstered furniture, quilted clothing, filling material, or any part.

(6) "Non-resident" means a person permitted under ~~these~~ this rule[s] who does not have premises in Utah.

(7) "Online Retailer" means any person who advertises and markets via the internet and another electronic network.

~~(7)~~ (8) "Person" means an individual, partnership, association, firm, auctioneer, trust, limited liability company, or corporation.

~~(8)~~ (9) "Premises" means any place where bedding, upholstered furniture, quilted clothing, or filling material is sold, offered for sale, exposed for sale, stored, renovated, or manufactured, and the delivery vehicle used in their transportation.

~~(9)~~ (10) "Supply dealer" means a person who manufactures, processes, or sells at wholesale any felt, batting, pads, or other fillings, loose in a bag, in a bale or ~~in~~ a container, concealed or not concealed, intended for use in bedding, upholstered furniture, or quilted clothing.

~~(10)~~ (11) "Second Hand Law Tag or Tag" means a tag attached to a product or filling material that has previously been used.

~~(11)~~ (12) "Sterilization Permit Number" means the number issued by a state to be used on any filling material or on the label for bedding, upholstered furniture, or quilted clothing to identify the sterilizing facility, person, or company.

~~(12)~~ (13) "Sterilize" means a process used to make wool, feathers, down, shoddy, or hair free from bacteria or any other living microorganism.

~~(13)~~ (14) "Sterilizer" means a person who sterilizes wool, feathers, down, shoddy, or hair.

(15) "Textile Label or Label" means a tag attached to a quilted clothing product that provides information required in 16 CFR Parts 300, 301, 303 and this rule.

~~(14)~~ (16) "Uniform Registry Number or URN" means the number issued by a state to be used on the law label of bedding, furniture, or filling material to identify the manufacturing facility, person, or company.

R70-101-3. Application of Rule.

~~(4)~~ This rule shall apply to any person engaged in the business of manufacturing, retailing, online retailing, wholesaling, processing, repairing, sterilizing, and selling items of bedding, upholstered furniture, quilted clothing, and filling material, regardless of their point of origin.

R70-101-4. Permit Requirements for Manufacturers, Repairers, and Wholesalers.

(1) Any person who advertises, solicits, or contracts to manufacture or repair bedding, upholstered furniture, or filling material shall secure a permit from the department before the product is offered for sale in Utah.

(2) Any person who advertises, solicits, or contracts to manufacture quilted clothing shall secure a permit from the department before the product is offered for sale in Utah.

(3) Any person seeking a permit shall provide the following to the department:

- (a) a completed registration form; and
- (b) a sample of the ~~identification~~ label that will be used; ~~and~~
~~e) a sample tag.~~

(4) A wholesale bedding, upholstered furniture dealer, ~~upholstery supply dealer, and quilted clothing manufacturer is~~ are exempted from providing a ~~sample tag~~ label to the department.

(5) A registration fee shall be assessed annually. This fee shall be paid before January 1 or a late fee shall be assessed. Each fee is listed in the department's fee schedule that is approved by the ~~(4)~~ [4] Legislature.

R70-101-5. Sterilization Permit Requirements for Sterilizers.

(1) A ~~any~~ [any] person who advertises, solicits, or contracts as a sterilizer shall secure a sterilization permit from the department before sterilized products are offered for sale in Utah.

(2) A ~~any~~ [any] person seeking a sterilization permit shall provide the department with a sterilization permit application completed by a department authorized third party inspector.

(3) A permit fee shall be assessed annually. This fee shall be paid before January 1 or a late fee will be assessed. Each fee is listed in the department's fee schedule that is approved by the ~~(4)~~ [4] Legislature.

(4) The inspection for a sterilization permit shall be conducted every three years.

(5) A copy of the inspection report shall be submitted to the department with the renewal form for that year.

R70-101-6. Revocation of Permit.

(1) The department shall have the authority to suspend or revoke a permit for any violation of these provisions.

(2) A suspension or revocation shall be in accordance with Section 4-1-106.

R70-101-7. Sanitation Requirements.

(1) The premises, delivery equipment, machinery, and any appliances, article, and devices shall be kept free from refuse, dirt, contamination, or insects.

(2) No person shall use in the making, repairing, or renovating of bedding, upholstered furniture, or quilted clothing any filling material that:

- (a) contains any insect, vermin, or filth;
- (b) is not clean; or
- (c) contains burlap or other material that has been used for baling.

(3) Bedding, quilted clothing, and filling material shall be stored four inches off the floor.

(4) New and used products shall be stored separately.

R70-101-8. Sterilization Requirements for New Fill Material.

(1) Any wool, feathers, down, shoddy, and hair shall be cleaned and sterilized before being used as new filling material.

(2) Methods for Sterilization.

(a) Pressure Steam. The material shall be subjected to treatment by steam at 15 PSI (.104 mPA) for 30 minutes or 20 PSI (.0138 mPA) for 20 minutes. The gauge for registering steam pressure must be visible from the outside of the room or chamber.

(b) Streaming Steam. Two applications of streaming steam maintained for a period of one hour each, applied at intervals of not less than six nor more than 24 hours, may be used. Valved

outlets shall be provided near the bottom and the top of the room or chamber when streaming steam is employed.

(c) Heat. A temperature of 235 degrees F held for a period of two hours, within a closed container is considered satisfactory for proper sterilization.

(d) Other methods of sterilization may be approved by the department upon petition.

R70-101-9. Manufacturing, Wholesale, Sterilizers, and Supply Dealer Labeling Requirements for Quilted Clothing.

(1) The department incorporates by reference the ~~rules under~~ October 19, 2017 version of the 16 CFR Parts 300 and 301, and the November 5, 2020 version of 16 CFR Part 303 ~~the Textile Fiber Products Identification Act, Fur Products Labeling Act, and Wool Products Labeling Act found in 16 CFR parts 300, 301, and 303~~.

(2) Articles of plumage-filled clothing shall meet the following label requirements.

(a) Any label stating the contents of Down, Goose Down, or Duck Down shall also state the minimum percentage of Down, Goose Down, or Duck Down that is contained in the article. The down label is a qualified general label and shall include in parentheses the minimum percentage of down in the product which shall be 75% or greater.

(b) "Down and Waterfowl Feathers" may be used to designate any plumage product containing between 50% minimum and 74% down and plumules. The percentage of both shall be stated on the sewn-in label and hang tags.

(c) "Waterfowl Feathers and Down" may be used to designate any plumage product containing between 5% minimum and 49% down and plumules. The percentage of both shall be stated on the sewn-in label and hang tags.

(d) "Waterfowl Feathers" may be used to designate any plumage product containing less than 5% down and plumules.

(e) Quill feathers are not permitted unless disclosed.

(f) Other plumage products that do not meet the requirements for any of the listed categories from Subsection R70-101-9(2) shall be labeled accurately with each component listed separately in order of predominance.

(3) The sterilization permit number "PER. NO. " shall be listed on the textile label.

(4) The form of identification used on a label and a tag shall be the same as those supplied to the department with the registration application.

(5) The textile label shall be easily accessible to the consumer for examination before purchase.

R70-101-10. Filling Material.

(1) Each term or definition of a filling material shall be the term that has been submitted and approved by the International Association of Bedding Law Officials (IABFLO), except as otherwise required by this rule.

(2) Notwithstanding Subsection R70-101-10(1), the term "recycled" may be used if the manufacturing facility:

(a) is Global Recycled Standard (GRS) certified ~~the GRS is incorporated by reference~~;

(b) provides proof of GRS certification to the department on the registration form; and

(c) provides a copy of the certificate or the certification number on the invoice to the retailer for each lot or batch of filling material.

(3) The manufacturing facility shall provide a copy of the certificate or the certification numbers for each batch or lot to the department upon request.

(4) Plumage material shall follow the standards as ~~set forth~~ outlined in the "USA-2000 Labeling Standards- Down and Feather Products" and ASTM D-4522, which are incorporated by reference.

(5) Any other filling material shall be clean.

(6) "Imperfect, irregular foam" means any foam product that shows a major imperfection or that falls below the foam manufacturer's usual standards or specifications and must be stated on the tag as "imperfect" or "irregular" along with the generic name of the foam.

(7) "Imperfect, irregular fibers" shall mean any fiber that has an imperfection or that falls below the fiber manufacturer's usual standards or specifications and must be stated on the tag as "imperfect" or "irregular" along with the generic name of the fiber.

(8) The terms "Prime₁"[₂] "Super₁"[₂] "Northern," and similar terms shall not be used unless the fill can be proved to be of superior quality and meet the terms of the qualifying statement.

R70-101-11. Generic Names, Grades, Descriptive Terms, and Definitions of Filling Material.

(1) Filling material shall be described on the label and ~~on~~ the tag using the:

(a) true generic name;

(b) grade;

(c) description terms; or

(d) definition of the filling material that has been approved by the department.

(2) When more than one kind of filling material is used in a mixture, the percentage by weight shall be listed in order of predominance.

(a) Federal fiber tolerance standards are applicable, except as pertains to a plumage product.

(b) Blends may be described in accordance with Section R70-101-10.

(3) When a different filling material is used in different parts of the garment, the areas of the garment shall be named, followed by the name of the filling material used in that area.

R70-101-12. Manufacturer Identification and Law Label Requirements for Bedding and Upholstered Furniture.

(1) The form of identification used on a law label and tag shall be the same as those supplied to the department with the registration.

(2) For any article of bedding and upholstered furniture, the law label shall use the format adopted by the IABFLO, as listed in the "Manual of Labeling Laws" of the International Sleep Products Association, 2021 edition, which is incorporated by reference. A copy of the ~~current~~ incorporated edition of the "Manual of Labeling Laws" is available for public inspection at the department.

(3) The law label for a newly manufactured product shall meet the following requirements:

(a) white on each side of the label;

(b) made of material that cannot be easily torn;

(c) printed in black ink;

(d) printed in English;

(e) printed clearly and legibly; and

(f) firmly attached to the article.

(4) Required information shall be printed on one side of the label with the opposite side remaining blank.

(5) Each law label shall state the following, in order:

(a) the phrase "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" in bold at the top of the label in capital letters no less than 1/8 inches in height;

(b) the phrase "ALL NEW MATERIAL" in bold, capital letters no less than 1/8 inch in height, followed by the phrase "CONSISTING OF", no case or height requirements, followed by the filling contents in bold capital letters no less than 1/8 inch in height;

(c) the words "CONTENTS STERILIZED" in bold capital letters no less than 1/8 inch in height;

(d) the URN issued by the state in which the firm is first registered;

(e) the sterilization permit number of the sterilization facility from which the material was obtained, in bold capital letters no less than 1/8 inch in height;

(f) the phrase, "Certification is made by the manufacturer that the materials in this article are described in accordance with law"; and

(g) the name and complete address of the manufacturer, importer, or vendor of the article.

(6) The law label shall be easily accessible to the consumer for examination ~~[-] before purchase.~~

(a) A product that is offered for sale in a box or in other packaging that makes a law label inaccessible shall reproduce a legible facsimile of the law label on the outer container or covering.

(7) No mark, label, printed matter, illustration, sticker, or other device shall be placed upon the label.

(8) The firm's license or permit with the state that issued the URN must be kept current for the number to be valid in Utah.

(9) Each firm doing business under more than one state-issued URN or permit shall obtain a permit for each number used on a product that -is offered for sale in Utah.

R70-101-13. Second Hand Law Tags and Tagging Requirements.

(1) A tag for second hand material shall be:

(a) a minimum of two inches by three inches;

(b) yellow on both sides of the tag;

(c) made of material that cannot be easily torn;

(d) printed in English;

(e) printed in black ink;

(f) printed clearly and legibly; and

(g) firmly attached to the article.

(2) Required information shall be printed on one side of the tag with the opposite side remaining blank.

(3) A second hand tag shall contain the following information, in order:

(a) the phrase "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" in bold at the top of the label in capital letters, no less than 1/8 inch in height;

(b) the phrase, "THIS ARTICLE CONTAINS SECOND HAND MATERIAL CONSISTING OF CONTENTS UNKNOWN". The words "SECONDHAND MATERIAL" and "CONTENTS UNKNOWN" shall be in capital letters, size not less than 1/8 inches in height;

(c) the phrase, "Certification is made that the materials in this article are described in accordance with law"; and

(d) the store name and complete corporate address.

(4) The tag shall be easily accessible to the consumer for examination.

(5) No mark, label, printed matter, illustration, sticker, or any other device shall be placed upon the tag.

R70-101-14. Second Hand Tag and Tagging Requirements for Repaired, Reupholstered, and Renovated Products.

(1) A tag for a repaired, reupholstered, and renovated product shall be:

(a) a minimum of two inches by three inches;

(b) yellow on both sides of the tag;

(c) made of material that cannot be easily torn;

(d) have the required information printed on one side of the tag with the opposite side remaining blank;

(e) printed in English;

(f) printed in black ink;

(g) printed clearly and legibly; and

(h) firmly attached to the article.

(2) A second hand tag shall contain the following information, in order:

(a) the phrase, "UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER" in bold at the top of the label in capital letters, no less than 1/8 inch in height;

(b) the phrase, "THIS ARTICLE IS NOT FOR SALE OWNER'S MATERIAL" in bold in capital letters, no less than 1/8 inch in height;

(c) the phrase, "CERTIFICATION IS MADE THAT THIS ARTICLE CONTAINS THE SAME MATERIAL IT DID WHEN RECEIVED FROM THE OWNER AND THAT ADDED MATERIALS ARE DESCRIBED IN THE ACCORDANCE WITH LAW, AND CONSIST OF THE FOLLOWING:" followed by a description of the filling material;

(d) a description of the work that was done on the product;

(e) the URN number;

(f) the name and address of the renovator or repairer; and

(g) the date of pick-up, owner's name, and address.

R70-101-15. Used Mattresses.

(1) A retailer selling a customer returned, refurbished, or used mattress shall follow the second hand law tag requirements as set out in Section R70-101-13.

(2) In addition, a retailer shall also display on the mattress a tag stating "USED" in bold capital letters.

(3) The USED tag shall be:

(a) a minimum of three inches by six inches;

(b) yellow on both sides of the tag;

(c) the font shall be a minimum of one inch in height;

(d) printed in black ink; and

(e) printed in English.

(4) Required information shall be printed on one side of the tag with the opposite side remaining blank.

(5) The USED tag shall be clearly visible to the consumer.

R70-101-16. Variance.

(1) The department may issue a variance on label and tag requirements.

(2) A request for a variance shall be made to the department in writing and shall contain the following information:

(a) the product associated with the variance request;

(b) where the variance will be used;

(c) an explanation of the need for a variance;

(d) a description of how the variance will be used in practice; and

(e) an example of the label or tag that will be used in place of the required label or tag.

(3) Approval of a variance shall be given from the department in writing.

- (4) A variance shall be subject to a period of review.

R70-101-17. Making or Selling Material or Parts.

~~[(4)]~~ A person shall not purchase, make, process, prepare, or sell, directly or indirectly, at wholesale or retail, or otherwise, any filling material or other component parts to be used in bedding, upholstered furniture, or quilted clothing, unless such material is appropriately tagged.

R70-101-18. Retailer Responsibilities.

- (1) A retailer, including online retailers, shall:

(a) ensure that any article of bedding, upholstered furniture, quilted clothing, or filling material sold is labeled and tagged correctly;

(b) ensure the label is easily accessible to the consumer for examination before purchase;

~~[(b)]~~(c) comply with state law and the department's rules governing false and misleading advertisement;~~[-and]~~

~~[(e)]~~(d) ensure that the manufacturer from whom a retailer purchases a product has a valid permit with the department~~[-]; and~~

(e) ensure that the importer from whom a retailer purchases a product has a valid permit with the department.

(2) Upon request of the department, a retailer shall provide the identity of the manufacturer or wholesaler of an article of bedding, upholstered furniture, quilted clothing, or filling material sold.

(3) A retailer may register in lieu of the manufacturer or wholesaler if the manufacturer or wholesaler is not registered.

(4) A retailer shall ensure that bedding or filling material using the term "recycled":

- (a) is from a GRS certified facility; and
(b) has a certificate or certification number.

R70-101-19. Violations~~[of This Rule]~~.

(1) Each improperly labeled or tagged article of bedding, upholstered furniture, quilted clothing, or filling material made or sold shall be a separate violation of this rule.

(2) No person shall be in violation if that person received, from the manufacturer or supplier of the article, a guarantee in good faith that the article is not contrary to ~~[these]~~ this rule[s] in the form prescribed by the Textile Fiber Products Identification Act, 15 U.S.C. 70, Wool Products Labeling Act, 15 U.S.C. 68, and related Federal Trade Commission rules.

(3) No person shall remove, or cause to be removed, any tag, or device placed upon any article of bedding, upholstered furniture, quilted clothing, or filling material by an inspector.

(4) No person may remove an article that has been condemned and ordered held on inspection notice.

(5) No person shall interfere with, obstruct, or hinder any inspector of the department in the performance of the inspector's duties.

(6) Any article of bedding, upholstered furniture, quilted clothing, or filling material manufactured or wholesaled by a manufacturer or wholesaler who is not registered or permitted may be withheld from sale until the manufacturer or wholesaler registers or obtains a permit.

(7) No person shall use the term "recycled" for bedding or filling material unless they meet the requirements of Subsection R70-101-10(2).

R70-101-20. Products Not Intended for Use Subject to ~~[(t)]~~ This Rule.

(1) The Commissioner may exclude from this rule a textile fiber product:

(a) that has an insignificant or inconsequential textile fiber content; or

(b) if the disclosure of the textile fiber content is not necessary for the protection of the consumer.

KEY: inspections, labeling, quality control, registration

Date of Last Change: ~~[April 5, 2022]~~ 2023

Notice of Continuation: March 12, 2020

Authorizing, and Implemented or Interpreted Law: 4-10-103

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R156-24b	Filing ID: 55210
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Agency Information

1. Department:	Commerce	
Agency:	Professional Licensing	
Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact persons:		
Name:	Phone:	Email:
Jeff Busjahn	801-530-6628	jbusjahn@utah.gov

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

General Information

2. Rule or section catchline:

R156-24b. Physical Therapy Practice Act Rule

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

The Division of Professional Licensing (Division), in collaboration with the Physical Therapist Licensing Board, is filing these proposed amendments to clarify and update this rule and to eliminate unnecessary regulation and reduce barriers to licensure in accordance with Executive Order No. 2021-1, Executive Order No. 2021-12, and S.B. 23 passed in the 2020 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 proposed amendments to Section R156-24b-303b update and better define and clarify the continuing education requirements for renewal of a Physical Therapist or Physical Therapist Assistant license and will allow continuing education credit for hours worked as a licensed Physical Therapist or Physical Therapist Assistant.

The proposed deletion of Section R156-24b-308 moves that content to Section R156-24b-303a to clarify the qualifications for licensure and reinstatement of an expired license.

The proposed amendments to Section R156-24b-502 update this unprofessional conduct section to reference the most current editions of the American Physical Therapy Association's Code of Ethics for the Physical Therapist, Guide for Professional Conduct for the Physical Therapist, Standards of Ethical Conduct for the Physical Therapist Assistant, and Guide for Conduct of the Physical Therapist Assistant.

The proposed amendments to Section R156-24b-505 provide clarification for submission of proof of supervised patient treatment sessions for Trigger Point Dry Needling.

Lastly, the remaining amendments streamline and update this rule and eliminate unnecessary language and duplications.

Hearing Information:

A public hearing will be held at the Heber Wells Bldg, 160 E 300 S, Conference Room 402 (fourth floor), Salt Lake City, UT on 02/16/2023 at 9:00 AM.

Will also be held electronically via Google Meet:

Meeting link:

meet.google.com/eke-jz dq-oig

Join by phone:

(US) +1 575-425-0148

PIN: 281873899

Fiscal Information

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

A) State budget:

The Division estimates that the proposed amendments to Sections R156-24b-303b and R156-24b-505 may indirectly benefit state government agencies who employ physical therapists or physical therapist assistants, if these licensees are able to more easily renew their license to practice in Utah.

The full fiscal and non-fiscal impacts cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that each state agency may experience from any resulting increased ability to employ qualified physical therapists or physical therapist assistants will vary widely depending on the requirements of each entity and the individual characteristics of each licensee.

The remainder of these proposed amendments are expected to have no measurable impact on state revenues or expenditures as they merely streamline and update this rule.

B) Local governments:

The proposed amendments may indirectly benefit local governments that employ physical therapists or physical therapist assistants, if these licensees are able to more easily renew their license to practice in Utah.

The full fiscal and non-fiscal impacts on local government cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that local governments may experience from any resulting increased ability to employ qualified physical therapists or physical therapist assistants candidates will vary widely depending on the requirements of each local government entity and the individual characteristics of each physical therapist or physical therapist assistant.

The remainder of these proposed amendments are expected to have no measurable impact on local government revenues or expenditure as they merely streamline and update this rule.

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

The proposed amendments to Sections R156-24b-303b and R156-24b-505 may indirectly benefit the estimated 8,633 small businesses in Utah comprising establishments employing physical therapists or physical therapist assistants such as Home Health Services, Nursing Care Facilities, Other hospitals, Individual and Family Services, Public Administration – State and Elementary and Secondary Schools (NAICS 6213, 9991, 6111, 9992, 6241, 6223, 6231, 6216), as the amendments are expected to facilitate license renewal to practice in Utah; however, the full fiscal and non-fiscal impacts on small businesses cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that a small business may experience from any resulting increased ability to employ qualified physical therapists or physical therapist assistant candidates will vary widely depending on the requirements of the small business and the individual characteristics of each physical therapist or physical therapist assistant.

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

As described in Box 5C for small businesses, non-small businesses may indirectly benefit from the proposed amendments to Sections R156-24b-303b and R156-24b-505, but the exact impacts cannot be estimated.

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

The proposed amendments to Sections R156-24b-303b and R156-24b-505 are expected to benefit the approximately 2,856 licensed physical therapists and 1,053 licensed physical therapist assistants via the continuing education renewal process.

The full fiscal and non-fiscal impacts on these licensees cannot be estimated because the data necessary to determine how many such licensees might be hired is unavailable, and because the benefits that each licensee may experience from any resulting increased ability to become employed will vary widely depending on the requirements of the employer and the individual characteristics of each physical therapist or physical therapist assistant.

The remainder of these proposed amendments are expected to have no measurable impact on these persons as they merely streamline and update this rule.

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

As described in Box 5E for other persons, no compliance costs are expected 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 Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division, in concert with American Physical Therapy Association, propose amendments to Rule R156-24b to update this rule. This rule will allow continuing education credit for hours worked as a licensed Physical Therapist or Physical Therapist Assistant and clarify the qualifications as a whole.

Also, the Division has made formatting conformities throughout this rule to align with the Utah Rulewriting Manual in accordance with Executive Orders No. 2021-1 and 2021-12.

Small Businesses (less than 50 employees):

There are approximately 2,856 licensed physical therapists and 1,053 licensed physical therapist assistants in Utah. The amendments will likely benefit the estimated 8,633 small businesses in Utah comprising employed as physical therapists or physical therapist assistants in home health services, nursing care facilities, hospitals, individual and family Services, public administration, and in state elementary and secondary Schools (NAICS 6213, 9991, 6111, 9992, 6241, 6223, 6231, 6216).

Further, the Division does not foresee any negative impact on small businesses from the grammar since this rule was drafted to comport to the Utah Rulewriting Manual.

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

The Division finds that the non-small businesses in the Utah will not suffer a negative fiscal impact from the proposed changes for the same rationale as described above for small businesses. Further, any of these costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

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 58-24b-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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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)	American Physical Therapy Association's Code of Ethics for the Physical Therapist
Publisher	American Physical Therapy Association
Issue Date	August 12, 2020

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

Official Title of Materials Incorporated (from title page)	American Physical Therapy Association's Guide for Professional Conduct
Publisher	American Physical Therapy Association
Issue Date	March 2019

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

Official Title of Materials Incorporated (from title page)	American Physical Therapy Association's Standards of Ethical Conduct for the Physical Therapist Assistant
Publisher	American Physical Therapy Association
Issue Date	August 12, 2020

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

Official Title of Materials Incorporated (from title page)	American Physical Therapy Association's Guide for Conduct of the Physical Therapist Assistant
Publisher	American Physical Therapy Association
Issue Date	March 2019

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: 03/17/2023

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

On:	At:	At:
02/16/2023	9:00 AM	See hearing information in Box 4 above

9. This rule change MAY become effective on: 03/24/2023

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:	Mark B. Steinagel, Division Director	Date:	01/26/2023
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R156. Commerce, [Occupational and] Professional Licensing. R156-24b. Physical Therapy Practice Act Rule.

R156-24b-101. Title - Authority - Relationship to Rule R156-1.

(1) This rule is known as the "Physical Therapy Practice Act Rule."^[7]

(2) This rule is adopted by the Division under Subsection 58-1-106(1)(a), to enable the Division to administer Title 58, Chapter 24b, Physical Therapy Practice Act.

(3) The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-24b-102. Definitions.

~~[In addition to the definitions in Title 58, Chapters 1 and 24b, as used in Title 58, Chapters 1 and 24b or this rule]~~ The following definitions supplement the definitions in Title 58, Chapter 1, Division of Professional Licensing Act, and Title 58, Chapter 24b, Physical Therapy Practice Act:

(1) ~~["An education program that is accredited by a recognized accreditation agency", as used in Subsections 58-24b-302(1)(c) and (d), (2)(c) and (d), and (3)(c), means an education program that is, at the time of an applicant's graduation:~~

~~(a) accredited by CAPTE; or~~

~~(b) a foreign education program which is equivalent to a CAPTE accredited program as determined by the FCCPT.~~

~~(2) —]"Credential evaluation" [as used in Subsections R156-24b-302a(2) and (3),] means the [appropriate] Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy [The appropriate CWT means the CWT in place at the time] when the foreign educated physical therapist or physical therapist assistant graduated from the physical therapy program.~~

~~([3]) "CAPTE" means Commission on Accreditation in Physical Therapy Education.~~

~~([4]) "FCCPT" means the Foreign Credentialing Commission on Physical Therapy.~~

~~([5]) "FSBPT" means the Federation of State [Licensing] Boards of Physical Therapy.~~

([6]5) "Joint mobilization"[~~]~~ as used in Subsection 58-24b-102(15)(d), means a manual therapy technique comprising a continuum of skilled passive movements to the joints ~~[and]~~ or related soft tissues that are applied at varying speeds and amplitudes, including a small-amplitude~~[/]~~-high velocity therapeutic movement.

([7]6) "Routine assistance"[~~]~~ as used in Subsections 58-24b-102(10) and 58-24b-401(3)(b) means:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and

(b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

([8]7) "Supportive personnel,"[~~]~~ as used in Subsection R156-24b-503(1), means a physical therapist assistant or a physical therapy aide and does not include a student in a physical therapist or physical therapist assistant program.

([9]8) "Unprofessional conduct" as defined in Title 58, Chapter~~[s]~~ 1, Division of Professional Licensing Act, and Title 58, Chapter 24b, Physical Therapy Practice Act, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-24b-502.[

~~R156-24b-103. Authority—Purpose.~~

~~This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 24b.~~

~~R156-24b-104. Organization—Relationship to Rule R156-1.~~

~~The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.[~~

R156-24b-302a. Qualifications for Licensure - Education Requirements.

(1) An education program that is accredited by a recognized accreditation agency under Subsections 58-24b-302(1)(b), 58-24b-302(1)(c)(ii), 58-24b-302(2)(b), 58-24b-302(2)(c)(ii) and 58-24b-302(3)(b)(i), if at the time of the applicant's graduation:

(a) the education program is CAPTE accredited; or

(b) the education program is in a jurisdiction outside the United States, and the FCCPT determines that the education program is equivalent to a CAPTE accredited program.

([1]2) [In accordance with]Under Subsections 58-24b-302(1) and (2), an applicant for licensure as a physical therapist or physical therapist assistant who completed their physical therapy education in a state, district, or territory of the United States shall document their education by providing:

(a) a transcript sent directly to the Division from the degree-granting institution showing completion of the accredited education program[~~as defined in Subsection R156-24b-102(1)(a)];~~ or

(b) a statement signed by the program director or other authorized school official with the school seal affixed, stating that the applicant has successfully completed the accredited education program[~~as defined in Subsection R156-24b-102(1)(a)].~~

([2]3) [In accordance with]Under Subsection[s] 58-24b-302[(2) and](4), an applicant who holds a current unrestricted physical therapist license or physical therapist assistant license issued by another state, district, or territory of the United States, other than Utah, may document their education by providing either:

(a) the documentation under Subsection ([1]2); or

(b) a score transfer from FSBPT sent directly to the Division[~~from the provider~~].

([3]4) [In accordance with Subsection]Under Subsections 58-24b-302(3)(b)(ii) and 58-24b-302(3)(d), an applicant for licensure as a physical therapist who is educated outside the United States shall document that the applicant's education is equal to a CAPTE accredited degree and that the applicant [is able to]can read, write, speak, understand, and be understood in the English language by submitting to the Division a Type I review from the FCCPT showing:

(a) no deficiencies; or

(b) [~~]~~

(a) Only[only] educational deficiencies in one or more of the following pre-professional subject areas, that the applicant has[~~may be~~] corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas[~~]~~

(b) Pre-professional subject areas include the following[~~]~~:

(i) humanities;

(ii) social sciences;

(iii) liberal arts;

(iv) physical sciences;

(v) biological sciences;

(vi) behavioral sciences;

(vii) mathematics; or

(viii) advanced first aid for health care workers.

([4]5) [In accordance with]Under Subsection 58-24b-302(2)(e)[b], an applicant for licensure as a physical therapist assistant shall:

(a) have received an associate's, bachelor's, or master's degree from a CAPTE accredited physical [therapy]therapist assistant education program; or

(b) [in accordance with]under Subsections (1)(b) and 58-24b-302(2)(d) and Section 58-1-302, if the applicant has been licensed or educated in a [foreign country]jurisdiction outside the United States but received a degree not accredited by CAPTE, document that the applicant's education is substantially [equal]similar to a CAPTE accredited degree by submitting to the Division a credential evaluation from the FCCPT showing:

(i) no deficiencies; or

(ii) educational deficiencies only in pre-professional subject areas that the applicant has corrected, as described in Subsection (3)(b).[

(i) Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas.

(ii) Pre-professional subject areas include the subject areas listed in Subsection (3)(b).[

([5]6) An applicant who has met all requirements for licensure as a physical therapist except passing the FSBPT National Physical Therapy Examination-Physical Therapist may apply for licensure as a physical therapist assistant.

R156-24b-302b. Qualifications for Licensure - Examination Requirements.

(1)(a) [In accordance with]Under Subsection 58-24b-302(1)([4]c) an applicant for licensure as a physical therapist who is educated in the United States shall pass the FSBPT's National Physical Therapy Examination - Physical Therapist (NPTE-PT) with a passing score as established by the FSBPT, after submitting proof that the applicant is in the final term of, or has graduated from, a

professional physical therapist education program accredited by CAPTE.

(b) ~~[In accordance with]~~Under Subsections 58-24b-302(3)(~~[d]~~~~[e]~~) and (~~[g]~~~~[f]~~), an applicant for licensure as a physical therapist who is educated outside the United States shall pass the FSBPT's National Physical Therapy Examination - Physical Therapist (NPTE-PT) with a passing score as established by the FSBPT, after submitting proof of compliance with Subsection 58-24b-302(3)(~~[e]~~~~[b]~~).

(2) ~~[In accordance with]~~Under Subsection 58-24b-302(2)(~~[d]~~~~[e]~~), an applicant for licensure as a physical therapist assistant shall pass the FSBPT's National Physical Therapy Examination - Physical Therapist Assistant (NPTE-PTA), with a passing score as established by the FSBPT, after submitting proof that the applicant is in the final term of, or has graduated from, an accredited physical therapist assistant education program~~[as defined in Subsection R156-24b-102(1)(a)]~~.

(3)(a) A passing score on the FSBPT's National Physical Therapy Examination shall be verified through FSBPT.

(b) An applicant for licensure by endorsement may verify the applicant's score by providing a score transfer from FSBPT sent directly to the Division~~[from the provider]~~.

(4) An applicant for licensure as a physical therapist who fails the FSBPT's NPTE-PT is eligible to sit for the FSBPT's NPTE-PTA after registering with FSBPT.

R156-24b-303a. ~~[Renewal Cycle Procedures]~~Term, Expiration, Renewal, and Reinstatement of License.

(1) ~~[In accordance with Subsection]~~Under Subsections 58-1-308(1) and 58-24b-303(1), the renewal date for the two-year renewal cycle ~~[applicable to]~~for licensees under Title 58, Chapter 24b, Physical Therapy Practice Act, is established ~~[by rule]~~in Section R156-1-308a.

(2) Renewal and reinstatement procedures shall be in accordance with Sections R156-1-308[e]a through R156-1-308l, except as provided in Subsection (3).

(3) Under Subsection 58-1-308(5)(a)(ii)(B) and subject to Subsection 58-1-308(6)(b), an applicant whose license was active and in good standing at expiration may apply for reinstatement of licensure between two years and five years after the date of expiration, by:

(a) if not previously completed, submitting to and passing a criminal background check under Section 58-24b-302.1; and

(b) completing one or more of the following practice reentry requirements, if required by the Division in collaboration with the Board:

(i) meet with the Board to evaluate the applicant's ability to safely and competently practice physical therapy;

(ii) pass the NPTE examination of the FSBPT, if the Division in collaboration with the Board determines that examination or reexamination is necessary to verify the applicant's ability to safely and competently practice; or

(iii) complete a plan of supervision under a Board-approved supervisor, which may include up to 4,000 hours of physical therapy training under a temporary physical therapist or physical therapist assistant license before qualifying for full reinstatement of the license.

R156-24b-303b. Continuing Education.

(1) ~~[Required Hours. In accordance with]~~Under Subsection 58-24b-303(2), the continuing education requirement for a physical therapist or physical therapist assistant during each two-

year renewal cycle commencing on June 1 of each odd numbered year are established in this section.~~;~~

~~(a) A physical therapist shall be required to complete not fewer than 40 contact hours of continuing education of which a minimum of two contact hours must be completed in ethics/law.~~

~~(b) A physical therapist assistant shall be required to complete not fewer than 20 contact hours of continuing education of which a minimum of two contact hours must be completed in ethics/law.~~

~~(c) Examples of subjects to be covered in an ethics/law course for physical therapists and physical therapist assistants include one or more of the following:~~

~~(i) patient/physical therapist relationships;~~

~~(ii) confidentiality;~~

~~(iii) documentation;~~

~~(iv) charging and coding;~~

~~(v) compliance with state and/or federal laws that impact the practice of physical therapy; and~~

~~(vi) any subject addressed in the American Physical Therapy Association Code of Ethics or Guide for Professional Conduct.~~

~~(d) The required number of contact hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.~~

~~(e) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.~~

(2) A continuing education course shall meet the following standards:

(a) Time. Each contact hour of continuing education course credit shall consist of not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one contact hour of continuing education for every two hours of time spent:

~~(i) lecturing or instructing a course;~~

~~(ii) in a post-professional doctorate or transitional doctorate program; or~~

~~(iii) in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association.~~

~~(b) Course Content and Type. The course shall be presented in a competent, well-organized, and sequential manner consistent with the stated purpose and objective of the course.~~

~~(i) The content of the course shall be relevant to the practice of physical therapy and shall be completed in the form of any of the following course types:~~

~~(A) department in service;~~

~~(B) seminar;~~

~~(C) lecture;~~

~~(D) conference;~~

~~(E) training session;~~

~~(F) webinar;~~

~~(G) internet course;~~

~~(H) distance learning course;~~

~~(I) journal club;~~

~~(J) authoring of an article or textbook publication;~~

~~(K) poster platform presentation;~~

~~(L) specialty certification through the American Board of Physical Therapy Specialties;~~

~~(M) post-professional clinical residency or fellowship approved by the American Physical Therapy Association;~~

~~(N) post-professional doctorate from a CAPTE accredited program;~~

~~(O) lecturing or instructing a continuing education course;~~
~~or~~
~~(P) study of a scholarly peer-reviewed journal article.~~
~~(ii) The following limits apply to the number of contact hours recognized in the following course types during a two year license renewal cycle:~~
~~(A) a maximum of 40 contact hours for initial specialty certification through the American Board of Physical Therapy Specialties (ABPTS);~~
~~(B) a maximum of 40 contact hours for hours spent in a post-professional doctorate or transitional doctorate CAPTE accredited program;~~
~~(C) a maximum of 40 contact hours for hours spent in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association;~~
~~(D) a maximum of half of the number of contact hours required for renewal for lecturing or instructing in courses meeting these requirements;~~
~~(E) a maximum of ten percent of the number of contact hours required for renewal for supervision of a physical therapist or physical therapist assistant student in an accredited college program and the licensee shall receive one contact hour of credit for every 80 hours of clinical instruction;~~
~~(F) a maximum of 15 contact hours required for renewal for serving as a clinical mentor for a physical therapy residency or fellowship training program at a credentialed program and the licensee shall receive one contact hour of credit for every ten hours of residency or fellowship;~~
~~(G) a maximum of half of the number of contact hours required for renewal for online or distance learning courses that include examination and issuance of a completion certificate;~~
~~(H) a maximum of 12 contact hours for authoring a published, peer-reviewed article;~~
~~(I) a maximum of 12 contact hours for authoring a textbook chapter;~~
~~(J) a maximum of ten contact hours for personal or group study of a scholarly peer-reviewed journal article;~~
~~(K) a maximum of six contact hours for authoring a non-peer-reviewed article or abstract of published literature or book review; and~~
~~(L) a maximum of six contact hours for authoring a poster or platform presentation.~~
~~(c) Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:~~
~~(i) a recognized accredited college or university;~~
~~(ii) a state or federal agency;~~
~~(iii) a professional association, organization, or facility involved in the practice of physical therapy; or~~
~~(iv) a commercial continuing education provider providing a course related to the practice of physical therapy.~~
~~(d) Objectives. The learning objectives of the course shall be clearly stated in course material.~~
~~(e) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.~~
~~(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due.~~
~~(i) At a minimum, the documentation shall contain the following:~~

~~(A) the date of the course;~~
~~(B) the name of the course provider;~~
~~(C) the name of the instructor;~~
~~(D) the course title;~~
~~(E) the number of contact hours of continuing education credit; and~~
~~(F) the course objectives.~~
~~(ii) If the course is self-directed, such as personal or group study or authoring of a scholarly peer-reviewed journal article, the documentation shall contain the following:~~
~~(A) the dates of study or research;~~
~~(B) the title of the article, textbook chapter, poster, or platform presentation;~~
~~(C) an abstract of the article, textbook chapter, poster, or platform presentation;~~
~~(D) the number of contact hours of continuing education credit; and~~
~~(E) the objectives of the self-study course.~~
~~(6) Extra Hours of Continuing Education. If a licensee completes more than the required number of contact hours of continuing education during the two year renewal cycle specified in Subsection (1), up to ten contact hours of the excess may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.]~~
~~(2) As used in this section:~~
~~(a) "Contact hour" means 50 continuous minutes of participation in a continuing education activity without a break period.~~
~~(b) "Continuing Education Unit" or "CEU" means the standard unit of measurement to signify a licensee's completion of participation in a continuing education activity.~~
~~(c) "Category I" CEU means:~~
~~(i) a fellowship, residency, specialty certification, degree awarding education program, or in-person attendance at a live educational program event in which participants can interact with the presenter in real time; and~~
~~(ii) one contact hour of Category I CEU equals two continuing education units.~~
~~(d) "Category II" CEU means:~~
~~(i) in-person attendance at live educational coursework or a live education program in a school setting, an electronic course with assessment, volunteer service, clinical instructor supervision, or teaching a physical therapy education course; and~~
~~(ii) one contact hour of Category II CEU equals 1 and 1/2 continuing education units.~~
~~(e) "Category III" CEU means:~~
~~(i) electronic physical therapy educational coursework without assessment or examination, in-service presentations, self-study, journal clubs, or ethics or law coursework; and~~
~~(ii) one contact hour of Category III CEU equals one continuing education unit.~~
~~(f) "Category IV" CEU means:~~
~~(i) licensed practice by a physical therapist or physical therapist assistant, up to a total of 500 hours; and~~
~~(ii) 50 practice hours of Category IV CEU equals one CEU.~~
~~(g) "Clinical instructor supervision" means the supervision of one or more:~~
~~(i) non-physical therapy students;~~
~~(ii) physical therapist assistants; or~~
~~(iii) physical therapy students.~~

(h) "Fellowship" means a post-professional program focused on a defined area of practice for professionals who have already completed a residency, or who are board-certified by the American Board of Physical Therapy Specialties (ABPTS) in a related area of specialty.

(i) "Group study" means a group of two or more licensed professionals that regularly meets to discuss shared areas or fields of learning, with topics that advance professional skill and experience.

(j) "Independent study" means structured learning experiences by an individual that take place outside of traditional learning environments.

(k) "Publication" means activities undertaken by an author or coauthor to design or implement, research, draft, edit, and submit material for publication.

(l) "Renewal educational coursework" means live, in-person, or electronic education with assessment undertaken in traditional learning environments, academic coursework, lectures, seminars, conferences, or workshops.

(m) "Research" means contribution to a research project through data collection, project development, or consultation.

(n) "Residency" means a post-professional program that focuses on a defined area of physical therapy practice.

(o) "Volunteer service" means services provided at no charge that rely on the skills and advance the professional competence of a physical therapist or physical therapist assistant, such as serving on a professional board or providing services at a health fair screening.

(3) During each two-year renewal cycle, a physical therapist shall complete at least 40 CEUs, of which at least two CEUs shall be in ethics or law. A physical therapist who completes more than the required number of CEUs during a two-year renewal cycle may carry over up to ten excess CEUs to the next two-year renewal cycle.

(4) During each two-year renewal cycle, a physical therapist assistant shall complete at least 20 CEUs, of which at least two CEUs shall be in ethics or law. A physical therapist assistant who completes more than the required number of CEUs during a two-year renewal cycle may carry over up to five excess CEUs to the next two-year renewal cycle.

(5) If a licensee first becomes licensed during the two-year renewal period, the licensee's required number of CEUs shall be decreased proportionately according to the date of licensure.

(6) The Division may defer or waive CEU requirements under Section R156-1-308d.

(7) A licensee may not apply continuing education or coursework education, including professional upgrades, that the licensee received before being granted a license, to CEUs required after the license is granted.

(8) CEU credit shall be recognized as follows, during each two-year renewal cycle:

(a) for clinical instructor supervision CEUs, up to ten CEUs for a physical therapist and up to five CEUs for a physical therapist assistant;

(b) for lecturing or instructing a course at an accredited university or college, continuing education course, or as an invited guest lecturer, up to ten CEUs for a physical therapist and up to five CEUs for a physical therapist assistant, subject to the following:

(i) one CEU shall be awarded for each hour of instruction;

(ii) credit shall be awarded for lecturing or instructing the same course up to two times; and

(iii) documentation of completion shall include a certificate or record from the human resources department.

(c) for volunteer service CEUs, up to ten CEUs for a physical therapist and up to five CEUs for a physical therapist assistant; and

(d) for practice hours CEUs, up to ten CEUs for a physical therapist and up to five CEUs for a physical therapist assistant.

(9) A continuing education course for a physical therapist or physical therapist assistant shall meet the following requirements:

(a) have content relevant to the practice of physical therapy;

(b) have learning objectives that are clearly stated in course material;

(c) be prepared and presented by individuals who are qualified by education, training, and experience; and

(d) be approved by, conducted by, or under the sponsorship of one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association, organization, or facility involved in the practice of physical therapy; or

(iv) a commercial continuing education provider;

(e) may be completed as any of the following:

(i) department in-service;

(ii) seminar;

(iii) lecture;

(iv) conference;

(v) training session;

(vi) webinar;

(vii) internet course;

(viii) distance learning course;

(ix) journal club;

(x) authoring of a scholarly peer-reviewed journal article or textbook publication;

(xi) poster platform presentation;

(xii) specialty certification through the American Board of Physical Therapy Specialties;

(xiii) post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(xiv) post-professional doctorate from a CAPTE accredited program;

(xv) lecturing or instructing a continuing education course; or

(xvi) study of a scholarly peer-reviewed journal article; and

(f) for an ethics or law continuing education course, include any of the following subjects:

(i) patient-physical therapist relationships;

(ii) confidentiality;

(iii) documentation;

(iv) charging and coding;

(v) compliance with state or federal laws that impact the practice of physical therapy; or

(vi) a subject in the American Physical Therapy Association Code of Ethics or Guide for Professional Conduct.

(10) A licensee shall maintain adequate documentation as proof of compliance with this section, such as certificate of compliance, school transcript, course description, or other course materials, for two years after the end of the renewal cycle for which the continuing education is due, as follows:

(a) at minimum, CEU course documentation shall include:

(i) date of the course;

(ii) name of the course provider;

(iii) name of the instructor;

_____ (iv) course title;
 _____ (v) course objectives; and
 _____ (vi) number of contact hours of continuing education credit; and
 _____ (b) if the CEU is self-directed, such as independent study, group study, authoring, or in-service, documentation shall include:
 _____ (i) dates of study or research;
 _____ (ii) title and an abstract of an article, textbook chapter, poster, or platform presentation;
 _____ (iii) objectives of a self-study course; and
 _____ (iv) number of contact hours of continuing education credit.

R156-24b-305. Temporary Licensure.

(1) ~~[In accordance with]~~Under Subsection 58-1-303(1), the Division may issue a temporary physical therapist or temporary physical therapist assistant license to a person who meets all qualifications for licensure as a physical therapist or physical therapist assistant except for the passing of the required examination, if the applicant:

- (a) submits a ["]Request for Authorization to Test["] as a physical therapist or physical therapist assistant, and is authorized to sit for the NPTE examination;
- (b) is a graduate of a CAPTE accredited physical therapy school within three months immediately preceding application for licensure;
- (c) is under the direct, on-site supervision of a physical therapist with an active, non-temporary license if employed as a physical therapist; and
- (d) has registered to take the required licensure examination.

(2) A temporary physical therapist or temporary physical therapist assistant license issued under Subsection (1) expires the earlier of:

- (a) six months from the date of issuance;
- (b) the date upon which the Division receives notice from the examination agency that the individual has failed the examination twice; or
- (c) the date upon which the Division issues the individual full licensure.

(3) A temporary physical therapist or temporary physical therapist assistant license issued in accordance with this section ~~[cannot]~~may not be renewed or extended.[]

~~R156-24b-308. Reinstatement of a Physical Therapist or Physical Therapist Assistant License which has Expired Beyond Two Years.~~

~~In addition to the requirements established in Section R156-1-308g and in accordance with Subsection 58-1-308(6), an applicant for reinstatement for licensure as a physical therapist or physical therapist assistant, whose license has been expired for two or more years, shall complete one or more of the following upon request of the Division in collaboration with the Board:~~

- ~~(1) meet with the Board to evaluate the applicant's ability to safely and competently practice physical therapy;~~
- ~~(2) pass the NPTE examination of the FSBPT if it is determined that examination or reexamination is necessary to verify the applicant's ability to safely and competently practice; and~~
- ~~(3) establish and carry out a plan of supervision under an approved supervisor which may include up to 4,000 hours of physical therapy training under a temporary physical therapist or physical~~

~~therapist assistant license before qualifying for full reinstatement of the license.]~~

R156-24b-502. Unprofessional Conduct.

~~[Unprofessional]~~Under Subsection 58-24b-502(4), unprofessional conduct includes:

- (1) ~~[violating,]~~as a physical therapist, ~~[any]~~violating ~~[provision of]~~the American Physical Therapy Association's Code of Ethics for the Physical Therapist, last amended ~~[July 2010]~~August 12, 2020, which is ~~[hereby adopted and]~~incorporated by reference;
- (2) ~~[violating,]~~as a physical therapist, ~~[any]~~violating ~~[provision of]~~the American Physical Therapy Association's Guide for Professional Conduct, last amended ~~[November 2010]~~March 2019, which is ~~[hereby adopted and]~~incorporated by reference;
- (3) ~~[not providing supervision,]~~as a physical therapist, violating~~[as set forth in]~~ Section R156-24b-503;
- (4) ~~[violating,]~~as a physical therapist assistant, ~~[any]~~violating ~~[provision of]~~the American Physical Therapy Association's Standards of Ethical Conduct for the Physical Therapist Assistant, last amended ~~[November 2010]~~August 12, 2020, which is ~~[hereby adopted and]~~incorporated by reference; and
- (5) ~~[violating,]~~as a physical therapist assistant, ~~[any]~~violating ~~[provision of]~~the American Physical Therapy Association's Guide for Conduct of the Physical Therapist Assistant, last amended ~~[July 2010]~~March 2019, which is ~~[hereby adopted and]~~incorporated by reference.

R156-24b-503. Physical Therapist Supervisory Authority and Responsibility.

~~[In accordance with]~~Under Section 58-24b-404, a physical therapist's supervision of a physical therapist assistant or a physical therapy aide shall meet the following conditions:

- (1) a full-time equivalent physical therapist ~~[can]~~may supervise ~~[no more than]~~up to three full-time equivalent supportive personnel, unless otherwise approved by the ~~[board and]~~Division in collaboration with the Board; and
- (2) a physical therapist shall provide treatment to a patient at least every tenth treatment but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less.

R156-24b-505. Trigger Point Dry Needling - Education and Experience Required - Registration.

(1) ~~[A]~~Under Subsection 58-24b-505(1)(b)(i), a trigger point dry needling course is approved by the Division if the course has been approved by ~~[one of the following organizations meets the standards of Section 58-24b-505 if it includes the hours and treatment sessions specified in Section 58-24b-505]:~~

- (a) the American Physical Therapy Association (APTA), or any of its sections or local chapters; or
- (b) the Federation of State Boards of Physical Therapy (FSBPT).

(2) ~~[In accordance with Subsection]~~Under Subsections 58-24b-505(1)(e) and 58-24b-505(2)(b), ~~[the]~~an approved course, including the ~~[and]~~ supervised patient treatment sessions, shall be completed no later than three calendar years from the start of the course.

(3) Under Subsection 58-24b-505(1)(c) the filed certificate of completion for an approved course shall include:

- (a) a certificate of completion issued by the approving organization under Subsection (1)(a) or (1)(b); and
- (b) for the approved course's supervised patient treatment sessions:

(i) a log of 250 trigger point dry needling sessions; or
(ii) a signed letter on letterhead from the supervising
physical therapist stating that the trigger point dry needling sessions
have been completed.

(4) Under Subsections 58-24b-505(1)(a) and (1)(c), the
physical therapist's license to practice physical therapy shall have
been unrestricted and in good standing for at least two years
immediately preceding the physical therapist's trigger point dry
needling application.

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

Date of Last Change: ~~October 8, 2019~~ 2023

Notice of Continuation: September 21, 2021

Authorizing, and Implemented or Interpreted Law: 58-24b-101;
58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R156-69	Filing ID: 55213
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Agency Information

1. Department:	Commerce	
Agency:	Professional Licensing	
Building:	Heber M Wells Building	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City, UT 84114-6741	
Contact persons:		
Name:	Phone:	Email:
Larry Marx	801-530-6628	lmarx@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R156-69. Dentist and Dental Hygienist Practice Act Rule
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The Division of Professional Licensing (Division) in collaboration with the Dentist and Dental Hygienist Licensing Board is filing these proposed amendments to update permit classifications, scopes of practice, qualifications, and standards for the use of anesthesia and sedation in accordance with statutory changes made by H.B. 384, passed in the 2022 General Session, to update the standards regarding the use of unlicensed personnel

as dental assistants, and to clarify the rule regarding the practice of teledentistry.

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

The amendments to Section R156-69-102 and new Sections R156-69-301a and R156-69-301 update this rule to redefine the classifications of anesthesia permits for dentists and to update scopes of practice and the qualifications and training and safety standards for permit holders in accordance with new Section 58-1-510 that was enacted by H.B. 384 (2022).

Generally, the permits are reclassified as follows: "Class A" to "local anesthesia" permit, "Class B" and "Class C" permits to "minimal sedation" permit, "Class D" to "moderate sedation" permit, and "Class E" to "deep sedation and general anesthesia" permit. The standards now additionally incorporated by reference are as follows: 1) American Society of Anesthesiologists (ASA) standards: (a) Basic Standards for Preanesthesia Care, 2020 edition; (b) Standards for Basic Anesthetic Monitoring, 2020 edition; and (c) Standards for Postanesthesia Care, 2019 edition; 2) Cote CJ, Wilson S. American Academy of Pediatric Dentistry, American Academy of Pediatrics. Guidelines for Monitoring and Management of Pediatric Patients Before, During, and After Sedation for Diagnostic and Therapeutic Procedures. Pediatr Dent 2019; 41(4):E-26-E-52; 3) ADA Policy Statement: The Use of Sedation and General Anesthesia by Dentists, 2007 edition; and 4) American Association of Oral and Maxillofacial Surgeons (AAOMS) standards: (a) Office Anesthesia Evaluation Manual, 2018 9th edition; and (b) Parameters of Care, 2017 6th edition.

Section R156-69-302c is amended to clarify that each dental hygienist shall obtain CPR-BLS or ACLS-PALS certification to qualify for licensure.

Section R156-69-304a is amended to clarify that each applicant for renewal or reinstatement must maintain certification in appropriate lifesaving courses as required by the license and permit classification to qualify for reinstatement or renewal, and to clarify that the applicant's recertification hours do not count toward the applicant's 30 required hours of continuing professional education. The section is further amended to reduce the required time period for a licensee to maintain documentation of compliance with the section from four years after the end of the renewal cycle to two years.

Section R156-69-603 that establishes the standards regulating the use of unlicensed individuals as dental assistants is amended to add the following prohibitions: An unlicensed individual may not: 1) start an intravenous (IV) line or administer medication in an IV line; 2) convert a denture into a fixed implant prosthesis, also known as performing a conversion; or 3) adjust a permanent or final

prosthetic, removable or fixed, that is worn by a patient or will be worn by a patient.

New Section R156-69-807 clarifies that under Subsections 58-69-802(2) and 58-69-807(4), the requirements and parameters for teledentistry to ensure the safe use of teledentistry are those established in Title 26, Chapter 60, Telehealth Act and Sections R156-1-602 and R156-1-603.

Per Executive Order No. 2021-12, formatting changes are also made throughout this rule to streamline and update this rule and conform this rule to the Utah Rulewriting Manual.

Hearing Information:

A public hearing will be held at the Heber Wells Bldg, 160 E 300 S, Conference Room 402 (fourth floor), Salt Lake City, UT on 02/16/2023 at 9:00 AM.

Will also be held electronically via Google Meet:

Meeting Link:

meet.google.com/eke-jzdq-oig

Join by phone:

(US) +1 575-425-0148

PIN: 281873899

Fiscal Information

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

A) State budget:

None of these proposed amendments are expected to impact state government revenues or expenditures because the changes merely update this rule to establish operating standards that encompass current statutory requirements and practices in the profession, and make changes for clarity to facilitate compliance and enforcement in accordance with Executive Order No. 2021-12, and will not affect existing state government procedures beyond the impacts described in the fiscal note for H.B. 384 (2022) at <https://le.utah.gov/~2022/bills/static/HB0384.html>.

B) Local governments:

The proposed amendments will have no measurable impact on local governments' revenues or expenditures as none of the amendments are expected to impact local governments' practices or procedures.

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

The proposed amendments to Section R156-67-603 prohibiting certain practices by unlicensed dental assistants are not expected to result in a measurable impact to small businesses because the amendments prohibit activities that are already outside the standard of care for a dental practice. A dentist who would delegate

such tasks to unlicensed assistants would be operating outside the standard of care, which would place the dentist and associated small business at risk for a violation of the law and increase liability.

Because the practices of most small businesses are, or should be, already consistent with this standard of care, the proposed amendments will only affect businesses with licensees who violate the rules and are disciplined, and as described below for other persons it is estimated that for the typical licensee the proposed amendments will have no measurable fiscal impact.

The remainder of the proposed amendments are expected to have no measurable impact on small businesses' revenues or expenditures as they merely clarify this rule based on existing practices, laws and rules, streamline and update this rule in accordance with Executive Order No. 2021-12, or implement statutory changes enacted in the 2022 General Session.

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

As described in Box 5C for small businesses, no measurable impact is expected 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**):

There are approximately 3,500 licensed dentists and 3,600 dental hygienists that may be affected by the proposed amendments, but the Division does not anticipate any measurable fiscal impact to these persons over and above the statutory changes and the impact already addressed in the fiscal note for those changes.

In particular, the proposed amendments to Section R156-67-306 that limit certain procedures that may be delegated to an unlicensed dental assistant are not expected to result in a measurable impact to licensees because engagement in this conduct by untrained and unlicensed individuals is outside of the standard of care for a licensee. Delegating this task would place an individual at risk for a violation of the law and increase liability, and the practices of most licensees are, or should be, already consistent with this rule.

Additionally, the proposed amendments will only affect licensees who violate the rules and are disciplined for unprofessional conduct, so that any impact from non-compliance will never be uniformly felt across the industry and most will never be impacted. Although a licensee disciplined for unprofessional conduct may face financial costs for such noncompliance, potential sanctions will vary widely depending on the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive. In sum, the scope of these proposed

amendments is so narrow that they will not affect the vast majority of licensees and are not expected to result in any measurable fiscal impact.

Finally, the remaining amendments are not expected to result in any measurable impact to these licensees as the amendments simply clarify this rule based on existing practices and laws and rules, streamline and update this rule in accordance with Executive Order No. 2021-12, or implement statutory changes enacted in the 2022 General Session.

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

As described in Box 5E above for other persons, no compliance costs are expected to 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 Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division, in concert with Dentist and Dental Hygienist Licensing Board, propose amendments to Rule R156-69 to harmonize it to the changes in H.B. 384 out of the 2022 General Session. This rule will allow the update to redefine the classifications of anesthesia permits for dentists, update scopes of practice, qualifications, and training and safety standards for permit holders.

Also, the Division has made formatting conformities throughout this rule to align with the Utah Rulewriting Manual in accordance with Executive Orders No. 2021-1 and 2021-12.

Small Businesses (less than 50 employees):

There are 3,500 licensed dentists and 3,600 dental hygienists in Utah. The Division finds that will not be a fiscal impact for small businesses.

A dentist cannot delegate certain aspects of the standard of care, which would place a business at risk for a violation of the law and increase liability if it is violated. However, since the practices of most small businesses are already consistent with this standard of care, the proposed amendments will only affect businesses with licensees who violate the rules and are disciplined.

Further, the Division does not foresee any negative impact on small businesses from the grammar since this rule was drafted to comport to the Utah Rulewriting Manual.

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

The Division finds that the non-small businesses in the Utah will not suffer a negative fiscal impact from the proposed changes for the same rationale as described above for small businesses. Further, any of these costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

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 58-69-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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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)	American Association of Oral and Maxillofacial Surgeons (AAOMS) Office of Anesthesia Evaluation Manual
Publisher	American Association of Oral and Maxillofacial Surgeons
Issue Date	2018 9th edition

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

Official Title of Materials Incorporated (from title page)	American Association of Oral and Maxillofacial Surgeons (AAOMS) Parameters of Care
Publisher	American Association of Oral and Maxillofacial Surgeons
Issue Date	2017 6th edition

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

Official Title of Materials Incorporated (from title page)	American Dental Association (ADA) Policy Statement: The Use of Sedation and General Anesthesia by Dentists
Publisher	American Dental Association
Issue Date	2007 edition

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

Official Title of Materials Incorporated (from title page)	American Society of Anesthesiologists (ASA) Basic Standards for Preanesthesia Care
Publisher	American Society of Anesthesiologists
Issue Date	2020 edition

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

Official Title of Materials Incorporated (from title page)	American Society of Anesthesiologists (ASA) Standards for Basic Anesthetic Monitoring
Publisher	American Society of Anesthesiologists
Issue Date	2020 edition

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

Official Title of Materials Incorporated (from title page)	American Society of Anesthesiologists (ASA) Standards for Postanesthesia Care
Publisher	American Society of Anesthesiologists
Issue Date	2019 edition

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

Official Title of Materials Incorporated (from title page)	Cote CJ, Wilson S. American Academy of Pediatric Dentistry, American Academy of Pediatrics Guidelines for Monitoring and Management of Pediatric Patients Before, During and After Sedation for Diagnostic and Therapeutic Procedures, Pediatr Dent 2019; 41(4):E-26-E-52
Publisher	American Academy of Pediatric Dentistry and American Academy of Pediatrics
Issue Date	2019

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:		03/17/2023
B) A public hearing (optional) will be held:		
On:	At:	At:
02/16/2023	9:00 AM	See hearing information in Box 4 above

9. This rule change MAY become effective on: 03/24/2023

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:	Mark B. Steinagel, Division Director	Date:	01/30/2023
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R156. Commerce, [Occupational and] Professional Licensing. R156-69. Dentist and Dental Hygienist Practice Act Rule. R156-69-101. Title.

(1) This rule is known as the "Dentist and Dental Hygienist Practice Act Rule."

(2) This rule is adopted by the Division under Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act.

(3) The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-69-102. Definitions.

[In addition to]The following definitions supplement the definitions in Title 58, Chapter[s] 1, Division of Professional Licensing Act, and Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act[as used in Title 58, Chapters 1 and 69 or this rule]:

(1) "AAOMS standards" means the following American Association of Oral and Maxillofacial Surgeons (AAOMS) standards, which are incorporated by reference:

(a) Office Anesthesia Evaluation Manual, 2018 9th edition; and

(b) Parameters of Care, 2017 6th edition.

(2) "AAPD" means the American Academy of Pediatric Dentistry.

([4]3) "ACLS" means Advanced Cardiac Life Support.

([2]4) "ADA" means the American Dental Association.

([3]5) "ADA CERP" means American Dental Association Continuing Education Recognition Program.

(6) "ADA Sedation and General Anesthesia Policy Statement" means the ADA Policy Statement: The Use of Sedation and General Anesthesia by Dentists, 2007 edition, which is incorporated by reference.

([4]7) "ADA Teaching Guidelines" means the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students published by the American Dental Association, as adopted by the ADA House of Delegates, October 2016, which is incorporated by reference.

([5]8) "ADA Use Guidelines"[7] means the Guidelines for the Use of Sedation and General Anesthesia by Dentists published by the American Dental Association, as adopted by the ADA House of Delegates, October 2016, which is incorporated by reference.

([6]9) "ADEX" means American Board of Dental Examiners.

(10) "ADHA" means the American Dental Hygienists' Association.

([7]11) "Advertising or otherwise holding oneself out to the public as a dentist" means representing or promoting oneself as a dentist through any of the following or similar methods:

(a) business names;

(b) business signs;

(c) door or window lettering;

(d) business cards;

(e) letterhead;

(f) business announcements;

(g) flyers;

(h) mailers;

(i) promotions;

(j) advertisements;

(k) radio or television commercials;

(l) listings in printed or online telephone directories; or

(m) any other type of advertisement or promotional communication.

([8]12) "Analgesia" means the same as defined in the ADA Use Guidelines.

([9]13) "Anesthesiology" means the science of administration of anesthetics and the condition of the patient while under anesthesia.[

(10) "ADHA" means the American Dental Hygienists' Association.]

(14) "ASA standards" means the following American Society of Anesthesiologists (ASA) standards, which are incorporated by reference:

(a) Basic Standards for Preanesthesia Care, 2020 edition;

(b) Standards for Basic Anesthetic Monitoring, 2020 edition; and

(c) Standards for Postanesthesia Care, 2019 edition;

([44]15) "BCLS" means Basic Cardiac Life Support.

([42]16) "BLS" means Basic Life Support.

([43]17) "CDCA" means Commission on Dental Competency Assessments.

(18) "CDEL" means the Council on Dental Education and Licensure.

([44]19) "CITA" means Council of Interstate Testing Agencies, Inc.[

(15) "CDEL" means the Council on Dental Education and Licensure.]

(20) "CODA" means the Commission on Dental Accreditation of the American Dental Association (ADA).

(21) "Competency" means displaying special skill or knowledge derived from training and experience.

([46]22) "CPR" means cardiopulmonary resuscitation.

([47]23) "CRDTS" means the Central Regional Dental Testing Service, Inc.[

(18) "CODA" means the Commission on Dental Accreditation.

(19) "Competency" means displaying special skill or knowledge derived from training and experience.]

([20]24) "DANB" means the Dental Assisting National Board, Inc.

([24]25) "Deep sedation" [means the same as defined in the ADA Use Guidelines]as defined in Subsection 58-1-510(1)(b) is further defined in the standards in Subsection R156-69-301b(3).

(26) "Deep sedation and general anesthesia permit" means the dentist deep sedation and general anesthesia permit classification and scope of practice established in Section R156-69-301b under Subsection 58-69-301(4).

(27) "Dental hygienist with local anesthesia permit" means the dental hygienist local anesthesia permit classification and scope of practice established in Section R156-69-301c under Subsection 58-69-301(4).

([22]28) "Discharge criteria" means the minimum requirements for a patient to be safely discharged from the care of a dentist.

([23]29) "General anesthesia" [means the same as defined in the ADA Use Guidelines]as defined in Subsection 58-1-510(1)(c) is further defined in the standards in Subsection R156-69-301b(3).

([24]30) "Local anesthesia" means the same as defined in the [ADA Use Guidelines]standards in Subsection R156-69-301b(3).

(31) "Local anesthesia permit" means the dentist local sedation permit classification and scope of practice established in Section R156-69-301b under Subsection 58-69-301(4).

([25]32) "Maximum recommended dose (MRD)" is the maximum FDA recommended dose of a drug, as printed in FDA approved labeling for unmonitored home use.

([26]33) "Minimal sedation" [means the same as defined in the ADA Use Guidelines]as defined in Subsection 58-1-501(1)(e) is further defined in the standards in Subsection R156-69-301b(3).

~~(34) "Minimal sedation permit" means the dentist minimal sedation permit classification and scope of practice established in Section R156-69-301b under Subsection 58-69-301(4).~~

~~([27]35) "Moderate sedation" [means the same as defined in the ADA Use Guidelines] as defined in Subsection 58-1-510(1)(f) is further defined in the standards in Subsection R156-69-301b(3).~~

~~(36) "Moderate sedation permit" means the dentist moderate sedation permit classification and scope of practice established in Section R156-69-301b under Subsection 58-69-301(4).~~

~~([28]37) "PALS" means Pediatric Advanced Life Support.~~

~~(38) "Pediatric dentistry" means the age-defined dental specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.~~

~~(39) "Pediatric Sedation Guidelines" means the guidelines established in Cote CJ, Wilson S. American Academy of Pediatric Dentistry, American Academy of Pediatrics Guidelines for Monitoring and Management of Pediatric Patients Before, During, and After Sedation for Diagnostic and Therapeutic Procedures, Pediatric Dent 2019; 41(4):E-26-E-52, which is incorporated by reference.~~

~~[(29) "Practice of dentistry" in regard to administering sedation or anesthesia is further defined as follows:~~

~~(a) a Class A permit allows administration of, or supervision of the administration of, local anesthesia in compliance with the ADA Use Guidelines.~~

~~(b) a Class B permit allows administration of, or supervision of the administration of, minimal sedation induced by nitrous oxide in compliance with the ADA Use Guidelines.~~

~~(c) a Class C permit allows administration of minimal sedation via nitrous oxide/oxygen with or without the administration of a single enteral drug, in compliance with the ADA Use Guidelines.~~

~~(d) a Class D permit allows administration of, or supervision of the administration of, moderate sedation via any route of administration, in compliance with the ADA Use Guidelines.~~

~~(e) a Class E permit allows administration of, or supervision of the administration of, deep sedation and general anesthesia in compliance with the ADA Use Guidelines.]~~

~~(40) "Practice of dental hygiene" under Subsection 58-69-102(7)(a)(ix) includes performing:~~

~~(a) laser bleaching; and~~

~~(b) laser periodontal debridement.~~

~~([30]41) "Prominent disclaimer" in Subsection 58-69-502(2)(b) means a disclaimer [as described in and as required by Subsection R156-69-502(2)(b)] that:~~

~~(a) [if in writing,] is in the same size of lettering as the largest lettering [otherwise] contained in [an] the advertisement, publication, or other communication in which the disclaimer appears; or~~

~~(b) [if not in writing,] is in the same volume and speed as the slowest speed and highest volume [otherwise] included in [a radio or television commercial or other oral advertisement or promotion] the advertisement, commercial, or other communication in which the disclaimer appears.~~

~~([31]42) "Route of administration" means the technique of administering agents, and includes the following, as defined in the ADA Use Guidelines:~~

~~(a) enteral;~~

~~(b) parenteral;~~

~~(c) transdermal;~~

~~(d) transmucosal; and~~

~~(e) inhalation.~~

~~([32]43) "Specialty area" or "dental specialty" means an area of dentistry in which the dentist has successfully completed at least two full-time years in a specialty post[-]doctoral program[-] in a specialty area of dentistry consisting of at least two full-time years and which is accredited by an accreditation agency that is recognized by the U.S. Department of Education] accredited by CODA.~~

~~([33]44) "SRTA" means Southern Regional Testing Agency, Inc.]~~

~~(34) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 69, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-69-502.]~~

~~([35]45) "UDA" means Utah Dental Association.~~

~~([36]46) "UDHA" means Utah Dental Hygienists' Association.~~

~~(47) "Unprofessional conduct is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-69-502.~~

~~([37]48) "WREB" means the Western Regional Examining Board.]~~

~~R156-69-103. Authority Purpose.~~

~~This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 69.~~

~~R156-69-104. Organization Relationship to Rule R156-1.~~

~~The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.~~

~~R156-69-201. Classifications of Anesthesia and Analgesia Permits Dentist.~~

~~In accordance with Subsection 58-69-301(4)(a), a dentist may be issued an anesthesia and analgesia permit in the following classifications:~~

~~(1) class A permit;~~

~~(2) class B permit;~~

~~(3) class C permit;~~

~~(4) class D permit; or~~

~~(5) class E permit.~~

~~R156-69-202. Qualifications for Anesthesia and Analgesia Permits Dentist.~~

~~In accordance with Subsection 58-69-301(4)(b), the qualifications for dentist anesthesia and analgesia permits are:~~

~~(1) for a class A permit current CPR or BCLS/BLS certification;~~

~~(2) for a class B permit:~~

~~(a) current BCLS/BLS certification; and~~

~~(b) completion of training in the administration of nitrous oxide that:~~

~~(i) conforms to the ADA Teaching Guidelines; or~~

~~(ii) is the substantial equivalent of the ADA Teaching Guidelines provided in a continuing education format by an ADA accredited school;~~

~~(3) for a class C permit compliance with Subsections (1) and (2) above:~~

~~(a) evidence of successful completion of training in pharmacological methods of minimal sedation that:~~

~~(i) conforms to the ADA Teaching Guidelines; or~~

~~(ii) is the substantial equivalent of the ADA Teaching Guidelines provided in a continuing education format by an ADA accredited school;~~

~~(b) evidence of holding a current Utah controlled substance license in good standing and a current Drug Enforcement Administration (DEA) registration in good standing;~~

~~(4) for a class D permit:~~

~~(a) compliance with Subsection (3)(b) above;~~

~~(b) current ACLS or PALS certification; and~~

~~(c) completion of:~~

~~(i)(A) a comprehensive predoctoral or postdoctoral training in the administration of moderate sedation that conforms to the ADA Teaching Guidelines, including a letter from the course director documenting competency in performing conscious sedation; and~~

~~(B) 60 hours of didactic education in sedation and successful completion of 20 cases; or~~

~~(ii) the substantial equivalent of Subsection (4)(c)(i) provided in a continuing education format by an ADA accredited school;~~

~~(5) for a class E permit:~~

~~(a) compliance with Subsections (4)(a) and (b) above;~~

~~(b) if treating pediatric patients, current PALS certification;~~

~~(c) completion of advanced training in the administration of general anesthesia and deep sedation, consisting of at least one year in a program which conforms to the ADA Teaching Guidelines, including a letter from the course director documenting competency in performing general anesthesia and deep sedation;]~~

R156-69-301a. Dentist Anesthesia and Analgesia - Permit Classifications and Scopes of Practice.

~~(1) Under Section 58-1-510 and Subsection 58-69-301(4)(b), the classification of dentist anesthesia and analgesia permits are as follows:~~

~~(a) local anesthesia permit;~~

~~(b) minimal sedation permit;~~

~~(c) moderate sedation permit; and~~

~~(d) deep sedation and general anesthesia permit.~~

~~(2) Under Subsections 58-1-510(2) through (4) and Subsection 58-69-301(4)(a), the scope of practice for each dentist anesthesia and analgesia permit is established as follows:~~

~~(a) a dentist with a local anesthesia permit may administer local anesthesia and nitrous oxide and supervise the administration of local anesthesia and nitrous oxide in compliance with the standards in Subsection (3);~~

~~(b) a dentist with a minimal sedation permit may:~~

~~(i) exercise the privileges of a local anesthesia permit; and~~

~~(ii) administer and supervise the administration of minimal sedation via nitrous oxide-oxygen, with or without the administration of enteral medications, in compliance with the standards in Subsection (3);~~

~~(c) a dentist with a moderate sedation permit may:~~

~~(i) exercise the privileges of a minimal sedation permit;~~

~~(ii) administer and supervise the administration of moderate sedation in compliance with the standards in Subsection (3); and~~

~~(iii) when engaging in the administration of moderate sedation shall:~~

~~(A) use pulse oximetry and end tidal CO2 monitoring with capnography; and~~

~~(B) have at least one ACLS or PALS trained assistant present in-operatory during sedation; and~~

~~(d) a dentist with a deep sedation and general anesthesia permit may:~~

~~(i) exercise the privileges of a moderate sedation permit;~~

~~(ii) administer or supervise the administration of deep sedation or general anesthesia in compliance with the standards in Subsection (3); and~~

~~(iii) when engaging in the administration of deep sedation or general anesthesia, shall:~~

~~(A) use pulse oximetry and end tidal CO2 monitoring with capnography; and~~

~~(B) have at least one ACLS or PALS trained assistant present in-operatory during sedation.~~

~~(3) Under Subsections 58-1-510(3) and (4) and 58-69-102(8) and Section 58-69-802:~~

~~(a) a dentist shall possess the knowledge, skills, education, and training required by and shall comply with the following standards, as applicable to the dentist's permitted scope of practice:~~

~~(i) the ADA Use Guidelines;~~

~~(ii) the Pediatric Sedation Guidelines;~~

~~(iii) the ADA Sedation and General Anesthesia Policy Statement;~~

~~(iv) the AAOMS standards;~~

~~(v) the ASA standards; and~~

~~(vi) Section 58-1-510; and~~

~~(b) a dentist who practices facial cosmetic dentistry using the neurotoxin clostridium botulinum or an injectable dermal filler shall demonstrate competency by having successfully completed a minimum of eight hours of training that:~~

~~(i) is taught by properly trained and licensed individuals teaching within their scope of practice;~~

~~(ii) includes a hands-on component; and~~

~~(iii) includes the following topics:~~

~~(A) treatment for temporomandibular joint dysfunction;~~

~~(B) infection control; and~~

~~(C) risk factors for administration of neurotoxin clostridium botulinum and dermal fillers.~~

R156-69-301b. Dentist Anesthesia and Analgesia - Permit Qualification.

~~(1) Under Sections 58-1-510 and 58-69-802 and Subsection 58-69-301(4)(b), the qualifications and training and safety standards for each classification of dentist anesthesia and analgesia permit are established in this section.~~

~~(2) An applicant for a local anesthesia permit shall:~~

~~(a) hold current CPR or BCLS-BLS certification; and~~

~~(b) document successful completion of:~~

~~(i) training in the administration of nitrous oxide that conforms to the ADA Teaching Guidelines, and if engaging in pediatric dentistry, the Pediatric Sedation Guidelines; or~~

~~(ii) continuing education training provided by an ADA accredited school that is the substantial equivalent of the training in Subsection (3)(b)(i).~~

~~(3) An applicant for a minimal sedation permit shall:~~

~~(a) hold current BCLS-BLD certification;~~

~~(b) hold a current Utah controlled substance license in good standing;~~

~~(c) hold a current Drug Enforcement Administration (DEA) registration in good standing;~~

~~(d) document successful completion of:~~

~~(i) training in the administration of nitrous oxide that conforms to the ADA Teaching Guidelines, and if engaging in pediatric dentistry, the Pediatric Sedation Guidelines; or~~

(ii) continuing education training provided by an ADA accredited school that is the substantial equivalent of the training in Subsection (3)(d)(i); and

(e) document successful completion of:

(i) training in pharmacological methods of minimal sedation that conforms to the ADA Teaching Guidelines, and if engaging in pediatric dentistry, the Pediatric Sedation Guidelines; or

(ii) continuing education training provided by an ADA accredited school that is the substantial equivalent of the training in Subsection (3)(e)(i).

(4) An applicant for a moderate sedation permit shall:

(a) hold current ACLS or PALS certification, except if engaging in pediatric dentistry, the applicant shall hold current PALS certification;

(b) hold a current Utah controlled substance license in good standing;

(c) hold a current Drug Enforcement Administration (DEA) registration in good standing; and

(d) document successful completion, as evidenced by a letter from the course director, of:

(i) comprehensive predoctoral or postdoctoral training in the administration of moderate sedation that:

(A) conforms to the ADA Teaching Guidelines, and if engaging in pediatric dentistry, the Pediatric Sedation Guidelines;

(B) includes at least 60 hours of didactic education in sedation; and

(C) includes at least 20 sedation cases; or

(ii) continuing education training provided by an ADA accredited school that is substantial equivalent of the education and training in Subsection (4)(d)(i).

(5) An applicant for a deep sedation and general anesthesia permit shall:

(a) hold current ACLS or PALS certification, except if engaging in pediatric dentistry, the applicant shall hold current PALS certification;

(b) hold a current Utah controlled substance license in good standing;

(c) hold a current Drug Enforcement Administration (DEA) registration in good standing; and

(d) document successful completion, as evidenced by a letter from the program director, of at least one full-time year in a program of advanced postdoctoral training in the administration of deep sedation and general anesthesia, that conforms to:

(i) the ADA Teaching Guidelines, and if engaging in pediatric dentistry, the Pediatric Sedation Guidelines; and

(ii) the ASA standards or the AAOMS standards.

R156-69-301c. ~~[Classification of Dental Hygienist Anesthesia and Analgesia Permits - Dental Hygienist - Permit Classification]~~

~~[In accordance with]~~ Under Subsections 58-69-102(7)(b) and 58-69-301(4)(a), a dental hygienist may be issued an anesthesia and analgesia permit in the classification of dental hygienist with local anesthesia.

R156-69-204. ~~[Qualifications for Dental Hygienist Anesthesia and Analgesia Permit]~~ ~~[Dental Hygienist Qualifications]~~

~~[In accordance with]~~ Under Subsection 58-69-301(4)(b), the qualifications for a dental hygienist with local anesthesia permit are the following:

(1)(a) current Utah licensure as a dental hygienist; or

(b) documentation of meeting ~~[all]~~ Utah requirements for licensure as a dental hygienist;

(2) completion of a program of training in the administration of local anesthesia, including nitrous oxide, that:

(a)(i) is accredited by the CODA; or

(ii) is the substantial equivalent of Subsection (2)(a)(i) provided in a continuing education format by an ADA accredited school; and

(b) documentation of successful completion of the program by a letter from the program director, or equivalent; and

(3)(a) a passing score on the WREB, CDCA, or SRTA written anesthesia examination; or

(b) a current, active in good standing license to administer local anesthesia in another state in the United States; and

(4) current CPR or BCLS~~[4]~~-BLS certification.

R156-69-302b. Qualifications for Licensure - Examination Requirements - Dentist.

~~[In accordance with]~~ Under Subsections 58-69-302(1)(e) and (f) ~~[and (g)]~~, an applicant for licensure as a dentist shall pass the ~~[examination requirements for licensure as a dentist include the]~~periodontics, endodontics, operative, class 2 restoration, class 3 restoration, and prosthodontics sections ~~[and are established as]~~of any of the following regional dental clinical licensure examinations:

(1) the WREB examination, with a passing score as established by the WREB;

(2) the CDCA examination, with a passing score as established by the CDCA;

(3) the SRTA examination, with a passing score as established by the SRTA;

(4) the CRDTS examination, with a passing score as established by the CRDTS; or

(5) the CITA examination, with a passing score as established by the CITA.

R156-69-302c. Qualifications for Licensure - Examination and Certification Requirements - Dental Hygienist.

~~[In accordance with]~~ Under Subsections 58-69-302(3)(e) and (f) ~~[and (g)]~~, ~~[the examination requirements for licensure]~~an applicant for licensure as a dental hygienist ~~[are established as]~~shall pass the following examinations:

(1) any one of the following examinations:

(a) the WREB examination, with a passing score as established by the WREB;

~~[(2)]~~~~(b)~~ the ~~[NERB]~~CDCA examination, with a passing score as established by the ~~[NERB]~~CDCA;

~~[(3)]~~~~(c)~~ the SRTA examination, with a passing score as established by the SRTA; ~~or~~

~~[(4)]~~~~(d)~~ the CRDTS examination, with a passing score as established by the CRDTS; or

~~(e)~~ the CITA examination, with a passing score as established by the CITA; and

(2) the CPR-BLS or ACLS-PALS examination, as evidenced by current CPR-BLS or ACLS-PALS certification.

R156-69-303. Renewal Cycle - Procedures.

(1) ~~[In accordance with]~~ Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle ~~[applicable to]~~for licensees under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act is established ~~[by rule]~~in Section R156-1-308a.

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

R156-69-304a. Continuing Education and Certification - Dentist and Dental Hygienist.

~~[In accordance with]~~(1) Under Section 58-69-304, ~~[qualified continuing professional education requirements are established as follows:~~

~~_____~~(1) ~~All~~each licensed dentist[s] and dental hygienist[s] shall complete at least 30 hours of qualified continuing professional education during each two-year licensure period, to include:

(a) for ~~[class C anesthesia]~~a minimal sedation permit holder[s], at least two hours ~~[of CPE]~~specific to the administration of enteral anesthesia~~[/]-pharmacology and minimal sedation;~~

(b) for ~~[class D anesthesia]~~a moderate sedation permit holder[s]:

(i) at least four didactic hours specific to moderate sedation and anesthesia~~[specific CPE didactic hours];~~ and

(ii) attestation of successful completion of at least ten sedation cases; and

(c) for ~~[class E anesthesia]~~a deep sedation permit holder[s]:

(i) at least eight didactic hours specific to general anesthesia~~[specific CPE didactic hours];~~ and

(ii) attestation of successful completion of at least 30 sedation cases.

~~(2) Under Subsections 58-1-203(1)(g) and 58-69-301(4), an applicant for renewal or reinstatement of licensure shall hold current CPR-BLS, ACLS, or PALS certification as required by the license and permit classification to qualify for reinstatement or renewal, but the applicant's recertification hours do not count toward the applicant's 30 required hours of continuing professional education.~~

~~[(2)]~~3 Qualified continuing professional education hours for licensees who have not been licensed for the entire two-year period shall be prorated from the date of licensure.

~~[(3)]~~4 Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training, and experience to provide dental and dental hygiene continuing education; and

(c) have a method of verification of attendance and completion.

~~[(4)]~~5 Credit for continuing education shall be recognized as follows:

(a) unlimited hours for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions ~~[which meet the criteria listed in]~~that comply with Subsection ~~[(3) above, and which]~~(4) and are approved by, conducted by or under sponsorship of:

(i) a government agency, including the Division of ~~[Occupational and]~~Professional Licensing;

(ii) recognized universities and colleges, or an accredited dental, dental hygiene, or dental postgraduate program;

(iii) professional associations, societies, and organizations representing a licensed profession whose program objectives relate to the practice of dentistry and dental hygiene; or

(iv) the ADA or any subgroup~~[thereof]~~, the ADHA or any subgroup~~[thereof]~~, a recognized health care professional association or a peer study club;

(b) a maximum of ten hours per two-year period may be recognized for teaching continuing education relevant to dentistry and dental hygiene;

(c) a maximum of 15 hours per two-year period may be recognized for continuing education that is provided ~~[via Internet]~~online or through home study ~~[which provides]~~with an examination and a completion certificate; and

(d) a maximum of three hours per two-year period may be recognized for continuing education in practice and office management.

~~[(5)]~~6 A licensee may fulfill up to 15% of the licensee's continuing professional education requirement by providing direct patient care volunteer services at a qualified location~~[, in accordance with]~~ under Section 58-13-3. For every four documented hours of ~~[such]~~volunteer services, the licensee may earn one hour of continuing education.

~~_____~~(6) Hours for recertification in CPR, BCLS, ACLS, and PALS may not count as continuing education.

(7) A licensee shall maintain ~~[competent records of the licensee's completed qualified continuing professional education for a period of four years after close of the two-year licensure period. It is the responsibility of the licensee to demonstrate that their continuing professional education meets the requirements of this section]~~documentation sufficient to prove compliance with this section for two years after the end of the renewal cycle for which the continuing professional education is due.

(8) The Division may defer or waive continuing professional education requirements for a licensee ~~[as provided in]~~under Section R156-1-308d.

R156-69-502. Unprofessional Conduct.

"Unprofessional Conduct" includes the following:

(1) for any patient under any level of sedation, including nitrous oxide:

(a) failing to provide continuous in-operatory observation by a trained dental patient care staff member until the patient continuously and independently maintains their airway and may be safely discharged; or

(b) failing to record the discharge time and the person discharging the patient in the patient's records;

(2) under Subsections 58-69-502(1)(b) and (2), advertising or otherwise holding oneself out to the public as a dentist or dental group that practices in a specialty area~~[unless, if:~~

(a) the dentist, or each dentist in the dental group, has not successfully completed an advanced educational program accredited by ~~[the ADA's Commission on Dental Accreditation (or its equivalent if completed prior to 1967) of two or more years in length, as specified by the Council on Dental Education and Licensure]~~CODA;

(b) as specified in Subsection 58-69-502(2)(b), the advertisement or other method of holding oneself out to the public as a dentist or dental group ~~[includes]~~does not include a prominent disclaimer under Subsection R156-69-102(41) that the dentist or dentists performing services are licensed as general dentists or that the specialty services:

(i) is or are licensed as general dentists or that the specialty services will be provided by a general dentist; or

~~[(e)]~~ii ~~[the advertisement or other method of holding oneself out to the public as a dentist or dental group that practices in a specialty area includes a prominent disclaimer that the dentist or dentists performing services]~~is ~~[a]~~or are specialists, but not qualified as a specialist in the specialty area being advertised;~~[or~~

~~_____~~(d) otherwise advertising in a specialty area by representing that a dentist has attained any education, training or certification in the specialty area when the dentist has not met the criteria;]

(3) advertising in any form that is misleading, deceptive, or false[s], including the display of any credential, education, or training that is inaccurate, or [the]making [of]any unsubstantiated claim of superiority in education, certification, training, skill, experience, or any other quantifiable aspect;

(4) prescribing treatments and medications outside the scope of dentistry;

(5) prescribing for oneself any Schedule II or III controlled substance;

(6) engaging in practice as a dentist or dental hygienist without prominently displaying a copy of the current Utah license;

(7)(a) failing to personally maintain current CPR, BCLS[4]-BLS, ACLS, or PALS certification as required by the licensee's anesthesia permit; or

(b) employing patient care staff who fail to maintain current CPR or BCLS[4]-BLS certification;

(8) providing consulting or other dental services under anonymity;

(9) engaging in unethical or illegal billing practices or fraud, including:

(a) reporting an incorrect treatment date for [the purpose of]obtaining payment;

(b) reporting charges for services not [rendered]provided;

(c) incorrectly reporting services [rendered]provided for [the purpose of]obtaining payment; or

(d) generally representing a charge to a third party that is different from that charged to the patient;

(10) failing to establish and maintain appropriate dental records;

(11) failing to maintain patient records for [a period of]seven years;

(12) failing to provide copies of x-rays, reports or records to a patient or the patient's designee upon written request and payment of a nominal fee for copies, regardless of the payment status of the services [reflected]in the record;[and

~~(13) failing to submit a complete report to the Division within 30 calendar days concerning an incident, in which any anesthetic or sedative drug was administered to any patient, which resulted in, either directly or indirectly, the death or adverse event resulting in patient admission to a hospital; and]~~

(14)[13] failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription in accordance with Section 58-37-19;

(14) violating Section R156-69-301a or R156-69-301b; or

(15) for a dental hygienist working a public health setting, violating Subsection 58-69-801(4).]

~~R156-69-601. Scope of Practice — Anesthesia and Analgesia Permits.~~

~~In accordance with Subsection 58-69-301(4)(a), the scope of practice permitted under each classification of anesthesia and analgesia permit includes the following:~~

~~(1) A dentist with a class A permit may administer, or supervise the administration of, minimal sedation using local anesthesia in compliance with the ADA Use Guidelines.~~

~~(2) A dentist with a class B permit:~~

~~(a) may exercise all of the privileges of a Class A permit; and~~

~~(b) administer, or supervise the administration of, nitrous oxide induced minimal sedation in compliance with the ADA Use Guidelines.~~

~~(3) A dentist with a class C permit:~~

~~(a) may exercise all of the privileges of a Class B permit; and~~

~~(b) may administer, or supervise the administration of, minimal sedation via nitrous oxide/oxygen with or without the administration of a single enteral drug in compliance with the ADA Use Guidelines.~~

~~(4) A dentist with a class D permit:~~

~~(a) may exercise all of the privileges of a Class C permit;~~

~~(b) may administer, or supervise the administration of, moderate sedation in compliance with the ADA Use Guidelines; and~~

~~(c) shall comply with Section 58-69-502.5 if administering sedation or anesthesia intravenously in an outpatient setting that is not an emergency department.~~

~~(5) A dentist with a class E permit:~~

~~(a) may exercise all of the privileges of a Class D permit;~~

~~(b) may administer, or supervise the administration of, general anesthesia or deep sedation in compliance with the ADA Use Guidelines; and~~

~~(c) shall comply with Section 58-69-502.5 if administering sedation or anesthesia intravenously in an outpatient setting that is not an emergency department.~~

~~(6) A dentist who practices facial cosmetic dentistry utilizing the neurotoxin clostridium botulinum or injectable dermal fillers shall demonstrate competency by completing a minimum of eight hours of PACE or CERP training, which shall include a hands-on component.~~

~~R156-69-602. Practice of Dental Hygiene.~~

~~In accordance with Subsection 58-69-102(6)(a)(ix), other practices of dental hygiene include performing:~~

~~(1) laser bleaching; and~~

~~(2) laser periodontal debridement.]~~

~~R156-69-603. Use of Unlicensed Individuals as Dental Assistants.~~

~~[In accordance with]Under Section 58-69-803, the standards regulating the use of unlicensed individuals as dental assistants are that an unlicensed individual [shall]may not, under any circumstance:~~

~~(1) [render]provide definitive treatment diagnosis;~~

~~(2) place, condense, carve, finish, or polish restorative materials, or perform final cementation;~~

~~(3) cut hard or soft tissue or extract teeth;~~

~~(4) remove stains, deposits, or accretions, except as is incidental to polishing teeth coronally with a rubber cup;~~

~~(5) initially introduce nitrous oxide and oxygen to a patient for [the purpose of]establishing and recording a safe plane of analgesia for the patient, except under the direct supervision of a licensed dentist after a baseline percentage and flow rate suitable for the patient is established and documented by a licensed dentist holding the appropriate permit;~~

~~(6) remove bonded materials from [the]teeth with a rotary dental instrument or use any rotary dental instrument within the oral cavity, except to polish teeth coronally with a rubber cup;~~

~~(7) take jaw registrations or oral impressions for supplying artificial teeth as substitutes for natural teeth, including electronic imaging, except for diagnostic or opposing models for the fabrication of temporary or provisional restorations or appliances;~~

~~(8) correct or attempt to correct the malposition or malocclusion of teeth, or make an adjustment that will result in the movement of teeth upon an appliance [which]that is worn in the mouth;~~

~~(9) perform sub-gingival instrumentation;~~

- (10) ~~[render]~~provide decisions concerning the use of drugs, including their dosage or prescription;
- (11) expose radiographs without meeting the following ~~[criteria]~~ qualifications:
- (a) completing a dental assisting course accredited by the ADA Commission on Dental Accreditation; or
 - (b) passing one of the following examinations:
 - (i) the DANB Radiation Health and Safety Examination (RHS); or
 - (ii) a radiology exam approved by the Board that ~~[meets the criteria established]~~ covers the topics in Section R156-69-604;
 - (12) work without a current CPR or BCLS certification;~~[or]~~
 - (13) provide injection[s] of any substance;
 - (14) start an intravenous (IV) line or administer medication in an IV line;
 - (15) convert a denture into a fixed implant prosthesis, also known as performing a conversion; or
 - (16) adjust a permanent or final prosthetic, removable or fixed, that is worn by a patient or will be worn by a patient.

R156-69-604. Radiology Course for Unlicensed Individuals as Dental Assistants.

~~[In accordance with]~~Under Section 58-69-803 and Subsection 58-54-306(2), the radiology course in Subsection R156-69-603(11) shall include radiology theory consisting of:

- (1) orientation to radiation technology;
- (2) terminology;
- (3) radiographic dental anatomy and pathology ~~__~~ ~~[cursory[]];~~
- (4) radiation physics ~~_~~ ~~[basic[]];~~
- (5) radiation protection to patient and operator;
- (6) radiation biology including interaction of ionizing radiation on cells, tissues and matter;
- (7) factors influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-radiation;
- (8) intraoral and extraoral radiographic techniques;
- (9) processing techniques including proper disposal of chemicals;
- (10) infection control in dental radiology; and
- (11) use of portable and handheld x-ray devices.

R156-69-807. Teledentistry Requirements and Parameters.

Under Subsections 58-69-802(2) and 58-69-807(4), the requirements and parameters for teledentistry to ensure the safe use of teledentistry are established in Title 26, Chapter 60, Telehealth Act and Sections R156-1-602 and R156-1-603.

KEY: licensing, dentists, dental hygienists

Date of Last Change: ~~[March 10, 2020]~~2023

Notice of Continuation: January 7, 2021

Authorizing, and Implemented or Interpreted Law: 58-69-101; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Rule or Section Number:	R356-6	Filing ID: 55209
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Agency Information

1. Department:	Governor	
Agency:	Criminal and Juvenile Justice (State Commission on)	
Room number:	E330	
Building:	Senate Building (at State Capitol)	
Street address:	350 N State Street	
City, state and zip:	Salt Lake City, UT 84114	
Contact persons:		
Name:	Phone:	Email:
Angelo Perillo	801-538-1047	aperillo@utah.gov
Ken Matthews	801-538-1058	kmatthews@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R356-6. Electronic Meetings
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this rule is to establish procedures for conducting an electronic meeting of any public body created in Title 63M, Chapter 7. The purpose of this rule to make Electronic Meetings compliant with new requirements. This rule is taking place of Rule R356-3 which expired 07/11/2022.
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 has a more descriptive list of procedures. Please refer to the rule for the differences.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This program will create no cost burden or savings for the state. This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.
B) Local governments:

This program will create no cost burden or savings for local governments. This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

This program will create no cost burden or savings for small businesses. This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

This program will create no cost burden or savings for non-small businesses. This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new 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**):

This program will create no cost burden or savings for other persons. This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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 costs or saving for any affected persons as a result of this rule. This new rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new 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 Executive Director of the Criminal and Juvenile Justice (State Commission on), Tom Ross, 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 52-4-202		
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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:	03/17/2023
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9. This rule change MAY become effective on:	03/24/2023
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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:	Tom Ross, Executive Director	Date:	01/24/2023
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R356. Governor, Criminal and Juvenile Justice (State Commission on).

R356-6. Electronic Meetings.

R356-6-1. Authority.

(1) This rule is authorized by Section 52-4-207 which requires any public body that convenes or conducts an electronic meeting to establish written rules or procedures for such meetings.

(2) This rule is also authorized by the Utah Administrative Rulemaking Act at Section 63G-3-201 which requires an agency to make rules when agency action:

(a) authorizes, requires, or prohibits an action;

(b) provides or prohibits a material benefit;

(c) applies to a class of persons or another agency; and

(d) is explicitly or implicitly authorized by statute.

R356-6-2. Purpose.

The purpose of this rule is to establish procedures for conducting an electronic meeting of any public body created in Title 63M, Chapter 7, Criminal Justice and Substance Abuse.

R356-6-3. Procedures.

(1) A public body described in this rule may hold an open and public meeting where members of the public body or the general public are allowed to participate electronically or telephonically.

(2) When an electronic meeting is scheduled, the public notice required by Section 52-4-202 shall describe:

(a) the electronic or telephonic method by which members of the public body or the general public may participate; and

(b) the anchor location where members of the public body or the general public may attend, monitor, and participate in the open portions of the meeting.

(3)(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 sufficient space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(4) At the commencement of the meeting the chair shall identify for the record those who are appearing telephonically or electronically.

(5) A member who appears electronically or telephonically shall be counted as present for purposes of determining a quorum.

(6)(a) A member who appears electronically or telephonically may fully participate and vote on any matter before the public body.

(b) Votes by members who are appearing electronically or telephonically shall be confirmed by the chair.

KEY: electronic meetings, procedures

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 52-4-207

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R410-14. Administrative Hearing Procedures
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 update the new agency name and hearing provisions to coincide with the merger of the Department of Health and the Department of Human Services (Department).
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 updates the new agency name, and with the merger, clarifies the role of the Department of Workforce Services in regard to hearing procedures and the hearings appeals process. It also makes other technical changes. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is effective as of 02/01/2023 is under ID 55224 in this issue, February 15, 2023, of the Bulletin.)

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no impact to the state budget as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Rule or Section Number:	R410-14	Filing ID: 55225

B) Local governments:			
There is no impact on local governments as they neither fund nor provide services under the Medicaid program.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There is no impact on small businesses as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There is no impact on non-small businesses as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
There is no impact to other persons or entities as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.			
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):			
There are no compliance costs to a single person or entity as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0

Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head comments on fiscal impact and approval of regulatory impact analysis:			
The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this fiscal analysis.			
Businesses will see no fiscal impact as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.			

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 26B-1-213	Section 63G-4-102

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:	03/17/2023

9. This rule change MAY become effective on:	03/24/2023
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:	02/01/2023
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R410. Health and Human Services, Health Care Financing.

R410-14. Administrative Hearing Procedures.

R410-14-1. Introduction and Authority.

(1) This rule sets forth the administrative hearing procedures for the Division of ~~[Medicaid and Health Financing]~~Integrated Healthcare.

(2) ~~[This rule is authorized by]~~ Section 26B-1-204, Section 63G-4-102, 42 U.S.C. 1396a(a)-(3), and 42 CFR 431~~[s]~~ Subpart E authorize this rule.

R410-14-2. Definitions.

(1) The definitions in Rule R414-1 and Section 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means:

(i) a denial, termination, suspension, or reduction of medical assistance for a ~~[recipient]~~member;

(ii) a reduction, denial or revocation of reimbursement for services for a provider;

(iii) a denial or termination of eligibility for participation in a program, or as a provider;

(iv) a determination by skilled nursing facilities and nursing facilities to transfer or discharge residents;

(v) an adverse determination, as defined in Subsection ~~[R410-14-2]~~(2)(b);

(vi) an adverse benefit determination as defined in Subsection R410-14-20(2)(a); or

(vii) placement of a Medicaid enrollee on the restriction program.

(b) "Adverse determination" means a determination made in accordance with Subsection~~[s]~~ 1919(b)(3)(F) or Subsection 1919(e)(7)(B) of the Social Security Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

(c) "Agency" means Division of ~~[Medicaid and Health Financing (DMHF)]~~Integrated Healthcare (DIH) within the Department of Health~~[, the Department of]~~ and Human Services (DHHS), the Department of Workforce Services (DWS), or any managed health care organization (MCO) that has conducted or performed an action as defined in this rule.

(d) "Aggrieved person" means any ~~[recipient]~~member, enrollee, or provider who is affected by an action of an agency.

(e) "CHEC" means Child Health Evaluation and Care program, which is Utah's version of the federally mandated Early and Periodic Screening, Diagnos~~[is]~~tic and Treatment (EPSDT) Medicaid child health program.

(f) "De novo" means anew, or considering the question of a case for the first time.

(g) ~~["DHS"]~~"Department" means the Department of Health and Human Services (DHHS).

~~["DOH"]~~ means the Department of Health.

~~["DWS"]~~ "DWS" means the Department of Workforce Services.

~~["Agency"]~~ "Eligibility ~~[A]~~agency" means DWS, ~~[or]~~ DHHS, or any entity the ~~[A]~~agency contracts with to determine medical assistance eligibility.

~~["Ex parte"]~~ "Ex ~~[P]~~parte" communications mean direct or indirect communication in connection with an issue of fact or law between the hearing officer and one party only.

~~["Grievance"]~~ "Grievance" means an expression of dissatisfaction about any matter other than an action as defined in this rule. Grievances may include ~~[but are not limited to]~~ the quality of care of

services provided~~[s]~~ and aspects of interpersonal relationships such as rudeness of a provider or employee or failure to respect the rights of an enrollee of a ~~[n-MCO]~~ managed care organization (MCO).

~~["Grievance system"]~~ "Grievance system" means the overall system that includes grievances and appeals handled by an MCO and access to the administrative hearing process set out in this rule.

~~["Hearing officer"]~~ "Hearing ~~[O]~~officer" means solely any person designated by the D~~[MHE]~~IH Director to conduct administrative hearings pursuant to this rule.

~~["Managed care organization"]~~ ~~[or "MCO"]~~ means a health maintenance organization, a prepaid mental health plan, or a dental managed care plan that contracts with D~~[MHE]~~IH to provide health, behavioral health, or oral health services to Medicaid or Children's Health Insurance Program [CHIP recipients]members.

~~["Medical record"]~~ "Medical record" means a record that contains medical data of a medical assistance ~~[recipient]~~member or enrollee.

~~["Provider"]~~ "Provider" means any person or entity that is licensed and otherwise authorized to furnish health care to medical assistance ~~[recipients]~~members or medical assistance MCO enrollees.

~~["Order"]~~ "Order" means a ruling by a hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

~~["Scope of service"]~~ "Scope of service" means medical, oral, or behavioral health services set out under Title R414 as a covered benefit.

~~["State fair hearing"]~~ "State fair hearing" means an administrative hearing conducted pursuant to this rule.

R410-14-3. Administrative Adjudicative Procedures.

(1) Except as provided in this rule or as otherwise designated by rule or statute or converted pursuant to Subsection 63G-4-202(3), all adjudicative proceedings conducted pursuant to this rule are informal proceedings.

(2) ~~[Request for Agency Action.]~~ An aggrieved person may file a written request for agency action pursuant to ~~[Utah Code Ann.]~~ Section 63G-4-201, and in accordance with this rule.

(a) A provider may file a written request for agency action without the consent of the ~~[recipient]~~member or MCO enrollee if the request for agency action pertains to the denial of an authorization for service or a denial of payment on a claim.

(b) A provider may not file a request for agency action if the request for agency action pertains to the denial, change, or termination of eligibility of a member or enrollee for a medical assistance program.

(3) If a medical issue is in dispute, each request ~~[shall]~~must include supporting medical documentation. ~~[DMHF]~~DIH ~~[shall]~~may schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.

~~["Notice of Agency Action"]~~

~~["4"]~~ An agency shall provide a written notice of action to each aggrieved person. ~~[Such]~~These actions include ~~[but are not limited to]~~:

~~["a"]~~ eligibility for assistance;

~~["b"]~~ scope of service;

~~["c"]~~ denial or limited prior authorization of a requested service including the type or level of service; and

~~["d"]~~ payment of a claim.

~~["5"]~~ The notice must include:

~~["a"]~~ a statement of the action the agency intends to take;

~~["b"]~~ the date the intended action becomes effective;

(~~[(h)]~~c) the reasons for the intended action;

(~~[(i)]~~d) the specific regulations that support the action, or the change in federal law, state law or ~~[DMHF]~~DIH policy which requires the action;

(~~[(v)]~~e) the right to request a hearing;

(~~[(vi)]~~f) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and

(~~[(vii)]~~g) if applicable, an explanation of the circumstances under which reimbursement for medical services will continue or may be reinstated pursuant to this rule.

(e)6 The agency shall mail the notice at least ~~[10]~~ten calendar days before the date of the intended action except:

(i)a the agency may mail the notice ~~[not later than]~~before the date of action in accordance with 42 CFR 431.213;

(i)b the agency may shorten the period of advance notice to five days before the date of action if it has facts that indicate it must take action due to probable fraud by the ~~[recipient]~~member or provider and the facts have been verified by affidavit.

R410-14-4. Hearings.

(1) ~~[DMHF]~~DIH shall conduct informal hearings for ~~[all]~~ issues except those specifically designated as formal hearings pursuant to this rule. The hearing officer may convert the proceeding to a formal hearing if an aggrieved person requests a hearing that meets the criteria set forth in Section 63G-4-202.

(2) If a hearing under this rule is converted to a formal hearing pursuant to Section 63G-4-202, the formal hearing ~~[shall]~~must be conducted in accordance with these ~~[rules]~~criteria except as otherwise provided in Sections 63G-4-204 through 63G-4-208 or other applicable statutes.

(3) ~~[DMHF]~~DIH shall conduct a hearing in connection with an agency action if the ~~[A]~~aggrieved [P]person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the hearing officer may deny a request for an evidentiary hearing and issue a recommended decision without a hearing based on the record. In the recommended decision, the hearing officer shall specifically set out all material and relevant facts ~~[that are]~~not in dispute.

(4) There is no disputed issue of fact if the ~~[A]~~aggrieved [P]person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(5) If the ~~[A]~~aggrieved [P]person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

(6) An MCO may not require an ~~[A]~~aggrieved [P]person to utilize arbitration or mediation ~~[in order]~~ to resolve an ~~[A]~~action. An ~~[A]~~aggrieved [P]person may file a request for hearing relating to an ~~[A]~~action regardless of any contractual provision with an MCO ~~[which]~~that may require arbitration or mediation.

(7) The hearing officer may not grant a hearing if the issue is a state or federal law requiring an automatic change in eligibility for medical assistance or covered services that affect the ~~[A]~~aggrieved [P]person.

R410-14-5. Request for Hearing.

(1) An aggrieved person shall request a hearing by submitting the request on the ~~[DMHF]~~DIH "Request for Hearing/Agency Action" form. The aggrieved person must then ~~[mail or fax]~~submit the form [to the address or fax number] by mail, fax, or other electronic means as [contained] directed on the Notice of Agency Action or Request for Hearing Form. The request must explain why the aggrieved person is seeking agency relief.

(2) Except as set forth in Section R410-14-20, hearings must be requested within the following deadlines:

(a) ~~[A]~~a medical assistance provider or ~~[recipient]~~member must request a hearing within 30 calendar days from the date that ~~[DMHF]~~DIH sends written notice of its intended action.

(b) ~~[A]~~a medical assistance ~~[recipient]~~member must request a hearing with DWS regarding eligibility for medical assistance within 90 calendar days from the date ~~[that]~~the agency sends written notice of its intended action.

(c) ~~[A]~~a medical assistance ~~[recipient]~~member must request a hearing with ~~[DMHF]~~DIH regarding a determination of disability for the purposes of medical assistance eligibility within 90 calendar days from the date that ~~[DMHF]~~DIH sends written notice of its intended action.

(d) ~~[A]~~a medical assistance ~~[recipient]~~member must request a hearing regarding approval or denial of a scope of service within 30 calendar days from the date the agency sends written notice of its intended action.

(3) A hearing request that an aggrieved person sends via mail is deemed filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the request is deemed filed on the date ~~[that]~~the agency receives it, unless the sender can demonstrate ~~[through competent evidence of]~~through competent evidence.

(4) Failure to submit a timely request for a hearing constitutes a waiver of an individual's due process rights.

(5) ~~[DMHF]~~DIH may dismiss a request for a hearing if the ~~[A]~~aggrieved [P]person:

(a) withdraws the request in writing;

(b) verbally withdraws the hearing request at a prehearing conference;

(c) fails to appear or participate in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the hearing officer or fails to provide medical records that the agency requests.

R410-14-7. Notice of Hearing.

(1) The agency shall notify the aggrieved person or representative in writing of the date, time, and place of the hearing, and shall mail the notice at least ~~[10]~~ten calendar days before the date of the hearing unless all parties agree to an alternative time frame. All aggrieved persons must inform the agency of a current address and telephone number.

(2) If ~~[DMHF]~~DIH must provide notice of a hearing, the notice becomes effective on the date of first class mailing to the party's address of record.

R410-14-8. Prehearing Procedures.

(1) ~~[DMHF]~~DIH shall schedule a preliminary conference, or begin negotiations in writing, within 30 calendar days from the date it receives the request for a hearing or agency action.

(2) The hearing officer may elect to conduct a preliminary conference to:

(a) formulate or simplify the issues;

(b) obtain admissions of fact and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) outline procedures for the hearing; or
(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The hearing officer may request a review of the medical record by a ~~[DMHF]DIH~~ CHEC ~~[A]~~Utilization Review committee to evaluate the medical necessity of benefits or services under dispute. The committee's recommendation is not binding, but may be admitted as evidence and included in the hearing record. If a party to the proceeding objects to the committee's determination, a representative of the committee ~~[shall]~~must be ~~[made]~~made available at the hearing for examination by the hearing officer and the parties.

(4) The hearing officer may require the parties to submit a prehearing position statement setting forth the parties' positions.

(5) The parties may enter into a written stipulation during the preliminary conference or at any time during the process.

(6) Ex parte communications with the hearing officer are prohibited. If a party attempts ex parte communication, the hearing officer shall inform the offeror that any communication ~~[that]~~that the hearing officer receives off the record, will become part of the record and furnished to all parties. Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

(7) The agency shall allow the aggrieved person or a representative to examine all ~~[DMHF]DIH~~ documents and records upon written request to ~~[DMHF]DIH~~ at least three days before the hearing.

(8) A party may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(a) The agency may request copies of pertinent records in the possession of a party and the ~~[recipient's]~~member's health care providers. In the event the ~~[recipient]~~member or provider fails to produce the records within a reasonable time, ~~[DMHF]DIH~~ may review all pertinent records in the custody of the ~~[recipient]~~member or provider during regular working hours after three days of written notice.

(b) The ~~[recipient]~~member shall submit medical records with the hearing request when~~[ever]~~ possible. Necessary medical records include:

(i) the provision of each service and activity addressed in the hearing request;
(ii) the first and last name of the party;
(iii) the reason for performing the service or activity that includes the party's complaint or symptoms;
(iv) the ~~[recipient's]~~member's medical history;
(v) examination findings;
(vi) diagnostic test results;
(vii) the goal or need ~~[that]~~the plan of care identifies; and
(viii) the observer's assessment, clinical impression, or diagnosis that includes the date of observation and identity of the observer.

(c) The medical records must demonstrate that the service is:

(i) medically necessary;
(ii) consistent with the diagnosis of the ~~[recipient's]~~member's condition; and
(iii) consistent with professionally recognized standards of care.

(9) The hearing officer may require each party to file a signed prehearing disclosure form at least ~~[10]~~ten calendar days before the scheduled hearing that identifies:

(a) fact witnesses;
(b) expert witnesses; and
(c) exhibits and reports the parties intend to offer into evidence at the hearing.

(10) Each party shall supplement the disclosure form with information that becomes available after filing the original form.

R410-14-9. Form and Service of Papers.

(1) Any document that a party files with ~~[DMHF]DIH~~ in a proceeding must:

(a) be typed or legibly written;
(b) bear a caption that clearly shows the title of the hearing;
(c) bear the docket number, if any;
(d) be dated and signed by the party or the party's authorized representative; and
(e) contain the address and telephone number of the party or the party's authorized representative.

(2) The party that files a document with ~~[DMHF]DIH~~ shall also serve a copy of the document to all parties to the proceeding or their representatives and file a proof of service with ~~[DMHF]DIH~~ that consists of a certificate of service.

(3) A document may be served by mail, fax, or email address to the party's address or phone number on record with the agency.

(4) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

R410-14-10. Conduct of Hearing.

(1) The agency shall conduct hearings in accordance with Section 63G-4-203 on a de novo basis.

(2) ~~[DMHF]DIH~~ shall appoint an impartial hearing officer to conduct hearings. Previous involvement in the initial determination of the action precludes an officer from appointment.

(3) Telephonic hearings will be held at the discretion of the hearing officer.

(4) The Department is not responsible for any travel costs incurred by the member in attending an in-person hearing.

(5) The hearing officer shall take testimony under oath or affirmation.

(6) Each party has the right to:
(a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;
(b) introduce exhibits;
(c) impeach any witness regardless of which party first called the witness to testify; and
(d) rebut the evidence against the party.

(7) Each party may admit any relevant evidence and use hearsay evidence to supplement or explain other evidence as may be required for full disclosure of all facts relevant to the disposition of the hearing. Hearsay, however, is not sufficient by itself to support a finding unless admissible over objection in civil actions. The hearing officer shall give effect to the rules of privilege recognized by law and may exclude irrelevant, immaterial, and~~[unduly]~~unduly repetitious evidence.

(8) The hearing officer may question any party or witness.

(9) The hearing officer shall control the evidence to obtain full disclosure of the relevant facts and to safeguard the rights of the parties. The hearing officer may determine the order in which ~~[he]~~the officer receives the evidence.

(10) The hearing officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly, or disruptive conduct. The hearing officer may remove

any person, including a participant from the hearing, to maintain order. If a person shows persistent disregard for order and procedure, the hearing officer may:

- (a) restrict the person's participation in the hearing;
- (b) strike pleadings or evidence; or
- (c) issue an order of default.

(11) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the hearing officer at no cost to the agency.

(12) The party who initiates the hearing process through a request for agency action has the burden of proof as the moving party.

(13) When a party possesses, but fails to introduce certain evidence, the hearing officer may infer that the evidence does not support the party's position.

R410-14-12. Record.

(1) The hearing officer shall make a complete record of ~~[all]~~ hearings. A hearing record is the sole property of ~~[DMHF]~~DIH and ~~[DMHF]~~DIH shall maintain the complete record in a secure area.

(2) Proceedings other than hearings may be recorded at the discretion of the hearing officer.

(3) If a party requests a copy of the recording of a hearing, that party may transcribe the recording at the party's sole cost.

(4) ~~[DMHF]~~DIH or its designated agent shall retain recordings of all hearings for a period of one year.

(5) ~~[DMHF]~~DIH shall retain written records of all hearings for a period of 10 years pending further litigation.

R410-14-14. Proposed Decision and Final Agency Review.

(1) At the conclusion of the hearing, the hearing officer shall take the matter under advisement and submit a recommended decision to the ~~[DMHF]~~DIH Director or the director's designee. The recommended decision is based on the testimony and evidence entered at the hearing, Medicaid policy and procedure, and legal precedent.

(2) The recommended decision must contain findings of fact and conclusions of law.

(3) The ~~[DMHF]~~DIH Director or the director's designee may:

- (a) adopt the recommended decision or any portion of the decision;
- (b) reject the recommended decision or any portion of the decision, and make an independent determination based upon the record; or
- (c) remand the matter to the hearing officer to take additional evidence, and the hearing officer thereafter shall submit to the ~~[DMHF]~~DIH ~~[d]~~Director or the director's designee a new recommended decision.

(4) The director or designee's decision constitutes final administrative action and is subject to judicial review.

(5) ~~[DMHF]~~DIH shall send a copy of the final administrative action to each party or representative and notify them of their right to judicial review.

(6) The parties shall comply with a final decision from the director reversing the agency's decision within ~~[10]~~ten calendar days.

(7) The ~~[DOH]~~DHHS Executive Director shall review all recommended decisions to determine approval of medical assistance for an organ transplant. The ~~[E]~~executive ~~[D]~~director's decision constitutes final administrative action and is subject to judicial review.

R410-14-15. Amending Administrative Orders.

(1) ~~[DMHF]~~DIH may amend an order if the hearing officer determines ~~[that]~~the order contains a clerical error.

(2) ~~[DMHF]~~DIH shall notify the parties of its intent to amend the order by serving a notice of agency action signed by the hearing officer.

(3) The ~~[DMHF]~~DIH Director shall review the amended order and ~~[he or his]~~the director or designee shall issue a final agency amended order.

(4) ~~[DMHF]~~DIH shall provide a copy of the final amended order to the respondent and the petitioner.

R410-14-16. Agency Review.

A party to the proceeding may move for reconsideration of ~~[DMHF's]~~DIH's final administrative action in accordance with Sections 63G-4-301 through 63G-4-302. A person may seek review of a DWS ~~[final agency order]~~hearing decision concerning eligibility for medical assistance by filing a written request for agency review with ~~[DMHF]~~DWS in accordance with Section 63G-4-301.

R410-14-18. Declaratory Orders.

(1) ~~[DMHF]~~DIH may issue declaratory orders in accordance with Rule R380-1.

(2) If ~~[DMHF]~~DIH does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.

(3) ~~[DMHF]~~DIH shall retain the request for declaratory ruling in its records.

(4) ~~[DMHF]~~DIH may not issue a declaratory order if an adjudicative proceeding that involves the same parties and issue is pending before the agency, ~~[or a]~~federal court, or state court.

R410-14-19. Interpreters.

(1) If a party notifies ~~[DMHF]~~DIH that it needs an interpreter, ~~[DMHF]~~DIH shall arrange for an interpreter at no cost to the party.

(2) The party may arrange for an interpreter to be present at the hearing only if the hearing officer can verify ~~[that]~~the interpreter is at least 18 years of age, and fluent in English and the language of the person who testifies.

(3) The hearing officer shall instruct the interpreter to interpret word for word, and not to summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter must swear under oath to truthfully and accurately translate all statements, questions, and answers.

R410-14-20. MCO Grievance and Appeal System.

(1) The procedures in Section R410-14-20 apply only to appeals or requests for agency action arising from actions taken by an MCO.

(2) For ~~[the purpose of]~~this section, the following definitions apply:

(a) "Adverse benefit determination" means one of the following actions by an MCO:

(i) ~~[F]~~the denial or limited authorization of a requested service, including the type and level of services, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(ii) ~~[F]~~the reduction, suspension, or termination of a previously authorized service;

(iii) ~~[T]~~the denial, in whole or in part, of payment for a service;

(iv) ~~[T]~~the failure to provide services in a timely manner;

(v) ~~[T]~~the failure to act within the time frames provided in 42 CFR 438.408(b);

(vi) ~~[T]~~the denial of a request by a Medicaid enrollee who is a resident of a rural area with only one MCO to exercise ~~[his or her]~~the enrollee's right under 42 CFR 438.52(b)(2)(ii) to obtain services outside of the network;

(vii) ~~[T]~~the denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities; or

(viii) ~~[T]~~the restriction of a Medicaid enrollee that utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines.

(b) "Appeal" means a review by an MCO of an ~~[]~~action~~[]~~ as defined in Section R410-14-20 or a request for ~~[DMHF]DIH~~ to review a final decision ~~[rendered]~~made by an MCO as a result of the MCO's appeal process.

(c) "Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include~~[, but are not limited to,]~~ the quality of care or services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the enrollee's rights regardless of whether remedial action is requested. Grievance includes an enrollee's right to dispute an extension of time proposed by the MCO to make an authorization decision.

(d) "Grievance and appeal system" means the processes the MCO implements to handle appeals of an action and grievances.

(e) "Party" means the agency, or other person commencing an adjudicative proceeding, ~~[all]~~respondents, and any MCO who is or may be obligated to pay a claim or provide a benefit or service to a ~~[recipient]~~member.

(3) An MCO shall establish a grievance and appeal system in accordance with this rule, 42 CFR 431.200 et seq. and 438.400 et seq. and the MCO's contractual obligations entered into with ~~[DMHF]DIH~~.

(4) The MCO grievance and appeal system shall include a written internal grievance and appeal procedure for aggrieved person to challenge an action by the MCO.

(5) The MCO shall provide to its enrollees and providers written information that explains the grievance and appeal procedure including a right to request a state fair hearing in accordance with this rule.

(6) The MCO's notice of action shall comply with the requirements set ~~[out]~~forth in Section R410-14-3~~[, and]~~ 42 CFR 438.402~~[, and]~~ 42 CFR 438.404.

(7) The MCO's written notice of final decision shall comply with the requirements set ~~[out]~~forth in 42 CFR 438.408 and include an explanation of the aggrieved person's right to a state fair hearing pursuant to this rule.

~~[]~~(8) ~~State fair hearings.~~

(8)(a) Unless otherwise stated in this section, an aggrieved party may appeal an MCO final written disposition on an action by requesting a state fair hearing in accordance with this rule. The hearing request must include a copy of the final written notice of the MCO disposition.

(b) An aggrieved person must exhaust the MCO grievance and appeal procedure before requesting a state fair hearing for an action other than the restriction of a Medicaid enrollee. In the case of an MCO that fails to adhere to the notice and timing requirements in 42 CFR 438.400 et seq., the enrollee is ~~[deemed]~~considered to

have exhausted the MCO's appeals process. The hearing request must include a copy of the final written notice of the MCO decision.

(c) The aggrieved party must request a hearing within 120 days from the date of the MCO final written notice of the decision.

~~[]~~(d) ~~Multiple MCO Participation in a state fair hearing.~~

(d)(i) If an appeal is based on a dispute regarding the payment liability between two or more MCOs, the aggrieved person is not required to exhaust the MCO grievance procedure for each MCO before requesting a state fair hearing under this rule.

(ii) If ~~[DMHF]DIH~~ identifies an MCO that may be liable to pay the claim and did not participate in the underlying grievance procedure, it shall send notice to that MCO that it may be subject to liability and its right to participate in the state fair hearing.

(iii) If more than one MCO is party to the state fair hearing, ~~[DMHF]DIH~~ shall provide a notice to all parties that shall include the identity of all parties, the reason for the dispute, a copy of the hearing request, and a statement that the MCO that did not participate in the underlying grievance and appeal procedure may be subject to payment liability and its right to participate in the state fair hearing.

(e) ~~[DMHF]DIH~~ may, but is not required to, file an answer or other response or position statement in the hearing proceeding at any time so long as it gives notice to ~~[all]~~other parties no less than five days before the hearing. If ~~[DMHF]DIH~~ chooses not to file a response or position statement, it does not waive its right to participate in the hearing.

~~[]~~(9) ~~Reversed appeal resolutions.~~

(9)(a) If the MCO or ~~[the S]~~state fair hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the MCO must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires, but ~~[no later than]~~before 72 hours from the date it receives notice reversing the determination.

(b) If the MCO or ~~[the S]~~state fair hearing officer reverses a decision to deny authorization of services~~[,]~~ and the enrollee received the disputed services while the appeal was pending, the MCO or the ~~[S]~~state must pay for those services in accordance with ~~[S]~~state policy and ~~[regulations]~~rules.

R410-14-21. Pre~~[]~~admission Screening Resident Review (PASRR) Hearings.

Pursuant to 42 U.S.C. 1396r, any resident and potential resident of a nursing facility whether Medicaid eligible or not, who disagrees with the preadmission screening and appropriateness of a placement decision that ~~[DMHF]DIH~~ or its designated agent makes, has the right to an informal hearing upon request in accordance with this rule and the requirements set out in 42 CFR 483.200, Subpart D.

R410-14-22. Nurse Aid Registry Hearings.

Pursuant to 42 U.S.C. 1395i-3, each nurse aide is subject to investigation of allegations of resident abuse, neglect, or misappropriation of resident property. ~~[DMHF]DIH~~ or its designated agent shall investigate each complaint and the nurse aide is entitled to a hearing that ~~[DMHF]DIH~~ or its designated agent conducts before a substantiated claim can be entered into the registry.

R410-14-23. Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), and Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID) Hearings.

Pursuant to 42 CFR 431, Subpart D, ~~[DMHF]DIH~~ shall provide an appeals hearing procedure for ~~[Skilled Nursing Facility (SNF)]~~, ~~[Intermediate Care Facility (ICF)]~~ or ~~[Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID)]~~.

DIH shall conduct [T]he informal hearing [shall be conducted] pursuant to this rule and the requirements of 42 CFR 431.153 and 42 CFR 431.154.

R410-14-24. Home and Community-Based Waiver Hearings.

(1) ~~[Hearings conducted by DMHF.]~~Pursuant to 42 CFR 431[~~7~~] Subpart E, ~~[DMHF]DIH~~ shall provide an appeals hearing procedure for home and community-based waiver hearings. DIH shall conduct [T]he informal hearing [shall be conducted] pursuant to this rule and the requirements of 42 CFR 431.200 through 431.250.

~~[(2) Hearings conducted by the Division of Services for People with Disabilities (DSPD):]~~

(2)(a) For home and community-based waivers in which the Division of Services for People with Disabilities (DSPD) is the designated operating agency and the grievance is based on whether the person meets the eligibility criteria for state matching funds through DHHS in accordance with Title 62A, Chapter 5a, Coordinating Council for Persons with Disabilities, the eligibility determination of the operating agency is final.

(b) If DSPD determines that an individual does not meet the eligibility criteria for state matching funds through DHHS, it shall inform the individual in writing and provide the individual an opportunity to appeal the decision through the ~~[DHS]DIH~~ hearing process in accordance with Section R539-3-8.

(c) The DSPD decision is dispositive for purposes of this subsection. ~~[DMHF]DIH~~ shall sustain the determination and there is no right to further agency review.

R410-14-25. Restriction Program Hearings.

Pursuant to 42 CFR 431.54(e), the Department may restrict Medicaid ~~[recipients]members~~ who utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines. ~~[DMHF]DIH~~ shall give the ~~[recipient]member~~ notice and opportunity for an informal hearing pursuant to this section before imposing restrictions.

R410-14-26. Eligibility Hearings.

~~[(4)]DWS conducts eligibility hearings in accordance with Section R414-301-7. [The eligibility agency shall provide a fair hearing process for applicants and recipients in accordance with the requirements of 42 CFR 431.220 through 431.246. The eligibility agency shall comply with Title 63G, Chapter 4.~~

~~(2) An applicant or recipient must request a hearing in writing or orally at the agency that made the final eligibility decision. A request for a hearing concerning a Medicaid eligibility decision must be made within 90 calendar days of the date of the notice of agency action with which the applicant or recipient disagrees. The request need only include a statement that the applicant or recipient wants to present his case.~~

~~(3) Hearings are conducted only at the request of a client or spouse, a minor client's parent, or a guardian or representative of the client.~~

~~(4) A recipient who requests a fair hearing concerning a decision about Medicaid eligibility shall receive continued medical assistance benefits pending a hearing decision if the recipient requests a hearing before the effective date of the action or within 15 calendar days of the date on the notice of agency action.~~

~~(5) The recipient must repay the continued benefits that he receives pending the hearing decision if the hearing decision upholds the agency action.~~

~~(a) A recipient may decline the continued benefits that the Department offers pending a hearing decision by notifying the eligibility agency.~~

~~(b) Benefits that the recipient must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.~~

~~(6) The eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, the eligibility agency must receive the request by the close of business on the next business day.~~

~~(7) DWS conducts fair hearings for all medical assistance cases except those concerning eligibility for advanced premium tax credits made by the FFM, foster care or subsidized adoption Medicaid. The Department conducts hearings for foster care or subsidized adoption Medicaid cases. In addition, the Department conducts hearings concerning its disability determination decisions. The FFM conducts hearings concerning determinations for advanced premium tax credits.~~

~~(8) DWS conducts informal, evidentiary hearings in accordance with Sections R986-100-124 through R986-100-134, except for the provisions in Subsection R986-100-128(17) and Subsection R986-100-134(5). Instead, the provisions in Subsection R414-301-7(16) concerning the time frame to comply with the DWS decision, and Subsection R414-301-7(17)(c) concerning continued assistance during a superior agency review conducted by the Department apply respectively.~~

~~(9) The Department conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date the Department issues the hearing decision, the applicant or recipient may file a petition for judicial review with the district court.~~

~~(10) DWS may not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.~~

~~(11) An applicant or recipient may designate a person or professional organization to assist in the hearing or act as his representative. An applicant or recipient may have a friend or family member attend the hearing for assistance.~~

~~(12) The applicant, recipient or representative can arrange to review case information before the scheduled hearing.~~

~~(13) At least one employee from the eligibility agency must attend the hearing. Other employees of the eligibility agency, other state agencies and legal representatives for the eligibility agency may attend as needed.~~

~~(14) The DWS Division of Adjudication and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts and the policies or regulations supporting the decision.~~

~~(a) The DWS decision shall include information about the right to request a superior agency review from the Department and how to make that request.~~

~~(b) The applicant or recipient may appeal the DWS decision to the Department pursuant to Section R410-14-16. The request for agency review must be made in writing and delivered to either DWS or the Department within 30 days of the mailing date of the decision.~~

~~(15) The Department, as the single state Medicaid agency, is a party to all fair hearings concerning eligibility for medical assistance programs. The Department conducts appeals and has the right to conduct a superior agency review of medical assistance hearing decisions rendered by DWS.~~

~~(16) The DWS hearing decision becomes final 30 days after the decision is sent unless the Department conducts a superior agency review. The DWS hearing decision may be made final in less than 30 days upon agreement of all parties.~~

~~(17) The Department conducts a superior agency review when the applicant or recipient appeals the DWS decision or upon its own accord if it disagrees with the DWS decision.~~

~~(a) The Department notifies DWS whenever it conducts a superior agency review.~~

~~(b) The DWS hearing decision is suspended until the Department issues a final decision and order on agency review.~~

~~(c) A recipient receiving continued benefits continues to be eligible for continued benefits pending the superior agency review decision.~~

~~(18) The superior agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.~~

~~(19) A Department decision and order on agency review becomes final upon issuance.~~

~~(20) The eligibility agency takes case action within 10 calendar days of the date the decision becomes final.~~

~~(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or recipient may file a petition for judicial review with the district court. Failure to appeal a DWS hearing decision to the Department negates this right to a judicial appeal.~~

~~(22) Recipients are not entitled to continued benefits pending judicial review by the district court.]~~

KEY: Medicaid

Date of Last Change: 2023[May 29, 2018]

Notice of Continuation: August 12, 2022

Authorizing, and Implemented or Interpreted Law: [26-1-24; 26B-1-[5]204; 26B-1-213; 63G-4-102

NOTICE OF PROPOSED RULE

TYPE OF RULE: New Rule

Title No. - Rule No. - Section No.

Rule or Section Number:	R414-24	Filing ID: 55221
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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 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 or section catchline:

R414-24. Claims and Adjustments for the Provider Reimbursement Information System

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

The purpose of this rule is to establish protocols for the Provider Reimbursement Information System (PRISM).

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

This rule establishes protocols for providers to submit electronic claims and adjustments in PRISM. It also includes provisions for overpayments.

Fiscal Information

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

A) State budget:

There is no impact to the state budget as funding for PRISM is covered by annual appropriations.

B) Local governments:

There is no impact on local governments as they neither fund nor provide services under the Medicaid program.

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

There is no impact on small businesses as funding for PRISM is covered by annual appropriations.

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

There is no impact on non-small businesses as funding for PRISM is covered by annual appropriations.

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

There is no impact to other persons or entities as funding for PRISM is covered by annual appropriations.

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

There are no compliance costs to a single person or entity as funding for PRISM is covered by annual appropriations.

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

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this fiscal analysis. Businesses will see no fiscal

impact as funding for PRISM is covered by annual appropriations.

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 26B-1-213 | Section 26-18-3

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: 03/17/2023

9. This rule change MAY become effective on: 03/24/2023

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:	02/01/2023
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R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.

R414-24. Claims and Adjustments for the Provider Reimbursement Information System.

R414-24-1. Introduction and Authority.

The purpose of this rule is to establish protocols for claim submissions. This rule is in accordance with Sections 26-18-3 and 26B-1-213, and claim requirements set forth in 42 CFR 424.32.

R414-24-2. Definitions.

(1) "HIPAA" means Health Insurance Portability and Accountability Act of 1996.

(2) "PRISM" means Provider Reimbursement Information System.

R414-24-3. Paper and Electronic Claim Submissions.

(1) Medicaid no longer processes paper claims and providers and their clearinghouses may only submit electronic claims for payment.

(2) Providers who submit electronic claims in PRISM must use one of the following options:

(a) an X12 electronic HIPAA claim transaction;

(b) direct data entry; or

(c) a web batch uploaded directly to PRISM.

R414-24-4. Self-Audited Claims.

(1) Providers must identify and report any overpayments within three years of the service date. Accordingly, providers or their

contractors must complete self-audits of claims and submit claim corrections within three years of the service end date.

(2) Providers are responsible for their claim adjustments. Providers must attempt to make adjustments on their own before requesting Medicaid staff to make claim corrections. If a claim is in a suspended status, Medicaid will assign a worker to process the claim according to the policy for the edit.

(3) Providers identifying overpayments beyond the deadline noted in Subsection (1) must contact the Office of the Inspector General of Medicaid Services to resolve the overpayment.

KEY: Medicaid

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 26B-1-204; 26B-1-213; 26-18-3

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R414-301	Filing ID: 55223
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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 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 or section catchline:
R414-301. Medicaid General Provisions
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 update the new agency name and hearing provisions to coincide with the merger of the Department of Health and the Department of Human Services (Department).

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 updates the new agency name, and with the merger, clarifies the role of the Department of Workforce Services in regard to hearing procedures and the hearings appeals process. It also makes other technical changes.

(EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is effective as of 02/01/2023 is under ID 55222 in this issue, February 15, 2023, of the Bulletin.)

Fiscal Information

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

A) State budget:

There is no impact to the state budget as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

B) Local governments:

There is no impact on local governments as they neither fund nor provide services under the Medicaid program.

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

There is no impact on small businesses as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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

There is no impact on non-small businesses as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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

There is no impact to other persons or entities as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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

There are no compliance costs to a single person or entity as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this fiscal analysis.

Businesses will see no fiscal impact as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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 26B-1-213	Section 26-18-3
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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: 03/17/2023

9. This rule change MAY become effective on: 03/24/2023

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:	02/01/2023
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R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.

R414-301. Medicaid General Provisions.

R414-301-2. Definitions.

The definitions in Section 26-18-2 apply in this rule. In addition, the following definitions apply in Rules R414-301 through R414-308:

(1) "Aged" means an individual who is 65 years of age or older.

(2) "Agency" means the Department of Health and Human Services ~~as referenced in incorporated federal materials~~.

(3) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) for children under ~~the age of~~ 21 years old.

(4) "Cost-of-care" means the amount of income after allowable deductions an individual must pay for their long-term care services either in a medical institution or for home and community-based waiver services.

(5) "Deemed ~~N~~ newborn" means a child who receives one year of continuous eligibility because at the time of the child's birth, the child's mother was a Medicaid member ~~recipient~~ or was receiving coverage under the Children's Health Insurance Program ~~(CHIP)~~ in a state that provides deemed newborn coverage to infants born to a CHIP eligible mother.

(6) "Department" means the Department of Health and Human Services.

(7) "Eligibility ~~A~~ agency" means any state office or outreach location of the Department of Workforce Services (DWS) that accepts and processes applications for medical assistance programs under contract with the Department. ~~—The Department of Health and Human Services (DHS) is the eligibility agency under contract with the Department to process applications for children in state custody.~~

(8) "Federal poverty guideline" means the United States (U.S.) federal poverty measure issued annually by the Department ~~and DHS~~ to determine financial eligibility for certain means-tested federal programs.

(9) "Federally [F]acilitated [M]arketplace (FFM) means the entity that individuals can access to enroll in health insurance and apply for assistance from insurance affordability programs such as Advanced Premium Tax Credits, Medicaid, and CHIP.

(10) "Medically needy" means medical assistance coverage under ~~the provisions of~~ 42 CFR 435.301 that uses the Basic Maintenance Standard as the income limit for eligibility.

(11) "Modified [A]adjusted [G]ross [I]ncome[~~(MAGI)~~]" means the income that is determined using the methodology defined in 42 CFR 435.603(e).

(12) "Outreach location" means any site other than a state office where state workers are located to accept applications for medical assistance programs. Locations include sites such as hospitals, clinics, and homeless shelters[~~etc~~].

(13) "QI" means the Qualifying Individuals program, a Medicare [C]ost-[S]haring program.

(14) "QMB" means Qualified Medicare Beneficiary program, a Medicare [C]ost-[S]haring program.

(15) "Reportable change" means any change in circumstances ~~which~~ that could affect a ~~client's~~ member's eligibility for Medicaid, including the following changes:

- (a) the source of income;
- (b) gross income of \$25 or more;
- (c) household size;
- (d) residence;
- (e) gain of a vehicle;
- (f) resources;
- (g) total allowable deductions of \$25 or more;
- (h) marital status, deprivation, or living arrangements;
- (i) pregnancy or termination of a pregnancy;
- (j) onset of a disabling condition;
- (k) change in health insurance coverage including changes in the cost of coverage;
- (l) tax filing status;
- (m) number of dependents claimed as tax dependents;
- (n) earnings of a child; and
- (o) student status of a child.

(16) "Resident of a medical institution" means a single individual who is a resident of a medical institution from the month after entry into a medical institution until the month ~~prior to~~ before discharge from the institution. Death in a medical institution is not considered a discharge from the institution and does not change the ~~client's~~ member's status as a resident of the medical institution. Married individuals are residents of an institution in the month of entry into the institution and in the month they leave the institution.

(17) "SLMB" means Specified Low-Income Medicare Beneficiary program, a Medicare [C]ost-[S]haring program.

(18) "Spendedown" means an amount of income in excess of the allowable income standard that must be paid in cash to the eligibility agency or incurred through the medical services not paid by Medicaid or other health insurance coverage, or some combination of these.

(19) "Spouse" means any individual who has been married to an applicant or ~~member~~ recipient and has not legally terminated the marriage.

(20) "Verification" means the proof needed to decide whether an individual meets the eligibility criteria to be enrolled in the applicable medical assistance program. Verification may include documents in paper format, electronic records from computer match systems, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

(21) "Worker" means a state employee who determines eligibility for medical assistance programs.

R414-301-7. Hearings.

(1) The eligibility agency shall provide a fair hearing process for applicants and ~~members~~ recipients in accordance with the requirements of 42 CFR 431.220 through 42 CFR 431.246. The eligibility agency shall comply with Title 63G, Chapter 4, Administrative Procedures Act.

(2) An applicant or ~~member~~ recipient must request a hearing in writing or orally at the agency that made the final eligibility decision. A request for a hearing must be made within 90 calendar days of the date of notice of agency action concerning the Medicaid eligibility decision. ~~concerning a Medicaid eligibility decision must be made within 90 calendar days of the date of the notice of agency action with which the applicant or recipient disagrees.~~ The request need only include a statement that the applicant or ~~member~~ recipient wants to present ~~his~~ their case.

(3) Hearings are conducted only at the request of a ~~client~~ member or spouse[;], a minor ~~client's~~ member's parent[;], or a guardian or representative of the ~~client~~ member.

(4) A ~~member~~ recipient who requests a fair hearing concerning a decision about Medicaid eligibility shall receive continued medical assistance benefits pending a hearing decision if the ~~member~~ recipient requests a hearing before the effective date of the action or within 15 calendar days of the date on the notice of agency action.

(5) The ~~member~~ recipient must repay the continued benefits that ~~the member~~ he receives pending the hearing decision if the hearing decision upholds the agency action.

(a) A ~~member~~ recipient may decline the continued benefits that the Department offers pending a hearing decision by notifying the eligibility agency.

(b) Benefits that the ~~member~~ recipient must repay include premiums for Medicare or other health insurance, premiums, and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

(6) The eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, the eligibility agency must receive the request by the close of business on the next business day.

(7) DWS conducts fair hearings for ~~all~~ medical assistance cases except those concerning eligibility for ~~a~~ Advanced ~~p~~ Premium ~~t~~ Tax ~~e~~ Credits made by the FFM, foster care, or subsidized adoption Medicaid. The Department conducts hearings for foster care or subsidized adoption Medicaid cases. In addition, the Department conducts hearings concerning its disability determination decisions. The FFM conducts hearings concerning determinations for ~~a~~ Advanced ~~p~~ Premium ~~t~~ Tax ~~e~~ Credits.

(8) DWS conducts informal, evidentiary hearings in accordance with Sections R986-100-124 through ~~Section~~ R986-100-13[4]2, [except for the provisions in Subsection R986-100-128(17) and Subsection R986-100-134(5).] with the exceptions found in Subsection R986-100-128(17) and Subsection R986-100-134(5). Instead, ~~the provisions in~~ Subsection R414-301-7(16) concerning the time frame to comply with the DWS decision, and Subsection R414-301-7(17)(c) concerning continued assistance during a superior agency review conducted by ~~the Department~~ DWS, apply respectively.

(9) The Department conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date the Department issues the hearing decision, the applicant or member[recipient] may file a petition for judicial review with the district court.

(10) DWS may not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.

(11) An applicant or member[recipient] may designate a person or professional organization to assist in the hearing or act as [his]a representative. An applicant or member[recipient] may have a friend or family member attend the hearing for assistance.

(12) The applicant, member[recipient] or representative [can]may arrange to review case information before the scheduled hearing.

(13) At least one employee from the eligibility agency must attend the hearing. Other employees of the eligibility agency, other state agencies, and legal representatives for the eligibility agency may attend as needed.

(14) The DWS Division of Adjudication and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts, and the policies or regulations supporting the decision.

(a) The DWS decision shall include information about the right to request [a superior]an agency review from [the Department]DWS and how to make that request.

(b) The applicant or member[recipient] may appeal the DWS decision to [the Department]DWS pursuant to Section R410-14-1[8]6. The request for agency review must be made in writing and delivered to [either]DWS [or the Department]within 30 days of the mailing date of the decision.

(15) The Department, as the single state Medicaid agency, is a party to [all]fair hearings concerning eligibility for medical assistance programs. The Department [conducts appeals and]has the right to [conduct]request [a superior]an agency review of medical assistance hearing decisions [rendered]given by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless [the Department]DWS conducts [a superior]an agency review. The DWS hearing decision may be made final in less than 30 days upon agreement of [all]the parties.

(17) [The Department]DWS conducts [a superior]an agency review when the applicant or member[recipient] appeals the DWS decision or [upon its own accord if]if the Department appeals because it disagrees with the DWS decision.

(a) [The Department]DWS notifies [DWS]the Department when[ever] it conducts [a superior]an agency review.

(b) The DWS hearing decision is suspended until [the Department]DWS issues a final decision and order on agency review.

(c) A member[recipient receiving] who receives continued benefits continues to be eligible for continued benefits pending the [superior]agency review decision.

(18) The [superior]agency review is an informal proceeding and [shall be]is conducted in accordance with Section 63G-4-301.

(19) A [Department]DWS decision and order on agency review becomes final upon issuance.

(20) The eligibility agency takes case action within ten calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or member[recipient] may file a petition for judicial review with the

district court. Failure to [appeal a DWS hearing decision to the Department]request an agency review negates this right to a judicial appeal.

(22) Members[Recipients] are not entitled to continued benefits pending judicial review by the district court.

KEY: [elient]member rights, hearings, Medicaid

Date of Last Change: 2023[October 1, 2013]

Notice of Continuation: January 8, 2018

Authorizing, and Implemented or Interpreted Law: 26-18

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R477-10	Filing ID: 55214
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Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room number:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Taylorsville, UT 84114-1531	
Contact persons:		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:

R477-10. Employee Development

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

The purpose of this amendment is to implement changes required by H.B.104, passed in the 2022 General Session, relating to employee performance evaluation and supervisory training.

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 specifies the required elements and frequency for both employee performance evaluation and supervisory training.

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

These amendments are not expected to have any fiscal impact because performance management and supervisory training are activities that already occur for state employees.

B) Local governments:

These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.

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

These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.

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

These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.

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

These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

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 direct compliance costs for these amendments. Although the amendments increase the frequency for both evaluation and training, these requirements are not designed or anticipated to reduce the effective time employees have to complete assigned work.

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

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director, of the Department of Government Operations.

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 63A-17-106		
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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:	03/17/2023
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9. This rule change MAY become effective on:	03/24/2023
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:	John Barrand, Division Director	Date:	01/31/2023
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R477. Government Operations, Human Resource Management.

R477-10. Employee Development.

R477-10-1. Performance Evaluation.

Management shall utilize the Utah Performance Management (UPM) system for employee performance plans and evaluations.

(1) ~~[Performance management systems shall satisfy the following criteria.]~~ Management shall establish a performance management system that:

(a) ~~[Management selects]~~ defines an overall performance rating scale[-];

(b) ~~[Management writes]~~ identifies performance standards and expectations for each employee in a performance plan[-]; and

(c) defines incentives for meeting or exceeding production, before work begins, that include:

- (i) eligible employees or groups;
- (ii) specific goals or targets;
- (iii) measurement procedures; and
- (iv) specific incentives.

(2) Management ~~[notifies]~~ shall notify employees when their performance plans are implemented or modified.

~~[- (d) Management provides employees with regular verbal and written feedback based on the standards of performance and behavior outlined in their performance plans.]~~

~~[(2)]~~(3) Management shall evaluate an employee's performance in writing ~~[each fiscal year]~~ at least quarterly.

(a) An employee may include written comments pertaining to the employee's performance evaluation.

(b) Management may issue a written performance evaluation to a probationary employee at the end of the probationary period.

(4) Management shall provide employees with regular verbal and written feedback based on the standards of performance and behavior outlined in their performance plans.

R477-10-2. Performance Improvement.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, and after consulting with DHRM, management may place an employee on an appropriate and documented performance improvement plan in accordance with ~~[the following rules]~~ this section.

(1) Management shall discuss the substandard performance with the employee and determine appropriate action.

(2) Performance improvement plans shall identify or provide for:

- (a) a designated period of time for improvement;
- (b) an opportunity for remediation;
- (c) performance expectations;

(d) closer supervision to include regular feedback of the employee's progress;

(e) notice of disciplinary action for failure to improve; and

(f) a written performance evaluation at the conclusion of the performance improvement plan.

(3) An employee may submit written comment to accompany the performance improvement plan.

(4) Performance improvement plans may also identify or provide for the following based on the nature of the performance issue:

- (a) training;
- (b) reassignment; or
- (c) use of appropriate leave.

(5) Following successful completion of a performance improvement plan, management shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

R477-10-5. Supervisor Training.

(1) Each supervisor shall complete supervisor training:

(a) within six months of appointment to a supervisory position; and

(b) at least annually thereafter.

(2) Management shall evaluate a supervisor's training completion and effective use of training information and principles in any evaluation of a supervisor's job performance.

(3) Management shall utilize supervisor training provided by or approved by DHRM which includes:

(a) effective employee management and evaluation methods based on the performance management system described in Section R477-10-1;

(b) instruction to improve supervisor and employee communications;

(c) best practices for recognizing and retaining high-performing employees;

(d) best practices for addressing poor-performing employees; and

(e) any other information and principles identified by the division to improve management or organizational effectiveness.

R477-10-6. Education Assistance.

Management may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Management may grant educational assistance when:

(a) the agency has a written policy governing educational assistance;

(b) the employee discloses any scholarships, subsidies, and grant monies received for the educational program; and

(c) the employee's educational program will provide a benefit to the state.

(2) Management shall require the employee to repay educational assistance when:

(a) the employee fails to successfully complete the required course work or educational requirements of a program; or

(b) the employee leaves the agency within one year of completing the educational work.

(3) Education assistance may not exceed \$5,250 per employee in any one calendar year unless approved in advance by the agency head.

(4) Management shall reduce the educational assistance provided by the amount of funding disclosed under Subsection (1)(b) except for funding that the employee is expected to repay.

(5) Management shall be responsible for determining the taxable or non-taxable status of educational assistance reimbursements.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs

Date of Last Change: 2023~~July 1, 2022~~

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63A-17-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Rule or Section Number:	R653-3	Filing ID: 55211
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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 84114
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

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

General Information

2. Rule or section catchline:

R653-3. Selecting Private Consultants

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

The Division of Water Resources (Division) is submitting a repeal because this rule is no longer applicable to the Division. The Division no longer has delegated purchasing

power. This process now goes through State Purchasing and the Division has not done this since 2017.

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

This filing is a repeal of a rule that provides procedures for selecting private consultants in the engineering field. This rule is repealed in its entirety.

Fiscal Information

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

A) State budget:

The estimated cost or savings to the state budget is zero. Repealing this rule does not have any anticipated cost or savings because State Purchasing already has its procedures established for selecting and contracting private consultants for engineering services.

B) Local governments:

The estimated cost or savings to local governments is zero. Repealing this rule does not have any anticipated cost or savings because State Purchasing already has its procedures established for selecting and contracting private consultants for engineering services.

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

The estimated cost or savings to small businesses is zero. Repealing this rule does not have any anticipated cost or savings because State Purchasing already has its procedures established for selecting and contracting private consultants for engineering services.

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

The estimated cost or savings to non-small businesses is zero. Repealing this rule does not have any anticipated cost or savings because State Purchasing already has its procedures established for selecting and contracting private consultants for engineering services.

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

The estimated cost or savings to other persons is zero. Repealing this rule does not have any anticipated cost or savings because State Purchasing already has its procedures established for selecting and contracting private consultants for engineering services.

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

As this rule has no fiscal impact on the affected parties or persons, there is no measurable compliance cost.

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 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 58-22-102

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: 03/17/2023

9. This rule change MAY become effective on: 03/24/2023

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:	Candice Hasenyager, Director	Date:	01/27/2023
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R653. Natural Resources, Water Resources.

~~**R653 3. Selecting Private Consultants.**~~

~~**R653 3 1. Application.**~~

~~The provisions of this section apply to procurement of services within the scope of the practice of professional engineering as defined in Section 58-22-102 Utah Code Annotated, except as authorized in Section 63-56-24 Utah Code Annotated (Emergency Procurements).~~

~~**R653 3 2. Policy.**~~

~~It is the policy of the Division of Water Resources (Division) to:~~

- ~~(1) Give public notice of all requirements for engineering services (except as noted in R653 3 1 and R653 3 5); and~~
- ~~(2) Negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.~~

~~**R653 3 3. Annual Statement of Qualifications and Performance Data.**~~

~~(1) The State's Chief Procurement Officer will encourage firms engaged in providing engineer services to submit annually a statement of qualifications and performance data which should include, but not be limited to, the following:~~

- ~~(a) The name of the firm and the location of all of its offices, specifically indicating the principal place of business;~~
- ~~(b) The age of the firm and its average number of employees over the past five years;~~
- ~~(c) The education, training, and qualifications of members of the firm and key employees;~~
- ~~(d) The experience of the firm reflecting technical capabilities and project experience;~~
- ~~(e) The names of five clients who may be contacted, including at least two for whom services were rendered in the last year; and~~
- ~~(f) Any other pertinent information requested by the Procurement Officer.~~

~~(2) A standard form or format may be developed for these statements of qualifications and performance data. Firms may amend~~

statements of qualifications and performance data at any time by filing a new statement.

R653-3-4. Billing Rate Survey.

The Consulting Engineers Council of Utah will provide the results of an annual survey on billing rates within their respective disciplines to the Division of Purchasing prior to April 1 of each year. This information will then be made available to all public procurement units.

R653-3-5. Small Purchases of Engineer Services.

When the procurement of engineer services is estimated to be less than \$20,000, the Division may select the provider directly from either the list of firms who have submitted annual statements of qualifications and performance data, or from other qualified firms if necessary. If the procurement is estimated to exceed \$20,000, then the selection method outlined in the following sections will apply.

R653-3-6. Engineer Selection Committee.

The Division's Procurement Officer, or designee, will designate members of the Engineer Selection Committee. The selection committee will consist of at least three members.

The Division's Procurement Officer, or designee, will designate one member of such committee as chair and to act as the Procurement Officer to coordinate the negotiations of a contract with the most qualified firm.

R653-3-7. Public Notice.

Public notice for engineer services will be given by the Division. Such notice will be published sufficiently in advance in order for firms to have an adequate opportunity to respond to the solicitation. The notice will contain a brief statement of the services required that adequately describes the project, the closing date for submissions, and how specific information on the project may be obtained.

R653-3-8. Request for Statements of Interest.

(1) A request for statements of interest (SOI) will be prepared that outlines the Division's requirements (scope of work) and sets forth the evaluation criteria. It will be distributed upon request and payment of a fee, if any.

(2) The request for SOI will include notice of any conference to be held and the criteria to be used in evaluating the statements of qualifications and performance data and selecting firms, including but not limited to:

(a) Competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services, and the qualifications and competence of persons who will be assigned to perform the services;

(b) Ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously; and

(c) Past performance as reflected by the evaluations of private persons and officials of other governmental entities that have retained the services of the firm with respect to such factors as control of costs, quality of work, and an ability to meet deadlines.

R653-3-9. Definition of Scope of Work.

Prior to initiating a request for SOI for engineer services, the Division shall define the scope of such services. The scope section will be sufficient to define the work expected, as detailed as

possible and will be the basis for the negotiation process. However the scope may be modified if necessary during final negotiations.

R653-3-10. Evaluation of Statements of Qualifications and Performance Data.

(1) The selection committee will evaluate:

(a) Statement of qualifications and performance data;

(b) Statements that may be submitted in response to the request for SOI for engineer services, including proposals for joint ventures; and

(c) Supplemental statements of qualifications and performance data, if their submission is required.

(2) All statements and supplemental statements of qualifications and performance data will be evaluated in light of the criteria set forth in the SOI request for engineer services.

R653-3-11. Selection of Firms for Discussions.

The selection committee will select for discussions no fewer than three firms evaluated as being professionally and technically qualified (unless fewer than three firms responded to the SOI request. The Division will notify each firm in writing of the date, time, and place of discussions, and, if necessary, will provide each firm with additional information on the project and the services required. This discussion phase may be waived if the evaluation of the statements of qualification and performance data indicate that one firm is clearly more qualified and if the scope and nature of the services are clearly understood.

R653-3-12. Discussions.

Following evaluation of the statements of interest, qualifications and performance data, the selection committee may hold discussions with the firms selected. The purposes of such discussions will be to:

(1) Determine each firm's general capabilities and qualifications for performing the contract; and

(2) Explore the scope and nature of the required services and the relative accuracy, efficiency, time consumption, and cost of the alternative methods proposed to be used.

R653-3-13. Selection of the Most Qualified Firms.

After discussions the selection committee will reevaluate and select, in order of preference, the firms that it deems to be the most highly qualified to provide the required services. The selection committee will document the selection process indicating how the evaluation criteria were applied in determining the selection of the most highly qualified firms. Documents will remain in the division files for one year.

R653-3-14. Negotiation and Award of Contract.

The selection committee or its designee will negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable to the Division. Contract negotiations will be directed toward:

(1) Clarifying that the firm has an understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

(2) Insuring that the firm will make available the necessary personnel and facilities to perform the services within the required time; and

(3) Agreeing to a compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.

~~R653-3-15. Failure to Negotiate Contract with the Most Qualified Firm.~~

~~(1) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the Division will advise the firm in writing of the termination of negotiations.~~

~~(2) Upon failure to negotiate a contract with the most qualified firm, the Procurement Officer will enter into negotiations with the next most qualified firm. If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon, then the contract will be awarded to that firm. If negotiations again fail, negotiations will be terminated as provided in paragraph (a) of this section and commenced with the next most qualified firm.~~

~~R653-3-16. Notice of Award.~~

~~Written notice of the award will be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held will be notified of the award. Notice of the award will be made available to the public.~~

~~R653-3-17. Failure to Negotiate Contract With Firms Initially Selected as Most Qualified.~~

~~Should the Division be unable to negotiate a contract with any of the firms initially selected as the most highly qualified firms, additional firms will be selected in preferential order based on their respective qualifications, and negotiations shall continue in accordance with Section R653-3-15 until an agreement is reached and the contract awarded.~~

~~KEY: consultants, government purchasing~~

~~Date of Last Change: February 18, 1998~~

~~Notice of Continuation: September 29, 2017~~

~~Authorizing, and Implemented or Interpreted Law: 58-22-102]~~

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R653-7	Filing ID: 55212
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Agency Information

1. Department:	Natural Resources	
Agency:	Water Resources	
Room number:	310	
Building:	The 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

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

General Information

2. Rule or section catchline:

R653-7. Administrative Procedures for Informal Proceedings

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

Upon the agency's five-year review of this rule, it was decided to incorporate nonsubstantive and substantive changes. The Division of Water Resources (Division) is filing an amendment to this rule to include a variety of updates listed in Box 4 below.

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):

Revisions include updating Utah code citations to current code numbering, updating subsection numbering formats to current rulemaking requirements, harmonizing the spelling, capitalization, and use of defined terms in the rule, eliminating unnecessary redundancy in the rule language, and updating notice requirements in the rule to include electronic mailing as an acceptable medium for providing notice to others.

Fiscal Information

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

A) State budget:

The estimated cost or savings to the state budget is zero. The revisions to this rule simply clarify the procedures for informal proceedings by harmonizing the spelling and capitalization, eliminating unnecessary redundancy in the rule language, updating the Utah code citation to the current code numbering, and adding electronic mailing as an acceptable medium for providing notice to others.

B) Local governments:

The estimated cost or savings to local governments is zero. The revisions to this rule simply clarify the procedures for informal proceedings by harmonizing the spelling and capitalization, eliminating unnecessary redundancy in the rule language, updating the Utah code citation to the current code numbering, and adding

electronic mailing as an acceptable medium for providing notice to others.

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

The estimated cost or savings to small businesses is zero. The revisions to this rule simply clarify the procedures for informal proceedings by harmonizing the spelling and capitalization, eliminating unnecessary redundancy in the rule language, updating the Utah code citation to the current code numbering, and adding electronic mailing as an acceptable medium for providing notice to others.

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

The estimated cost or savings to non-small businesses is zero. The revisions to this rule simply clarify the procedures for informal proceedings by harmonizing the spelling and capitalization, eliminating unnecessary redundancy in the rule language, updating the Utah code citation to the current code numbering, and adding electronic mailing as an acceptable medium for providing notice to others.

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

The estimated cost or savings to other persons is zero. The revisions to this rule simply clarify the procedures for informal proceedings by harmonizing the spelling and capitalization, eliminating unnecessary redundancy in the rule language, updating the Utah code citation to the current code numbering, and adding electronic mailing as an acceptable medium for providing notice to others.

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

As this rule has no fiscal impact on the affected parties or persons, there is no measurable compliance cost.

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 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 63G-4-202		
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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:	03/17/2023
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9. This rule change MAY become effective on:	03/24/2023
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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:	Candice Hasenyager, Director	Date:	01/27/2023
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R653. Natural Resources, Water Resources.

R653-7. Administrative Procedures for Informal Proceedings.

R653-7-1. Authority and Effective Date.

This rule establishes and governs administrative proceedings before the ~~[Utah] Division [of Water Resources]~~ and the ~~[Utah] Board [of Water Resources]~~, respectively, as required by ~~[Sections 63-46b-1, et seq]~~ Title 63G, Chapter 4, Administrative Procedures Act.

R653-7-2. Designation of Informal Proceedings.

All adjudicative proceedings of the Division ~~[of Water Resources]~~ and the Board ~~[of Water Resources]~~ are ~~[hereby]~~ designated ~~[as] informal, unless otherwise designated formal by the Presiding Officer under Section 63G-4-202.~~

R653-7-3. Definitions.

(1)~~[-]~~ Terms used in this rule are defined in Section ~~[63-46b-2]~~ 63G-4-103.

(2)~~[-]~~ In addition:

(a)~~[-]~~ "Division" means the Utah Division of Water Resources.

(b)~~[-]~~ "Board" means the Utah Board of Water Resources.

(c)~~[-]~~ "Director" means the ~~[D]~~ director of the Division of Water Resources.

~~[-]~~ d. "Staff" means the staff of the Division of Water Resources.]

(d) "Presiding officer" means the Director, the Board, or an individual designated by the Director or Board to conduct an adjudicative proceeding under the Administrative Procedures Act and this rule.

R653-7-4. Construction -- Computation of Time.

(1)~~[-]~~ This rule shall be construed in accordance with the ~~[Utah]~~ Administrative Procedures Act and supersedes any conflicting provision of procedural rules promulgated by the Division or Board.

(2)~~[-]~~ This rule shall be liberally construed to secure a just and speedy determination of ~~[all]~~ any issues presented in adjudicative proceedings ~~[to]~~ conducted by the Division or Board.

(3)~~[-]~~ For good cause, and where no party is prejudiced, the Division or Board may permit deviation from this rule, except where precluded by statute.

(4)(a) The time within which any act shall be done, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or ~~[S]~~ state holiday~~[-]~~.

(b) When the last day falls on a Saturday, Sunday, or state holiday, ~~[and then it is excluded and]~~ the period runs until the end of the next day which is neither a Saturday, Sunday, or ~~[S]~~ state holiday.

R653-7-5. Commencement of Proceedings.

(1)~~[-]~~ All informal adjudicative proceedings commenced by the Division or Board shall be initiated as provided ~~[by]~~ in ~~[Subsection 63-46b-3]~~ Section 63G-4-201.

(2)~~[-]~~ All informal adjudicative proceedings commenced by a person other than the Division or Board shall be commenced by ~~[either]~~:

(a) completing ~~[prepared]~~ the forms on file at the Division requesting agency action; or

(b) ~~[by]~~ submitting ~~[in writing]~~ a written request for agency action in accordance with ~~[Subsection 63-46b-3]~~ Section 63G-4-201.

R653-7-6. Answer or Responsive Pleading.

After a notice of agency action or a request for agency action has been issued or filed, any party may file an answer or response.

R653-7-7. Amendments to Pleadings.

(1) Except as provided in Subsection (2), ~~[T]~~ the Presiding Officer may allow pleadings to be amended or corrected, ~~[and defects which do]~~ when doing so will not ~~[affect substantial]~~ prejudice the interests or rights of ~~[the]~~ other parties. ~~[- may be disregarded; provided, however, that documents which are]~~

(2) Pleadings governed by specific statutory provisions shall be amended only as provided by applicable statute.

R653-7-8. Intervention.

Intervention is prohibited except as otherwise required by ~~[a federal or State]~~ statute.

R653-7-9. Hearings.

(1)~~[-]~~ The Division, Board, or ~~[a]~~ Presiding Officer shall hold a hearing if:

(a) ~~[a hearing is]~~ required or permitted by statute~~[-]~~; ~~[or if a hearing is permitted by statute]~~ and

(b) ~~[is]~~ requested by a party within 30 days of the commencement of the adjudicative proceeding.

(2) The Division, Board, or ~~[a]~~ Presiding Officer may, at their discretion, initiate and hold a hearing to determine matters within their authority.

(3)~~[-]~~ Notice of the hearing will be served ~~[on all parties]~~ to each party by regular or electronic mail at least ten days ~~[prior to]~~ before the hearing.

(4)~~[-]~~ If no hearing is held in a particular adjudicative proceeding, the Presiding Officer shall issue a decision within ~~[a reasonable time]~~ 30 days.

R653-7-10. Pre-Hearing Procedure.

The Presiding Officer may, upon written notice to ~~[all]~~ any parties of record, hold a pre-hearing conference ~~[for purposes of]~~ to:

(1) formulate~~[ing]~~ or simplify~~[ing the]~~ issues;~~[-]~~

(2) obtain~~[ing]~~ admissions of fact and documents to ~~[which will]~~ avoid unnecessary proof and expedite the proceeding;~~[-]~~

(3) ~~[arranging for the]~~ exchange ~~[of]~~ proposed exhibits~~[-]~~; and

(4) ~~[agreeing to]~~ resolve other matters ~~[as may]~~ in effort to expedite the orderly conduct of the proceedings or the settlement thereof.

R653-7-11. Continuance.

If application to continue a hearing is made to the Presiding Officer within a reasonable time ~~[prior to]~~ before the date of hearing~~[-]~~ and ~~[upon]~~ proper notice of the application is provided to the other parties, the Presiding Officer may grant a continuance of the hearing.

R653-7-12. Parties to a Hearing.

(1)~~[-]~~ ~~[All persons defined as a "party"]~~ Any parties to the action are entitled to participate in hearings before the Division or Board.

(2)~~[-]~~ ~~[All parties shall be]~~ Any party ~~[entitled to]~~ may introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R653-7-13. Appearances and Representation.

(1)[~~-~~] Parties shall enter their appearances at the beginning of a hearing or at a time as may be designated by the Presiding Officer by:

- (a) giving their names and addresses; and
- (b) stating their positions or interests in the proceeding.

(2)[~~-~~] An individual who is a party to a proceeding, or an officer designated by a business or governmental entity~~[a partnership, corporation, association or governmental subdivision or agency which]~~ that is a party to a proceeding, may ~~represent his or its interest~~ participate in the proceeding.

(3)[~~-~~] Any party may be represented by an attorney ~~[licensed]~~ authorized to practice law in the ~~[State of Utah]~~ state.

R653-7-14. Failure to Appear--Default.

(1) When a party or ~~[his]~~ their authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer may:

- (a) continue the matter;~~[or may]~~
- (b) enter an order of default judgment, as provided ~~[by]~~ in Section ~~[63-46b-11,]~~ 63G-4-209; or
- (c) ~~[may]~~ proceed to hear the matter in the absence of the defaulting party.

R653-7-15. Discovery, Testimony, Evidence, and Argument.

(1)[~~-~~] Discovery is prohibited and the Division or Board may not issue subpoenas or other discovery orders.

(2)[~~-~~] ~~[All parties shall]~~ Any party may have access to:

- (a) non-confidential and non-privileged information contained in Division and Board files that are public record; and
- (b) ~~[to all]~~ any materials and information gathered in any investigation of the matters at issue in the adjudicative proceeding, to the extent permitted by law.

(3)[~~-~~] At any hearing, the Presiding Officer ~~[shall]~~ may:

- (a) accept oral or written testimony from any party;~~[or]~~
- (b) ~~[Further, the Presiding Officer shall have the right to]~~ question and examine any witness called to present testimony;~~[or]~~ and
- (c) require ~~[T]~~ testimony and statements received at hearings ~~[may]~~ to be under oath.

(4)(a)[~~-~~] A hearing may be conducted in an informal manner and without strict adherence to the formal rules of evidence required in judicial proceedings.

(b) Irrelevant, immaterial, and ~~[unduly]~~ repetitious evidence may be excluded.

(c) The ~~[weight to be given to evidence shall be determined by the]~~ Presiding Officer shall determine the weight given to any submission of evidence.

(d) Hearsay evidence may not be excluded solely because it is hearsay.

(5)[~~-~~] Documentary evidence may be received in the form of copies or excerpts~~[or]~~, ~~[However, upon request,]~~ provided the parties, upon request, shall be are given an opportunity to compare the copy with the original.

(6)[~~-~~] The Presiding Officer may take official notice of the following matters:

- (a)[~~-~~] [R]rules, guidelines, official reports, written decisions, orders, and~~[or]~~ policies of the
 - (i) Board~~[of Water Resources,];~~
 - (ii) Division~~[of Water Resources];~~ or
 - (iii) ~~[and]~~ any other state or federal regulatory agency~~[State or federal];~~

(b)[~~-~~] [O]official documents introduced into the record by proper reference and authentication,~~[or]~~ provided~~[or]~~ the documents ~~[shall be]~~ are made available to the other~~[so that]~~ parties ~~[to the hearing may examine the documents]~~ for examination and the opportunity to contest~~[present rebuttal testimony if they so desire];~~ and]

(c)[~~-~~] [M]matters of common knowledge and generally-recognized technical or scientific facts within the Division's or Board's specialized knowledge; and

(d) ~~[of]~~ any factual information which the Presiding Officer may have gathered from a field inspection.

(7)[~~-~~] Upon ~~[the]~~ conclusion of ~~[the]~~ taking ~~[of]~~ evidence, the Presiding Officer may~~[in his discretion,]~~ permit the parties to:

- (a) make oral arguments ~~[setting forth]~~ summarizing their respective positions; and
- (b) ~~[also to]~~ submit written memoranda within the time specified by the Presiding Officer.

R653-7-16. Record of Hearing.

(1)(a)[~~-~~] A record of ~~[any]~~ every hearing shall be made by electronic, audio recording ~~[recorded]~~ of the proceedings at the Division's or Board's expense.~~[When a record is made by the Division or Board, it shall be done by means of an automatic recording device.]~~

(b) Any party, at ~~[his]~~ their own expense, may have a reporter approved by the Division or Board prepare a written transcript from the audio recording of the hearing.

(2)[~~-~~] If a party desires that ~~[the testimony]~~ a hearing be recorded by ~~[means of]~~ a court reporter, that party:

- (a) may ~~[employ]~~ retain a court reporter, acceptable to the Division or Board, at ~~[his own]~~ the party's sole expense; and
- (b) shall furnish a transcript of the ~~[testimony]~~ hearing to the Division or Board free of charge.

(3) ~~[This]~~ The transcript shall be available at the Division's office to any party to the hearing.

R653-7-17. Decisions and Orders.

(1)[~~-~~] After the Presiding Officer has reached a final decision ~~[upon]~~ in any adjudicative proceeding, ~~[he]~~ they shall make and enter a signed order in writing that states the:

- (a) ~~[the]~~ decision;
- (b) ~~[the]~~ reasons and basis for the decision;
- (c) ~~[a notice of the]~~ rights of the parties to request Division or Board ~~[review,]~~ reconsideration or judicial review, as appropriate; and

(d) ~~[notice of]~~ time limits for filing a request for ~~[review,]~~ reconsideration or ~~[court appeal]~~ judicial review.

~~[2. The order shall be based on facts appearing in any of the Division's files or records and on facts presented in evidence at any hearings.]~~

[3-](2) A copy of the Presiding Officer's order shall be mailed by regular or electronic mail to each of the parties.

R653-7-18. Request for Reconsideration.

(1)[~~-~~] Any aggrieved party may file a request for reconsideration by following the procedures ~~[of]~~ in Section ~~[63-46b-13]~~ 63G-4-302. ~~[A request is not a prerequisite for judicial review.]~~

(2)[~~-~~] The Division ~~[Director]~~ or Board shall issue a written order granting or denying the request for reconsideration.

(3) If an order is not issued within 20 days after the filing of a request, the request for ~~[rehearing]~~ reconsideration shall be ~~[considered]~~ deemed denied.

(4) Any order on reconsideration granting rehearing shall specifically identify the matters to be addressed in rehearing and rehearing shall be strictly limited to ~~[the matter specified in the order]~~ those matters.

R653-7-19. Judicial Review.

(1) Any party aggrieved by final agency action may obtain judicial review of the action pursuant to Sections ~~[63-46b-14 and 45]~~ 63G-4-401 and 63G-4-402, except where judicial review is otherwise not permitted.

(2) A petition for judicial review shall be filed within 30 days ~~[after]~~ of the date ~~[that]~~ the order constituting final agency action is issued ~~or deemed denied~~.

R653-7-20. Declaratory Orders.

(1) ~~[-]~~ Any interested person may file a request for agency action requesting that the Division or Board issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Division or Board ~~[pursuant to Section 63-46b-21]~~ to specified circumstances.

(2) ~~[-]~~ A request for a declaratory order shall be filed in accordance with Section ~~[63-46b-21]~~ 63G-4-503, which request commences an informal adjudicative proceeding, and shall set forth in detail ~~the~~:

(a) ~~[-the]~~ specific statute, rule, or order ~~[which is]~~ in question;

(b) ~~[-the]~~ specific facts for which the order is requested;

(c) ~~[-the manner in]~~ basis upon which the person making the request claims the statute, rule, or order may affect ~~[him]~~ them; and

(d) ~~[-the]~~ specific question for which a declaratory order is requested.

(3) ~~[-]~~ The Division or Board may ~~[in their discretion]~~ decline to issue declaratory orders where the:

(a) facts and issues presented are deemed ~~[to be]~~ conjectural, abstract, or insubstantial; or

(b) ~~[where the]~~ public interest ~~[would]~~ is best ~~[be]~~ served by not issuing an order.

R653-7-21. Emergency Orders.

The Division or Board may issue an order on an emergency basis without complying with ~~[these rules]~~ this rule under the circumstances and procedures set forth in Section ~~[63-46b-20]~~ 63G-4-502.

KEY: administrative procedure

Date of Last Change: ~~2023~~ February 18, 1998

Notice of Continuation: September 21, 2022

Authorizing, and Implemented or Interpreted Law: ~~[63-46b-4]~~ 63G-4-102; 63G-4-202

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R657-33	Filing ID: 55203
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Agency Information

1. Department:	Natural Resources
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Agency:	Wildlife Resources
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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:

R657-33. Taking Bear

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 bear.

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) allows hunters with valid bait permits to hunt over another hunter's bait site, with written permission from the COR holder; and 2) prohibits the use of chocolate or cocoa products as bait.

Fiscal Information

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

A) State budget:

The proposed rule amendments allows for additional opportunities to use approved bait sites, as well as prohibits the use of chocolate, the DWR has determined that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

B) Local governments:

Since the proposed amendments regulate the taking of bear, this filing does not create any direct cost or savings

impact to local governments. 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):

The proposed rule amendments do not have the potential to impact small businesses nor is a service required of them to implement the rule amendments.

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

The proposed rule amendments do not have the potential to impact non-small businesses nor is a service required of them to implement the rule amendments.

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

The proposed rule amendments do not have the potential to impact other persons that hunt bear in Utah, nor is a service required of them. The amendments are changes to hunting strategies and do not result in a fiscal impact.

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

The DWR has determined that this amendment may not create additional costs for those individuals wishing to hunt bear 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:

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a measurable fiscal impact to businesses. 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 23-14-18	Section 23-14-19	
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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: 03/17/2023

9. This rule change MAY become effective on: 03/24/2023

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:	01/18/2023
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R657. Natural Resources, Wildlife Resources.

R657-33. Taking Bear.

R657-33-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-13. Certificate of Registration Required for Bear Baiting.

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration for bear baiting are issued only to holders of limited entry permits authorizing the use of bait, as provided in the guidebook of the Wildlife Board for taking bear.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established by applying on the division website.

(4) A new certificate of registration must be obtained before moving a bait station. All materials used as bait must be removed from the old site before the issuing of a new certificate of registration.

(5) The following information must be provided to obtain a certificate of registration for baiting: a 1:24000 USGS quad map with the bait location marked, or the Universal Transverse Mercator (UTM) or latitude and longitude coordinates of the bait station, including the datum, type of bait used and written permission from the appropriate landowner for private lands.

(6)(a) Any person interested in baiting on lands administered by the Bureau of Land Management must verify that the lands are open to baiting before applying for and receiving a certificate of registration for bear baiting.

(b) Information on areas that are open to baiting on National Forests must be obtained from district offices.

(c) Issuance of a certificate of registration for baiting does not authorize an individual to bait if it is otherwise unlawful to bait under the regulations of the applicable land management agency.

(7) A handling fee must accompany the application.

(8) ~~[Only hunters]~~ A person may hunt over a bait station only if:

(a) the person is listed on the certificate of registration [may hunt over the bait station] and possesses the certificate of registration [must be] in [possession while hunting] the field; or

(b) possesses written permission from the certificate of registration holder to hunt over the bait station.

(9) Any person tending a bait station must be listed on the certificate of registration for that bait station.

R657-33-14. Use of Bait.

(1)(a) A person who has obtained a limited entry bear permit for a season and hunt unit that allows baiting may use firearms and archery equipment as provided in Section R657-33-6.

(b) Bear lured to a bait station may only be taken using firearms and archery equipment approved by the Wildlife Board and described in the guidebook for taking bear.

(c) A person may establish or use no more than two bait stations. The bait stations may only be used during periods designated in the guidebook for taking bear.

(d) Bear lured to a bait station may not be taken with dogs.

(e) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(f) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(g) A dog handler may not intentionally run dogs off a bait station while pursuing bear.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the persons, who are registered for that bait station harvest a bear.

(3) A person may:

(i) use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the guidebook of the Wildlife Board for Taking Fish and Crayfish[-];

(ii) ~~[No]~~ not use other species of protected wildlife [may be used] as bait; or

(iii) not use any chocolate or cocoa products as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate of brand inspection, bill of sale, or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail; or

(b) 1/2 mile of any permanent dwelling or campground.

KEY: wildlife, bear, game laws

Date of Last Change: 2023[May 2, 2022]

Notice of Continuation: October 31, 2022

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-2

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number:	R940-5	Filing ID: 55204
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Agency Information

1. Department:	Transportation Commission	
Agency:	Administration	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton Bldg	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov

James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R940-5. Approval of Highway Facilities on Sovereign Lands
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The Commission is revising this rule to bring it in line with its current processes and edit the text to conform to 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 Commission drafted, filed, and effectuated this rule in 2011, and it has had limited actual use to date. However, there is a conflict between this rule and the Department of Transportation's Rule R926-16, Unsolicited Proposals. If a person were to submit an unsolicited proposal for a Highway Facility on Sovereign Lands, they would have to follow both rules. The way this rule reads currently, that would be impossible. Changes to both rules will allow a person to comply with both rules and the applicable state statutes related to each rule. This approach allows us to comply with the Utah Code while not necessitating a Utah Code revision at the legislative level.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The Commission does not anticipate this proposed rule change will impact the state's budget because it changes an existing rule to make it more concise and practical, and more straightforward for the Commission to enforce.
B) Local governments:
The Commission does not anticipate this proposed rule change will impact the local governments' costs or savings because it changes an existing rule to make it more concise and practical, and more straightforward for the Commission to enforce.
C) Small businesses ("small business" means a business employing 1-49 persons):

The Commission does not anticipate this proposed rule change will impact small businesses' costs or savings because it changes an existing rule to make it more concise and practical and more straightforward for the Commission to enforce.

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

The Commission does not anticipate this proposed rule change will impact non-small businesses' costs or savings because it changes an existing rule to make it more concise, practical, and straightforward for the Commission to enforce.

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

The Commission does not anticipate this proposed rule change will impact persons other than small businesses, non-small businesses, state, or local government entities costs or savings because it changes an existing rule to make it more concise, practical, and straightforward for the Commission to enforce.

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

The Commission does not anticipate this proposed rule change will impact affected persons' costs or savings because it changes an existing rule to make it more concise and practical and more straightforward for the Commission to enforce.

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 Chair of the Transportation Commission, Naghi Zeenati, has reviewed and approved this fiscal analysis.			

Citation Information

6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 72-6-303		

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:	03/17/2023

9. This rule change MAY become effective on:	03/24/2023
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

Agency Authorization Information

Agency head or designee and title:	Carlos M. Bracerias, PE, Executive Director	Date:	01/24/2023
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R940. Transportation Commission, Administration.

R940-5. Approval of Highway Facilities on Sovereign Lands.

R940-5-1. Authority.

This rule is required and authorized by Section 72-6-303[and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act].

R940-5-2. Purpose.

(1) This rule establishes minimum guidelines for the Commission to consider when reviewing a proposed plan to construct a highway facility over sovereign lakebed lands as part of an application to lease sovereign land through the Division of Forestry, Fire and State Lands of the Department of Natural Resources, as provided in Section 65A-7-5.

(2) When considering a proposal to construct a highway facility over sovereign lakebed lands, the Commission must safeguard the public interest by thoroughly evaluating the financial viability of the project to ensure:

(a) the project can be constructed and completed as proposed;

(b) the project can be completed within the proposed time frame;

(c) the long-term viability and operability of the project by the proposer; and

(d) the facility meets current engineering standards for safety, design, construction, operation, and maintenance.~~When considering a proposed plan to construct a highway facility over sovereign lakebed lands, it is the obligation of the Utah Transportation Commission to safeguard the public interest by thoroughly evaluating the financial viability of the project to ensure the project can be constructed and completed as proposed, that the project can be completed within the proposed time frame, to ensure the long-term viability and operability of the project by the proposer, and to ensure that the facility is safe and meets current engineering standards for design, construction, operation, and maintenance.~~

(3) Commission approval of a plan to construct a highway facility over sovereign lakebed lands does not constitute approval of an application to lease state lands by the Division of Forestry, Fire and State Lands as provided under Section 65A-7-5. Issuance of surface leases of state lands is determined separately under a process determined by the Division of Forestry, Fire and State Lands as provided under state law and administrative rule.

R940-5-3. Definitions.

Except as otherwise stated in this rule, terms used in this rule are defined in Section 72-6-302. ~~[The following additional]~~In addition, the following terms are defined for this rule.

(1) "Commission" means the Utah Transportation Commission, created in Section 72-1-301.

(2) "Department" means the Utah Department of Transportation, created in Section 72-1-101.

(3) ~~["Proposed plan"]~~"Application" means a proposed plan submitted by a private entity to the Commission for approval to construct a highway facility over sovereign lakebed lands.

(4) "Proposer" means the private entity that ~~[submits an application]~~applies to the Commission.

R940-5-4. Submission of Proposed Plan and Application.

(1) The Commission may utilize the resources of the Department in receiving, reviewing, and evaluating an unsolicited proposal related to sovereign lakebed lands.~~The Commission may accept delivery of a proposed plan to construct a highway facility over sovereign lakebed lands as part of an application to lease sovereign land through the Division of Forestry, Fire and State Lands.~~

(2) The Commission may accept delivery by the Department of an application, including a proposed plan to construct a highway facility over sovereign land through the Division of Forestry, Fire and State Lands[proposer must submit a minimum of 20 copies of the proposed plan to the Commission.

(3) The proposed plan must be submitted to the Commission in a format that corresponds to the required information contained within this rule and must contain the specific information requested under this rule. Any supporting documentation not required under this rule may be submitted in an appendix].

(3) In addition to the requirements of Section 72-6-303 and this rule, the requirements outlined in Rule R926-16 Unsolicited Proposals for Transportation Infrastructure Public-Private Partnerships, will also apply if the application is related to an unsolicited proposal.

[R940-5-5. Preliminary Review of the Qualifications and Financial Resources of the Proposer.

(1) The Commission will conduct a preliminary review of the proposed plan to determine the qualifications and financial resources of the proposer.

(2) The proposer must submit the following information:

(a) a description of the legal structure of the proposer, including equity ownership structure of the entity;

(b) information on third-party consultants (five page limit per entity), including investment bankers, lawyers, engineers, traffic consultants and other entities that will provide information necessary for the submission of the proposed plan. Consultant information must include the contact information, experience and a brief biography of each individual consultant, and must describe the prior experience of similar projects for each consulting firm (the submission must contain a letter, printed on company letterhead and signed by an officer of the respective firm, stating that the firm has been retained by the proposer to do the scope of work required and detail the elements of the said scope);

(c) a maximum two page description of the physical elements of the proposed project;

(d) a maximum two page description of the permitting and environmental elements of the proposed project;

(e) a maximum five page description of the funding and finance plan for the proposed project;

(f) an explanation of whether the proposer plans to own the asset for at least the first 10 years of the operation. If not, provide a description of the proposer's plan to transfer or otherwise sell part or all of the asset to other entities;

(g) information describing the financial strength of the proposer, including:

(i) a comprehensive budget for the preliminary developmental elements of the proposed project, including but not limited to:

(A) preliminary design and engineering (30 percent);

(B) traffic and revenue study;

(C) financial plan and pro formas for the life of the project;

(D) independent engineer's report;

(E) permitting and other preliminary environmental work;

(F) proposer staff budget, including a list of the staff members and proposed budget;

(G) an estimate of the cost to review the proposed plan by the Utah Department of Transportation; and

(H) a timeline of the aggregated development budget payments, including all elements required through financial close;

(ii) proof of financial sufficiency showing that the proposer's corporate entity has sufficient funds to pay for the items listed in the comprehensive development budget and at the required times shown in the budget timeline. If development funds are to come from third parties, present proof of financial sufficiency for those entities;

(h) a statement whether the proposer will indemnify the state and what resources are at the proposers disposal to backstop the indemnification;

(i) terms the proposer seek from the state for the sovereign state lands impacted by the proposed plan;

(j) the type and amount of insurance that will be carried by the proposer.

R940-5-6. Final Review of Final Statement of Qualifications and Financial Resources, and Final Review of Technical Proposal.

(1) As specified under section 72-6-303, the proposer must submit the following information:

(a) a map indicating the location and legal description of the highway facility and all proposed interconnections with other highway facilities;

(b) a description of the highway facility, including the conceptual design of the highway facility and a statement whether the facility will be operated and maintained as a tollway facility;

(c) a list of the major permits and approvals required for developing or operating improvements to the highway facility from local, state or federal agencies and a projected schedule for obtaining the permits and approvals;

(d) a description of the types of public utility facilities, if any, that will be crossed by the highway facility and a statement of the plans to accommodate the crossing;

(e) a description of the types of public utilities used, carried, or accommodated by the highway facility and a statement of the plans to use, carry or accommodate the public utilities;

(f) an estimate of the design and construction costs of the highway facility;

(g) a statement setting forth the private entity's general plans for constructing, operation, and maintaining the highway facility, including:

(i) the proposed date for development, operation, or both of the highway facility;

(ii) the proposed term of the lease over sovereign lakebed lands; and

(iii) a demonstration by the private entity that the proposed plan is financially viable;

(h) the names and addresses of the persons who may be contacted for further information concerning the highway facility application.

(i) demonstration that the proposed highway facility is contained within the long range highway plan prepared by the Department or by a metropolitan planning organization, including the visionary long range highway plan.

(j) a statement whether or how the highway facility can safely accommodate recreational fishing or other recreational activities on the highway facility.

(2) The commission also requires the following information:

(a) a copy of the agreement entered into by the Department and the proposer, pursuant to Section 72-6-303, demonstrating that the proposed construction plan meets engineering and design standards specified by the Department, including authorization for

the Department to assure the safety of the design, construction, operation, and maintenance of the facility;

~~(b) proof of a performance bond issued for the project pursuant to the provisions of Section 63G-6-505 and 507;~~

~~(c) verification of executed steps identified in the funding and finance plan required and submitted as part of the Preliminary Review required under R940-5-5 necessary to complete proof of financial strength of the proposed plan (for example, if the funding and finance plan submitted under the Preliminary Review states that the proposer would have a letter of credit available for a portion of the funding and financing plan, and the proposer had demonstrated during the Preliminary Review that such proof is available, the Commission will likely require the letter of credit executed and delivered as part of Final Review required under this part);~~

~~(d) final submission of information requested by the Commission under the Preliminary Review; and~~

~~(e) any additional information required by the Commission and posted by the Commission on the Department's website necessary to determine the feasibility and financial viability of the proposal.~~

R940-5-7. Review of Proposal.

~~(1) As part of the Commission review of a proposed plan to construct a highway facility over sovereign lakebed lands, the Commission will consider the public interest to ensure the proposed plan is feasible, financially viable, and that the facility is safe by meeting current engineering standards. At the same time, the Commission will provide timely review of the proposed plan to help meet business time lines and provide greater certainty for the proposer.~~

~~(2) The Commission reserves the right to require or permit the proposer to submit revisions, clarifications, or supplementals of the proposal during the review process.~~

~~(3) The Commission may appoint a committee of its members to evaluate a proposal for recommendation to the full Commission.~~

~~(4) The Commission shall consider recommendations made by the Department, including whether the highway construction plan contained within the proposal meets engineering and design standards outlined in an agreement entered into by the Department and the proposer.~~

~~(5) The Commission may, at any time in its sole discretion, refuse to review an application if the proposal fails to meet the guidelines established in Section 72-6-303 and this rule.]~~

R940-5-5. Review of the Qualifications and Financial Resources of the Proposer.

(1) An application must include specific qualifications and details, including the requirements outlined in Subsection 72-6-

303(3) in addition to requirements outlined in Rule R926-16 Unsolicited Proposals for Transportation Infrastructure Public-Private Partnerships.

(2) The Department will review each application to ensure compliance with Subsection 72-6-303(3) and Section 63G-6a-712 in addition to requirements outlined in Rule R926-16.

(3) As part of the review of a proposed plan to construct a highway facility over sovereign lakebed lands, the Department and Commission will consider the public interest to ensure the proposed plan is feasible, financially viable, and that the facility is safe by meeting current engineering standards.

(4) The Commission may require or permit the proposer to submit revisions or clarifications or supplement the application during the review process.

(5) The Commission shall consider recommendations made by the Department, including whether the highway construction plan contained within the application meets engineering and design standards outlined in an agreement entered into by the Department and the Proposer.

(6) The Commission may, in its sole discretion, refuse to review an application if the proposal fails to meet the guidelines established in Section 72-6-303 and this rule.

R940-5-[8]6. Approval of Proposed Plan.

(1) The Commission shall not approve [any proposal]an application until the Department has conducted its review and evaluation and presented its recommendation to the Commission, and the [proposer]proposer has [entered into an agreement]agreed with the Department as required in Section 72-6-303.

(2) If the Commission approves an application[a proposal]:

(a) it will give a notice [will be given]to the proposer;

(b) it will post the notice [will be posted]on the Department's website; and

(c) it will deliver a copy of the notice [will be given]to the Division of Forestry, Fire and State Lands.

KEY: highway, construction, lakebed, sovereign lands, transportation, public-private partnerships, unsolicited proposals

Date of Last Change: 2023[September 15, 2011]

Notice of Continuation: December 19, 2019

Authorizing, and Implemented or Interpreted Law: 72-6-303

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends March 17, 2023.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through June 15, 2023, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

NOTICE OF CHANGE IN PROPOSED RULE		
Rule or Section Number:	R307-313	Filing ID: 55040
Date of Previous Publication:	12/01/2022	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Ryan Bares		rbares@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R307-313. VOC and Blue Smoke Controls for Hot Mix Asphalt Plants
3. Reason for this change (Why is the agency submitting this filing?):
Changes were made to the proposed rule because of comments received during the comment period.
4. Summary of this change (What does this filing do?):
The changes are: 1) the annual production applicability threshold was increased from 75,000 to 250,000 tons per year, 2) clarifying language was added to the warm mix asphalt exemptions found in Section R307-313-5 and moved to the Section R307-313-2, 3) language was added exempting visibility requirements during tank filling, and 4) the compliance schedule was extended from 05/01/2023 to 05/01/2025. (EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the December 1, 2022, issue of the Utah State Bulletin, on page 81. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the

CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

These changes to the proposed rule are not expected to create additional costs or savings for state government because these plants are already permitted and inspected under existing rules. Inspectors will be able to confirm compliance as part of normal inspection processes.

It is possible that the cost of implementing controls could be passed on to the consumer of asphalt products, of whom the Utah Department of Transportation is a large customer. However, these impacts can not be measured or are unknown at this time.

B) Local government:

These changes to the proposed rule will have no impact on local governments because it does not apply to them.

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

These changes to the proposed rule are not expected to have a fiscal impact on small businesses since Hot Mix Asphalt (HMA) plants operating in the relevant counties are owned and operated by a business with more than 50 employees.

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

No additional impact will occur to non-small businesses as a result of these changes to the proposed rule. However, the changes proposed in Rule R307-313 will increase the applicability threshold of controls on for plants from 75,000 tons per year to 250,000 tons per year, decreases the number of facilities expected to be impacted by the rule to 13 plants.

Thus, the regulatory impacts are lower compared to impacts originally identified, which is reflected in the regulatory impact table below. The fiscal impacts identified when Rule R307-313 was proposed for public comment have also been delayed two years due to the proposed extension of the compliance schedule to 2025. Depending on when impacted businesses begin to implement controls, some of the identified cost may be implemented in FY24, but it is not known at this time when each individual source will install controls and how those costs may be spread out over time.

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

These changes to the proposed rule are not expected to have a fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because it does not apply to them.

F) Compliance costs for affected persons:

No additional compliance costs are expected as a result of these changes to the proposed rule.

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

Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$6,643,975
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	(\$6,643,975)

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

The Executive Director of the Department of Environmental Quality, Kim D. Shelly, 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 19-2-104

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: 03/17/2023

9. This rule change MAY become effective on: 03/24/2023

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:	Bryce C. Bird, Director	Date:	01/24/2023
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R307. Environmental Quality, Air Quality.

R307-313. VOC and Blue Smoke Controls for Hot Mix Asphalt Plants.

R307-313-1. Purpose.

Rule R307-313 establishes emission controls and work practice standards for the emissions of blue smoke and volatile organic compounds (VOC) from hot mix asphalt plants and associated oil storage tanks.

R307-313-2. Applicability.

Rule R307-313 applies to stationary hot mix asphalt plants and their associated oil storage tanks located in Salt Lake, Davis, Weber, Utah, and Tooele counties with an annual production level greater than or equal to ~~75,000~~ 250,000 tons of hot mix asphalt per rolling 12-month period. Warm mix asphalt production shall not be included in the applicable annual production level in Rule R307-313.

R307-313-3. Definitions.

Terms defined in Section R307-312-3 also apply to this rule.

"Blue smoke" means a mixture of visible emissions and VOC emissions from HMA plants that results from the process of mixing hot oil with aggregate.

NOTICES OF CHANGES IN PROPOSED RULES

"Dryer" means a piece of machinery where aggregate is dried and heated during the asphalt manufacturing process, usually drum or cylinder shaped.

"Load out" means an area used for the loading of material from a silo or a batch tower into a truck or train or other means of transport, often located under a silo.

"Silo" means a tower used to store material.

"Storage tank" means any storage vessel where oils are heated and stored before mixing with aggregate.

"Warm mix asphalt" means asphalt produced at a temperature at or below 275 degrees F (135 degrees C).

R307-313-4. Blue Smoke and VOC Emissions from Hot Mix Asphalt Plants.

(1) The owner or operator shall install emission capture and control systems that capture and reduce blue smoke emissions from dryers, conveyors, silos, and load out areas. The owner or operator shall operate emission capture and control systems at all times during the production of ~~hot mix~~ asphalt products. Emission capture and control systems shall also reduce VOC emissions from captured blue smoke as verified by the manufacturer of control systems ~~upon installation~~.

(2) Visible emissions from emission points subject to Section R307-313-4 shall not exceed 10% opacity ~~[limits of 10% at emission points covered by Section R307-313-4]~~ as measured according to 40 CFR 60, Appendix A, Method 9.

~~[(3) Owners or operators whose production consists entirely of warm mix asphalt shall be exempt from the provisions in Section R307-313-4.]~~

R307-313-5. VOC Emissions from Storage Tanks.

(1) Storage tanks shall be equipped with VOC capture and control systems such as a condenser and a carbon-filled vessel which shall reduce VOC emissions as verified by the manufacturer of capture and control systems ~~upon installation~~.

(2) All seals and gaskets associated with tanks and capture and controls system shall be properly maintained to prevent leaks in

accordance with manufacture recommendations. Properly maintained includes, no visible holes, tears, or other openings in any seal.

~~(3) Except during time of tank filling, [E]~~emission points subject to Section R307-313-5 shall operate with no visible emissions as measured according to 40 CFR 60, Appendix A, Method 9.

R307-313-6. Recordkeeping.

(1) The owner or operator shall:

(a) Retain a copy of the manufacturer's recommendations for proper operation and maintenance of equipment in Sections R307-313-4 and R307-313-5.

(b) Establish a plan for scheduled maintenance based upon these recommendations.

(c) Maintain records showing proper operation and maintenance of equipment in accordance with the manufacturer's recommendations for equipment referenced in Sections R307-313-4 and R307-313-5.

(d) Maintain records of annual production of hot mix asphalt ~~[the temperature at which asphalt products were produced]~~.

(e) Maintain records of annual production of warm mix asphalt products, and the temperature at which products were produced.

(2) These records shall be stored for at least 2 years and shall be made available to the director upon request.

R307-313-7. Compliance Schedule.

The owners and operators of hot mix asphalt plants subject to Rule R307-313 shall comply with Rule R307-313 by May 1, 20~~23~~25.

KEY: air pollution, volatile organic compounds, VOC, hot mix asphalt, asphalt, aggregate, blue smoke

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 19-2-104

End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([~~example~~]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE

Rule or Section Number:	R270-1-25	Filing ID: 55215
Effective Date:	02/01/2023	

Agency Information

1. Department:	Crime Victim Reparations	
Agency:	Administration	
Street address:	350 E 500 S	
City, state and zip:	Salt Lake City, UT 84111	
Contact persons:		
Name:	Phone:	Email:
Gary Scheller	801-227-9375	garys@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R270-1-25. Victim Services

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

The emergency assistance funding that the Crime Victim Reparations Advocacy Center receives in its federal grant has been depleted due to a reduction in the federal grant funds that support the program. The emergency assistance funds are critical to the health and safety of crime victims. The Crime Victim Reparation and Assistance (CVRA) board has determined there is an adequate balance in the CVR trust account and it finds that the emergency assistance funds for the advocacy center are the most appropriate use of the funds. The CVR Advocacy Center was not in existence when Section R270-1-25 was adopted by the CVRA board, and it was not contemplated at that time that the center could receive a victim service award from the CVRA board. The amendment to this rule facilitates that ability.

4. Summary of the new rule or change (What does this filing do?):

The CVRA board has the ability to award victim services awards to victim service programs under certain conditions. This rule adds victim service programs managed by the office to the victim service programs eligible to receive a victim service award from the CVRA Board when the required circumstances have been met.

5A) The agency finds that regular rulemaking would:

- | | |
|---|---|
| X | cause an imminent peril to the public health, safety, or welfare; |
| | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| | place the agency in violation of federal or state law. |

B) Specific reasons and justifications for this finding:

The current program was established to provide emergency assistance to victims for costs that are not available through the reparation program.

The assistance to victims helps pay for safe shelter and sustenance for those at risk of homelessness, who are not immediately eligible for alternative assistance programs. The program acts as a safety net for adults and children with emergency safety needs following a criminal incident. It was originally set up with VOCA dollars which are no longer available as a funding source due to significant federal grant decreases.

This rule change will allow the board to allocate critical funding to replace the loss in federal grant dollars. Without a change in this rule, the Utah Office for Victims of Crime (UOVC) will no longer be able to provide assistance beyond a few more weeks. This will leave many victims in Utah in immediate risk of physical safety and even death if they are not able to find safe shelter apart from their abuser/offender.

Fiscal Information**6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The CVRA Board has determined that it would allow the transfer of \$75,000 from the CVRA fund to the CVR Advocacy Center for use exclusively within the emergency assistance category of that program. There will not be any impact on the state budget as the funding has already been appropriated and will be taken from the crime victim trust fund.

B) Local governments:

Any budget impact to local governments would be a savings by this program covering costs that it might otherwise experience. The UOVC does not yet know exactly who will apply for this funding or what their exact needs will be so the UOVC cannot provide a numerical estimate.

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

Small businesses such as landlords, moving companies, grocery stores, etc. are the likely end recipient of these funds because these are the types of goods and services most frequently purchased with the emergency assistance funds. The UOVC does not yet know exactly who will

apply for this funding or what their exact needs will be so the UOVC cannot provide a numerical estimate.

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

Persons meeting similar criteria as those mentioned in Box 6C, may also benefit. The UOVC does not yet know exactly who will apply for this funding or what their exact needs will be so the UOVC cannot provide a numerical estimate.

E) 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 any entity will have any compliance costs. The CVR Advocacy Program has existing accounting and accountability processes and abilities.

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

The UOVC has supported this and requested the change be authorized by the CVRA Board of Directors.

The director has taken the action in an attempt to eliminate the imminent peril to the public health and safety. This rule will have positive impacts on persons, small businesses and is in the interest of state and local governments.

The UOVC does not yet know exactly who will apply for this funding or what their exact needs will be so the UOVC cannot provide a numerical estimate. Gary Scheller, Director

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

Subsection 63M-7-506(1)(c)	Subsection 63M-7-506(1)(i)	Subsection 63M-7-526(1)(c)
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Agency Authorization Information

Agency head or designee and title:	Gary Scheller, Director	Date:	02/01/2023
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R270. Crime Victim Reparations, Administration.**R270-1. Award and Reparation Standards.****R270-1-25. Victim Services.**

(1) Pursuant to Subsection 63M-7-506(1)(i), the board may authorize the program when there is a surplus of money in the fund in addition to what is necessary to pay reparations awards and associated administrative costs for the upcoming year.

(2) When the program is authorized, the board[
~~(a)~~] shall determine the amount available for the program
for that year[
~~(b)~~ ~~shall~~ and may:

(a) announce the availability of program funds through a
request for proposals or other similar competitive process approved
by the board[~~and~~]

[~~(c)~~ ~~may~~](b) establish funding priorities and shall include
any priorities in the announcement of funds[~~or~~]

(c) make an award to a qualified victim services program
managed by the office.

(3) Requests for funding shall be submitted on a form
approved by the board.

(4) The board shall establish a process to review requests
for funding and shall make final decisions regarding the approval,
modification, or denial of requests for funding. The board may award
less than the amount determined in Subsection R270-1-25(2)(a). The
decisions of the board may not be appealed.

(5) An award by the board shall not constitute a
commitment for funding in future years. The board may limit
funding for ongoing projects.

(6) Award recipients shall submit quarterly reports to the
board on forms established by the director. The office staff shall
monitor victim services grants and provide regular reports to the
board.

KEY: victim compensation, victims of crimes

Date of Last Change: February 1, 2023~~December 22, 2021~~

Notice of Continuation: March 16, 2021

Authorizing, and Implemented or Interpreted Law: Title 63M,
Chapter 7, Part 5

NOTICE OF EMERGENCY (120-DAY) RULE

Rule or Section Number:	R410-14	Filing ID: 55224
Effective Date:	02/01/2023	

Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Financing	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact persons:		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

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

General Information

2. Rule or section catchline:

R410-14. Administrative Hearing Procedures

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 update the new agency name and hearing provisions to coincide with the merger of the Department of Health and the Department of Human Services.

4. Summary of the new rule or change (What does this filing do?):

This amendment updates the new agency name, and with the merger, clarifies the role of the Department of Workforce Services in regard to hearing procedures and the hearings appeals process. It also makes other technical changes.

(EDITOR'S NOTE: A corresponding proposed amendment is under ID 55225 in this issue, February 15, 2023, of the Bulletin.)

5A) The agency finds that regular rulemaking would:

- ☐ cause an imminent peril to the public health, safety, or welfare;
- ☐ cause an imminent budget reduction because of budget restraints or federal requirements; or
- ☒ place the agency in violation of federal or state law.

B) Specific reasons and justifications for this finding:

S.B. 45 from the 2022 General Session implements the Department of Health and Human Services (Department) reorganization and includes the Department's vital function of administrative hearings. This emergency rule is subsequent to that bill and state law, Section 26B-1-201. In accordance with Section 26B-1-201, this amendment coincides with federal approval of a state plan amendment that combines the Department of Health and the Department of Human Services as a single state agency, and implements new hearing procedures. The state plan amendment was not approved at the federal level until 12/22/2022. Since, the Department has worked to finalize these emergency amendments and the subsequent standard amendments.

Fiscal Information

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

A) State budget:

There is no impact to the state budget as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

B) Local governments:

There is no impact on local governments as they neither fund nor provide services under the Medicaid program.

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

There is no impact on small businesses as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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

There is no impact to other persons or entities as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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

There are no compliance costs to a single person or entity as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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

Businesses will see no fiscal impact as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers. Tracy S. Gruber, Executive Director

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

Section 26B-1-204 Section 26B-1-213 Section 26-18-3

Agency Authorization Information

Agency head or designee and title:	Tracy S. Gruber, Executive Director	Date:	02/01/2023
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R410. Health and Human Services, Health Care Financing.**R410-14. Administrative Hearing Procedures.****R410-14-1. Introduction and Authority.**

(1) This rule sets forth the administrative hearing procedures for the Division of ~~Medicaid and Health Financing~~ Integrated Healthcare.

(2) ~~This rule is authorized by~~ Section 26B-1-204, Section 63G-4-102, 42 U.S.C. 1396a(a)(3), and 42 CFR 431, Subpart E authorize this rule.

R410-14-2. Definitions.

(1) The definitions in Rule R414-1 and Section 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means:

(i) a denial, termination, suspension, or reduction of medical assistance for a ~~recipient~~ member;

(ii) a reduction, denial or revocation of reimbursement for services for a provider;

(iii) a denial or termination of eligibility for participation in a program, or as a provider;

(iv) a determination by skilled nursing facilities and nursing facilities to transfer or discharge residents;

(v) an adverse determination, as defined in Subsection ~~[R410-14-2]~~(2)(b);

(vi) an adverse benefit determination as defined in Subsection R410-14-20(2)(a); or

(vii) placement of a Medicaid enrollee on the restriction program.

(b) "Adverse determination" means a determination made in accordance with Subsection[s] 1919(b)(3)(F) or Subsection 1919(e)(7)(B) of the Social Security Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

(c) "Agency" means Division of ~~Medicaid and Health Financing (DMHF)~~ Integrated Healthcare (DIH) within the Department of Health ~~the Department of~~ and Human Services (DHHS), the Department of Workforce Services (DWS), or any managed health care organization (MCO) that has conducted or performed an action as defined in this rule.

(d) "Aggrieved person" means any ~~recipient~~ member, enrollee, or provider who is affected by an action of an agency.

(e) "CHEC" means Child Health Evaluation and Care program, which is Utah's version of the federally mandated Early and Periodic Screening, Diagnosis ~~is~~ and Treatment (EPSDT) Medicaid child health program.

(f) "De novo" means anew, or considering the question of a case for the first time.

(g) ~~["DHS"]~~ "Department" means the Department of Health and Human Services (DHHS).

~~["DOH"]~~ means the Department of Health.

~~["DWS"]~~ "DWS" means the Department of Workforce Services.

~~["Agency"]~~ "Eligibility ~~[A]~~ agency" means DWS, ~~or~~ DHHS, or any entity the ~~[A]~~ agency contracts with to determine medical assistance eligibility.

~~["Ex parte"]~~ "Ex ~~[P]~~ parte" communications mean direct or indirect communication in connection with an issue of fact or law between the hearing officer and one party only.

~~["Grievance"]~~ "Grievance" means an expression of dissatisfaction about any matter other than an action as defined in this rule. Grievances may include ~~but are not limited to~~ the quality of care of services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee or failure to respect the rights of an enrollee of a ~~[MCO]~~ managed care organization (MCO).

~~["Grievance system"]~~ "Grievance system" means the overall system that includes grievances and appeals handled by an MCO and access to the administrative hearing process set out in this rule.

~~["Hearing officer"]~~ "Hearing ~~[O]~~ officer" means solely any person designated by the ~~D[MHF]IH~~ Director to conduct administrative hearings pursuant to this rule.

((e)n) "Managed [C]care [O]rganization" [or "MCO"] means a health maintenance organization, a prepaid mental health plan, or a dental managed care plan that contracts with D[DMHF]DIH to provide health, behavioral health, or oral health services to Medicaid or Children's Health Insurance Program [CHIP-recipients]members.

((p)o) "Medical record" means a record that contains medical data of a medical assistance [recipient]member or enrollee.

((e)p) "Provider" means any person or entity that is licensed and otherwise authorized to furnish health care to medical assistance [recipients]members or medical assistance MCO enrollees.

((f)q) "Order" means a ruling by a hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

((s)l) "Scope of service" means medical, oral, or behavioral health services set out under R414 as a covered benefit.

((t)s) "State fair hearing" means an administrative hearing conducted pursuant to this rule.

R410-14-3. Administrative Adjudicative Procedures.

(1) Except as provided in this rule or as otherwise designated by rule or statute or converted pursuant to Subsection 63G-4-202(3), all adjudicative proceedings conducted pursuant to this rule are informal proceedings.

(2) [~~Request for Agency Action.~~]An aggrieved person may file a written request for agency action pursuant to [Utah Code Ann.]Section 63G-4-201, and in accordance with this rule.

(a) A provider may file a written request for agency action without the consent of the [recipient]member or MCO enrollee if the request for agency action pertains to the denial of an authorization for service or a denial of payment on a claim.

(b) A provider may not file a request for agency action if the request for agency action pertains to the denial, change, or termination of eligibility of a member or enrollee for a medical assistance program.

(3) If a medical issue is in dispute, each request [shall]must include supporting medical documentation. [DMHF]DIH [shall]may schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.

[~~-----~~ (4) Notice of Agency Action.]

((a)4) An agency shall provide a written notice of action to each aggrieved person. [Such]These actions include[~~but are not limited to~~]:

((i)a) eligibility for assistance;

((i)b) scope of service;

((i)c) denial or limited prior authorization of a requested service including the type or level of service; and

((i)d) payment of a claim.

((b)5) The notice must include:

((i)a) a statement of the action the agency intends to take;

((i)b) the date the intended action becomes effective;

((i)c) the reasons for the intended action;

((i)d) the specific regulations that support the action, or the change in federal law, state law or [DMHF]DIH policy which requires the action;

((i)e) the right to request a hearing;

((i)f) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and

((i)g) if applicable, an explanation of the circumstances under which reimbursement for medical services will continue or may be reinstated pursuant to this rule.

((e)6) The agency shall mail the notice at least 10 calendar days before the date of the intended action except:

((i)a) the agency may mail the notice not later than the date of action in accordance with 42 CFR 431.213;

((i)b) the agency may shorten the period of advance notice to five days before the date of action if it has facts that indicate it must take action due to probable fraud by the [recipient]member or provider and the facts have been verified by affidavit.

R410-14-4. Hearings.

(1) [DMHF]DIH shall conduct informal hearings for [all] issues except those specifically designated as formal hearings pursuant to this rule. The hearing officer may convert the proceeding to a formal hearing if an aggrieved person requests a hearing that meets the criteria set forth in Section 63G-4-202.

(2) If a hearing under this rule is converted to a formal hearing pursuant to Section 63G-4-202, the formal hearing [shall]must be conducted in accordance with these [rules]criteria except as otherwise provided in Sections 63G-4-204 through 63G-4-208 or other applicable statutes.

(3) [DMHF]DIH shall conduct a hearing in connection with an agency action if the [A]aggrieved [P]person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the hearing officer may deny a request for an evidentiary hearing and issue a recommended decision without a hearing based on the record. In the recommended decision, the hearing officer shall specifically set out all material and relevant facts [that are]not in dispute.

(4) There is no disputed issue of fact if the [A]aggrieved [P]person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(5) If the [A]aggrieved [P]person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

(6) An MCO may not require an [A]aggrieved [P]person to utilize arbitration or mediation in order to resolve an [A]action. An [A]aggrieved [P]person may file a request for hearing relating to an [A]action regardless of any contractual provision with an MCO [which]that may require arbitration or mediation.

(7) The hearing officer may not grant a hearing if the issue is a state or federal law requiring an automatic change in eligibility for medical assistance or covered services that affect the [A]aggrieved [P]person.

R410-14-5. Request for Hearing.

(1) An aggrieved person shall request a hearing by submitting the request on the [DMHF]DIH "Request for Hearing/Agency Action" form. The aggrieved person must then [mail or fax]submit the form [to the address or fax number]by mail, fax, or other electronic means as [contained]directed on the Notice of Agency Action or Request for Hearing Form. The request must explain why the aggrieved person is seeking agency relief.

(2) Except as set forth in Section R410-14-20, hearings must be requested within the following deadlines:

(a) [A]a medical assistance provider or [recipient]member must request a hearing within 30 calendar days from the date that [DMHF]DIH sends written notice of its intended action.

(b) [A]a medical assistance [recipient]member must request a hearing with DWS regarding eligibility for medical assistance within 90 calendar days from the date [that]the agency sends written notice of its intended action.

NOTICES OF 120-DAY (EMERGENCY) RULES

(c) ~~[A]~~a medical assistance ~~[recipient]~~member must request a hearing with ~~[DMHF]~~DIH regarding a determination of disability for the purposes of medical assistance eligibility within 90 calendar days from the date that ~~[DMHF]~~DIH sends written notice of its intended action.

(d) ~~[A]~~a medical assistance ~~[recipient]~~member must request a hearing regarding approval or denial of a scope of service within 30 calendar days from the date the agency sends written notice of its intended action.

(3) A hearing request that an aggrieved person sends via mail is deemed filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the request is deemed filed on the date ~~[that]~~the agency receives it, unless the sender can demonstrate ~~[through competent evidence of]~~the mailing date through competent evidence.

(4) Failure to submit a timely request for a hearing constitutes a waiver of an individual's due process rights.

(5) ~~[DMHF]~~DIH may dismiss a request for a hearing if the ~~[A]~~aggrieved ~~[P]~~person:

- (a) withdraws the request in writing;
- (b) verbally withdraws the hearing request at a prehearing conference;
- (c) fails to appear or participate in a scheduled proceeding without good cause;
- (d) prolongs the hearing process without good cause;
- (e) cannot be located or agency mail is returned without a forwarding address; or
- (f) does not respond to any correspondence from the hearing officer or fails to provide medical records that the agency requests.

R410-14-7. Notice of Hearing.

(1) The agency shall notify the aggrieved person or representative in writing of the date, time, and place of the hearing, and shall mail the notice at least 10 calendar days before the date of the hearing unless all parties agree to an alternative time frame. All aggrieved persons must inform the agency of a current address and telephone number.

(2) If ~~[DMHF]~~DIH must provide notice of a hearing, the notice becomes effective on the date of first class mailing to the party's address of record.

R410-14-8. Prehearing Procedures.

(1) ~~[DMHF]~~DIH shall schedule a preliminary conference, or begin negotiations in writing, within 30 calendar days from the date it receives the request for a hearing or agency action.

(2) The hearing officer may elect to conduct a preliminary conference to:

- (a) formulate or simplify the issues;
- (b) obtain admissions of fact and documents that will avoid unnecessary proof;
- (c) arrange for the exchange of proposed exhibits or prepared expert testimony;
- (d) outline procedures for the hearing; or
- (e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The hearing officer may request a review of the medical record by a ~~[DMHF]~~DIH CHEC_~~[4]~~Utilization Review committee to evaluate the medical necessity of benefits or services under dispute. The committee's recommendation is not binding, but may be admitted as evidence and included in the hearing record. If a party to the proceeding objects to the committee's determination, a

representative of the committee ~~[shall]~~must be ~~[made]~~available at the hearing for examination by the hearing officer and the parties.

(4) The hearing officer may require the parties to submit a prehearing position statement setting forth the parties' positions.

(5) The parties may enter into a written stipulation during the preliminary conference or at any time during the process.

(6) Ex parte communications with the hearing officer are prohibited. If a party attempts ex parte communication, the hearing officer shall inform the offeror that any communication ~~[that]~~the hearing officer receives off the record, will become part of the record and furnished to all parties. Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

(7) The agency shall allow the aggrieved person or a representative to examine all ~~[DMHF]~~DIH documents and records upon written request to ~~[DMHF]~~DIH at least three days before the hearing.

(8) A party may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(a) The agency may request copies of pertinent records in the possession of a party and the ~~[recipient's]~~member's health care providers. In the event the ~~[recipient]~~member or provider fails to produce the records within a reasonable time, ~~[DMHF]~~DIH may review all pertinent records in the custody of the ~~[recipient]~~member or provider during regular working hours after three days of written notice.

(b) The ~~[recipient]~~member shall submit medical records with the hearing request whenever possible. Necessary medical records include:

- (i) the provision of each service and activity addressed in the hearing request;
- (ii) the first and last name of the party;
- (iii) the reason for performing the service or activity that includes the party's complaint or symptoms;
- (iv) the ~~[recipient's]~~member's medical history;
- (v) examination findings;
- (vi) diagnostic test results;
- (vii) the goal or need ~~[that]~~the plan of care identifies; and
- (viii) the observer's assessment, clinical impression, or diagnosis that includes the date of observation and identity of the observer.

(c) The medical records must demonstrate that the service is:

- (i) medically necessary;
- (ii) consistent with the diagnosis of the ~~[recipient's]~~member's condition; and
- (iii) consistent with professionally recognized standards of care.

(9) The hearing officer may require each party to file a signed prehearing disclosure form at least 10 calendar days before the scheduled hearing that identifies:

- (a) fact witnesses;
- (b) expert witnesses; and
- (c) exhibits and reports the parties intend to offer into evidence at the hearing.

(10) Each party shall supplement the disclosure form with information that becomes available after filing the original form.

R410-14-9. Form and Service of Papers.

(1) Any document that a party files with [DMHF]DIH in a proceeding must:

- (a) be typed or legibly written;
- (b) bear a caption that clearly shows the title of the hearing;
- (c) bear the docket number, if any;
- (d) be dated and signed by the party or the party's authorized representative; and

(e) contain the address and telephone number of the party or the party's authorized representative.

(2) The party that files a document with [DMHF]DIH shall also serve a copy of the document to all parties to the proceeding or their representatives and file a proof of service with [DMHF]DIH that consists of a certificate of service.

(3) A document may be served by mail, fax, or email address to the party's address or phone number on record with the agency.

(4) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

R410-14-10. Conduct of Hearing.

(1) The agency shall conduct hearings in accordance with Section 63G-4-203 on a de novo basis.

(2) [DMHF]DIH shall appoint an impartial hearing officer to conduct hearings. Previous involvement in the initial determination of the action precludes an officer from appointment.

(3) Telephonic hearings will be held at the discretion of the hearing officer.

(4) The Department is not responsible for any travel costs incurred by the member in attending an in-person hearing.

(5) The hearing officer shall take testimony under oath or affirmation.

(6) Each party has the right to:

- (a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;
- (b) introduce exhibits;
- (c) impeach any witness regardless of which party first called the witness to testify; and
- (d) rebut the evidence against the party.

(7) Each party may admit any relevant evidence and use hearsay evidence to supplement or explain other evidence as may be required for full disclosure of all facts relevant to the disposition of the hearing. Hearsay, however, is not sufficient by itself to support a finding unless admissible over objection in civil actions. The hearing officer shall give effect to the rules of privilege recognized by law and may exclude irrelevant, immaterial, and unduly repetitious evidence.

(8) The hearing officer may question any party or witness.

(9) The hearing officer shall control the evidence to obtain full disclosure of the relevant facts and to safeguard the rights of the parties. The hearing officer may determine the order in which ~~he~~ the officer receives the evidence.

(10) The hearing officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly, or disruptive conduct. The hearing officer may remove any person, including a participant from the hearing, to maintain order. If a person shows persistent disregard for order and procedure, the hearing officer may:

- (a) restrict the person's participation in the hearing;
- (b) strike pleadings or evidence; or
- (c) issue an order of default.

(11) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the hearing officer at no cost to the agency.

(12) The party who initiates the hearing process through a request for agency action has the burden of proof as the moving party.

(13) When a party possesses, but fails to introduce certain evidence, the hearing officer may infer that the evidence does not support the party's position.

R410-14-12. Record.

(1) The hearing officer shall make a complete record of ~~all~~ hearings. A hearing record is the sole property of [DMHF]DIH and [DMHF]DIH shall maintain the complete record in a secure area.

(2) Proceedings other than hearings may be recorded at the discretion of the hearing officer.

(3) If a party requests a copy of the recording of a hearing, that party may transcribe the recording at the party's sole cost.

(4) [DMHF]DIH or its designated agent shall retain recordings of all hearings for a period of one year.

(5) [DMHF]DIH shall retain written records of all hearings for a period of 10 years pending further litigation.

R410-14-14. Proposed Decision and Final Agency Review.

(1) At the conclusion of the hearing, the hearing officer shall take the matter under advisement and submit a recommended decision to the [DMHF]DIH Director or the director's designee. The recommended decision is based on the testimony and evidence entered at the hearing, Medicaid policy and procedure, and legal precedent.

(2) The recommended decision must contain findings of fact and conclusions of law.

(3) The [DMHF]DIH Director or the director's designee may:

- (a) adopt the recommended decision or any portion of the decision;
- (b) reject the recommended decision or any portion of the decision, and make an independent determination based upon the record; or
- (c) remand the matter to the hearing officer to take additional evidence, and the hearing officer thereafter shall submit to the [DMHF]DIH director or the director's designee a new recommended decision.

(4) The director or designee's decision constitutes final administrative action and is subject to judicial review.

(5) [DMHF]DIH shall send a copy of the final administrative action to each party or representative and notify them of their right to judicial review.

(6) The parties shall comply with a final decision from the director reversing the agency's decision within 10 calendar days.

(7) The ~~DOH~~ DHHS Executive Director shall review all recommended decisions to determine approval of medical assistance for an organ transplant. The ~~E~~ executive ~~D~~ director's decision constitutes final administrative action and is subject to judicial review.

R410-14-15. Amending Administrative Orders.

(1) [DMHF]DIH may amend an order if the hearing officer determines ~~that~~ the order contains a clerical error.

(2) [DMHF]DIH shall notify the parties of its intent to amend the order by serving a notice of agency action signed by the hearing officer.

(3) The ~~[DMHF]~~DIH Director shall review the amended order and ~~[he or his]~~the director or designee shall issue a final agency amended order.

(4) ~~[DMHF]~~DIH shall provide a copy of the final amended order to the respondent and the petitioner.

R410-14-16. Agency Review.

A party to the proceeding may move for reconsideration of ~~[DMHF's]~~DIH's final administrative action in accordance with Sections 63G-4-301 through 63G-4-302. A person may seek review of a DWS ~~[final agency order]~~hearing decision concerning eligibility for medical assistance by filing a written request for agency review with ~~[DMHF]~~DWS in accordance with Section 63G-4-301.

R410-14-18. Declaratory Orders.

(1) ~~[DMHF]~~DIH may issue declaratory orders in accordance with Rule R380-1.

(2) If ~~[DMHF]~~DIH does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.

(3) ~~[DMHF]~~DIH shall retain the request for declaratory ruling in its records.

(4) ~~[DMHF]~~DIH may not issue a declaratory order if an adjudicative proceeding that involves the same parties and issue is pending before the agency, ~~[or a]~~federal court, or state court.

R410-14-19. Interpreters.

(1) If a party notifies ~~[DMHF]~~DIH that it needs an interpreter, ~~[DMHF]~~DIH shall arrange for an interpreter at no cost to the party.

(2) The party may arrange for an interpreter to be present at the hearing only if the hearing officer can verify ~~[that]~~the interpreter is at least 18 years of age, and fluent in English and the language of the person who testifies.

(3) The hearing officer shall instruct the interpreter to interpret word for word, and not to summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter must swear under oath to truthfully and accurately translate all statements, questions, and answers.

R410-14-20. MCO Grievance and Appeal System.

(1) The procedures in Section R410-14-20 apply only to appeals or requests for agency action arising from actions taken by an MCO.

(2) For the purpose of this section, the following definitions apply:

(a) "Adverse benefit determination" means one of the following actions by an MCO:

(i) ~~[F]~~the denial or limited authorization of a requested service, including the type and level of services, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(ii) ~~[F]~~the reduction, suspension, or termination of a previously authorized service;

(iii) ~~[F]~~the denial, in whole or in part, of payment for a service;

(iv) ~~[F]~~the failure to provide services in a timely manner;

(v) ~~[F]~~the failure to act within the time frames provided in 42 CFR 438.408(b);

(vi) ~~[F]~~the denial of a request by a Medicaid enrollee who is a resident of a rural area with only one MCO to exercise his or her right under 42 CFR 438.52(b)(2)(ii) to obtain services outside of the network;

(vii) ~~[F]~~the denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities; or

(viii) ~~[F]~~the restriction of a Medicaid enrollee that utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines.

(b) "Appeal" means a review by an MCO of an ~~[]~~action as defined in Section R410-14-20 or a request for ~~[DMHF]~~DIH to review a final decision rendered by an MCO as a result of the MCO's appeal process.

(c) "Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include ~~[, but are not limited to,]~~ the quality of care or services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the enrollee's rights regardless of whether remedial action is requested. Grievance includes an enrollee's right to dispute an extension of time proposed by the MCO to make an authorization decision.

(d) "Grievance and appeal system" means the processes the MCO implements to handle appeals of an action and grievances.

(e) "Party" means the agency, or other person commencing an adjudicative proceeding, ~~[all]~~respondents, and any MCO who is or may be obligated to pay a claim or provide a benefit or service to a ~~[recipient]~~member.

(3) An MCO shall establish a grievance and appeal system in accordance with this rule, 42 CFR 431.200 et seq. and 438.400 et seq. and the MCO's contractual obligations entered into with ~~[DMHF]~~DIH.

(4) The MCO grievance and appeal system shall include a written internal grievance and appeal procedure for aggrieved person to challenge an action by the MCO.

(5) The MCO shall provide to its enrollees and providers written information that explains the grievance and appeal procedure including a right to request a state fair hearing in accordance with this rule.

(6) The MCO's notice of action shall comply with the requirements set ~~[out]~~forth in Section R410-14-3, ~~[and]~~ 42 CFR 438.402, and 42 CFR 438.404.

(7) The MCO's written notice of final decision shall comply with the requirements set ~~[out]~~forth in 42 CFR 438.408 and include an explanation of the aggrieved person's right to a state fair hearing pursuant to this rule.

~~[(8) State fair hearings.]~~

~~(8)(a)~~ Unless otherwise stated in this section, an aggrieved party may appeal an MCO final written disposition on an action by requesting a state fair hearing in accordance with this rule. The hearing request must include a copy of the final written notice of the MCO disposition.

(b) An aggrieved person must exhaust the MCO grievance and appeal procedure before requesting a state fair hearing for an action other than the restriction of a Medicaid enrollee. In the case of an MCO that fails to adhere to the notice and timing requirements in 42 CFR 438.400 et seq., the enrollee is ~~[deemed]~~considered to have exhausted the MCO's appeals process. The hearing request must include a copy of the final written notice of the MCO decision.

(c) The aggrieved party must request a hearing within 120 days from the date of the MCO final written notice of the decision.

~~[(d) Multiple MCO Participation in a state fair hearing.]~~

~~(d)(i)~~ If an appeal is based on a dispute regarding the payment liability between two or more MCOs, the aggrieved person is not required to exhaust the MCO grievance procedure for each MCO before requesting a state fair hearing under this rule.

(ii) If ~~[DMHF]~~DIH identifies an MCO that may be liable to pay the claim and did not participate in the underlying grievance procedure, it shall send notice to that MCO that it may be subject to liability and its right to participate in the state fair hearing.

(iii) If more than one MCO is party to the state fair hearing, ~~[DMHF]~~DIH shall provide a notice to all parties that shall include the identity of all parties, the reason for the dispute, a copy of the hearing request, and a statement that the MCO that did not participate in the underlying grievance and appeal procedure may be subject to payment liability and its right to participate in the state fair hearing.

(c) ~~[DMHF]~~DIH may, but is not required to, file an answer or other response or position statement in the hearing proceeding at any time so long as it gives notice to ~~[all]~~ other parties no less than five days before the hearing. If ~~[DMHF]~~DIH chooses not to file a response or position statement, it does not waive its right to participate in the hearing.

~~[(9) Reversed appeal resolutions.]~~

~~(9)(a)~~ If the MCO or ~~[the S]~~ state fair hearing officer reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the MCO must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires, but ~~[no later than]~~ before 72 hours from the date it receives notice reversing the determination.

(b) If the MCO or ~~[the S]~~ state fair hearing officer reverses a decision to deny authorization of services~~[;]~~ and the enrollee received the disputed services while the appeal was pending, the MCO or the ~~[S]~~ state must pay for those services in accordance with ~~[S]~~ state policy and regulations.

R410-14-21. Pre-admission Screening Resident Review (PASRR) Hearings.

Pursuant to 42 U.S.C. 1396r, any resident and potential resident of a nursing facility whether Medicaid eligible or not, who disagrees with the preadmission screening and appropriateness of a placement decision that ~~[DMHF]~~DIH or its designated agent makes, has the right to an informal hearing upon request in accordance with this rule and the requirements set out in 42 CFR 483.200, Subpart D.

R410-14-22. Nurse Aid Registry Hearings.

Pursuant to 42 U.S.C. 1395i-3, each nurse aide is subject to investigation of allegations of resident abuse, neglect, or misappropriation of resident property. ~~[DMHF]~~DIH or its designated agent shall investigate each complaint and the nurse aide is entitled to a hearing that ~~[DMHF]~~DIH or its designated agent conducts before a substantiated claim can be entered into the registry.

R410-14-23. Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), and Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID) Hearings.

Pursuant to 42 CFR 431, Subpart D, ~~[DMHF]~~DIH shall provide an appeals hearing procedure for ~~[Skilled Nursing Facility (SNF)]~~, ~~[Intermediate Care Facility (ICF)]~~ or ~~[Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID)]~~. DIH shall conduct [F] the informal hearing [shall be conducted] pursuant to this rule and the requirements of 42 CFR 431.153 and 42 CFR 431.154.

R410-14-24. Home and Community-Based Waiver Hearings.

(1) ~~[Hearings conducted by DMHF.]~~ Pursuant to 42 CFR 431~~[;]~~ Subpart E, ~~[DMHF]~~DIH shall provide an appeals hearing procedure for home and community-based waiver hearings. DIH

shall conduct [F] the informal hearing [shall be conducted] pursuant to this rule and the requirements of 42 CFR 431.200 through 431.250. ~~[(2) Hearings conducted by the Division of Services for People with Disabilities (DSPD).]~~

~~(2)(a)~~ For home and community-based waivers in which the Division of Services for People with Disabilities (DSPD) is the designated operating agency and the grievance is based on whether the person meets the eligibility criteria for state matching funds through DHHS in accordance with Title 62A, Chapter 5a, the eligibility determination of the operating agency is final.

(b) If DSPD determines that an individual does not meet the eligibility criteria for state matching funds through DHHS, it shall inform the individual in writing and provide the individual an opportunity to appeal the decision through the ~~[DHS]~~DIH hearing process in accordance with Section R539-3-8.

(c) The DSPD decision is dispositive for purposes of this subsection. ~~[DMHF]~~DIH shall sustain the determination and there is no right to further agency review.

R410-14-25. Restriction Program Hearings.

Pursuant to 42 CFR 431.54(c), the Department may restrict Medicaid ~~[recipients]~~members who utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines. ~~[DMHF]~~DIH shall give the ~~[recipient]~~member notice and opportunity for an informal hearing pursuant to this section before imposing restrictions.

R410-14-26. Eligibility Hearings.

~~[(4)]~~ DWS conducts eligibility hearings in accordance with Section R414-301-7. ~~[The eligibility agency shall provide a fair hearing process for applicants and recipients in accordance with the requirements of 42 CFR 431.220 through 431.246. The eligibility agency shall comply with Title 63G, Chapter 4.]~~

~~(2)~~ An applicant or recipient must request a hearing in writing or orally at the agency that made the final eligibility decision. A request for a hearing concerning a Medicaid eligibility decision must be made within 90 calendar days of the date of the notice of agency action with which the applicant or recipient disagrees. The request need only include a statement that the applicant or recipient wants to present his case.

~~(3)~~ Hearings are conducted only at the request of a client or spouse, a minor client's parent, or a guardian or representative of the client.

~~(4)~~ A recipient who requests a fair hearing concerning a decision about Medicaid eligibility shall receive continued medical assistance benefits pending a hearing decision if the recipient requests a hearing before the effective date of the action or within 15 calendar days of the date on the notice of agency action.

~~(5)~~ The recipient must repay the continued benefits that he receives pending the hearing decision if the hearing decision upholds the agency action.

~~(a)~~ A recipient may decline the continued benefits that the Department offers pending a hearing decision by notifying the eligibility agency.

~~(b)~~ Benefits that the recipient must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

~~(6)~~ The eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, the eligibility

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agency must receive the request by the close of business on the next business day.

(7) DWS conducts fair hearings for all medical assistance cases except those concerning eligibility for advanced premium tax credits made by the FFM, foster care or subsidized adoption Medicaid. The Department conducts hearings for foster care or subsidized adoption Medicaid cases. In addition, the Department conducts hearings concerning its disability determination decisions. The FFM conducts hearings concerning determinations for advanced premium tax credits.

(8) DWS conducts informal, evidentiary hearings in accordance with Sections R986-100-124 through R986-100-134, except for the provisions in Subsection R986-100-128(17) and Subsection R986-100-134(5). Instead, the provisions in Subsection R414-301-7(16) concerning the time frame to comply with the DWS decision, and Subsection R414-301-7(17)(c) concerning continued assistance during a superior agency review conducted by the Department apply respectively.

(9) The Department conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date the Department issues the hearing decision, the applicant or recipient may file a petition for judicial review with the district court.

(10) DWS may not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.

(11) An applicant or recipient may designate a person or professional organization to assist in the hearing or act as his representative. An applicant or recipient may have a friend or family member attend the hearing for assistance.

(12) The applicant, recipient or representative can arrange to review case information before the scheduled hearing.

(13) At least one employee from the eligibility agency must attend the hearing. Other employees of the eligibility agency, other state agencies and legal representatives for the eligibility agency may attend as needed.

(14) The DWS Division of Adjudication and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts and the policies or regulations supporting the decision.

(a) The DWS decision shall include information about the right to request a superior agency review from the Department and how to make that request.

(b) The applicant or recipient may appeal the DWS decision to the Department pursuant to Section R410-14-16. The request for agency review must be made in writing and delivered to either DWS or the Department within 30 days of the mailing date of the decision.

(15) The Department, as the single state Medicaid agency, is a party to all fair hearings concerning eligibility for medical assistance programs. The Department conducts appeals and has the right to conduct a superior agency review of medical assistance hearing decisions rendered by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless the Department conducts a superior agency review. The DWS hearing decision may be made final in less than 30 days upon agreement of all parties.

(17) The Department conducts a superior agency review when the applicant or recipient appeals the DWS decision or upon its own accord if it disagrees with the DWS decision.

(a) The Department notifies DWS whenever it conducts a superior agency review.

(b) The DWS hearing decision is suspended until the Department issues a final decision and order on agency review.

(c) A recipient receiving continued benefits continues to be eligible for continued benefits pending the superior agency review decision.

(18) The superior agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.

(19) A Department decision and order on agency review becomes final upon issuance.

(20) The eligibility agency takes case action within 10 calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or recipient may file a petition for judicial review with the district court. Failure to appeal a DWS hearing decision to the Department negates this right to a judicial appeal.

(22) Recipients are not entitled to continued benefits pending judicial review by the district court.]

KEY: Medicaid

Date of Last Change: **February 1, 2023**[**May 29, 2018**]

Notice of Continuation: August 12, 2022

Authorizing, and Implemented or Interpreted Law: **[26-1-24; 26B-1-[5]204; 26B-1-213; 63G-4-102**

NOTICE OF EMERGENCY (120-DAY) RULE

Rule or Section Number:	R414-301	Filing ID: 55222
Effective Date:	02/01/2023	

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 or section catchline:**

R414-301. Medicaid General Provisions

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 update the new agency name and hearing provisions to coincide with the merger of the Department of Health and the Department of Human Services.

4. Summary of the new rule or change (What does this filing do?):

This amendment updates the new agency name, and with the merger, clarifies the role of the Department of Workforce Services in regard to hearing procedures and the hearings appeals process. It also makes other technical changes.

(EDITOR'S NOTE: A corresponding proposed amendment is under ID 55223 in this issue, February 15, 2023, of the Bulletin.)

5A) The agency finds that regular rulemaking would:

☐ cause an imminent peril to the public health, safety, or welfare;

☐ cause an imminent budget reduction because of budget restraints or federal requirements; or

☒ place the agency in violation of federal or state law.

B) Specific reasons and justifications for this finding:

S.B. 45 from the 2022 General Session implements the Department of Health and Human Services (Department) reorganization and includes the Department's vital function of administrative hearings.

This emergency rule is subsequent to that bill and state law, Section 26B-1-201. In accordance with Section 26B-1-201, this amendment coincides with federal approval of a state plan amendment that combines the Department of Health and the Department of Human Services as a single state agency, and implements new hearing procedures.

The state plan amendment was not approved at the federal level until 12/22/2022. Since then, the Department has worked to finalize these emergency amendments and the subsequent standard amendments.

Fiscal Information**6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no impact to the state budget as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

B) Local governments:

There is no impact on local governments as they neither fund nor provide services under the Medicaid program.

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

There is no impact on small businesses as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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

There is no impact to other persons or entities as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers

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

There are no compliance costs to a single person or entity as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers.

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

Businesses will see no fiscal impact as the Department merger neither affects services to Medicaid members nor reimbursement to Medicaid providers. Tracy S. Gruber, Executive Director

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

Section 26B-1-204 Section 26B-1-213 Section 26-18-3

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	02/01/2023
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R414. Health and Human Services, Health Care Financing, Coverage and Reimbursement Policy.**R414-301. Medicaid General Provisions.****R414-301-2. Definitions.**

The definitions in Section 26-18-2 apply in this rule. In addition, the following definitions apply in Rules R414-301 through R414-308:

(1) "Aged" means an individual who is 65 years of age or older.

NOTICES OF 120-DAY (EMERGENCY) RULES

(2) "Agency" means the Department of Health and Human Services ~~[as referenced in incorporated federal materials]~~.

(3) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnosis ~~[is]~~ tic, and Treatment (EPSDT) for children under ~~[the age of]~~ 21 years old.

(4) "Cost-of-care" means the amount of income after allowable deductions an individual must pay for their long-term care services either in a medical institution or for home and community-~~[]~~based waiver services.

(5) "Deemed ~~[N]~~ newborn" means a child who receives one year of continuous eligibility because at the time of the child's birth, the child's mother was a Medicaid member ~~[recipient]~~ or was receiving coverage under the Children's Health Insurance Program ~~[(CHIP)]~~ in a state that provides deemed newborn coverage to infants born to a CHIP eligible mother.

(6) "Department" means the Department of Health and Human Services.

(7) "Eligibility ~~[A]~~ agency" means any state office or outreach location of the Department of Workforce Services (DWS) that accepts and processes applications for medical assistance programs under contract with the Department. ~~[-The Department of Human Services (DHS) is the eligibility agency under contract with the Department to process applications for children in state custody.]~~

(8) "Federal poverty guideline" means the United States (U.S.) federal poverty measure issued annually by the Department ~~[and DHS]~~ to determine financial eligibility for certain means-tested federal programs.

(9) "Federally ~~[F]~~ facilitated ~~[M]~~ marketplace (FFM) means the entity that individuals can access to enroll in health insurance and apply for assistance from insurance affordability programs such as Advanced Premium Tax Credits, Medicaid, and CHIP.

(10) "Medically needy" means medical assistance coverage under ~~[the provisions of]~~ 42 CFR 435.301 that uses the Basic Maintenance Standard as the income limit for eligibility.

(11) "Modified ~~[A]~~ adjusted ~~[G]~~ gross ~~[F]~~ income ~~[(MAGI)]~~" means the income that is determined using the methodology defined in 42 CFR 435.603(e).

(12) "Outreach location" means any site other than a state office where state workers are located to accept applications for medical assistance programs. Locations include sites such as hospitals, clinics, homeless shelters, etc.

(13) "QI" means the Qualifying Individuals program, a Medicare ~~[C]~~ cost-~~[S]~~ sharing program.

(14) "QMB" means Qualified Medicare Beneficiary program, a Medicare ~~[C]~~ cost-~~[S]~~ sharing program.

(15) "Reportable change" means any change in circumstances ~~[which]~~ that could affect a ~~[client's]~~ member's eligibility for Medicaid, including the following changes:

- (a) the source of income;
- (b) gross income of \$25 or more;
- (c) household size;
- (d) residence;
- (e) gain of a vehicle;
- (f) resources;
- (g) total allowable deductions of \$25 or more;
- (h) marital status, deprivation, or living arrangements;
- (i) pregnancy or termination of a pregnancy;
- (j) onset of a disabling condition;
- (k) change in health insurance coverage including changes in the cost of coverage;
- (l) tax filing status;

(m) number of dependents claimed as tax dependents;

(n) earnings of a child; and

(o) student status of a child.

(16) "Resident of a medical institution" means a single individual who is a resident of a medical institution from the month after entry into a medical institution until the month ~~[prior to]~~ before discharge from the institution. Death in a medical institution is not considered a discharge from the institution and does not change the ~~[client's]~~ member's status as a resident of the medical institution. Married individuals are residents of an institution in the month of entry into the institution and in the month they leave the institution.

(17) "SLMB" means Specified Low-Income Medicare Beneficiary program, a Medicare ~~[C]~~ cost-~~[S]~~ sharing program.

(18) "Spenddown" means an amount of income in excess of the allowable income standard that must be paid in cash to the eligibility agency or incurred through the medical services not paid by Medicaid or other health insurance coverage, or some combination of these.

(19) "Spouse" means any individual who has been married to an applicant or member ~~[recipient]~~ and has not legally terminated the marriage.

(20) "Verification" means the proof needed to decide whether an individual meets the eligibility criteria to be enrolled in the applicable medical assistance program. Verification may include documents in paper format, electronic records from computer match systems, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

(21) "Worker" means a state employee who determines eligibility for medical assistance programs.

R414-301-7. Hearings.

(1) The eligibility agency shall provide a fair hearing process for applicants and members ~~[recipients]~~ in accordance with the requirements of 42 CFR 431.220 through 42 CFR 431.246. The eligibility agency shall comply with Title 63G, Chapter 4.

(2) An applicant or member ~~[recipient]~~ must request a hearing in writing or orally at the agency that made the final eligibility decision. A request for a hearing must be made within 90 calendar days of the date of notice of agency action concerning the Medicaid eligibility decision. ~~[-concerning a Medicaid eligibility decision must be made within 90 calendar days of the date of the notice of agency action with which the applicant or recipient disagrees.]~~ The request need only include a statement that the applicant or member ~~[recipient]~~ wants to present ~~[his]~~ their case.

(3) Hearings are conducted only at the request of a ~~[client]~~ member or spouse~~[-]~~, a minor ~~[client's]~~ member's parent~~[-]~~, or a guardian or representative of the ~~[client]~~ member.

(4) A member ~~[recipient]~~ who requests a fair hearing concerning a decision about Medicaid eligibility shall receive continued medical assistance benefits pending a hearing decision if the member ~~[recipient]~~ requests a hearing before the effective date of the action or within 15 calendar days of the date on the notice of agency action.

(5) The member ~~[recipient]~~ must repay the continued benefits that ~~the member~~ he receives pending the hearing decision if the hearing decision upholds the agency action.

(a) A member ~~[recipient]~~ may decline the continued benefits that the Department offers pending a hearing decision by notifying the eligibility agency.

(b) Benefits that the member ~~[recipient]~~ must repay include premiums for Medicare or other health insurance, premiums and fees to managed care and contracted mental health services entities, fee-

for-service benefits on behalf of the individual, and medical travel fees or reimbursement to or on behalf of the individual.

(6) The eligibility agency must receive a request for a hearing by the close of business on a business day that is before or on the due date. If the due date is a non-business day, the eligibility agency must receive the request by the close of business on the next business day.

(7) DWS conducts fair hearings for ~~[all]~~ medical assistance cases except those concerning eligibility for advanced premium tax credits made by the FFM, foster care, or subsidized adoption Medicaid. The Department conducts hearings for foster care or subsidized adoption Medicaid cases. In addition, the Department conducts hearings concerning its disability determination decisions. The FFM conducts hearings concerning determinations for advanced premium tax credits.

(8) DWS conducts informal, evidentiary hearings in accordance with Sections R986-100-124 through ~~[Section]~~ R986-100-134(4), ~~[except for the provisions in Subsection R986-100-128(17) and Subsection R986-100-134(5)]~~ with the exceptions found in Subsection R986-100-128(17) and Subsection R986-100-134(5). Instead, ~~[the provisions in]~~ Subsection ~~[R414-301-7]~~ (16) concerning the time frame to comply with the DWS decision, and Subsection ~~[R414-301-7]~~ (17)(c) concerning continued assistance during a superior agency review conducted by ~~[the Department]~~ DWS, apply respectively.

(9) The Department conducts informal hearings concerning eligibility for foster care or subsidized adoption Medicaid in accordance with Rule R414-1. Pursuant to Section 63G-4-402, within 30 days of the date the Department issues the hearing decision, the applicant or member[recipient] may file a petition for judicial review with the district court.

(10) DWS may not conduct a hearing contesting resource assessment until an institutionalized individual has applied for Medicaid.

(11) An applicant or member[recipient] may designate a person or professional organization to assist in the hearing or act as ~~[his]~~ a representative. An applicant or member[recipient] may have a friend or family member attend the hearing for assistance.

(12) The applicant, member[recipient] or representative ~~[can]~~ may arrange to review case information before the scheduled hearing.

(13) At least one employee from the eligibility agency must attend the hearing. Other employees of the eligibility agency, other state agencies, and legal representatives for the eligibility agency may attend as needed.

(14) The DWS Division of Adjudication and Appeals shall mail a written hearing decision to the parties involved in the hearing. The decision shall include the decision, a summary of the facts, and the policies or regulations supporting the decision.

(a) The DWS decision shall include information about the right to request ~~[a superior]~~ an agency review from ~~[the Department]~~ DWS and how to make that request.

(b) The applicant or member[recipient] may appeal the DWS decision to ~~[the Department]~~ DWS pursuant to Section R410-14-1(8)(6). The request for agency review must be made in writing and delivered to ~~[either]~~ DWS ~~[or the Department]~~ within 30 days of the mailing date of the decision.

(15) The Department, as the single state Medicaid agency, is a party to ~~[all]~~ fair hearings concerning eligibility for medical assistance programs. The Department ~~[conducts appeals and]~~ has the right to ~~[conduct]~~ request ~~[a superior]~~ an agency review of medical assistance hearing decisions ~~[rendered]~~ given by DWS.

(16) The DWS hearing decision becomes final 30 days after the decision is sent unless ~~[the Department]~~ DWS conducts ~~[a superior]~~ an agency review. The DWS hearing decision may be made final in less than 30 days upon agreement of ~~[all]~~ the parties.

(17) ~~[The Department]~~ DWS conducts ~~[a superior]~~ an agency review when the applicant or member[recipient] appeals the DWS decision or ~~[upon its own accord if]~~ if the Department appeals because it disagrees with the DWS decision.

(a) ~~[The Department]~~ DWS notifies ~~[DWS]~~ the Department whenever it conducts ~~[a superior]~~ an agency review.

(b) The DWS hearing decision is suspended until ~~[the Department]~~ DWS issues a final decision and order on agency review.

(c) A member[recipient receiving] who receives continued benefits continues to be eligible for continued benefits pending the ~~[superior]~~ agency review decision.

(18) The ~~[superior]~~ agency review is an informal proceeding and ~~[shall be]~~ is conducted in accordance with Section 63G-4-301.

(19) A ~~[Department]~~ DWS decision and order on agency review becomes final upon issuance.

(20) The eligibility agency takes case action within ~~[ten]~~ 10 calendar days of the date the decision becomes final.

(21) Pursuant to Section 63G-4-402, within 30 days of the date the decision and order on agency review is issued, the applicant or member[recipient] may file a petition for judicial review with the district court. Failure to ~~[appeal a DWS hearing decision to the Department]~~ request an agency review negates this right to a judicial appeal.

(22) Members[Recipients] are not entitled to continued benefits pending judicial review by the district court.

KEY: client member rights, hearings, Medicaid

Date of Last Change: February 1, 2023 ~~[October 1, 2013]~~

Notice of Continuation: January 8, 2018

Authorizing, and Implemented or Interpreted Law: 26-18

NOTICE OF EMERGENCY (120-DAY) RULE

Rule or Section Number:	R501-12	Filing ID: 55220
Effective Date:	02/01/2023	

Agency Information

1. Department:	Health and Human Services	
Agency:	Administration, Services, Licensing	Administrative
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact persons:		
Name:	Phone:	Email:
Janice Weinman	385-321-5586	jweinman@utah.gov

Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R501-12. Foster Care Services
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This emergency filing is to align this rule more carefully with statutory intent.
4. Summary of the new rule or change (What does this filing do?):
The Utah Adoption Act does not explicitly require child placing proctor agencies conducting home studies that are not for the purposes of adoption to comply with Section 78B-6-128. The Department of Health and Human Services (Department) agrees this is overly burdensome and is proposing this emergency rule to make the process less burdensome.
5A) The agency finds that regular rulemaking would:
<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or
<input type="checkbox"/> place the agency in violation of federal or state law.
B) Specific reasons and justifications for this finding:
The non-adoptive home studies requirements instituted through the definition of "Home Study" in this rule and Subsection R501-12-4(6) is causing a delay in approving foster homes or a shortage of foster homes for kids in child welfare.
The Department is enacting this emergency rule to modify these requirements to protect public health, safety, and welfare. Through these changes, more foster homes would be available or available quicker to ensure a safe environment for kids in child welfare, which lessens the imminent peril to public health.

Fiscal Information

6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure. No cost or benefit change will be introduced to the state budget as a result of this filing because this amendment modifies and replaces outdated

language and citations and provides relief to non-adoption child placing agencies.

B) Local governments:

There is no estimable cost or benefit to local governments with the implementation of this rule because local governments do not regulate child placing foster care programs.

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

Directly impacted small businesses will see a cost benefit if they do not certify their homes for adoption, as they will no longer need to hire and pay Division of Professional Licensing (DPL)-licensed individuals to complete the studies for their agency. There are 84 Child Placing Foster agencies licensed by the Office of Licensing (OL) within the Department. At this time, all of them have either contracted with or employed DPL licensees to conduct home studies. With this rule change, benefit amounts are inestimable due to the flexibility for providers to continue to recruit for and hire DPL licensees and because the preferences of each family being assessed cannot be predicted.

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

DPL licensed individuals may still remain employed at the will of the provider, but are no longer required to do non-adoptive home studies. OL is unable to quantify how providers may utilize DPL licensees moving forward as the rule compliance is largely dependent upon whether or not the recruited families want to adopt or just foster the children placed by the agency. While job opportunities may open for non-DPL licensees and burdens to those employers will be reduced, any agency recruiting a family wishing to adopt will need to complete the process with a DPL licensee.

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

Determination of affected persons is inestimable, due to the variable nature of the families coming to each agency.

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

The Executive Director of The Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 62A-2-106	Section 26B-1-202	Section 78B-6-128
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Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	02/01/2023
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R501. Health and Human Services, Administration, Administrative Services, Licensing.**R501-12. Foster Care Services.****R501-12-1. Authority.**

~~[This Rule is authorized by Sections 62A-2-101 et seq.]~~ Title 62A, Chapter 2, Licensure of Programs and Facilities and Section 26B-1-202.

R501-12-2. Purpose Statement.

(1) This Rule establishes standards for the licensure of foster parents for children in the custody of DHHS, inclusive of its divisions.

(2) This Rule establishes standards that must be utilized by child-placing foster agencies for the certification of foster parents to provide care for foster children.

(3) This Rule establishes compliance standards for licensed and certified foster parents.

R501-12-3. Definitions.

As used in this Rule:

(1) "Agency" means the owners, directors and managers of a child-placing foster agency licensed by the DHHS Office of Licensing to certify foster parents. ~~["Agency" refers to the owners, directors and managers.]~~

(2) "Child" is defined in Section 62A-2-101.

(3) "Child Care" is defined in Section 26-39-102.

(4) "DCFS" means the DHS Division of Child and Family Services.

(5) ~~["DHS]Department~~ means the Utah Department of Health and Human Services (DHHS) including all divisions, offices and institutions.

(6) "Direct Access" is defined in Section 62A-2-101.

(7) "DJJYS" means the DHHS Division of Juvenile Justice Youth Services.

(8) "Foster Care" means the temporary provision of family based care for a foster child by a foster parent.

(9) "Foster Child" means a person under 21 years of age who remains subject to the continuing jurisdiction of the Juvenile Court or whose placement in the home was facilitated by a division of the Department of Human Services.

(10) "Foster Parent" means a substitute parent licensed by the DHS Office of Licensing or certified by a licensed child-placing foster Agency, and includes the spouse of the primary applicant. Foster parents may also be referred to by other titles, including proctor foster parents, professional foster parents, resource families, or kinship caregivers.

(11) "Hazardous Material" means any substance that if ingested, inhaled, ignited, used, or touched may cause significant injury, illness, or death. These substances include:

(a) pesticides;

- (b) gasoline;
- (c) bleach, including bleach based cleansers;
- (d) compressed air;
- (e) ammonia, including ammonia based cleansers;
- (f) chemical drain openers;
- (g) hair relaxers or permanents;
- (h) kerosene;
- (i) spray paint;
- (j) paint thinner;
- (k) automotive fluids;
- (l) toxic glues (excludes non-toxic glues);
- (m) oven cleaners;
- (n) matches, lighters, lighter fluid;
- (o) cleaning aerosols;
- (p) medications; and
- (q) ultra and concentrated detergent capsules.

(12) "Home Study" means ~~a[the same as a pre-placement adoptive evaluation as outlined in Section 78B-6-128 and is the]~~ written assessment of an applicant's ability to:

- (a) comply with applicable statutes and administrative rules related to providing foster care;
- (b) meet the physical and emotional needs of a foster child; and

(c) actively engage in achieving the custodial Agency's identified outcomes for a foster child.

(13) "Human Services Program" is defined in Section 62A-2-101.

(14) "Incidental Care" is defined in Section 62A-2-120.

(a) Foster parents shall utilize reasonable and prudent judgment in selecting a provider of incidental care of a foster child.

(b) Incidental care is permitted only in DHHS licensed homes, not those certified by child placing agencies.

(15) "Medication" means any over-the-counter or prescription drug, vitamin, or supplement in any form.

(16) ~~["Office" is defined in 62A-2-101(30)]~~ means the Office of Licensing within the Divisions of Licensing and Background Checks under the DHHS.

(17) "Poverty Guidelines" means the current US Department of Health and Human Services listing of poverty levels as determined by the number of members of a family (see <https://aspe.hhs.gov/poverty-guidelines>).

(18) For purposes of this rule: "Reside" means living in the home for any cumulative thirty days of the past 12 months.

(a) for purposes of background screening, please refer to "reside" definition listed in Section R501-14-2.

(19) "Respite Care" means the short term provision of family based care for a foster child by a foster parent in order to provide relief to another parent.

(20) "Siblings" means children with a common parent or grandparent, regardless of whether their legal relationship has been severed, including biological siblings, half-siblings, step-siblings, adopted siblings, and cousins.

(21) "Sick" means to have a fever, to be experiencing ongoing or severe diarrhea, unexplained lethargy, respiratory distress, ongoing or severe vomiting, or pain or other symptoms that are ongoing or severe enough to impair a child's ability to participate in normal activity.

R501-12-4. Initial Application, Renewal, and Reapplication Process.

- (1) Initial application for licensure or certification

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(a) an individual or legally married couple age 18 or over may apply for licensure or certification to be a foster parent.

(2) Applicant shall provide a completed Office or Agency foster care application that lists each member of the applicant's household and shall include:

(a) an acknowledgement of responsibility to maintain clients' confidentiality;

(b) a signed Office of Licensing Provider Code of Conduct form as required in Rule R501-1-11;

(c) an acknowledgement that the applicant has read and understands Rule R501-12 Foster Care Services; and

(d) A written statement of household income and expenses, together with consecutive current pay stubs or income tax forms.

(i) The Office or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(ii) The Office or Agency may require supporting documentation of household income and expenses to verify the foster parent is financially stable and will not be dependent on foster care reimbursement.

(2) Training

(i) Applicant shall provide verification of successful completion of Agency approved pre-service training by each applicant within the past 24 months, and

(ii) Verification of current cardiopulmonary resuscitation (CPR) and first aid training for each prospective foster parent. Accepted training includes Heart Savers, American Red Cross, and American Heart Association Friends and Family.

(3) Medical Assessment

(a) Each applicant shall authorize a licensed health care professional to complete a physical exam within the previous 12 months and send a signed medical reference report directly to the Office or Agency. A medical reference report must assess the current ability of the individual to be a foster parent.

(b) A professional mental health examination of a prospective or current foster parent may be required by the Office or the Agency if there are concerns regarding the individual's mental status which may impair functioning as a foster parent. These concerns may be based upon any information gathered during the licensing or certifying and monitoring process.

(i) The type of professional mental health examination required shall be determined by the Office or Agency based on the nature of the presenting concerns.

(ii) Determination of need and type of examination will be made collaboratively involving the licenser, Agency or Office administration, and clinical staff from within the DHHS or Agency.

(iii) The prospective or current foster parent shall authorize the release of examination information to the Office or Agency, including a signed report that assesses the ability of the individual to parent vulnerable foster children full time as a foster parent.

(iv) Medical and mental health examinations shall be paid for by the prospective or current foster parent.

(c) The Agency or the Office may, in the exercise of their professional judgment, deny, suspend or revoke an application or license if a medical reference report or other examination reveals reasonable concerns regarding an applicant's ability to provide foster care services, or if the required examination is not completed and provided to the Agency of the Office.

(4) References

(a) At the time of initial application or as requested thereafter, the applicant shall submit the names, mailing address, email addresses, and phone numbers of no more than four individuals

who will be contacted by the Agency or the Office and asked to provide a reference letter. These individuals shall be knowledgeable regarding the ability of the applicant to provide a safe environment and to nurture foster children. One reference must be a relative of the applicant and three must be non-relatives. Only the four original reference individuals submitted will be considered.

(b) A minimum of three out of the four individuals including one relative and two non-relatives must submit reference letters directly to the Agency or the Office. A minimum of three reference letters received must be acceptable to the Agency or the Office.

(c) The Agency or the Office may, in the exercise of their professional judgment, deny an application if a reference reveals reasonable concerns regarding an applicant's ability to provide foster care services.

(5) Background screening

(a) Each applicant and persons 18 years of age or older residing in the home shall submit a background screening application as part of the initial application. A background screening application is also required at the point any new individual over the age of 18 moves into the home. A foster parent shall not be licensed or certified unless the background screening applications of persons 18 years of age or older who reside in the home are approved by the Office in compliance with Section 62A-2-120 and Rule R501-14.

(b) A foster parent shall not permit any person without an Office approved background screening clearance to have unsupervised direct access to a foster child unless:

(i) the person is a provider of "Incidental Care" as defined in Section 62A-2-120 and Subsection R501-12-3(14); or

(ii) the person's access is driven by child-centered normalcy needs that are guided by reasonable and prudent parenting as described in Sections 62A-4a-211 through 62A-4a-212 and is not a foster parent-centered delegation of parental responsibility.

(c) A foster parent shall immediately notify the Office or Agency if any person in the home is charged with or under investigation for any criminal offense, or allegation of abuse, neglect, or exploitation of any child or vulnerable adult.

(i) A pending Child Protective Services, Adult Protective Services or Law Enforcement investigation of any person in the home shall result in a license suspension until resolved to the satisfaction of the Office.

(d) Pursuant to Subsection 62A-4a-1003(2), the Office shall review and evaluate information from the Division of Child and Family Services Management Information System for the purpose of licensing and monitoring individuals who reside in the foster home. When, in the professional judgment of the Office, a supported or substantiated finding against any individual who resides in the foster home may pose a risk of harm to a foster child, the Office may issue a safety plan, place parameters on the license or issue a notice of agency action to the foster parent or Agency.

~~[(6) Home Study]~~

~~(a) The Office or Agency is not required to perform a home study until after the background screening applications of persons 18 years of age or older who reside in the foster home are approved.~~

~~(b) A narrative home study shall be completed by an adoption service provider as described in Subsection 78B-6-128(2)(c) and may be used for adoptive purposes.]~~

(6) After completing the required background checks, each agency shall conduct a home study before making a placement.

(a) If the home study is being conducted for adoptive purposes, an adoption service provider, as defined in Section 78B-6-103, shall complete the home study.

(b) If the home study is not being conducted for adoptive purposes, the home study may be conducted by an individual who:

(i) is employed or contracted to conduct a home study for an agency licensed by the department;

(ii) has participated in the recruiting, hiring, training, and supervising of proctor foster homes for at least a year; and

(iii) ensures the home study content is in compliance with Subsection R501-12-4(6)(c).

(c) The home study shall include background and current information of each caregiver to include:

(i) information regarding family of origin, discipline used by parents, family history or presence of abuse or neglect, current or historical use or abuse of alcohol or illegal substances by anyone in the household, education, employment, relationship with extended family, mental and physical health history based on doctor's examination completed within 12 months, mental health history for household members and applicants' stress reduction techniques, values, and interests;

(ii) marital or relationship information, including areas of conflict, communication, how problems are resolved, and how responsibilities are shared;

(iii) family demographic information, including ages, ethnicity, languages spoken, dates of birth, gender, relationships, and history of adoption;

(iv) family characteristics including functioning, cohesion, interests, work/life balance, family activities, ethnicity, culture, and values;

(v) child care and supervision arrangements;

(vi) written description of in home interviews conducted with the applicants, applicants' children, and others residing in the home;

(vii) written description of the physical characteristics of the home, including neighborhood and school information, sufficient space and facilities to meet the needs of foster children and ensure their basic health and safety;

(viii) motivation for doing foster care, including assessment of interest in adoption vs. foster care only;

(ix) assessment of understanding and expectations of a foster child;

(x) previous experience caring for a child;

(xi) current and planned methods of discipline, use of privileges, family rules;

(xii) previous experience with a child with special needs or trauma histories;

(xiii) description of the reference response regarding the character and suitability of the applicants;

(xiv) assessment of informal and formal;

(xv) assessment of willingness and ability to access support and resources;

(xvi) finances, including bankruptcies;

(xvii) applicant strengths and weaknesses;

(xviii) applicant history of any previous applications, home studies, licenses or certifications related to providing foster care;

(xix) assessment of ability to actively engage in achieving the custodial agency's identified outcomes for foster children; and

(xx) recommendations for the applicant's suitability for placement of a foster child, to include: child matching, capacity, training, and support needs; and

(xxi) query results of the home address on the Utah Sex Offender Registry and address how potential threats will be mitigated.

(8) Foster parent annual renewals

(a) A foster parent who wishes to remain authorized to provide foster care services shall submit renewal paper work at least 30 days and no longer than 90 days prior to the license or certification expiration.

(b) Renewal applications shall address updates and changes to the initial application to include:

(i) an acknowledgment of responsibility to maintain confidentiality for current and past clients;

(ii) a signed Office of Licensing Provider Code of Conduct form as required in Rule R501-1-11;

(iii) an acknowledgment that the applicant has read and understands Rule R501-12 Foster Care Services;

(iv) health statement including new medical reference form if there has been significant health changes over the past year;

(v) proof of current CPR and first aid certification;

(vi) background screening as outlined in Subsection R501-12-4(7); and

(vii) financial statement outlining changes to household income, job status, and expenses, including any foreclosures or bankruptcies.

(A) The Office or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(B) The Office or Agency may require supporting documentation of household income and expenses in order to verify the foster parent will not be dependent on foster care reimbursement.

(c) ~~The provider shall ensure that the home study is~~ ~~shall be~~ updated in writing annually after a home visit and safety inspection ~~and shall be completed by an adoptions service provider as described in Subsection 78B-6-128(2)(e)]~~ as a means to assess the family's experience over the past year as a foster family and shall include:

(i) any changes to required home study information; and

(ii) interviews with any members of the home; and

(iii) references or other requested information needed to update the home study.

(9) Reapplication

(a) A previously licensed or certified foster home is subject to the same requirements as an initial application, with the following additional requirements;

(i) Each applicant shall disclose previous foster care licenses and certifications, including those outside of Utah.

(ii) Previously licensed applicants shall request a written reference from the , custodial agency where they last held a foster care license to be sent directly to the Office or Agency. Previously certified applicants shall request a written reference letter from the last Agency where they were certified, and every Agency they have been certified by within the past three years, to be sent directly to the Office or Agency.

(iii) Each applicant shall sign a release of information for any Agency where the foster parent previously provided certified or licensed foster care.

(10) Reapplication of previously licensed or certified applicants may utilize an update of the previous home study as long as the home study was created by the same Agency currently relicensing or recertifying the home.

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(a) The Office or Agency may add an update to the existing home study from another Agency if the Agency provides it directly and it is completed on an Office approved template that addresses and updates general provider requirements. The update may reference applicable portions of the original study as an attachment.

(b) The Office or DCFS may request new reference letters or additional information if needed to update the home study.

(c) If 12 months or less since lapse of any license or certification, non-agency references shall be waived.

(d) If 12 months or less since lapse of any license or certification, physician's statement shall be waived. Personal health statement is still required.

(e) If 24 months or less since lapse of any license or certification, initial training requirements shall be waived as long as there is not a change in licensing or certifying Agency. A change in Agency requires new initial training.

(11) The decision to approve or deny the applicant to provide foster services shall be made on the basis of facts, health and safety factors, and the professional judgment of the Agency or the Office.

(a) No person may be denied a foster care license or certification on the basis of the religion, race, color, or national origin of any individual.

(b) The approval of a license or certification is not a guarantee that a foster child will be placed or retained in the foster parent's home.

(c) Except for kinship providers, foster parents shall not be licensed or certified to provide foster or respite care services in the same home in which they are providing child care or another licensed or certified Department of Health or Department of Human Services program.

(d) In order to promote health and safety, the Office or Agency may issue a license or certification that includes additional restrictions unique to the circumstances of the license.

(e) If a license or certification is denied, an applicant may not reapply for a minimum of 90 days from the date of denial.

(12) Initial license expiration dates must coincide with background screening clearance dates by:

(a) allowing the applicants to resubmit clearances in order to receive a full year's license; or

(b) setting the initial license expiration date no more than one year from the date of the earliest initial completed background clearance.

R501-12-5. Foster Parent Requirements.

(1) Foster parents shall:

(a) be in good health and emotionally stable;

(b) be able to provide for the physical, social, mental health, and emotional needs of the foster child;

(c) be responsible persons who are 18 years of age or older;

(d) be able to communicate with the child, DHHS, health care providers and other service providers;

(e) have at least one functionally literate applicant in the home able to read medication labels and other critical information;

(f) provide documentation of legal residential status;

(g) have the ability to help the foster child thrive;

(h) not be dependent on foster care reimbursement for their own expenses, outside of those expenses directly associated with providing foster care services;

(i) provide updated medical, social, financial, or other family information when requested by the Office or Agency;

(j) follow federal, state and local laws and ordinances; and

(k) not engage in conduct that poses a substantial risk of harm to any person or that is illegal or grounds for denying a license under Section 62A-2-112.

(2) DHHS employees shall not be licensed or certified as foster parents for children in the custody of their respective divisions, unless they qualify as a "relative" to the child in accordance with Section 78A-6-307. An employee may provide foster services for children in the custody of a different division only with the prior written approval of both divisions' directors in accordance with DHHS conflict of interest policy.

(3) Foster parents shall cooperate with the Office, Agency, courts, and law enforcement officials.

(4) Each foster parent shall read, acknowledge, and comply with the Office of Licensing Provider Code of Conduct.

(a) Foster parents shall not abuse, neglect, or maltreat a child through any act or omission.

(b) Foster parents shall not encourage or fail to deter the acts or omissions of another that abuse, neglect, or maltreat a child.

(5) No more than two children under the age of two, including children who are members of the household and foster children, shall reside in a foster home.

(6) No more than two non-ambulatory children, including children who are members of the household and foster children, shall reside in a foster home.

(7) Except as provided by Section 62A-2-116.5 and Subsection R501-12-5(8), no more than four foster children shall reside in a licensed foster home and no more than three foster children shall reside in a certified foster home.

(a) The capacity limits of foster homes may be exceeded under the conditions outlined in Section 62A-2-116.5. Foster homes, as defined in Subsection 62A-2-101(19), shall remain in continual compliance with foster care rules established by the Office.

(8) Foster parents may provide respite care in their home as long as they remain in compliance with licensing rules in regards to each child placed for foster and respite care. Foster parents may provide respite care when the additional foster children exceed their licensed capacity only as follows:

(a) Respite care is limited to a maximum of 10 days within any 30 day period.

(i) For a foster child who is not part of a sibling group, each day of respite for each individual foster child counts as one day of respite care.

(ii) For a foster child who is part of a sibling group, each day of respite for a sibling group receiving respite in the same foster home at the same time counts as one day of respite care.

(b) There must be no licensing sanctions currently imposed, including corrective action plans or conditional licenses.

(c) Total number of foster and respite children in a home at one time shall not exceed six unless but one or two of the children are part of a single sibling group.

(9) Respite care can be provided by an unlicensed caregiver only for kinship providers as approved by DCFS as a means to maintain familiar connections.

(a) Unlicensed kinship respite caregivers are still subject to licensure background screening requirements and a DCFS staff walk-through of the home for safety approval.

(10) A foster parent shall report major changes or events to the Office or Agency within one business day.

(a) A major change includes:

(i) the death or serious illness of a member of the foster parent's household;

(ii) change in marital status;

- (iii) loss of employment;
- (iv) change in household composition, such as the birth or adoption of a child, addition of household members, or tenants;
- (v) allegations of abuse or neglect of any child or vulnerable adult against any member of the foster parent's household; or
- (vi) anything defined as a "critical incident" in Rule R501-1.

(b) The Office or Agency may evaluate major changes to determine necessary actions which may include an update to the home study; implementation of a safety plan; amendments to the license certification; request for new references or examinations; or Agency action in the form of a penalty.

(11) A foster parent shall report any potential change in address in advance to the Office or Agency.

(a) Licenses and certifications are site specific.

(b) An adjoining dwelling with a separate address that is not accessible from the foster home is not considered part of the foster home site.

(c) A foster child shall not be moved into a home that is not licensed or certified to provide foster care except as allowed in R501-1 provisions for relocation of a license.

(d) Foster providers must reside at the license location.

(e) In the event of a separation or divorce, a provider who no longer resides at the licensed location shall be removed from the license certificate and must apply for a separate initial license and meet licensing requirements in the new residence in order to become licensed at the new location.

(i) The provider remaining in the home shall demonstrate the ability to continue to meet the financial and other foster care licensure requirements and an update to the home study shall be completed.

(12) Foster parents shall offer nutritious, balanced meals that meet each foster child's individual needs.

R501-12-6. Physical Aspects of Home.

(1) Indoor and outdoor areas of the home shall be maintained to ensure a safe physical environment.

(2) The home shall be free from health and fire hazards.

(3) The home shall have a working smoke detector and a working carbon monoxide detector on each separated level and at least one of each is required to be in close proximity to sleeping areas.

(4) The home shall have at least one approved, fully charged fire extinguisher readily accessible to the main living area. An approved fire extinguisher shall be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

(5) The home shall have at least one toilet, sink and tub or shower.

(a) Each bathroom shall have a lock sufficient to preserve the privacy of the occupant.

(6) The home shall have sufficient bedroom space to provide for the following:

(a) a bedroom shall not be shared by children of the opposite sex unless each child sharing the room is under two years of age;

(b) a foster parent's bedroom may only be shared with foster children who are under the age of two years and foster parents must not bed-share with foster children;

(c) a foster parent's bedroom shall not be considered in calculating the allowable bedroom space for foster children;

(d) a foster child shall not share a bedroom with other adults in the home;

(e) each foster child must have an individual bed/ or crib, mattress, and linens that meet the child's needs and are comparable to other similarly utilized sleeping accommodations in the household;

(f) weighted blankets may only be used for foster children if therapeutically recommended in writing or approved in writing by the child's caseworker;

(g) a minimum of 40 square feet per child, excluding adjoining bathrooms and storage space;

(h) no more than four children are housed in a single bedroom that houses at least one foster child;

(i) bedrooms used for foster children shall be comparable to other similarly utilized bedrooms in the home, including access, location, space, finishings, and furnishings;

(j) bedrooms used by foster children shall have a source of natural light and shall be equipped with a screened window that opens and provides egress to the outdoors; and

(k) closet or dresser space shall be provided within the bedroom for the foster child's personal possessions and for a reasonable degree of privacy.

(8) The home shall have space or access to common areas for recreational activities.

(9) The home shall have adequate lighting, ventilation and be maintained at a reasonable temperature when occupied by a foster child. The age and needs of the foster child and other residents may be considered. Generally, reasonable temperatures range between 65 and 82 degrees Fahrenheit.

(10) The home shall have a properly operating kitchen with working refrigerator, cooking appliances, adequate supply of safe drinking water and functional indoor plumbing.

(11) Hazards on the property shall be abated and mitigated through the use of protective hardware, fences, banisters, railings, grates, natural barriers, or other licensor approved methods.

(a) Fall hazards of 3 feet or greater including steep grades, cliffs, open pits, window wells, stairwells, elevated porches, retaining walls.

(b) Drowning hazards including swimming pools, hot tubs, water features, ponds or streams.

(c) Burn hazards including fireplaces, candles, radiators, water temperature.

(d) Unstable heavy items to include televisions, bookshelves.

(e) High voltage boosters, or dangerous traffic conditions.

(12) The home and its contents shall be maintained in a clean and safe condition. Food, clothing, supplies, furniture, and equipment shall be of sufficient quantity, variety, and quality to meet the foster child's needs.

(13) The home shall be free from rodent and insect infestation.

(14) There shall be at least two exits on each accessible floor of the home. Each exit shall be accessible and adequately sized for emergency personnel. Multiple-level homes shall have a functional, automatic fire suppression system or an escape ladder, stairway, or other exterior egress to ground level accessible from each of the upper levels.

(15) Foster parents shall have and use child safety devices appropriate to the needs of the foster child, including safety gates and electrical outlet covers.

(16) Home address is clearly visible and location is accessible.

(17) Water and sewage disposal systems other than public systems must be approved by the appropriate authorities.

(18) Home shall have proper trash and recycling disposal.

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(19) Swimming pools will be secured in order to prevent unsupervised access and comply with applicable community ordinances.

(20) Hot tubs and spas shall have locked covers

(21) Foster providers shall ensure that physical aspects of the home outlined in this section remain in continual compliance for the duration of the child's placement in the home.

(22) Foster providers with no placements made in the home shall demonstrate the ability to comply upon request.

R501-12-7. Safety.

(1) A foster parent and their guests shall not smoke any substance in the foster home or vehicle when a foster child is present or residing in the home. Smoking materials shall be inaccessible to foster children.

(2) Foster parents shall provide training to children regarding response to fire warnings and other instructions for life safety upon the initial placement of a foster child and annually thereafter. This includes an evacuation plan that also anticipates the evacuation of a foster child who is non-ambulatory or who has a disability.

(3) The home shall have a telephone on-site during times that a foster child is present. This may be a land line or a mobile phone, but must be able to receive and make calls and be recognized by the 911 system. Telephone numbers for emergency assistance, poison control, emergency evacuation plan and the address of the home shall be posted next to the telephone or in a central location visible to the foster child.

(4) The home shall have a fully supplied first aid kit such as recommended by the American Red Cross.

(5) Foster parents shall inform the Office or the Agency if they possess or use a firearm or other weapon.

(6) Firearms, ammunition, and other weapons shall be inaccessible to foster children. Foster parents shall not provide a weapon to a foster child or permit a foster child to possess a weapon except as outlined in Sections 76-10-509 through 76-10-509.7.

(a) Foster parents do not have the authority of a parent or guardian under Section 76-10-509.

(b) Firearms may be stored together with ammunition only in a locked container commercially manufactured for the secure storage of firearms.

(c) Firearms not stored in a locked container commercially manufactured for the secure storage of firearms shall be unloaded and securely locked. Ammunition for these firearms shall be kept securely locked in a separate location.

(i) The locked storage for firearms and ammunition shall not be accessible through the same keys or combinations.

(ii) Keys and combinations utilized to open locked storage for firearms and ammunition shall not be accessible to a foster child.

(d) Firearms may be stored in display cases only if unloaded and rendered inoperable through the effective use of trigger locks, bolts removed, or other disabling methods.

(e) This does not restrict an individual's rights regarding concealed weapons permits pursuant to UC 53-5-704.

(7) Foster parents who have alcoholic beverages in their home shall not consume in excess and shall ensure that the beverages are closely monitored and inaccessible to foster children.

(8) Hazardous materials shall be stored securely and remain locked when not in active use, and closely monitored while in active use.

(a) Hazardous materials shall be stored in the manufacturer's original packaging together with the manufacturer's

directions and warnings or a container that complies with the manufacturer's directions and warnings and is clearly labeled with the contents, manufacturer's directions and warnings.

(9) Flammable substances, including gasoline and kerosene, shall be locked in a ventilated storage area separate from living areas. This requirement does not include substances contained within the storage tanks of equipment, including automobiles, lawnmowers, ATV's, boats and snow blowers.

(10) General, common use, household items shall be stored responsibly in consideration of the age, behavior, history, and cognitive and physical ability of each foster child in the home. The foster parent is responsible for consulting with the caseworker and child and family team regarding individual restrictions. General, common use, household items include the following:

- (a) oral hygiene products;
- (b) hair and cosmetic products;
- (c) facial and skin hygiene products;
- (d) cutlery;
- (e) laundry and dish detergent, excluding concentrated

pods;

- (f) cleaning wipes;
- (g) rubbing alcohol;
- (h) nail polish remover;
- (i) laundry stain remover;
- (j) propane attached to a grill;
- (k) air fresheners and deodorizers; and
- (l) spray furniture polish.

(11) Foster parents shall comply with laws regarding the care and number of animals on their property.

(12) Foster parents shall ensure that the foster child has the safety equipment, supervision, and training necessary for the foster child to safely participate in an activity that has an inherent risk of bodily harm, injury, or death.

(a) These activities include participation in rock climbing, swimming, hunting, target practice, camping, hiking, use of recreational vehicles, and sports.

(b) Every precaution must be taken to participate in the respective activity as safely as possible. This includes, wearing DOT or Snell approved helmets when riding off-highway vehicles, OHV, completing OHV education, personal watercraft or boating education, wearing Coast Guard approved lifejackets, and completing hunter's education.

(c) Foster parents shall follow any applicable statute pertaining to minors operating OHV's, personal watercraft, boats, and firearms.

(d) Foster parents shall not permit a foster child any access to firearms without first obtaining the written approval of the foster child's caseworker.

(13) Foster parents shall comply with any written safety plan required by the Office or Agency which establishes additional safety requirements to protect the foster child from hazardous conditions on the foster parent's property. A safety plan shall not waive any requirement of Rule R501-12.

(14) Verification of compliance with the Utah Department of Health's recommended immunization schedules shall be provided for each individual residing in the home who is not a foster child.

(a) Recommended influenza immunizations are optional unless a foster child in the home has an immunocompromised condition.

(b) If compliance of residents in the home cannot be verified, the license shall be restricted to only placements of foster children who are over the age of 2 months and who are immunized

in accordance with the Utah Department of Health's recommendations for their age.

(i) Foster parents must disclose if any individual residing in the home is not in compliance with the Utah Department of Health's recommended immunization schedules to the child placing Agency prior to accepting a placement.

(ii) Newborn infants must reach the required age and receive their first dose of required vaccinations to be considered appropriately immunized for their age.

(15) Foster parents shall not accept the placement of a foster child into their home in violation of any license conditions or parameters.

R501-12-8. Emergency Plans.

(1) Foster parents shall have a written plan of action for emergencies and disaster to include the following:

- (a) evacuation with a pre-arranged site for relocation;
- (b) transportation and relocation of foster children when necessary;
- (c) supervision of foster children after evacuation or relocation; and
- (d) notification of appropriate authorities.

(2) Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

(3) Foster parents shall immediately report any serious illness, injury, or death of a foster child to the appropriate division or Agency and the Office.

R501-12-9. Infectious Disease.

(1) In the event of an infectious or communicable disease outbreak, foster parents shall follow specific instructions given by the local health department.

R501-12-10. Medication and Medical Emergencies.

(1) Foster parents shall ensure that prescribed medication is administered according to the written directions of the foster child's health provider.

(a) Foster parents shall ensure that the foster child actually consumes the medication.

(b) Foster parents shall report any severe or unexpected side effects or reactions to the foster child's health provider.

(2) Medication shall only be given to the foster child for whom it was prescribed.

(3) Medication shall not be discontinued without the approval of the foster child's health provider.

(4) Non-prescription medications may be administered by foster parents according to manufacturer's instructions unless otherwise directed by the foster child's health provider.

(5) Medications shall not be administered or carried by the foster child unless approved in writing by the foster child's health provider.

(6) Medication shall not be used for behavior management or restraint unless prescribed in writing by the foster child's health provider and after notification to the division or Agency worker.

(7) Medication shall remain locked at times they are not in immediate, active use.

(a) Foster parents shall not leave medications in active use unattended and shall not abuse or misuse prescription or non-prescription drugs or medications.

(b) If a foster child requires immediate access to their medication, including a foster child with asthma or diabetes, foster

parents may carry a single dose of medication for active use on the foster parent's person.

(8) Medications shall remain in the original pharmacy or manufacturer's packaging.

(a) Foster parents shall not repackage medications or divide doses into alternative containers.

(b) Foster parents should partner with the pharmacy regarding any needed divisions of medication.

(9) Foster parents shall promptly take a foster child who has a medical emergency, who is sick, or who is injured, for an assessment by a medical practitioner.

(10) Foster parents shall comply with the treatment orders of the foster child's health provider.

(11) When a foster child is no longer placed in the foster parent's home, unused medications shall be transferred to the caseworker or Agency.

R501-12-11. Transportation.

(1) Drivers of vehicles carrying a foster child shall have a valid, current driver's license and valid, current vehicle insurance, and comply with traffic regulations.

(2) Transportation of foster children shall be provided in an enclosed, registered vehicle that has functional seatbelts. Foster parents shall ensure that foster children properly utilize seatbelts and other safety equipment, including age and size appropriate car or booster seats. Recreational vehicles, including motorcycles, shall not be used for transportation.

(3) Emergency contact information, including caseworker and Agency information, shall be provided and accessible in each vehicle used to transport foster children.

(4) Each vehicle shall be equipped with a first aid kit.

R501-12-12. Behavior Management.

(1) Foster parents shall provide supervision appropriate to the age and needs of each foster child.

(2) Foster parents shall not use, nor permit the use of corporal punishment including physical, mechanical, or chemical restraint, physical force, infliction of bodily harm or pain, deprivation of meals, rest or visits with family, or humiliating or frightening methods to discipline, coerce, punish, or retaliate against a child.

(3) Foster parents shall only use behavior management techniques appropriate for the child's age, behavior, needs, developmental level, and past experiences.

(4) Foster parents shall use the least restrictive method of behavior management available to control a situation.

(5) Foster parents shall only use behavior management techniques that are positive, consistent, and that promote self-control, self-esteem, and independence.

(6) Foster parents shall not use physical work assignments or activities that inflict pain as behavior management techniques. A physical work assignment or activity that results in minor sore muscles does not violate this subsection.

(7) Foster parents shall not abuse, threaten, ridicule, intimidate, or degrade a child.

(8) Foster parents shall not deny a child medical care, nutrition, hydration, clothing, bedding, sleep, or toilet and bathing facilities.

(9) Passive physical restraint shall be applied only by individuals who are trained in accordance with the non-violent intervention strategies of a state, regional, or nationally recognized behavior management program. Documentation of passive physical

NOTICES OF 120-DAY (EMERGENCY) RULES

restraint training certification shall be submitted to the Office or Agency with the initial and each renewal application.

R501-12-13. Foster Child's Rights in Foster Care.

- (1) Foster parents shall not violate a foster child's right to:
 - (a) eat nutritious meals with the family;
 - (b) eat the same food as the family, except when the foster child is provided with alternative food ordered by the foster child's physician;
 - (c) participate in family and school activities;
 - (d) privacy, including maintaining the confidentiality of information about the foster child and not retaining copies of the foster child's records once the foster child is no longer placed there;
 - (e) be informed of the foster child's responsibilities, including household tasks, privileges, and rules of conduct;
 - (f) be protected from discrimination based upon the foster child's race, color, national origin, culture, religion, sex, sexual orientation, age, political affiliation, or disability;
 - (g) be protected from harm or acts of violence, including protection from physical, verbal, sexual, or emotional abuse, neglect, maltreatment, exploitation including source funding, or inhumane treatment;
 - (h) be treated with courtesy and dignity, including reasonable personal privacy and self-expression;
 - (i) communicate with and visit the foster child's family, attorney, physician, and clergy, except as restricted by court order;
 - (j) have clean clothes and personal hygiene needs met;
 - (k) participate in their own cultural traditions;
 - (l) receive prompt medical care when sick or injured; and
 - (m) be free from media content that is likely harmful considering the foster child's age, behavior, needs, developmental level, and past experiences.

R501-12-14. Additional Child Placing Agency Considerations.

- (1) The Agency shall comply with rules and laws that relate to the child placing foster license to include Rule R501-2, Section R501-1-11 regarding incident reporting, Rule R501-14 regarding background screenings and Section 62A-4a-7 regarding the Interstate Compact for the Placement of Children (ICPC) for agencies taking placements from out of state.
- (2) The Agency shall recruit, train, certify, and supervise foster parents.
- (3) The Agency shall not certify a home which is licensed or certified or applying to be licensed or certified with any other Agency.
- (4) Agency owners, directors, managers, and members of the governing body shall not be certified to provide foster care services for children placed with or by the Agency.
- (5) The Agency shall verify completion of a foster parent's training requirements, including CPR or First Aid training and training regarding the requirements of Rule R501-12, prior to issuing an initial or renewal certification and prior to placing a foster child in the home.
- (6) The Agency shall train each foster parent regarding the Agency's policies and procedures prior to placing a foster child in the home.
- (7) The Agency shall provide the department with identifying information of certified foster homes via the DHHS or DCFS Provider website located on the Human Services DHHS or DCFS Employee website and shall report their list of homes annually and upon request.

(8) The Agency shall maintain documentation of the initial and annual home studies and any updates for review by the department upon request. ~~[of the foster parent's home in compliance with Section 78B-6-128.]~~

- (9) The Agency must have a written agreement with the foster parents which includes:
 - (a) the expectations and responsibilities of the Agency, staff, foster parents and limitations of authority;
 - (b) the services to be provided to and by the foster parent;
 - (c) the provision of medical, remedial, treatment, and other specialized services to a foster child;
 - (d) the financial arrangements for a foster child placed in the home;
 - (e) the authority foster parents can exercise over a foster child placed in the home; and
 - (f) actions which require staff or DHHS authorizations.
- (10) The Agency shall monitor and keep detailed documentation regarding foster parents' compliance with Rule R501-12.

(11) The Agency shall document announced and unannounced visits to the foster home, including an initial safety inspection and a minimum of one unannounced safety inspection annually in addition to any announced or unannounced visits to the foster home.

(a) Each safety inspection completed by the Agency shall be documented on the ~~[DHS]~~ Home Inspection Checklist, or a similar form that contains all of the DHHS form contents.

(b) The Agency shall coordinate with the Office when checklist items are not compliant or noted rule violations to determine which actions should be taken.

(i) Actions on provider certifications shall be documented in provider file and shall include, request for remediation with assigned time frames, request corrective action plan from provider, suspend certification or revoke certification.

(ii) Multiple violations of the same rule shall escalate the level of Agency action to be taken toward the license and provider certification.

(iii) Failure of the Agency to take action when a violation is alleged or noted may result in an action on the Agency license by the Office.

(c) The Agency shall maintain completed checklists and compliance monitoring documentation in the provider files.

(12) The Agency shall investigate complaints and alleged violations of this rule. The Agency shall provide documentation to the Office of any investigations into complaints and alleged violations of Rule R501-12.

(13) The Agency shall provide written notification to each foster parent that informs the foster parent of the rights and responsibilities assumed by a foster parent who signs as the responsible adult for a foster child to receive a driver license, as described in Section 53-3-211.

(a) The Agency shall maintain documentation in the foster parent's file, signed and dated by the foster parent, acknowledging receipt of a copy of this written notification.

(14) The Agency shall have and comply with written policies and procedures regarding the denial, suspension, and revocation of a foster parent's certification to provide foster care services, which must include written notification of the foster parent's appeal process.

(15) The Agency shall provide documentation to the Office and DCFS of any denial, suspension, revocation or other Agency-initiated termination of a foster parent's certification. Documentation shall be provided within two weeks of the action.

(16) The Agency shall not grant any variance to Rule R501-12 or any other regulation without the prior written consent of the Director of the Office.

(17) The Agency shall certify foster parent for a specific time period that does not exceed one year prior to placing any foster children in the home. Documentation of certification dates shall be made available to the Office as requested.

(18) The Agency shall provide ongoing supervision of certified foster parents to ensure the quality of care they provide.

(19) The Agency shall participate with the foster child's legal guardian and the foster home to obtain, coordinate, and supervise care and services necessary to meet the needs of each foster child in their care.

(20) The Agency shall not take placement of a child whose needs exceed the scope or ability of the program to reasonably manage

(21) The Agency shall outline in policies and procedures which behaviors and presenting issues would be reason for discharge or exclusion from the program.

(22) The Agency shall document how the placement of the child is appropriate and commensurate with presenting needs and which services are available to address the child's needs.

(23) The Agency shall conduct or coordinate monthly visits to the child in the placement or school.

(24) The Agency shall maintain responsibility as the guardian of the child for the child's behavior in the program, school and community and maintain responsibility for transitioning a child and 18-21 year olds who remain in custody or on variance, into safe and appropriate placements upon planned or unplanned discharge from the program in accordance with Subsection R501-2-6(D)(7) and ICPC disruption plan requirements.

(a) Sending a child to homeless shelters, refusal to pick up from detention or offering one way plane or bus tickets are not appropriate or responsible program transition actions unless supported by therapeutic or parental recommendation.

(25) The Agency shall provide and receive approval from the school district of certified homes with a youth education coordinating form in compliance with the requirements of Section 62A-2-108.1.

(a) Youth Education Coordinating forms are located on the Office website www.hslic.utah.gov

(26) The Agency shall provide accurate and truthful written references for any previously certified home that requests such reference to work with foster children in another Agency or setting.

(27) The Agency shall follow DHHS contract requirements and request guidance from the Office of Continuous Quality Improvement~~[Quality and Design]~~ and the Office in the event of conflicting requirements.

R501-12-15. Additional DCFS Kinship and Specified Home Licensure Considerations.

(1) An applicant may be licensed for the placement of a specific foster child or sibling group.

(a) A kinship specific applicant must be 18 years of age or older and may be cohabitating or legally married in accordance with Section 62A-4a-209 and Subsection 78A-6-307(19).

(2) The home study shall be conducted by an approved DCFS kinship home study specialist; an ~~[A]~~agency contracted by DCFS to perform home studies; or by the Office.

(3) A minimum of three reference letters shall be sent out and a minimum of two of those reference letters received must be acceptable to the ~~[A]~~agency or the Office and one must be completed by a relative.

(4) The home study safety inspection and background screening approvals shall be successfully completed prior to the placement of the foster child in the home unless the placement is made on an emergency basis as authorized by Section 62A-4a-209.

(5) The Office shall grant a kinship specific probationary license upon receipt and approval of a completed kinship or specific packet submitted by DCFS.

(a) The kinship specific probationary license shall be issued for no more than five months until full compliance can be achieved in order to receive an initial license for the remainder of the licensing year.

(b) An initial license may be issued at any time that compliance with probationary terms is met.

(c) A probationary license whose terms are not met prior to the expiration of that license shall be extended in corrective or penalty status.

(d) Initial license expiration dates shall be determined per Subsection R501-12-4(9).

(6) A kinship specific home license may not be utilized for the placement of any foster child other than the foster child, or relatives to that foster child, who is designated on the license, and may not be utilized for general respite care.

(7) If a kinship specific home desires to provide general foster care services, they shall submit the following.

(a) Obtain written approval from their DCFS kinship support worker to become a general foster provider. If DCFS does not support this license change, no further Licensing action shall be taken.

(i) Provide the written approval to the Office and DCFS contracted foster parent recruitment and training agency.

(b) Close their Specific License and submit to the requirements of an initial foster care license to include:

(i) complete initial foster care application; and

(ii) complete foster care pre-service training series with the exception session #1, if completed within the last 2 years.

(c) The Office shall complete a home study update on an Office approved template that addresses general provider requirements and replace or redact child-specific personally identifying information in the child-specific study.

(i) The home study update may reference the original study as an attachment, but must address content requirements for general foster care.

(ii) New reference letters may be requested if determined necessary by the Office or DCFS.

(8) The Office recognizes the importance of preserving family and cultural connections for foster children in foster care. In accordance with Section 62A-2-117.5 and the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, the Office may issue a waiver of any rule in regards to a kinship specific home that does not impact the health and safety of the specific foster child or sibling group. This requires prior written approval by the Director of the Office.

R501-12-16. Compliance.

Any active license on the effective date of this rule shall be given 30 days to achieve compliance with this rule.

NOTICES OF 120-DAY (EMERGENCY) RULES

KEY: licensing, human services, foster care, certified foster care

Date of Last Change: February 1, 2023~~May 11, 2020~~

Notice of Continuation: October 3, 2022

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at adminrules.utah.gov. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number: R13-3 **Filing ID:** 53478

Effective Date: 02/01/2023

Agency Information

1. Department: Government Operations

Agency: Administration

Street address: 4315 S 2700 W, 3rd Floor

City, state and zip: Taylorsville, UT 84129

Contact persons:

Name:	Phone:	Email:
Michael Broschinsky	801-957-7100	mbroschi@utah.gov

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

General Information

2. Rule catchline:

R13-3. Americans with Disabilities Act Grievance Procedures

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is made under the authority of Section 63A-1-105.5 which authorizes the executive director of the Department of Government Operations (Department) to write rules governing the services of the Department and their provision and use. It is also made under the authority of Subsection 63G-3-201(3) which authorizes rulemaking when agency action is implicitly or explicitly required by law and affects a class of persons or another agency. As

a public entity as that is defined in 28 CFR 35.104, the Department is required by 28 CFR 35.107 to adopt and publish grievance procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received during and since the last five-year review of this rule from interested persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Department because of a disability. This federal law is still in effect and this the rule is necessary to satisfy the federal law's requirements. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Jenney Rees, Executive Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-436	Filing ID: 54888
Effective Date:	01/18/2023	

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:
R277-436. Gang Prevention and Intervention Programs in the Schools
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; 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-2-410(1)(b), which appropriates funds to be used for Gang Prevention and Intervention Programs in the schools.
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 standards and procedures for distributing funding for gang prevention and intervention programs in public schools. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	01/18/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R277-614	Filing ID: 54893
Effective Date:	01/18/2023	

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:
R277-614. Athletes and Students with Head Injuries
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; and Subsection 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.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no public comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary in order to provide directions to Local Education Agencies (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. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	01/18/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-220	Filing ID:	50594
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-220. Emission Standards: Plan for Designated Facilities
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 19-2-104(3)(q) allows the Air Quality Board to implement the requirements of federal air pollution laws. Under Section 111(d) of the Clean Air Act (42 U.S.C. 7411(d)), EPA issues standards of performance for existing sources at the time standards are issued for new sources, and states are required to prepare plans and rules to implement the standards for existing sources.

Rule R307-220 incorporates by reference the Utah Plans written to meet this requirement.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-220 is required by 42 U.S.C. 7411(d) (Clean Air Act 111(d)). Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-221	Filing ID:	50595
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-221. Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 19-2-104(3)(q) allows the Air Quality Board to implement the requirements of federal air pollution laws.

Under Section 111(d) of the Clean Air Act (42 U.S.C. 7411(d)), EPA issues standards of performance for existing sources at the time standards are issued for new sources, and states are required to prepare plans and rules to implement the standards for existing sources.

Rule R307-221 implements the standards for existing Municipal Solid Waste Landfills, as required by 40 CFR 60.30c through 60.36c. The corresponding plan is incorporated by reference in Rule R307-220-2. Rule R307-221 also includes necessary definitions, emission restrictions, control device specifications, and a compliance schedule, as required by 40 CFR 60.30c through 60.36c.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-221 is required by 40 CFR 60.30c through 60.36c. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-222	Filing ID:	50601
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality
Agency:	Air Quality
Building:	MASOB
Street address:	195 N 1950 W
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 144820
City, state and zip:	Salt Lake City, UT 84114-4820

Contact persons:

Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov

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

General Information

2. Rule catchline:

R307-222. Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 19-2-104(3)(q) allows the Air Quality Board to implement the requirements of federal air pollution laws.

Under Section 111(d) of the Clean Air Act (42 U.S.C. 7411(d)), EPA issues standards of performance for existing sources at the time standards are issued for new sources, and states are required to prepare plans and rules to implement the standards for existing sources.

Rule R307-222 implements the standards for existing Incinerators for Hospital, Medical, Infectious Waste, as required by 40 CFR Subpart Ce. The corresponding plan is incorporated by reference in Section R307-220-3.

Rule R307-222 also includes necessary definitions, emission restrictions, control device specifications, and a compliance schedule, as required by 40 CFR 60 Subpart C.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-222 is required by 40 CFR Part 60, Subpart Ce and the Clean Air Act, 42 U.S.C. 7411(d). Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	R307-223	Filing ID: 50597
Effective Date:	02/01/2023	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-223. Emission Standards: Existing Small Municipal Waste Combustion Units
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 19-2-104(3)(q) allows the Air Quality Board to implement the requirements of federal air pollution laws.
Under Section 111(d) of the Clean Air Act (42 U.S.C. 7411(d)), EPA issues standards of performance for existing sources at the time standards are issued for new sources, and states are required to prepare plans and rules to implement the standards for existing sources.
Rule R307-223 implements the standards for existing Incinerators for Small Municipal Waste Combustion Units, as required by 40 CFR Part 60, Subpart BBBB. The corresponding plan is incorporated by reference in Section R307-220-4.
Rule R307-223 also includes necessary definitions, emission restrictions, control device specifications, and a compliance schedule, as required by 40 CFR Part 60, Subpart BBBB.
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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-223 is required by 40 CFR Part 60, Subpart BBBB. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
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Rule Number:	R307-224	Filing ID: 50599
Effective Date:	02/01/2023	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
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Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-224. Mercury Emission Standards: Coal-Fired Electric Generating Units
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
As specified in Subsection 19-2-104(3)(b)(iii), the Air Quality Board may "meet the requirements of federal air pollution laws." Nationwide reductions of mercury (Hg) emissions from certain coal-fired electric generating units were required by 40 CFR Part 60, subparts B and HHHH, and by the Designated Facilities Plan for coal-fired electric

generating units, incorporated by reference at R307-220-5.

Rule R307-224 regulates mercury emissions from any coal-fired electric generating unit as defined in 40 CFR 60.24, dated 06/09/2006.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-224 is necessary to reduce mercury emissions from any coal-fired electrical generating unit (EGU) as defined in 40 CFR Sec. 60.24. EPA went through several rulemakings to regulate hazardous air pollutants (HAP) including mercury from the coal-fired EGUs as a result of the 2015 Michigan v. EPA, 576 U.S. 743 (2015), US Supreme Court decision. In that decision, the Supreme Court held that EPA unreasonably deemed cost irrelevant when it decided to regulate HAP from the power plants and remanded the decision to EPA for cost considerations. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-250	Filing ID:	50602
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
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Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov

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

General Information

2. Rule catchline:

R307-250. Western Backstop Sulfur Dioxide Trading 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:

Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

Subsection 19-2-104(3)(e) states that the board may "prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state."

Rule R307-250 is required to implement the provisions of the State Implementation Plan (SIP), Section XX, the Regional Haze Plan. The Plan is required under 40 CFR Part 51, Subpart P, Protection of Visibility. The Plan requires a backstop trading program for emissions of sulfur dioxide from large sources, and Rule R307-250 sets forth the requirements sources will have to meet if the program is ever triggered.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-250 is required to implement the provisions of the State Implementation Plan (SIP), Section XX, the Regional Haze Plan, required under 40 CFR Part 51, Subpart P. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-342	Filing ID: 50632
Effective Date:	02/01/2023	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-342. Adhesives and Sealants
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-342 establishes VOC emission limits and emission abatement requirements if emission levels are exceeded.
Additionally, R307-342 includes recordkeeping requirements, product application requirements, and container labeling 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 comments in opposition to or support of this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-342 is needed to specify the emission limits and controls necessary for VOCs in the manufacturing of adhesives and sealants, which are precursors to the formation of PM_{2.5} and ozone. In addition, Rule R307-342 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-344	Filing ID: 50620
Effective Date:	02/01/2023	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-344. Paper, Film, and Foil Coatings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-344 reduces VOC emissions emitted from paper, film, and foil coating operations by establishing

reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-344 is needed to establish controls in the paper, film, and foil coating operations emitting VOCs, which are precursors to the formation of PM_{2.5} and ozone. Rule R307-344 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-345	Filing ID:	50619
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality		
Agency:	Air Quality		
Building:	MASOB		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144820		
City, state and zip:	Salt Lake City, UT 84114-4820		
Contact persons:			
Name:	Phone:	Email:	
Mat Carlile	385-306-6535	mcarlile@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:

R307-345. Fabric and Vinyl Coatings

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."

Rule R307-345 reduces VOC emissions emitted from fabric and vinyl coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-345 is needed to establish RACT controls in the fabric and vinyl coating operations emitting VOCs, which are precursors to the formation of PM_{2.5} and ozone. Rule R307-345 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-346	Filing ID:	50623
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality		
Agency:	Air Quality		
Building:	MASOB		

Street address:	195 N 1950 W	
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Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-346. Metal Furniture Surface Coatings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-346 reduces VOC emissions emitted from metal furniture surface coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.
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 comments in opposition to or support of this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-346 is needed to establish RACT controls in the metal furniture surface coating operations emitting VOCs, which are precursors to the formation of PM2.5 and ozone. Rule R307-346 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-347	Filing ID:	50622
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality		
Agency:	Air Quality		
Building:	MASOB		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144820		
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Contact persons:			
Name:	Phone:	Email:	
Mat Carlile	385-306-6535	mcarlile@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:
R307-347. Large Appliance Surface Coatings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-347 reduces VOC emissions emitted from large appliance surface coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-347 is needed to establish RACT controls in the large appliance surface coating operations emitting VOCs, which are precursors to the formation of PM_{2.5} and ozone. Rule R307-347 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-348	Filing ID:	50637
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-348. Magnet Wire Coatings

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."

Rule R307-348 reduces VOC emissions emitted from magnet wire coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-348 is needed to establish RACT controls in the magnet wire coating operations emitting VOCs, which are precursors to the formation of PM_{2.5} and ozone. Rule R307-348 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-349	Filing ID:	50625
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality		
Agency:	Air Quality		
Building:	MASOB		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
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Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-349. Flat Wood Paneling Coatings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-349 reduces VOC emissions emitted from flat wood panel coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.
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 comments in opposition to or support of this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-349 is needed to establish RACT controls in the flat wood panel coating operations emitting VOCs, which are precursors to the formation of PM2.5 and ozone. Rule R307-349 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-350	Filing ID:	50626
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
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Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-350. Miscellaneous Metal Parts and Products Coatings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-350 reduces VOC emissions emitted from miscellaneous metal parts and products coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.
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 comments in opposition to or support of this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-350 is needed to establish RACT controls in the miscellaneous metal parts and products coating operations emitting VOCs, which are precursors to the formation of PM2.5 and ozone. Rule R307-350 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-351	Filing ID:	50627
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-351. Graphic Arts
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-351 prevents VOCs emissions by establishing limits on the amounts of pollutants that may be emitted by graphic arts printing operations. This rule also controls techniques and work practices that reduce VOC emissions, as well as the requirements for when an add-on control device is used.
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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Graphic arts printing operations emit volatile organic compounds (VOCs), which are precursors to the formation of PM_{2.5} and ozone. This rule reduces the VOCs emitted by graphic arts printing operations, is required under the State Implementation Plan, and cannot be changed without approval from EPA. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-352	Filing ID:	50629
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-352. Metal Container, Closure, and Coil Coatings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality

Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."

Rule R307-352 reduces VOC emissions emitted from metal container, closure, and coil coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-352 is needed to establish RACT controls in the metal container, closure, and coil coating operations emitting VOCs, which are precursors to the formation of PM_{2.5} and ozone. Rule R307-352 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-353	Filing ID:	50636
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov

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

General Information

2. Rule catchline:

R307-353. Plastic Parts Coatings

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."

Rule R307-353 reduces VOC emissions emitted from plastic parts coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-353 is needed to establish RACT controls in the plastic parts coating operations emitting VOCs, which are precursors to the formation of PM_{2.5} and ozone. Rule R307-353 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-354	Filing ID:	50638
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality		
Agency:	Air Quality		
Building:	MASOB		
Street address:	195 N 1950 W		

City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-354. Automotive Refinishing Coatings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-354 reduces VOC emissions emitted from automotive refinishing coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.
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 comments in opposition to or support of this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-354 is needed to establish RACT controls in the automotive refinishing operations emitting VOCs, which are precursors to the formation of PM _{2.5} and ozone. Rule R307-354 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	R307-355	Filing ID: 50631
Effective Date:	02/01/2023	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-355. Aerospace Manufacture and Rework Facilities
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-355 reduces VOC emissions emitted from aerospace manufacture and rework facilities coating operations by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.
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 comments in opposition to or support of this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-355 is needed to establish RACT controls in the aerospace manufacture and rework facilities coating

operations emitting VOCs, which are precursors to the formation of PM_{2.5} and ozone. Rule R307-355 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-356	Filing ID:	50633
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-356. Appliance Pilot Light
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-356 prevents VOCs emissions by prohibiting all individuals in PM _{2.5} nonattainment areas from selling, distributing, offering for sale, or installing any natural gas-

fired fan-type central furnaces, gas fireplaces, or gas stoves that require the use of a pilot light for ignition.

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 comments in opposition to or support of this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Natural gas pilot lights emit volatile organic compounds (VOCs) which are precursors to the formation of PM_{2.5} and ozone. This rule reduces the VOCs emitted by pilot lights in natural gas appliances by prohibiting their future sale and distribution in PM_{2.5} nonattainment areas, is required under the State Implementation Plan, and cannot be changed without approval from EPA. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-357	Filing ID:	50634
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-357. Consumer Products
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Rule R307-357 reduces VOC emissions emitted from consumer products by implementing control plan or variances on consumer products containing VOCs, and establishing bans on toxic and ozone depleting compounds that result in reduced VOC emissions.
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 comments in opposition to or support of this rule since the last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R307-357 is needed to establish controls and limits on consumer products that emit VOCs, which are precursors to the formation of PM _{2.5} and ozone, or contain toxic and ozone depleting compounds. Rule R307-357 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-506	Filing ID:	50657
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality
Agency:	Air Quality
Building:	MASOB
Street address:	195 N 1950 W

City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-506. Oil and Gas Industry: Storage Vessel
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Subsection 19-2-104(1)(a), which authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Subsection 19-2-104(1)(f) authorizes the Board to "implement an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990."
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 was a proposed amendment to Rule R307-506, ID 54499, that lowered the throughput threshold for control requirements. The Air Quality Board decided not to approve the final adoption of the amendment and it was allowed to lapse.
Several comments were provided on the rule amendment challenging the lower throughput threshold for controls proposed by the Division of Air Quality (DAQ) and asking for more data evaluation and discussion with stakeholders.
The majority of the Air Quality Board agreed with the commenters and as such the rule amendment was not approved for final adoption.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Subsection 401-10 (5) provides an exemption from approval order requirements for sources in the oil and gas industry that register operations with the DAQ.

Rule R307-506 establishes the requirements for the operation of storage vessels associated with oil and gas well operations that are registered with the state of Utah in lieu of obtaining an air order. This rule is part of a group of rules that together establish a regulatory structure for sources in the oil and gas industry. This process is both less costly and more predictable for these sources than securing a standard approval order, while also reducing the costs associated with permitting for DAQ.

Rule R307-506 is a necessary part of this regulatory system. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-507	Filing ID:	50653
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov

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

General Information

2. Rule catchline:
R307-507. Oil and Gas Industry: Dehydrators
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Subsection 19-2-104(1)(a), which authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the

maximum quantity of air pollutants that may be emitted by an air pollutant source."

Subsection 19-2-104(1)(f) authorizes the Board to "implement an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990."

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 in opposition to or support of this rule have been received since enactment five years ago.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Subsection 401-10 (5) provides an exemption from approval order requirements for sources in the oil and gas industry that register operations with the Division of Air Quality (DAQ).

Rule R307-507 establishes requirements for emission controls for dehydrators. This rule is part of a group of rules that together establish a regulatory structure for sources in the oil and gas industry. This process is both less costly and more predictable for these sources than securing a standard approval order, while also reducing the costs associated with permitting for DAQ.

Rule R307-507 is an important part of this regulatory system. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-508	Filing ID:	54500
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality		
Agency:	Air Quality		
Building:	MASOB		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144820		
City, state and zip:	Salt Lake City, UT 84114-4820		

Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-508. Oil and Gas Industry: VOC Control Devices
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Subsection 19-2-104(1)(a), which authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Subsection 19-2-104(1)(f) authorizes the Board to "implement an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990."
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
This rule was amended one time during the review period. No comments in opposition to or support of this rule have been received since enactment five years ago.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Subsection 401-10 (5) provides an exemption from approval order requirements for sources in the oil and gas industry that register operations with the Division of Air Quality (DAQ). Rule R307-508 establishes requirements for VOC control devices. This rule is part of a group of rules that together establish a regulatory structure for sources in the oil and gas industry. This process is both less costly and more predictable for these sources than securing a standard approval order, while also reducing the costs associated with permitting for DAQ.
Rule R307-508 is an important part of this regulatory system. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	R307-509	Filing ID: 54501
Effective Date:	02/01/2023	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-509. Oil and Gas Industry: Leak Detection and Repair Requirements
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Subsection 19-2-104(1)(a), which authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."
Subsection 19-2-104(1)(f) authorizes the Board to "implement an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990."
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
This rule was amended one time during the review period. No comments in opposition to or support of this rule have been received since enactment five years ago.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Subsection 401-10 (5) provides an exemption from approval order requirements for sources in the oil and gas industry that register operations with the Division of Air Quality (DAQ).

Rule R307-509 establishes leak detection and repair requirements. This rule is part of a group of rules that together establish a regulatory structure for sources in the oil and gas industry. This process is both less costly and more predictable for these sources than securing a standard approval order, while also reducing the costs associated with permitting for DAQ.

Rule R307-509 is an important part of this regulatory system. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-510	Filing ID:	50661
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-510. Oil and Gas Industry: Natural Gas Engine Requirements
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized under Subsection 19-2-104(1)(a), which authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."

Subsection 19-2-104(1)(f) authorizes the Board to "implement an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990."

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 in opposition to or support of this rule have been received since enactment five years ago.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Subsection 401-10 (5) provides an exemption from approval order requirements for sources in the oil and gas industry that register operations with the Division of Air Quality (DAQ).

Rule R307-510 establishes requirements for the approved use of natural gas engines. This rule is part of a group of rules that together establish a regulatory structure for sources in the oil and gas industry. This process is both less costly and more predictable for these sources than securing a standard approval order, while also reducing the costs associated with permitting for DAQ.

Rule R307-510 is an important part of this regulatory system. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-801	Filing ID:	52818
Effective Date:	02/01/2023		

Agency Information

1. Department:	Environmental Quality		
Agency:	Air Quality		
Building:	MASOB		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	
Contact persons:		
Name:	Phone:	Email:
Mat Carlile	385-306-6535	mcarlile@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R307-801. Utah Asbestos Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
<p>Subsection 19-2-104(1)(d) states that the Air Quality Board may make rules to implement Subchapter II, Asbestos Hazard Emergency Response, of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); 40 C.F.R. Part 763, Asbestos; 40 C.F.R. Part 61 National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos; and to review and approve asbestos management plans submitted by local education agencies.</p> <p>Subsections 19-2-104(3)(b) allow the Board to establish work practice, certification, and clearance air sampling requirements for persons who: 1) contract to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections; or 2) conduct such work in areas to which the public has access or in school buildings subject to Asbestos Hazard Emergency Response Act of 1986 (AHERA); and to establish certification requirements for inspectors, management planners, abatement project designers, contractors, or workers under AHERA.</p> <p>Rule R307-801 establishes procedures and requirements for asbestos projects and training programs, for certification of persons engaged in asbestos activities, and work practice standards for such work.</p>
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
<p>Rule R307-801 has been amended one time since the last five-year review, DAR No. 52818 (effective 09/03/2020). No written comments were received in relation to changes made to this rulemaking. In addition, no other written comments were received since the last five-year review.</p>
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Without Rule R307-801, Utah would not have authority to implement the federal asbestos requirements and implementation would be carried out by the Environmental Protection Agency.

The specific authorizations in Subsections 19-2-104(1)(d) and 19-2-104(3)(a) and (b) clearly indicate that the Legislature prefers that the Division of Air Quality implement the program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Bryce C. Bird, Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R317-9	Filing ID:	50774
Effective Date:	01/18/2023		

Agency Information

1. Department:	Environmental Quality		
Agency:	Water Quality		
Room number:	DEQ, 3rd Floor		
Building:	Multi Agency State Office Building (MASOB)		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144870		
City, state and zip:	Salt Lake City, UT 841144870		
Contact persons:			
Name:	Phone:	Email:	
Judy Etherington	801-536-4344	jetherington@utah.gov	
Leanna Littler-Woolf	801-536-4397	lnlittler@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:
R317-9. Administrative 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 implements the Administrative Procedures Act, Title 63G, Chapter 4, as required, for the Division of Water Quality (Division). The Water Quality Board is given rulemaking authority in Section 19-4-104 of the Utah Water Quality Act.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received since the last five-year review of this rule from any persons supporting or opposing this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule sets forth the administrative procedures of the Division in compliance with the Administrative Procedures Act and consolidates these procedures into one location. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	John K. Mackey, PE, Director	Date:	01/18/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R317-13	Filing ID: 50781
Effective Date:	01/18/2023	

Agency Information

1. Department:	Environmental Quality	
Agency:	Water Quality	
Room number:	DEQ 3rd Floor	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144870	
City, state and zip:	Salt Lake City, UT 84114-4870	
Contact persons:		
Name:	Phone:	Email:
Andrew Pompeo	385-320-1057	apompeo@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

R317-13. Approvals and Permits for a Water Reuse Project

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule was adopted in 2008 to implement the requirements of the Wastewater Reuse Act, Title 73, Chapter 3c. The Water Quality Board is given rulemaking authority in Section 19-4-104 of the Utah Water Quality Act.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments either supporting or opposing this rule were received since this rule was originally adopted in February 2008.

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 terms and establishes administrative requirements for water reuse projects, including application and approval procedures. This rule is necessary to implement the provisions of the Wastewater Reuse Act and the Board's authority to issue reuse permits under Subsection 19-5-104(3)(f). Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	John K. Mackey, PE, Director	Date:	01/18/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R317-14	Filing ID: 50787
Effective Date:	01/18/2023	

Agency Information

1. Department:	Environmental Quality		
Agency:	Water Quality		
Room number:	DEQ 3rd Floor		
Building:	MASOB		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144870		

City, state and zip:	Salt Lake City, UT 84114-4870	
Contact persons:		
Name:	Phone:	Email:
Andrew Pompeo	385-320-1057	apompeo@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R317-14. Approval of Change in Point of Discharge of POTW
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule was adopted in 2008 to implement the requirements of the Wastewater Reuse Act, Section 73-3c-304. The Water Quality Board is given rulemaking authority in Section 19-4-104 of the Utah Water Quality Act.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments have been received since the last five-year review of this rule from any persons supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule defines terms and describes administrative procedures for considering changes in the point of discharge from a Publicly Owned Treatment Works (POTW). These procedures are needed to implement the requirements of Section 73-3c-304 and administer the Utah Pollution Discharge Elimination System (UPDES) under Rule R317-8. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	John K. Mackey, PE, Director	Date:	01/18/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R432-1	Filing ID:	51056
Effective Date:	01/26/2023		

Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Licensing	
Room number:	1st Floor	
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-1. General Health Care Facility Rules
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.
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. There have been no comments opposing this rule and the Department of Health and Human Services (Department) supports its 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:
Title 26, Chapter 21, mandates the licensing of health facilities and requires this rule to remain in effect for continuity of oversight. Therefore, this rule should be continued.
The Department will be amending this rule in the coming weeks to remove outdated language and comply with the

Governor's Executive Order (EO No. 2021-12) and changes following the consolidation of the Department. Continuation of this rule is necessary until these changes can be addressed.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/25/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R432-2	Filing ID:	51045
Effective Date:	01/23/2023		

Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Licensing	
Room number:	1st Floor	
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-2. General Licensing Provisions
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 26, Chapter 21, is the health code that mandates the licensing of health facilities.

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. There have been no comments opposing this rule and the Department of Health and Human Services (Department) supports its 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:

Title 26, Chapter 21, mandates the licensing of health facilities and requires this rule to remain in effect for continuity of oversight. Therefore, this rule should be continued.

The Department will be revisiting this rule in the coming weeks for compliance with the Governor's Executive Order (EO No. 2021-12) and changes following the consolidation of the Department. Continuation of this rule is necessary until these changes can be addressed.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/23/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R432-3	Filing ID:	51054
Effective Date:	01/23/2023		

Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Licensing	
Room number:	1st Floor	
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-3. General Health Care Facility Rules Inspection and Enforcement
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 26, Chapter 21, is the health code that mandates the licensing of health facilities.
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. There have been no comments opposing this rule and the Department of Health and Human Services (Department) supports its 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:
Title 26, Chapter 21, mandates the licensing of health facilities and requires this rule to remain in effect for continuity of oversight. Therefore, this rule should be continued.
The Department will be revisiting this rule in the coming weeks for compliance with the Governor's Executive Order (EO No. 2021-12) and changes following the consolidation of the Department. Continuation of this rule is necessary until these changes can be addressed.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/23/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R432-4	Filing ID: 51047
Effective Date:	01/23/2023	

Agency Information

1. Department:	Health and Human Services
Agency:	Family Health and Preparedness, Licensing

Room number:	1st Floor	
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-4. General Construction
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 26, Chapter 21, is the health code that mandates the licensing of health facilities.
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. There have been no comments opposing this rule and the Department of Health and Human Services (Department) supports its 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:
Title 26, Chapter 21, mandates the licensing of health facilities and requires this rule to remain in effect for continuity of oversight. Therefore, this rule should be continued.
The Department will be revisiting this rule in the coming weeks for compliance with the Governor's Executive Order (EO No. 2021-12) and changes following the consolidation of the Department. Continuation of this rule is necessary until these changes can be addressed.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/23/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R432-5	Filing ID:	54267
Effective Date:	01/23/2023		

Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Licensing	
Room number:	1st Floor	
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-5. Nursing Care and Pediatric Respite Care Facility Construction
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 26, Chapter 21, is the health code that mandates the licensing of health facilities.
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. There have been no comments opposing this rule and the Department

of Health and Human Services (Department) supports its 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:

Title 26, Chapter 21, mandates the licensing of health facilities and requires this rule to remain in effect for continuity of oversight. Therefore, this rule should be continued.

The Department will be revisiting this rule in the coming weeks for compliance with the Governor's Executive Order (EO No. 2021-12) and changes following the consolidation of the Department. Continuation of this rule is necessary until these changes can be addressed.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/23/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R432-6	Filing ID:	51057
Effective Date:	01/23/2023		

Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Licensing	
Room number:	1st Floor	
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-6. Assisted Living Facility General Construction
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 26, Chapter 21, is the health code that mandates the licensing of health facilities.
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. There have been no comments opposing this rule and the Department of Health and Human Services (Department) supports its 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:
Title 26, Chapter 21, mandates the licensing of health facilities and requires this rule to remain in effect for continuity of oversight. Therefore, this rule should be continued.
The Department will be revisiting this rule in the coming weeks for compliance with the Governor's Executive Order (EO No. 2021-12) and changes following the consolidation of the Department. Continuation of this rule is necessary until these changes can be addressed.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/23/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R432-16	Filing ID:	51065
Effective Date:	01/23/2023		

Agency Information

1. Department:	Health and Human Services
Agency:	Family Health and Preparedness, Licensing
Room number:	1st Floor
Building:	Multi-Agency State Office Bldg
Street address:	195 N 1950 W
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO BOX 144103

City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-16. Hospice Inpatient Facility Construction
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 26, Chapter 21, is the health code that mandates the licensing of health facilities.
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. There have been no comments opposing this rule and the Department of Health and Human Services (Department) supports its 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:
Title 26, Chapter 21, mandates the licensing of health facilities and requires this rule to remain in effect for continuity of oversight. Therefore, this rule should be continued.
The Department will be revisiting this rule in the coming weeks for compliance with the Governor's Executive Order (EO No. 2021-12) and changes following the consolidation of the Department. Continuation of this rule is necessary until these changes can be addressed.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/23/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R432-35	Filing ID: 52375
Effective Date:	01/23/2023	

Agency Information

1. Department:	Health and Human Services	
Agency:	Family Health and Preparedness, Licensing	
Room number:	1st Floor	
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO BOX 144103	
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-35. Background Screening -- Health Facilities
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 26, Chapter 21, is the health code that mandates the licensing of health facilities.
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. There have been no comments opposing this rule and the Department of Health and Human Services (Department) supports its 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:

Title 26, Chapter 21, mandates the licensing of health facilities and requires this rule to remain in effect for continuity of oversight. Therefore, this rule should be continued.

The Department of Health and Human Services will be revisiting this rule in the coming weeks for compliance with the Governor's Executive Order (EO No. 2021-12) and changes following the consolidation of the Department. Continuation of this rule is necessary until these changes can be addressed.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/23/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R438-15	Filing ID: 52786
Effective Date:	01/26/2023	

Agency Information

1. Department:	Health and Human Services	
Agency:	Disease Control and Prevention, Laboratory Services	
Building:	Utah Public Health Laboratories	
Street address:	4431 S Constitution Blvd	
City, state and zip:	Taylorsville, UT 84129	
Contact persons:		
Name:	Phone:	Email:
Kim Hart	801-656-9315	kimhart@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:
R438-15. Newborn Screening
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Sections 26-10-6 and 26B-1-202 authorize this rule. Subsection 26-10-6(5)(b)(ii) requires the Newborn Hearing Screening Committee to advise the Department of Health and Human Services (Department) on rules.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is essential to facilitate early detection, prompt referral, and treatment through screening of newborns for certain conditions. The Department has flagged outdated language and plans to file an amendment simultaneously with this five-year review. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Tracy Gruber, Executive Director	Date:	01/26/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R653-3	Filing ID:	51712
Effective Date:	01/26/2023		

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 84114	
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:
R653-3. Selecting Private Consultants
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The Division of Water Resources (Division) is filing a repeal of this rule but needed to file a five-year review to avoid this rule expiring. Section 58-22-102 grants the Division authority to establish procedures for selecting private consultants in the engineering field. However, the Division no longer has purchasing power that was delegated to the Division. Since 2017, the procedures go through State Purchasing.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Division is filing a repeal of this rule but needed to file a five-year review to avoid this rule expiring. Therefore, this rule should be continued.

(EDITOR'S NOTE: The proposed repeal of Rule R653-3 is under ID 55211 in this issue, February 15, 2023, of the Bulletin.)

Agency Authorization Information

Agency head or designee and title:	Candice Hasenyager, Director	Date:	01/26/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R657-3	Filing ID:	51733
Effective Date:	02/01/2023		

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 catchline:

R657-3. Collection, Importation, Transportation, and Possession of Animals

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means to allow the collection, importation, exportation, transportation and possession of animals and their parts.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments supporting or opposing Rule R657-3 were received since March 2018, when this rule was last reviewed.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R657-3 governs the collection, importation, exportation, transportation, and possession of animals and their parts. The procedures adopted in this rule have provided an effective and efficient process. This rule is necessary for continued success of this program. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	J. Shirley, Division Director	Date:	02/01/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R805-1	Filing ID:	54647
Effective Date:	01/23/2023		

Agency Information

1. Department:	Higher Education (Utah Board of)
Agency:	University of Utah, Administration
Room number:	309
Building:	Park Building
Street address:	201 S Presidents Circle
City, state and zip:	Salt Lake City, UT 84112-9009

Contact persons:

Name:	Phone:	Email:
Allyson Hicks	801-587-2357	allyson.hicks@utah.edu

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

General Information

2. Rule catchline:

R805-1. Operating Regulations for Bicycles, Skateboards, Rollerskates, Scooters, and Other Non-Motorized Riding Devices

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 53B-2-106 authorizes Rule R805-1 by authorizing the president of each higher education institution to enact rules for the administration and operation of the institution. Section 53B-3-101 authorizes Rule R805-1 by allowing the Utah Board of Higher Education to pass rules and regulations governing parking and traffic on campuses and to enforce the rules and regulations by all appropriate methods. Section 53B-3-101 further allows the Utah Board of Higher Education to delegate this same authority to the president of each institution so long as the relevant board of trustees approves.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The University of Utah's ability to ensure the safety of all persons on campus has been facilitated by Rule R805-1. Rule R805-1 regulates the operation of bicycles, skateboards and scooters on campus and provides clear standards on the proper operation of these means of transportation. The use of bicycles, skateboards, and scooters on and around campus is very common and Rule R805-1 gives the University of Utah meaningful tools for the regulation of this type of traffic which enhances the safety of the University community. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Robert Payne, Deputy General Counsel	Date:	01/23/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R940-5	Filing ID: 52159
Effective Date:	01/24/2023	

Agency Information

1. Department:	Transportation Commission	
Agency:	Administration	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton Bldg	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information**2. Rule catchline:**

R940-5. Approval of Highway Facilities on Sovereign Lands

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 required by Section 72-6-303. Subsection 72-6-303(1)(b) requires the Transportation Commission to make rules "establishing minimum guidelines for an application to construct a highway facility over sovereign lakebed lands."

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Commission has not received a written comment during and since the last five-year review of this rule from any interested person supporting or opposing the 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:

Subsection 72-6-303(1)(b) requires the Transportation Commission to make rules "establishing minimum guidelines for an application to construct a highway facility over sovereign lakebed lands." This administrative rule satisfies that requirement. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee and title:	Carlos M. Braceras, PE, Executive Director	Date:	01/24/2023
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End of the Five-Year Notices of Review and Statements of Continuation 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

Regulatory Services

No. 55041 (Amendment) R70-370: Butter

Published: 12/01/2022

Effective: 01/12/2023

No. 55034 (Amendment) R70-380: Grade A Condensed and Dry Milk Products and Condensed and Dry Whey

Published: 12/01/2022

Effective: 01/12/2023

No. 55038 (Amendment) R70-560: Inspection and Regulation of Cottage Food Production Operations

Published: 12/01/2022

Effective: 01/12/2023

No. 55035 (Amendment) R70-570: Direct-to-Sale Farmers Market Signage

Published: 12/01/2022

Effective: 01/12/2023

No. 55054 (Amendment) R70-920: Packaging and Labeling of Commodities

Published: 12/01/2022

Effective: 01/12/2023

Commerce

Professional Licensing

No. 55111 (Amendment) R156-31b: Nurse Practice Act Rule

Published: 12/15/2022

Effective: 01/24/2023

No. 55082 (Amendment) R156-60c: Clinical Mental Health Counselor Licensing Act Rule

Published: 12/01/2022

Effective: 01/12/2023

No. 55059 (Amendment) R156-67: Utah Medical Practice Act Rule

Published: 12/01/2022

Effective: 01/12/2023

No. 55058 (Amendment) R156-68: Utah Osteopathic Medical Practice Act Rule

Published: 12/01/2022

Effective: 01/12/2023

Education

Administration

No. 55157 (Amendment) R277-306: Educator Preparation Programs for School Psychologists, Audiologists, Speech-Language Pathologists, Speech-Language Technicians, Counselors, and School Social Workers

Published: 01/01/2023

Effective: 02/08/2023

No. 55158 (Amendment) R277-317: Incentives for National Board Certification

Published: 01/01/2023

Effective: 02/08/2023

No. 55159 (Amendment) R277-469: Instructional Materials Commission Operating Procedures

Published: 01/01/2023

Effective: 02/08/2023

No. 55160 (Amendment) R277-477: Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program

Published: 01/01/2023

Effective: 02/08/2023

No. 55161 (Amendment) R277-609: Standards for LEA Discipline Plans and Emergency Safety Interventions

Published: 01/01/2023

Effective: 02/08/2023

NOTICES OF RULE EFFECTIVE DATES

No. 55162 (Repeal and Reenact) R277-709: Education Programs Serving Youth in Custody
Published: 01/01/2023
Effective: 02/08/2023

No. 55163 (Amendment) R277-920: School Improvement and Leadership Development
Published: 01/01/2023
Effective: 02/08/2023

Environmental Quality Administration

No. 55036 (Amendment) R305-4: Clean Fuels and Emission Reduction Technology Program
Published: 12/01/2022
Effective: 02/02/2023

Air Quality

No. 55037 (Amendment) R307-123: Clean Fuels and Vehicle Technology Grant and Loan Program
Published: 12/01/2022
Effective: 02/02/2023

No. 55039 (Amendment) R307-328: Gasoline Transfer and Storage
Published: 12/01/2022
Effective: 02/02/2023

Waste Management and Radiation Control, Radiation
No. 55060 (Amendment) R313-15-501: Surveys and Monitoring - General
Published: 12/01/2022
Effective: 01/17/2023

No. 55065 (Amendment) R313-28-31: General and Administrative Requirements
Published: 12/01/2022
Effective: 01/17/2023

No. 55061 (Amendment) R313-34-3: Clarifications or Exemptions
Published: 12/01/2022
Effective: 01/17/2023

No. 55062 (Amendment) R313-35-120: X-Ray Systems Less than 1 MeV used for Non-Destructive Testing
Published: 12/01/2022
Effective: 01/17/2023

No. 55063 (Amendment) R313-36-3: Clarifications or Exceptions
Published: 12/01/2022
Effective: 01/17/2023

No. 55064 (Amendment) R313-38-3: Clarifications or Exceptions
Published: 12/01/2022
Effective: 01/17/2023

Waste Management and Radiation Control, Waste Management
No. 55066 (Amendment) R315-15-5: Standards for Used Oil Processors and Re-Refiners
Published: 12/01/2022
Effective: 01/17/2023

No. 55067 (Amendment) R315-260-10: Definitions
Published: 12/01/2022
Effective: 01/17/2023

No. 55068 (Amendment) R315-261: General Requirements -- Identification and Listing of Hazardous Waste
Published: 12/01/2022
Effective: 01/17/2023

No. 55069 (Amendment) R315-262-24: Manifest Requirements Applicable to Small and Large Quantity Generators -- Use of the Electronic Manifest
Published: 12/01/2022
Effective: 01/17/2023

No. 55070 (Amendment) R315-263: Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for Any Hazardous Waste Handlers
Published: 12/01/2022
Effective: 01/17/2023

No. 55071 (Amendment) R315-264-71: Manifest System, Recordkeeping, and Reporting -- Use of Manifest System
Published: 12/01/2022
Effective: 01/17/2023

No. 55072 (Amendment) R315-265: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
Published: 12/01/2022
Effective: 01/17/2023

Water Quality

No. 54987 (Amendment) R317-2: Standards of Quality for Waters of the State
Published: 11/01/2022
Effective: 01/25/2023

Government Operations

Facilities Construction and Management

No. 55153 (Amendment) R23-1: Procurement Rules with Numbering Related to the Procurement Code
Published: 01/01/2023
Effective: 02/08/2023

No. 55131 (Amendment) R23-3: Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities
Published: 01/01/2023
Effective: 02/08/2023

No. 55132 (Amendment) R23-5: Contingency Funds
Published: 01/01/2023
Effective: 02/08/2023

No. 55133 (Amendment) R23-6: Value Engineering and Life Cycle Costing of State Owned Facilities Rules
Published: 01/01/2023
Effective: 02/08/2023

No. 55134 (Amendment) R23-7: State Construction Contracts and Drug and Alcohol Testing
Published: 01/01/2023
Effective: 02/08/2023

No. 55135 (Amendment) R23-10: Naming of State Buildings
Published: 01/01/2023
Effective: 02/08/2023

No. 55136 (Amendment) R23-12: Building Code Appeals Process
Published: 01/01/2023
Effective: 02/08/2023

No. 55137 (Amendment) R23-13: State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management
Published: 01/01/2023
Effective: 02/08/2023

No. 55138 (Amendment) R23-14: Management of Roofs on State Buildings
Published: 01/01/2023
Effective: 02/08/2023

No. 55139 (Amendment) R23-19: Facilities Use Rules
Published: 01/01/2023
Effective: 02/08/2023

No. 55140 (Amendment) R23-20: Free Speech Activities
Published: 01/01/2023
Effective: 02/08/2023

No. 55141 (Amendment) R23-21: Division of Facilities Construction and Management Procedures for Leases, Purchases, and Exchanges of Real Property
Published: 01/01/2023
Effective: 02/08/2023

No. 55142 (Amendment) R23-22: Disposal of Division owned Property -- Qualified Proposal Requirements
Published: 01/01/2023
Effective: 02/08/2023

No. 55143 (Amendment) R23-23: Health Reform -- Health Insurance Coverage in State Contracts -- Implementation
Published: 01/01/2023
Effective: 02/08/2023

No. 55144 (Amendment) R23-24: Capital Projects Utilizing Non-appropriated Funds
Published: 01/01/2023
Effective: 02/08/2023

No. 55145 (Amendment) R23-25: Administrative Rules Adjudicative Proceedings
Published: 01/01/2023
Effective: 02/08/2023

No. 55146 (Amendment) R23-26: Dispute Resolution
Published: 01/01/2023
Effective: 02/08/2023

No. 55150 (Amendment) R23-29: Categorical Delegation of Project Management
Published: 01/01/2023
Effective: 02/08/2023

No. 55148 (Amendment) R23-30: State Facility Energy Efficiency Fund
Published: 01/01/2023
Effective: 02/08/2023

No. 55147 (Amendment) R23-31: Executive Residence Commission
Published: 01/01/2023
Effective: 02/08/2023

Finance

No. 55028 (Amendment) R25-5: Payment of Meeting Compensation (Per Diem) to Boards
Published: 12/01/2022
Effective: 01/13/2023

No. 55020 (Repeal) R25-6: Relocation Reimbursement
Published: 01/01/2023
Effective: 02/7/2023

No. 55123 (Amendment) R25-7: Travel-Related Reimbursements for State Travelers
Published: 01/01/2023
Effective: 02/07/2023

No. 55005 (Repeal) R25-8: Overtime Meal Allowance
Published: 11/15/2022
Effective: 01/26/2023

Human Resource Management

No. 55115 (Amendment) R477-7-3: Annual Leave
Published: 12/15/2022
Effective: 01/24/2023

Governor

Economic Opportunity

No. 55107 (Amendment) R357-3: Economic Development Tax Increment Financing Rule
Published: 12/15/2022
Effective: 02/03/2023

NOTICES OF RULE EFFECTIVE DATES

No. 53055 (Amendment) R357-14: Electronic Meetings
Published: 11/15/2022
Effective: 02/03/2023

Health and Human Services

Administration (Health)

No. 54901 (Repeal) R380-407: Medical Cannabis
Pharmacy Agent
Published: 11/01/2022
Effective: 03/01/2023

No. 54969 (Repeal) R380-408: Home Delivery and Courier
Published: 11/01/2022
Effective: 03/01/2023

Center for Medical Cannabis

No. 54904 (New Rule) R383-8: Medical Cannabis
Pharmacy Agent
Published: 11/01/2022
Effective: 03/01/2023

No. 54958 (New Rule) R383-9: Home Delivery and Courier
Published: 11/01/2022
Effective: 03/01/2023

Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health

No. 55119 (Amendment) R388-805: Ryan White Part B
Program
Published: 01/01/2023
Effective: 02/07/2023

Family Health and Preparedness, Emergency Medical Services

No. 55026 (Amendment) R426-3: Licensure
Published: 11/15/2022
Effective: 01/17/2023

Administration, Administrative Services, Licensing
No. 55057 (Repeal) R501-16: Intermediate Secure
Treatment Programs for Minors
Published: 12/01/2022
Effective: 01/18/2023

Insurance

Administration

No. 55164 (Amendment) R590-164-5: Electronic Data
Interchange Transactions
Published: 01/01/2023
Effective: 02/08/2023

No. 55109 (Amendment) R590-177: Life Insurance
Illustrations Rule
Published: 12/15/2022
Effective: 01/24/2023

No. 55110 (Amendment) R590-197: Treatment of Guaranty
Association Assessments as Qualified Assets
Published: 12/15/2022
Effective: 01/24/2023

No. 55165 (Amendment) R590-271-4: Reporting
Requirements
Published: 01/01/2023
Effective: 02/08/2023

No. 55166 (Repeal and Reenact) R590-273: Continuing Care Provider Rule

Published: 01/01/2023
Effective: 02/08/2023

Labor Commission

Boiler, Elevator and Coal Mine Safety

No. 55118 (Amendment) R616-2-3: Safety Codes and
Rules for Boilers and Pressure Vessels
Published: 01/01/2023
Effective: 02/08/2023

Lieutenant Governor

Elections

No. 54985 (New Rule) R623-7: Vote Tabulation Software
Validation Rule
Published: 11/01/2022
Effective: 01/24/2023

Money Management Council

Administration

No. 55116 (Amendment) R628-12: Certification of Qualified
Depositories for Public Funds
Published: 12/15/2022
Effective: 01/24/2023

Tax Commission

Administration

No. 55075 (Amendment) R861-1A-12: Policies and
Procedures Regarding Public Disclosure Pursuant to Utah
Code Ann. Sections 41-3-209, 59-1-210, 59-1-403, and 59-1-
405
Published: 12/01/2022
Effective: 01/12/2023

No. 55077 (Amendment) R861-1A-16: Utah State Tax
Commission Management Plan Pursuant to Utah Code Ann.
Section 59-1-207
Published: 12/01/2022
Effective: 01/12/2023

No. 55076 (Amendment) R861-1A-46: Procedures for
Purchaser Refund Requests Pursuant to Utah Code Ann.
Sections 59-1-1410 and 59-12-110
Published: 12/01/2022
Effective: 01/12/2023

Auditing

No. 55078 (Amendment) R865-14W-1: Mineral Production
Tax Withholding Pursuant to Utah Code Ann. Sections 59-6-
101 through 59-6-104
Published: 12/01/2022
Effective: 01/12/2023

No. 55079 (Amendment) R865-19S-102: Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104
Published: 12/01/2022
Effective: 01/12/2023

Motor Vehicle Enforcement
No. 55156 (Amendment) R877-23V-7: Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210
Published: 01/01/2023
Effective: 02/09/2023

Property Tax
No. 55167 (Amendment) R884-24P-66: County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004
Published: 01/01/2023
Effective: 02/09/2023

Transportation

Administration
No. 55101 (Amendment) R907-1-3: Appointment of the Presiding Officer and Hearing Record
Published: 12/15/2022
Effective: 01/24/2023

Program Development
No. 55114 (Amendment) R926-17: Road Usage Charge Program
Published: 12/15/2022
Effective: 01/24/2023

Preconstruction
No. 55103 (Amendment) R930-5: Maintenance
Published: 01/01/2023
Effective: 02/07/2023

Transportation Commission

Administration
No. 55102 (Repeal) R940-8: Establishment of Road Usage Charge (RUC) Rates
Published: 12/15/2022
Effective: 01/24/2023

Workforce Services

Employment Development
No. 55113 (Amendment) R986-600: Workforce Innovation and Opportunity Act
Published: 12/15/2022
Effective: 01/24/2023

No. 55155 (Amendment) R986-700: Child Care Assistance
Published: 01/01/2023
Effective: 02/08/2023

Housing and Community Development
No. 55024 (Amendment) R990-200: Private Activity Bonds
Published: 11/15/2022
Effective: 02/07/2023

No. 55024 (Change in Proposed Rule) R990-200: Private Activity Bonds
Published: 01/01/2023
Effective: 02/07/2023

End of the Notices of Rule Effective Dates Section

