

# UTAH STATE BULLETIN

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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## NOTICES OF PROPOSED RULES

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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 February 02, 2023, 12:00 a.m., and February 15, 2023, 11:59 p.m. are included in this, the March 01, 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 Rules being repealed are completely struck out.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 31, 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 29, 2023, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

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The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Rule or Section Number:	R58-1	Filing ID: 55241

#### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Animal Industry	
<b>Building:</b>	TSOB South Bldg, Floor 2	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state, and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@Utah.gov
Amanda Price	801-982-2200	amandaprice@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

#### General Information

<b>2. Rule or section catchline:</b>
R58-1. Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Changes are needed to bring the import requirements in line with current disease risks and federal movement requirements for all species. Changes are also required to make the rule text more consistent with the requirements of the Utah Rulewriting Manual.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Unnecessary and redundant language is removed throughout this rule to make it easier to understand.
In Section R58-1-2, definitions are simplified and clarified, and unnecessary definitions are removed.
Identification guidelines have been simplified by removing a portion of Section R58-1-3 and all of Section R58-1-4.

Specific animal standards are already covered by Subsection R58-1-3(2)(e) and do not need to be listed in detail.

#### Fiscal Information

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
The changes clarify and make this rule consistent with current practice. The Division of Animal Industry (Division) does not anticipate any impact on the state budget.			
<b>B) Local governments:</b>			
Local governments do not participate in the Department of Agriculture and Food's (Department) animal health program and should not be impacted by the changes.			
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>			
The changes clarify and make this rule consistent with current practice. The Division does not anticipate any impact on small businesses.			
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>			
The changes clarify and make this rule consistent with current practice. The Division does not anticipate any impact on non-small businesses.			
<b>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 <b>agency</b>):</b>			
The changes clarify and make this rule consistent with current practice. The Division does not anticipate any impact on other persons.			
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>			
Compliance costs for affected persons will not change. The fees charged by the Department and compliance requirements will remain the same.			
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in the narratives above.)</b>			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Commissioner of the Utah Department of Agriculture and Food, Craig W Butters, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>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:</b>		
Title 4, Chapter 31	Subsection 4-2-103(1)(c)(i)	Subsection 4-2-103(1)(i)

**Public Notice Information**

<b>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.)</b>	
<b>A) Comments will be accepted until:</b>	03/31/2023
<b>9. This rule change MAY become effective on:</b>	04/07/2023
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**

<b>Agency head or designee and title:</b>	Craig W Butters, Commissioner	<b>Date:</b>	02/09/2023
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**R58. Agriculture and Food, Animal Industry.****R58-1. Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals.****R58-1-1. Authority.**

(1) Promulgated under the authority of Title 4, Chapter 31, Control of Animal Disease, and Subsections 4-2-103(1)(c)(i), and 4-2-103(1)(i).

(2) ~~[It is the intent of these rules]~~ This rule intends to eliminate or reduce the spread of diseases among animals by providing standards to be met in the movement of animals within Utah and the importation of animals into the state.

**R58-1-2. Definitions.**

(1) "Accredited Veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services (VS), Animal and Plant Health Inspection Services (APHIS), United States Department of Agriculture (USDA), in accordance with ~~[the provisions of]~~ 9 CFR 161 to perform functions required by cooperative ~~[S]state-[F]federal~~ disease control and eradication programs.

(2) "Animal identification number (AIN)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of 15 digits, with the first ~~[3]three~~ being the country code. The country code is ~~[8]840~~ for the United States, or a unique country code may be used for any U.S. territory that has such a code and elects to use it in place of the 840 code~~]~~.

(3) "Animals" means vertebrates, except humans.

~~[(4) "Approved livestock facility" means a stockyard, livestock market, buying station, concentration point, or any other premises under state or federal veterinary inspection where livestock are assembled and that has been approved by the department.]~~

~~[(5)]~~ [(4)] "Approved Livestock Market" means a livestock market that is licensed by the department under Title 4, Chapter 30, Livestock Markets.

~~[(6)]~~ [(5)] "Approved Slaughter Establishment" means a state or federally inspected slaughter establishment at which ante-mortem and ~~[post-mortem]~~ postmortem inspection ~~[is]are~~ conducted by state or federal inspectors.

~~[(7) "Approved tagging site" means a premises, authorized by department, where livestock may be officially identified on behalf of their owner or the person in possession, care, or control of the animals when they are brought to the premises.]~~

~~[(8)]~~ [(6)] "Brand Inspection Certificate" means an official form, issued by a government agency or other agency responsible for animal identification in the state of origin, used to transfer the title of livestock~~;~~, listing the identification marks of the animals as well as the consignor and consignee contact information.

~~[(9)]~~ [(7)] "Camelid~~[ae]~~" means a ~~[term referring to members of the family of animals which for the purposes of these rules includes]~~ camel~~[s (camelus dromedarius and camelus bactrianus)]~~, llama~~[s (lama glama)]~~, alpaca~~[s (vicugna pacos)]~~, guanaco~~[s (lama guanicoe)]~~, and vicuna~~[s (vicugna vicugna)]~~.

~~[(10)]~~ [(8)] "Captive Cervidae" means a term referring to captive-bred members of the cervid family ~~[of animals which for the purposes of these rules includes]~~ including ~~[captive-bred]~~ caribou,

~~[(c)reindeer, [(rangifer tarandus)), captive bred] elk, [(cervus canadensis nelsoni)], and [captive bred] fallow deer [(dama dama)], or any other captive[-]bred cervidae allowed with permission from the State Veterinarian and the Utah Division of Wildlife Resources.~~

~~[(14)9] "Certificate of Veterinary Inspection" means an official paper or electronic form completed by an accredited veterinarian that has examined the animal [or animals] listed on the certificate and has completed any disease testing or vaccinations [as] required.~~

~~[(12)10] "Commuter herd" means a herd of cattle or bison [located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual] moved interstate during normal livestock management operations and without change of ownership directly between two premises, as provided in a commuter herd agreement.~~

~~[(13)11] "Commuter herd agreement" means a written agreement between the owner of a herd of cattle or bison and the animal health officials for the states or tribes of origin and destination specifying the conditions required for the interstate movement from one premises to another in the course of normal livestock management operations and specifying the [time] period, up to one year, that the agreement is effective. A commuter herd agreement may be renewed annually.~~

~~[(14)12] "Dairy cattle" means any cattle, regardless of age [or], sex, or current use, that are of a breed used to produce milk or other dairy products for human consumption [including ayrshire, brown swiss, holstein, jersey, guernsey, milking shorthorn, and red and whites].~~

~~[(15)13] "Department" means the Utah Department of Agriculture and Food.~~

~~[(16)14] "Designated Brucellosis surveillance area" means an area within a state [that has been] designated by the animal health official of that state as an area of increased disease risk for bovine Brucellosis.~~

~~[(17)15] "Direct Movement" means the movement of [in which the] animals without [are not unloaded] unloading and enroute to their final destination, except for stops of less than 24 hours to feed, water, or rest the animals being moved, and [not commingled] without commingling with another producer's animals.~~

~~[(18) "Exotic animal" means a rare or unusual animal pet or an animal, not commonly thought of as a pet, kept within a human household. For this chapter, rodents, reptiles, and amphibians are considered exotic animals.]~~

~~[(19)16] "Exposed Animal" means an animal that has been in contact with [or] on the same premises [of] as, or within a quarantine zone where animals with a contagious or communicable disease are present.~~

~~[(20) "Farm of Origin" means the farm where the animal was born and remains prior to importation into the state.]~~

~~[(21)17] "Flock-based number system" means the [flock-based] number system that combines a flock identification number (FIN) with a producer's unique livestock production numbering system to provide a nationally unique identification number for an animal.~~

~~[(22)18] "Flock identification number (FIN)" means a nationally unique number assigned by a state, tribal, or federal animal health authority to a group of animals that are managed as a unit on one or more premises and are under the same ownership.~~

~~(19) "Gamebird" means any captive raised animal identified as a Pen-Reared Gamebird in Section R657-4-2.~~

~~[(23)20] "Group [or] lot identification number (GIN)" means the identification number used to uniquely identify a "unit of animals" of the same species that [is] are managed together as one group throughout the preharvest production chain.~~

~~[(24)21] "Import Permit" means a number given by the department to the issuing veterinarian that is recorded on the [e]Certificate of [v]Veterinary [i]Inspection if [and is] required before the movement of the animals into the state.~~

~~[(25)22] "Interstate movement" means the movement of animals from one state into or through any other state.~~

~~[(26) "Livestock Market Veterinarian" means a Utah licensed and USDA accredited veterinarian appointed by the department to work at approved livestock markets.~~

~~[(27) "Location identification (LID) number" means a nationally unique number issued by a state, tribal, or federal animal health authority to a location as determined by the state or tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique and herd unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).]~~

~~[(28)23] "National Uniform Eartagging System (NUES)" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.~~

~~[(29)24] "Official [C]alfhood [V]accinate" means female bison or cattle vaccinated by a USDA Veterinary Services representative, state certified technician, or accredited veterinarian with an approved dose of RB51 vaccine or other USDA approved agent while from 4 to 12 months of age in accordance with its labeling. These cattle shall be properly identified by official tattoos and ear tags or registration tattoos [and be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.]~~

~~[(30)25] "Official [eartag]ear tag" means an identification tag approved by the department that bears an official identification number for individual animals. The official [eartag]ear tag shall be tamper-resistant and have a high retention rate in the animal.~~

~~[(31) "Official eartag shield" means the shield shaped graphic of the U.S. Route Shield with "U.S." or the State postal abbreviation or tribal alpha code imprinted within the shield.]~~

~~[(32)26] "Official identification device or method" means a means approved by the department of applying an official identification number to an animal of a specific species or associating an official identification number with an animal or group of animals of a specific species or otherwise officially identifying an animal or group of animals.~~

~~[(33)27] "Official identification number" means a nationally unique number that is permanently associated with an animal or group of animals.~~

~~[(34)28] "Officially identified" means identified [by means of] using an official identification device or method approved by the department.~~

~~[(35)29] "Poultry" means domestic fowl [such as] including chickens, turkeys, [ducks, geese, and] guinea fowl, [and] [pea] fowl, pigeons [and doves, pheasants and other gamebirds], and ratites or other captive-bred birds not listed in Section R657-4-2 that are bred for the primary purposes of producing eggs or meat whether kept for production or exhibition.~~

(~~36~~30) "Premises identification number (PIN)" means a nationally unique number assigned by a state, tribal, or federal animal health authority to a premise[s] that ~~is~~are, in the judgment of the state, tribal, or federal animal health authority a geographically distinct location from other premises.

(~~37~~31) "Qualified ~~[F]~~feedlot" means a feedlot approved by the department to handle ~~[heifers, cows, or bulls]~~cattle ~~[that are either official calfhood vaccinated, or Brucellosis unvaccinated animals]~~confined to a ~~[drylot]~~dry lot area that is used to upgrade or finish feeding animals going only to slaughter or another qualified feedlot. Animals shall be kept separate from other animals not destined for slaughter.

(~~38~~32) "Quarantine" means a verbal or written restriction of movement of animals into or out of an area or premise, issued by a ~~[S]~~state ~~[A]~~animal ~~[H]~~health ~~[O]~~official.

(~~39~~33) "Reactor" means any animal that has been determined by an ~~an~~ ~~designated Brucellosis~~epidemiologist to be infected with Brucellosis or Tuberculosis based on test results, herd or flock history, or culture results.

(~~40~~34) "Suspect" means any animal that may be infected with a contagious, infectious, or communicable disease based on test results or herd or flock history but not confirmed by official laboratory tests.

~~[(41) "Test Eligible Cattle and Bison" means cattle or bison six months of age or older, except:~~

- ~~(a) steers, spayed heifers; or~~
- ~~(b) official calfhood vaccinates of any breed under 24 months of age that are not parturient, springers, or post parturient.]~~

(35) "Travel permit" means a permit issued by the department for show horses and mules instead of a brand inspection certificate. Travel permits do not exempt horses from health requirements as described in Section R58-1-6.

(~~42~~36) "United States Department of Agriculture (USDA) approved backtag" means a backtag issued by APHIS that provides a temporary unique identification for each animal.

~~[(43) "Zoological animal" means an animal kept at a zoological garden (zoo) or other exhibition that is inspected on a regular basis by the USDA.]~~

### **R58-1-3. Official Identification Devices and Methods.**

(1) Any state, tribe, accredited veterinarian, or other person or entity who distributes official identification devices shall maintain ~~[for five years]~~a record of the names and addresses of anyone to whom the devices were distributed for five years.

(2) An official identification number is a nationally unique number that is permanently associated with an animal or group of animals, and that adheres to one of the following systems:

- (a) National Uniform Eartagging System (NUES);
- (b) ~~[A]~~animal identification number (AIN);
- (c) location-based number system;
- (d) flock-based number system; or
- (e) any other numbering system approved by the animal health official of the state of origin for the official identification of animals.

~~[(3) The department has approved the following official identification devices or methods for the species listed:~~

~~(a) The department may authorize the use of additional devices or methods for a specific species if the department determines that the additional devices or methods will provide for adequate traceability.~~

~~(4) Cattle and bison that are required to be officially identified for interstate movement must be identified by means of:~~

~~(a) an official eartag; or~~  
~~(b) brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when agreed to by the shipping and receiving state or tribal animal health authorities; or~~

~~(c) tattoos and other identification methods acceptable to a breed association for registration purposes, accompanied by a breed registration certificate, when agreed to by the shipping and receiving state or tribal animal health authorities; or~~

~~(d) group or lot identification when a group or lot identification number (GIN) may be used.~~

(5) Horses and other equine species that are required to be officially identified for interstate movement shall be identified by one of the following methods:

~~(a) a description sufficient to identify the individual equine including name, age, breed, color, gender, distinctive markings, and unique and permanent forms of identification when present such as brands, tattoos, scars, cowlicks, blemishes or biometric measurements;~~

~~(b) electronic identification that complies with ISO 11784/11785;~~

~~(c) non ISO electronic identification injected to the equine on or before June 30, 2013; or~~

~~(d) digital photographs sufficient to identify the individual equine.~~

(6) Poultry that are required to be officially identified for interstate movement shall be identified by one of the following methods:

~~(a) sealed and numbered leg bands; or~~  
~~(b) group and lot identification when a group/lot identification number (GIN) may be used.~~

~~(7) sheep and goats that are required to be officially identified for interstate movement must be identified by one of the following methods:~~

~~(a) electronic implants when accompanied by a certificate or owner statement that includes the electronic implant numbers and the name of the chip manufacturer;~~

~~(b) official eartags, including tags approved for use in the Scrapie Flock Certification Program or APHIS approved premises identification number eartags when combined with a unique animal identification number;~~

~~(c) United States Department of Agriculture backtags or official premises identification backtags that include a unique animal identification number, when used on sheep or goats moving directly to slaughter and when applied within 3 inches of the poll on the dorsal surface of the head or neck;~~

~~(d) legible official registry tattoos that have been recorded in the book of record of a sheep or goat registry association when the animal is accompanied by either a registration certificate or a certificate of veterinary inspection. These tattoos may also be used as premises identification if they contain a unique premises prefix that has been linked in the National Scrapie Database with the assigned premises identification number of the flock of origin;~~

~~(e) premises identification eartags or tattoos, if the premises identification method includes a unique animal number or is combined with a flock eartag that has a unique animal number and the animal is accompanied by an owner statement;~~

~~(f) premises identification when premises identification is allowed and the animal is accompanied by an owner statement; or~~

~~(g) any other official identification method or device approved by the animal health official of the state of origin.~~

~~(8) Swine that are required to be officially identified for interstate movement shall be identified by one of the following methods:~~

- ~~(a) official eartags;~~
- ~~(b) USDA backtags, when used on swine moving to slaughter;~~
- ~~(c) official swine tattoos, when used on swine moving to slaughter;~~
- ~~(d) ear notching when used on any swine, if the ear notching has been recorded in the book of record of a purebred registry association;~~
- ~~(e) tattoos on the ear or inner flank of any swine, if the tattoos have been recorded in the book of record of a swine registry association;~~
- ~~(f) for slaughter swine and feeder swine, an eartag or tattoo bearing the premises identification number assigned by the state animal health official to the premises on which the swine originated;~~
- ~~(g) any other official identification device or method that is approved by the animal health official of the state of origin; or~~
- ~~(h) group or lot identification when a group or lot identification number (GIN) may be used.~~
- ~~(9) Captive cervids that are required to be officially identified for interstate movement shall be identified by one of the following methods:~~
  - ~~(a) official eartag and a tattoo that is placed peri-anally or inside the right ear and consists of a number assigned by the animal health official of the state of origin; or~~
  - ~~(c) a microchip that has been placed in the right ear.]~~

**~~[R58-1-4. Intrastate Cattle Movement Rules - Brucellosis.~~**

- ~~(1) The State Veterinarian may require Brucellosis testing of cattle, bison, and elk, moving intrastate as necessary to protect against potential disease threat or outbreak.~~
- ~~(2) department inspectors will help regulate intrastate movement of cattle according to Brucellosis rules at the time of change of ownership inspection.]~~

**R58-1-5[4. Interstate Importation Standards.**

- (1) No animal, poultry, or bird of any species or other animal, including wildlife, that is known to be affected with or has been exposed to a contagious, infectious, or communicable disease, or that originates from a quarantined area, shall be shipped, transported, or moved into ~~[the State of Utah]~~the state until written permission for entry is first obtained from the ~~[USDA, Animal and Plant Health Inspection Service, Veterinary Services Division, and the department,]~~State Veterinarian~~], or Commissioner of Agriculture].~~
- ~~[(a)]~~ Failure to obtain written permission may result in a citation.
- ~~[(2)]~~ An official Certificate of Veterinary Inspection issued by an accredited veterinarian is required for importation of any animals.]
- ~~[(3)]~~ A copy of the ~~[certificate]~~Certificate of Veterinary Inspection shall be immediately forwarded to the department by the issuing veterinarian or the animal health official of the state of origin within seven calendar days from the date on which the Certificate of Veterinary Inspection ~~[or other document]~~is ~~[received or]~~issued.
- ~~[(4)]~~ Import permits ~~[for livestock, poultry, and other animals]~~may be obtained by telephone ~~[or via the internet to]~~by the accredited veterinarian responsible for issuing a Certificate of Veterinary Inspection.

~~(4) Import permits are required for the following movements:~~

- ~~(a) exotic animals and wildlife, captive Cervidae, and aquatic animals;~~
- ~~(b) animals under regulatory oversight for disease or infected with or exposed to a reportable disease;~~
- ~~(c) animals coming from control areas for disease;~~
- ~~(d) approved variances to import requirements;~~
- ~~(e) international shipments; or~~
- ~~(f) commuter permits.~~
- (5) Certificates of Veterinary Inspection are considered valid for 30 days from the ~~[date of inspection]~~inspection date.

**R58-1-6[5. Cattle and Bison.**

- (1) A Certificate of Veterinary Inspection ~~[and an import permit]~~shall accompany any cattle and bison imported into the state.
- (a) Cattle consigned by the direct movement to an approved slaughter establishment or a federally approved auction market do not require a Certificate of Veterinary Inspection.
- (2) ~~[Any e]~~Cattle and bison ~~[shall carry some form of individual identification as listed in Subsection R58-1-3(4)]~~are required to be individually identified for interstate movement.
- (a) Individual identification means:~~[shall be listed on the Certificate of Veterinary Inspection.]~~
  - (i) ~~An [O]~~official ~~[individual identification used for testing purposes shall be shown on the Certificate of Veterinary Inspection; or]~~ear tag (RFID or metal NUES tag);
  - (ii) ~~[a copy of the official Brucellosis or Tuberculosis test sheets shall be stapled to each copy of the Certificate of Veterinary Inspection.]~~Brands registered with a recognized brand inspection authority and accompanied by an official brand inspection certificate, when agreed to by participating states;
  - (A) Animals with a brand and accompanied by official brand inspection certificates shall be individually identified but may be moved without listing the individual IDs on the Certificate of Veterinary Inspection.
  - (B) The official list of IDs shall be made available to the State Veterinarian upon request.
  - (iii) tattoos and other identification methods acceptable to a breed association for registration purposes, accompanied by a breed registration certificate when agreed to by participating states; or
  - (iv) group or lot identification when a group or lot identification number (GIN) may be used.
  - (b) ~~[Any cattle and bison imported into Utah from Canada, except those imported directly to slaughter, shall be permanently branded with the letters CAN, not less than two inches high nor more than three inches high, placed high on the right hip]~~international imports of cattle and bison to Utah shall meet federal import requirements for identification.
  - (3) ~~[The import permit number shall be listed on the Certificate of Veterinary Inspection]~~Import permits may be required by Subsection R58-1-4(4).
  - (4) ~~[The following cattle are exempted from Subsection R58-1-6(1):~~
    - ~~(a) cattle consigned directly to slaughter at an approved slaughter establishment; or~~
    - ~~(b) cattle consigned directly to a state or federal approved Auction Market.~~
    - ~~(c) Movements under Subsections R58-1-5(4)(a), and R58-1-5(4)(b) shall be in compliance with state and federal laws and regulations and shall be accompanied by a weighbill, brand certificate, or similar document showing some form of positive~~

identification, signed by the owner or shipper stating the origin, destination, number, and description of animals and purpose of movement.

~~\_\_\_\_\_ (d) Commuter cattle are exempt as outlined in Subsection R58-1-5(6). A brand inspection certificate or proof of ownership that indicates the intended destination is required for cattle entering the state.~~

~~\_\_\_\_\_ (5) A brand inspection certificate or proof of ownership, which indicates the intended destination, is required for cattle entering the state.~~

~~\_\_\_\_\_ (6) Commuter cattle may enter Utah or return to Utah after grazing if the following conditions are met.~~

~~\_\_\_\_\_ (a) A commuter permit approved by [the import state and the State of Utah] both states shall be obtained [prior to] before movement into Utah. This will allow movements for grazing for the current season if the following conditions are met:~~

~~\_\_\_\_\_ (i) cattle shall meet testing requirements [as to state classification for interstate movements as outlined in 9 CFR 1-78, which is incorporated by reference; USDA, Animal and Plant Health Inspection Services (APHIS), Brucellosis Eradication, Uniform Methods and Rules, October 1, 2003, and approved by cooperating states] specified on the commuter permit application;~~

~~\_\_\_\_\_ (ii) commuter cattle shall not be mixed with quarantined cattle, [exposed,] cattle of unknown or positive trichomoniasis status, [or suspect cattle] nor change ownership during the grazing period; and~~

~~\_\_\_\_\_ (iii) bulls used in the commuter herd shall be tested annually for trichomoniasis as required by [the State of Utah] Rule R58-21.~~

~~\_\_\_\_\_ (b) No quarantined, exposed or reactor cattle shall enter Utah.~~

~~\_\_\_\_\_ (7) [Prior to] Before the importation of cattle or bison into Utah, the following health restrictions [must] shall be met:~~

~~\_\_\_\_\_ (a) Female bison and cattle [heifers of vaccination age between four and 12] over four months of age shall be officially calfhood vaccinated for Brucellosis with legible tattoos or tested negative for Brucella abortus within 30 days [prior to] before entering Utah, unless:~~

~~\_\_\_\_\_ (i) going directly to slaughter;~~

~~\_\_\_\_\_ (ii) going to a qualified feedlot to be sold for slaughter; or~~

~~\_\_\_\_\_ (iii) going to an approved [livestock] auction market to be sold for slaughter or testing and [for] vaccination in accordance with Subsection R58-7-3(B)(5).~~

~~\_\_\_\_\_ (iv) Bison and cattle heifers of vaccination age may be vaccinated upon arrival by special permit from the State Veterinarian.~~

~~\_\_\_\_\_ (b) [Any female bison and cattle over 12 months of age imported to Utah shall have evidence of a Brucellosis calfhood vaccination tattoo to be imported or sold into the State of Utah, unless:~~

~~\_\_\_\_\_ (i) going directly to slaughter;~~

~~\_\_\_\_\_ (ii) going to a qualified feedlot to be sold for slaughter;~~

~~\_\_\_\_\_ (iii) going to an approved livestock market to be sold for slaughter; or~~

~~\_\_\_\_\_ (iv) they have tested negative for Brucella Abortus within 30 days prior to entry.] No reactor cattle or bison or cattle or bison from herds under quarantine for Brucellosis will be allowed to enter the state except when consigned to an approved slaughter establishment. An import permit and a Veterinary Services Form 1-27 before shipment are also required.~~

~~\_\_\_\_\_ (c) [Test eligible cattle imported from states designated as Brucellosis free, but that are coming from a designated Brucellosis~~

~~surveillance area within that state, shall test negative for Brucellosis within 30 days prior to entry.] A negative Tuberculosis test is required within 60 days before shipment for any dairy cattle two months of age and older and bison six months of age and older.~~

~~\_\_\_\_\_ (i) Test eligible cattle may enter the state prior to testing with approval from the State Veterinarian but shall be tested immediately upon arrival and the cattle shall be kept isolated away from other cattle until testing negative.]~~

~~\_\_\_\_\_ (d) [Test eligible cattle imported from states that have not been designated as Brucellosis free shall test negative for Brucellosis within 30 days before movement into Utah.] Cattle originating within a quarantined area, from a reactor or exposed herds, or from a site that is not classified as Tuberculosis free are required to be tested for tuberculosis within 60 days before entry to Utah unless moving directly to an approved slaughter establishment for immediate slaughter.~~

~~\_\_\_\_\_ (c) [Exceptions to the above testing requirements include exhibition animals and test eligible cattle imported to Utah and moving directly to:~~

~~\_\_\_\_\_ (i) an approved livestock market;~~

~~\_\_\_\_\_ (ii) a qualified feedlot; or~~

~~\_\_\_\_\_ (iii) an approved slaughter establishment for immediate slaughter.] Rodeo bulls and roping steers shall be tested for tuberculosis within 12 months before entry to Utah.~~

~~\_\_\_\_\_ (f) [No reactor cattle, or cattle from herds under quarantine for Brucellosis will be allowed to enter the state except when consigned to an approved slaughter establishment. An import permit and a Veterinary Services Form 1-27 prior to shipment are also required.] No cattle infested with or exposed to scabies shall be moved into Utah. Cattle from a county where scabies has been diagnosed during the past 12 months shall be officially treated within ten days before shipment into Utah. The treatment date and products used shall be shown on the Certificate of Veterinary Inspection.~~

~~\_\_\_\_\_ (g) [Entry of cattle that have been retattooed is not permitted unless they are moved for immediate slaughter to an approved slaughter establishment or to not more than one state or federal approved market for sale to a qualified feedlot or slaughtering establishment.] Any bulls imported to Utah shall follow the trichomoniasis rule found in Section R58-21-5.~~

~~\_\_\_\_\_ (h) A negative Tuberculosis test is required within 60 days prior to shipment for any dairy cattle two months of age and older and bison six months of age and older.~~

~~\_\_\_\_\_ (i) Breeding cattle originating within a quarantined area or from reactor or exposed herds and cattle from an area that is not classified as Tuberculosis free are required to be tested for tuberculosis within 60 days prior to entry to Utah.~~

~~\_\_\_\_\_ (j) Rodeo bulls and roping steers shall be tested annually during the calendar year for tuberculosis prior to entry to Utah.~~

~~\_\_\_\_\_ (k) No cattle infested with, or exposed to scabies shall be moved into Utah. Cattle from a county where scabies has been diagnosed during the past 12 months shall be officially treated within ten days prior to shipment into Utah. The date of treating and products used shall be shown on the Certificate of Veterinary Inspection.~~

~~\_\_\_\_\_ (l) No cattle infested with ticks that can transmit splenic or tick fever, or exposed to tick infestations shall be imported into the State of Utah for any purpose.~~

~~\_\_\_\_\_ (m) Any bulls imported to Utah shall be in compliance with Subsection R58-21-3(A), that requires testing of bulls over 12 months of age for Trichomoniasis prior to entry, with some exceptions for slaughter, rodeo, exhibition, and bulls kept in confinement.]~~

**R58-1-[7]6. Horses, Mules, Donkeys,~~[Asses,~~ and Other Equidae.**

(1) Equidae may be imported into~~[the State of]~~ Utah when accompanied by an official Certificate of Veterinary Inspection or an electronic Extended Equine Certificate of Veterinary Inspection created by a platform approved by the department.

(2) ~~[The Certificate of Veterinary Inspection shall show a negative Equine Infectious Anemia (EIA)(Coggins — AGID or ELISA) test within one year previous to the time the certificate was issued.~~

~~———— (a) Entry of equidae into Utah shall not be allowed until the EIA test has been completed and reported negative.~~

~~———— (b) Equidae that test positive to the EIA test shall not be permitted entry into Utah, except by special written permission from the State Veterinarian.~~

~~———— (c) A nursing foal less than six months of age accompanied by its EIA negative dam, and equidae moving directly to an approved livestock market are exempt from the test requirements.]Equines shall be accompanied by a brand inspection or proof of ownership and be officially identified by 9 CFR 86.~~

(3) [Utah horses returning to Utah as part of a commuter livestock shipment are exempted from the Certificate of Veterinary Inspection requirements; however, a valid Utah horse travel permit as outlined under Sections 4-24-405 or 4-24-406 and Section R58-9-4 is required for re-entering Utah.]Equines shall be tested for Equine Infectious Anemia (EIA) via AGID or ELISA test within one year before entry to Utah. A nursing foal less than six months old accompanied by its EIA negative dam is exempt from the test requirements.

(4) [An import permit issued by the department shall accompany any stallions or semen.]Utah horses returning to Utah as part of a commuter livestock shipment are exempted from the Certificate of Veterinary Inspection requirements; however, a brand inspection or valid Utah horse travel permit as outlined under Section 4-24-405 or Section 4-24-406 and a negative EIA test within one year are required.

(5) Any stallions used for breeding that enter Utah or stallions whose semen will be shipped to Utah shall be tested for Equine Viral Arteritis (EVA) by an accredited veterinarian within 30 days ~~[prior to]before~~ entry.

(a) ~~[Exceptions are stallions that have proof of negative EVA status prior to vaccination and proof of subsequent yearly vaccination.]Stallions that have proof of negative EVA status before vaccination and evidence of subsequent annual vaccination are exempt from this requirement.~~

(b) The EVA test or vaccination status shall be recorded on the Certificate of Veterinary Inspection.

(c) ~~[Breeding stallions and semen infected with Equine Arteritis Virus shall be handled only on an approved facility as required by Rule R58-23.]No EVA carrier stallion used for breeding purposes or semen from an EVA carrier stallion shall be permitted to enter Utah without an import permit from the State Veterinarian.~~

(d) EVA Carrier Stallions imported for breeding purposes into Utah shall be taken directly to an approved facility and shall remain in the facility until permission from the State Veterinarian is obtained to move the animal to another approved facility.

(e) Semen from an EVA Carrier Stallion imported into Utah shall be shipped directly to an approved facility and shall remain in the facility until inseminated, transported to another approved facility, or disposed of.

(6) Any quarter horses imported for racing purposes shall be tested for piroplasmiasis within 30 days before entry.

**R58-1-[8]7. Swine.**

(1) Swine may be shipped into the state if the following requirements are met:

(a) ~~[s]~~Swine shall be accompanied by an approved Certificate of Veterinary Inspection stating they have not been fed raw garbage.

~~———— (i) The Certificate of Veterinary Inspection shall show individual identification, ear tags, tattoos, registration numbers, microchips, or other permanent means.]~~

(b) [An import permit issued by the department shall accompany any swine imported into the state.]Swine shall have individual official identification such as an RFID or NUES tag. Ear notches or tattoos are only allowed if registered with a purebred association.

(c) Breeding and exhibition swine over the age of three months shipped into Utah ~~[shall be tested negative for]~~that do not originate from a swine Brucellosis free state shall be tested negative for Brucellosis within 30 days ~~[prior to]before~~ movement into the state.~~———— (i) A validated Brucellosis free herd number and date of last test is required to be listed on the Certificate of Veterinary Inspection.]~~

~~———— (i) A validated Brucellosis free herd number and date of last test is required to be listed on the Certificate of Veterinary Inspection.]~~

~~———— (ii) Swine from states with serious disease occurrences or known populations of feral or wild hogs may be required to be tested for Brucellosis [prior to]before entry to Utah.~~

(d) Breeding, feeding, and exhibition swine shall be tested negative for Pseudorabies within ~~[thirty]30~~ days unless they originate from a recognized qualified ~~[p]~~Pseudorabies free herd or Pseudorabies Stage V state.

(i) Swine ~~[that have been]~~vaccinated with any Pseudorabies vaccine shall not enter the state.

(ii) Swine ~~[that are]~~infected or exposed to Pseudorabies may not enter the state, except swine consigned to a slaughterhouse for immediate slaughter that shall be moved in compliance with 9 CFR 71, which is incorporated by reference.

~~———— (iii) Swine from states with known populations of feral or wild hogs may be required to be tested for Pseudorabies prior to entry to Utah.]~~

(2) Prohibition of Non-domestic and Non-native Suidae and Tayassuidae and their hybrids.

(a) Javelina or peccary, and feral or wild hogs such as Eurasian or Russian wild hogs (*sus scrofa*) are considered invasive species in Utah, capable of establishing wild reservoirs of diseases such as Brucellosis and Pseudorabies.

(b) These animals and their hybrids are prohibited from entry to Utah except when approved by the State Veterinarian and [special application]only for purposes of exhibition and after meeting the ~~[above]~~testing requirements listed in this rule.

(c) Any person who imports javelina, peccary, or feral or wild hogs such as Eurasian or Russian wild hogs (*sus scrofa*) into Utah without prior approval by the department shall be subject to citation and fines as prescribed by the department or may be called to appear before an administrative proceeding by the department.

**R58-1-[9]8. Sheep, Goats, and Camelids.**

(1) Sheep, goats, and camelids [4]imported [sheep]into Utah shall be accompanied by a Certificate of Veterinary Inspection [and an import permit]unless imported directly to an approved slaughter establishment.

~~———— (a) No sheep exhibiting clinical signs of blue tongue may enter Utah.~~

~~(b) Sheep shall be thoroughly examined for evidence of foot rot and verified that they are free from foot rot.~~

~~(c) Sheep entering Utah shall comply with federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.~~

~~(d) Sheep from scrapie infected, exposed, quarantined, or source flocks may not be permitted to enter the state unless an official post exposure flock eradication and control plan has been implemented.~~

~~(e) Breeding rams six months of age or older shall test negative for Brucella Ovis within 30 days of entry or originate from a certified Brucellosis free flock. Rams entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.]~~

~~(2) Scrapie.~~

~~(a) Sheep and goats entering Utah shall comply with federal Scrapie identification requirements as listed in 9 CFR 79~~

~~(b) Sheep and goats from Scrapie infected, exposed, quarantined, or source flocks are not permitted to enter the state.~~

~~(3) No sheep exhibiting clinical signs of bluetongue may enter Utah.~~

~~(4) Breeding rams six months of age or older shall test negative for Brucella ovis within 30 days of entry or originate from a certified Brucella ovis free flock.~~

~~(5) Dairy goats over six months of age used for milk production shall be tested for tuberculosis within 60 days before import.~~

#### **R58-1-~~10~~9. Poultry and Gamebirds.**

~~(1) Poultry, gamebirds, and hatching eggs [being] imported into Utah shall [meet the following requirements:] be accompanied by a Certificate of Veterinary Inspection or a National Poultry Improvement Plan VS Form 9-3.~~

~~[(a) Poultry and hatching eggs shall have an import permit from the department.~~

~~(b) Poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan VS Form 9-3.]~~

~~[(e)2] Poultry, gamebirds, and hatching eggs shall originate from flocks or hatcheries that [have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state, or~~

~~(d) Poultry entering Utah from a flock or hatchery that does not have a clean rating through NPIP certification shall have been tested negative for Pullorum-Typhoid within the last 30 days] are National Poultry Improvement Plan (NPIP) certified for both Pullorum-Typhoid and Avian Influenza by their official state agency, or tested negative for Pullorum-Typhoid and Avian Influenza within the 30 days before entry.~~

~~(3) Gamebirds imported for release shall meet the health requirements for release from the Division of Wildlife Resources found in Rule R657-4.~~

~~(4) Poultry and gamebirds shall be identified by one of the following methods when required:~~

~~(a) Sealed and numbered leg bands; or~~

~~(b) Group or lot identification when a group or lot identification number (GIN) may be used.~~

#### **[R58-1-11. Goats and Camelids.**

~~(1) Goats being imported into Utah shall meet the following requirements:~~

~~(a) dairy goats shall have an import permit from the department and an official Certificate of Veterinary Inspection showing a negative Tuberculosis test within 60 days, and a negative Brucellosis test within 30 days prior to entry, or be from a certified Brucellosis free herd and accredited Tuberculosis free herd. Thereto; there shall be no evidence of caseous Lymphadenitis (abscesses).~~

~~(b) Meat type goats shall have an import permit from the department and an official Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous Lymphadenitis (abscesses).~~

~~(c) Goats entering Utah shall comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.~~

~~(d) Goats for slaughter may be shipped into Utah directly to an approved slaughter establishment or to an approved auction market without an official Certificate of Veterinary Inspection and an import permit but shall comply with Federal Scrapie identification requirements as listed in 9 CFR 79, which is incorporated by reference.~~

~~(2) Camelids being imported into Utah shall have an import permit from the department and an official Certificate of Veterinary Inspection showing a negative Tuberculosis test within 60 days, and a negative Brucellosis test within 30 days prior to entry or be from a certified Brucellosis free herd and accredited Tuberculosis free herd.~~

~~(3) Test eligible age for both Brucellosis and Tuberculosis shall be 6 months of age or older for both goats and camelids.~~

~~(4) Dairy goats and camelids entering Utah for exhibition purposes only and returning immediately to their home state are exempt from the testing requirement.]~~

#### **R58-1-~~12~~10. Psittacine and Passerine Birds and Raptors.**

~~(1) No psittacine or passerine birds or raptors shall be shipped into [the State of] Utah unless an official Certificate of Veterinary Inspection accompanies the birds.~~

~~(2) The number and kinds of birds to be shipped into Utah, their origin, date to be shipped, and destination shall be listed on the Certificate of Veterinary Inspection.~~

#### **R58-1-1~~3~~1. Dogs, Cats, and Ferrets.**

~~(1) Dogs, cats, and ferrets shall be [accompanied by an official Certificate of Veterinary Inspection] currently vaccinated against rabies before entering Utah. The owner or shipper shall carry rabies vaccination proof, which shall be provided to the department upon request.~~

~~(2) [Dogs, cats and ferrets over three months of age shall be currently vaccinated against rabies before entering Utah.~~

~~(a) The date of vaccination, name of product used, and expiration date shall be written on the Certificate of Veterinary Inspection] Animals undergoing treatment for contagious disease require a Certificate of Veterinary Inspection and an import permit.~~

~~(3) No puppies or kittens less than [8] eight weeks of age shall be imported into the state unless accompanied by the mother.~~

#### **[R58-1-14. Exotic Animals.**

~~(1) It is unlawful for any person to import into the State of Utah any species of exotic animal that is prohibited for importation or possession as listed in Rule R657-3.~~

~~(2) Exotic animals like birds, mammals, and reptiles shall be accompanied by an official Certificate of Veterinary Inspection.~~

~~(3) Aquatic animals like fish, mollusk, crustacean, or amphibians shall fulfill the requirements of Rule R58-17 prior to importation into the State of Utah.~~

**R58-1-15. Game and Fur Bearing Animals.**

~~(1) No game or fur bearing animals shall be imported into Utah without an import permit obtained from the department.~~

~~(2) Each shipment shall be accompanied by an official Certificate of Veterinary Inspection.~~

~~(3) Mink entering Utah shall have originated on ranches where mink viral enteritis has not been diagnosed or exposed to within the past three years.]~~

**R58-1-1[6]2. Captive Cervidae.**

~~[\_\_\_\_\_]~~ (1) -Captive elk entering Utah shall:

(a) ~~\_~~meet the health and genetic purity requirements specified in Sections R58-18-11 and R58-18-7; and

(b) be imported to ~~[a-]~~premises licensed with the department.

(2) Any caribou (reindeer) entering Utah shall meet the following requirements:

(a) come from a state or province with a USDA approved herd certification program;

(b) originate from a herd that is not affected with or is a trace~~[-]~~back or forward herd for Chronic Wasting Disease (CWD);

(c) originate from a herd that has participated in a National CWD Herd Certification program for at least 60 months and has received Certified CWD free status from the state or province of origin ~~[prior to]~~before movement; and

(d) each other requirement of this subsection.

(3) Any captive cervidae entering Utah shall:

(a) have a Certificate of Registration (COR) issued by the Utah Division of Wildlife Resources;

(b) be permanently identified using an RFID tag~~[-metal NUES tag];~~

(c) have an import permit from the department;

(d) have an import application approved by the department; and

(e) - have an official Certificate of Veterinary Inspection showing the following:

(i) if the cervidae is from the United States, they shall have a negative tuberculosis test (DPP or single cervical tuberculin) within 60 days of import and shall come from an accredited tuberculosis-free state or zone;

(ii) if the cervidae is from Canada, they shall be sourced from a herd officially recognized as free of ~~[Tuberculosis]~~Tuberculosis and Brucellosis according to ~~[the provisions of-]~~the CFIA Captive Ungulate Program and shall have a negative Tuberculosis test within 60 days of import with the mid-~~[cervical]~~cervical test;

(iii) cervidae from the ~~[United]~~United States shall have a negative Brucella ~~[A]~~abortus test within 30 days of import and shall come from an accredited Brucellosis~~[-]~~free state or zone. Cervidae coming from Brucellosis certified-free herds are exempted from the testing requirement;

(iv) any cervidae six months of age or older originating from outside of the United States shall have negative Brucella ~~[A]~~abortus test results from a single sample that has been tested by two USDA approved tests; and

(v) a statement that the animals listed on the certificate are not known to be infected with John's Disease (Paratuberculosis) or Malignant Catarrhal Fever.

**[R58-1-17. Zoological Animals.**

~~(1) The entry of zoological animals to be kept in zoological gardens, or shown at exhibitions is authorized when an import permit, subject to requirements established by the State Veterinarian, has been obtained from the department and the animals are accompanied by an official Certificate of Veterinary Inspection.~~

~~(2) Movement of these animals shall also be in compliance with the Federal Animal Welfare Act, 7 USC 2131-2159.~~

**R58-1-18. Wildlife.**

~~(1) It is unlawful for any person to import into the State of Utah any species of live native or exotic wildlife except as provided in Title 23, Chapter 13 and Rule R657-3.~~

~~(2) Any wildlife imports shall meet the same department requirements as required for the importation of domestic animals.]~~

**R58-1-13. Exotic Animals and Wildlife.**

(1) It is unlawful for any person to import into the state any species of animal that is prohibited from importation or possession as listed in Rule R657-3.

(2) Animals that require a Certificate of Registration from the Division of Wildlife Resources for possession shall be accompanied by a Certificate of Veterinary Inspection and receive an import permit from the department.

(3) Aquatic animals, including fish, mollusks, crustaceans, or amphibians, shall fulfill the requirements of Rule R58-17 before importation into the state.

(4) Mink entering Utah shall have originated on ranches where mink viral enteritis has not been diagnosed or exposed to within the past three years. Mink shall not be imported from a facility with a diagnosis of SARS-CoV-2 within 30 days of signs of illness.

(5) Rabbits entering Utah shall have an import permit or be vaccinated for RHDV2.

(6) Movement of animals to be kept in zoological gardens or shown at exhibitions shall also follow the Federal Animal Welfare Act, 7 USC 2131-2159.

(7) Any imports of species susceptible to reportable diseases shall meet the same testing requirements as required for the importation of domestic animals.

**R58-1-1[9]4. Duties of Carriers.**

(1) Owners and operators of railroads, trucks, airplanes, and other conveyances are forbidden to move any livestock, poultry, or other animals into or within the [S]state~~[-of Utah]~~ or through the [S]state except in compliance with [the provisions set forth in these]this rule[s].

([1]2) Sanitation. Any railway cars, trucks, airplanes, and other conveyances used in [the transportation of]transporting livestock, poultry, or other animals shall be maintained in a clean, sanitary condition.

([2]3) Movement of Infected Animals. Owners and operators of railway cars, trucks, airplanes, and other conveyances that have been used for the movement of any livestock, poultry, or other animals infected with or exposed to any infectious, contagious, or communicable disease as determined by the department, shall be required to have cars, trucks, airplanes, and other conveyances thoroughly cleaned and disinfected under official supervision before further use is permissible for the transportation of livestock, poultry, or other animals.

([3]4) Compliance with Laws and Rules. Owners and operators of railroads, trucks, airplanes, or other conveyances used for the transportation of livestock, poultry, or other animals are



responsible [to see]for seeing that each consignment is prepared for shipment in keeping with[the] state and federal laws and regulations. Certificates of Veterinary Inspection, brand certificates, and permits should be attached to the waybill accompanying the attendant in charge of the animals.

**KEY: disease control, import requirements**

**Date of Last Change:** [September 8, 2021]2023

**Notice of Continuation:** December 28, 2021

**Authorizing, and Implemented or Interpreted Law:** 4-31; 4-2-103(1)(i)

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R58-3</b>	<b>Filing ID:</b> <b>55243</b>
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### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Animal Industry	
<b>Building:</b>	TSOB South Bldg, Floor 2	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state, and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda Price	801-982-2244	amandaprice@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Amber Brown	385-245-5222	amberbrown@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R58-3. Brucellosis Vaccination Requirements
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
The proposed text will align the import requirements with current disease risks and federal movement requirements for all species.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the

substantive differences between the repealed rule and the reenacted rule):

This rule provides clarity to align the import requirements with current disease risks and federal movement requirements while aligning the text requirements with the Utah Rulewriting Manual. This rule provides clarity per USDA's definition of a vaccination tag by including radio frequency identification device (RFID) tags. This rule removes text that is confusing and is not common industry practice.

### Fiscal Information

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

#### A) State budget:

The changes to this rule update and clarify the text with federal requirements and do not change the procedures of the program and will not impact the state budget.

#### B) Local governments:

The changes to this rule are clarifying so they align with federal requirements and will not impact a local government's budget because the program costs are not changing.

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

The changes to this rule clarify text to align with the current federal requirements and will not impact costs for small businesses.

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

The changes to this rule clarify text to align with federal requirements and will not impact costs 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**):

The changes to this rule clarify text to align with federal requirements and will not impact costs for a person because the program costs are not changing.

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

The changes to this rule clarify text to align with federal requirements and will not impact compliance costs.

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

this table. Inestimable impacts will be included in narratives above.)

#### Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

#### Citation Information

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

Section 4-31-109	Subsection 4-2-103(1)(c)(i)	Subsection 4-2-103(1)(j)
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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:** 03/31/2023

**9. This rule change MAY become effective on:** 04/07/2023

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

<b>Agency head or designee and title:</b>	Craig W. Butters, Commissioner	<b>Date:</b>	02/09/2023
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#### R58. Agriculture and Food, Animal Industry.

##### R58-3. Brucellosis Vaccination Requirements.

##### R58-3-1. Authority.

(1) Promulgated under the authority of Section 4-31-109 and Subsections 4-2-103(1)(c)(i) and 4-2-103(1)(j).

(2) ~~[It is the intent of t]~~ This rule intends to state the ~~[b]~~Brucellosis vaccination requirements for cattle and bison ~~[with]~~ in Utah.

##### R58-3-2. Definitions.

(1) "Accredited ~~[V]~~veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services (VS), Animal and Plant Health Inspection Services (APHIS), United States Department of Agriculture (USDA), in accordance with the provisions of 9 CFR 161 to perform functions required by cooperative ~~[S]~~state-~~[F]~~federal disease control and eradication programs.

(2) "Bison" means a bovine-like animal, genus Bison, commonly referred to as American buffalo or buffalo.

(3) "Brucellosis ~~[F]~~technician" means an individual approved and trained by the State Veterinarian or designee to administer the Brucella abortus vaccine and appropriately identify the animal.

(4) "Cattle" means ~~[all]~~domestic bovine, genus Bos.

(5) "Official USDA vaccination tag" means a USDA approved official ~~[metal]~~identification cartag, metal or RFID, that provides a unique identification for each individual animal. ~~[by conforming to the nine character alpha numeric national uniform eartagging system or any other unique identification device approved by the United States Department of Agriculture.]~~

(6) "RFID" means a radio frequency identification device used ~~[as]~~for individual identification of livestock.

##### R58-3-3. Utah Cattle and Bison Vaccination Requirements.

(1) ~~[AH]~~Any Utah cattle and bison heifers intended for replacement breeding animals ~~[must]~~shall be vaccinated against Brucella abortus.

(2) Vaccination of cattle and bison heifer calves shall be administered by an accredited veterinarian or by a Utah Department of Agriculture and Food contracted ~~[b]~~Brucellosis technician.

(3) ~~[AH]~~Any cattle and bison heifers shall be vaccinated with strain RB-51 administered between 4 and 12 months of age. These heifers shall be properly identified by official tattoos and ear tag ~~[c]~~either an official USDA vaccination tag or an official USDA RFID tag, [of approved design] and shall be reported on an official

vaccination certificate, VS Form 4-24, within 30 days to the State Veterinarian.

(4) Cattle and bison heifers not intended for replacement breeding are exempt from the vaccination requirement in Subsection R58-3-3(1).

**KEY: brucellosis, vaccination, cattle, bison**

**Date of Last Change:** ~~April 16, 2014~~ **2023**

**Notice of Continuation:** December 28, 2021

**Authorizing, and Implemented or Interpreted Law:** 4-31-109; 4-2-103(1)(c)(i); 4-2-103(1)(j)

#### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R58-23</b>	<b>Filing ID:</b> <b>55228</b>
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#### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Animal Industry	
<b>Building:</b>	TSOB South Bldg, Floor 2	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state, and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Amber Brown	385-245-5222	amberbrown@utah.gov
Amanda Price	801-982-2244	amandaprice@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

#### General Information

<b>2. Rule or section catchline:</b>
R58-23. Equine Viral Arteritis (EVA)
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The proposed text clarifies the import requirements by aligning them with the current disease risks for all species. The updated texts align with the Utah Rulewriting Manual.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the</b>

substantive differences between the repealed rule and the reenacted rule):

The text clarifies import requirements to align them with the current disease risks for all species. Specifically, unnecessary language is removed from this rule to make it easier to understand. Minor clarifications are made to the definitions in Section R58-23-2. Section R58-23-3 is removed because adequate requirements for stallion movement are included in the current Section R58-23-4. Section R58-23-7 has also been removed because the reporting requirements are not needed.

#### Fiscal Information

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

##### A) State budget:

The text clarifies requirements, does not change the program's administration, and will not impact the state's budget.

##### B) Local governments:

The text clarifies requirements, does not change the program's administration, and will not impact local governments.

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

The text clarifies requirements, does not change the program's administration, and will not impact small businesses.

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

The text clarifies requirements, does not change the program's administration, and will not impact non-small businesses.

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

The text clarifies requirements, does not change the program's administration, and will not impact other persons.

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

The compliance costs will not be impacted because the program's administration is not changing. The proposed text is clarifying and aligns with the Utah Rulewriting Manual.

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

**Regulatory Impact Table**

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

**Citation Information**

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

Section 4-31-103	Subsection 4-2-103(1)(i)	
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**Public Notice Information**

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

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

**A) Comments will be accepted until:** 03/31/2023

**9. This rule change MAY become effective on:** 04/07/2023

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**

<b>Agency head or designee and title:</b>	Craig W Butters, Commissioner	<b>Date:</b>	02/07/2023
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**R58. Agriculture and Food, Animal Industry.**

**R58-23. Equine Viral Arteritis (EVA).**

**R58-23-1. Authority.**

(1) Promulgated under the authority of ~~[Title 4]~~Section 4-31-109, and Subsection 4-2-103(1)(i).

(2) ~~[It is the intent of t]~~This rule intends to eliminate or reduce the spread of Equine Viral Arteritis among equids by providing ~~[for]~~a protocol for the handling of equids and semen infected or exposed to Equine Arteritis Virus.

**R58-23-2. Definitions.**

~~[(A)]~~ ~~Accredited Veterinarian~~ means a veterinarian approved by the Deputy Administrator of the United States Department of Agriculture (USDA), Animal Plant Health Inspection Service (APHIS), Veterinary Services (VS) in accordance with provisions of 9 CFR Part 161.

~~[(B)]~~ "Approved Facility" ~~[-]~~means a facility that has currently written approval from the State Veterinarian to house and ~~[or]~~ breed a carrier stallion or receive positive semen in ~~[the state of]~~ Utah.

~~[(C)]~~ "Approved Laboratory" ~~[-]~~means a state, federal, or private laboratory that has been approved for EVA testing by the State Veterinarian.

~~[(D)]~~ "Carrier Stallion" ~~[-]~~means a ~~any~~ clinically normal stallion that sheds ~~[tests positive for]~~ EAV continuously in its semen. ~~[-, but has no proof of a negative semen test.]~~

~~[(E)]~~ "Equine or Equid" ~~[-]~~means any animal in the family Equidae, including, ~~[but not limited to]~~ horses, ~~[asses]~~ donkeys, mules, ponies, and zebras.

~~[(F)]~~ "Equine Viral Arteritis (EVA)" ~~[-]~~means an infectious disease of equids caused by Equine Arteritis Virus (EAV). ~~[The disease is characterized by abortion in pregnant mares, illness and death in young foals, inflammation of blood vessels resulting in edema and the potential of establishing a carrier state in stallions.]~~

~~[(G)]~~ "Equine Arteritis Virus (EAV)" ~~[-]~~means the ~~[viral organism]~~ virus that causes Equine Viral Arteritis.

~~[(H)]~~ "EVA Positive" ~~[-]~~means an equid who has been identified as having tested positive ~~[to]~~ for EAV.

**[R58-23-3. Importation of Stallions.**

~~[(A)]~~ All stallions used for breeding entering Utah shall be tested for Equine Viral Arteritis by an accredited veterinarian within 30 days prior to entry.

~~(B) Exceptions to the above (Subsection R58-23-3(A)) are stallions that have proof of negative EVA status prior to vaccination and proof of subsequent yearly vaccination.]~~

#### **R58-23-[4]3. Importation of EVA Positive Equids and Semen.**

(A) ~~[A]Any~~ equids imported into Utah shall be in compliance with Section R58-1-6.

~~[(B) No EVA carrier stallion used for breeding purposes shall be permitted to enter into Utah without a prior permit from the State Veterinarian.~~

~~[(C) No semen from a carrier stallion shall be permitted to enter into Utah without a prior permit from the State Veterinarian.~~

~~[(D) All EVA Carrier Stallions, used for breeding purposes, imported into Utah shall be taken directly to an approved facility and shall remain on said facility until permission from the State Veterinarian is obtained to move the animal to another approved facility.~~

~~[(E) All semen from an EVA Carrier Stallion imported into Utah shall be shipped directly to an approved facility and shall remain on said facility until inseminated, transported to another approved facility and/or disposed of.]~~

#### **R58-23-[5]4. Handling of EVA Positive Equids and Semen.**

~~[(A)1] [A]Any stallion[s] used for breeding purposes identified as EVA positive shall have their semen tested [by an accredited veterinarian] at an approved laboratory [prior to] before the breeding of [said] the stallion.~~

~~[(B)2] [A]Any carrier stallions used for breeding purposes shall be housed and maintained at an approved facility until permission from the State Veterinarian is given to move the stallion to another approved facility.~~

~~[(C)3] [A]Any EVA infected semen shall only be collected, handled, evaluated, received, packaged, or administered [on] in an approved facility.~~

~~(4) The State Veterinarian may require testing of any stallion suspected of being exposed to EAV.~~

#### **R58-23-[6]5. Requirements for an Approved Facility.**

~~[(A)1] [A]Any equids, including [but not limited to] stallions, mares, and geldings, on approved facilities shall be vaccinated for EVA no less than 21 days before the start of the breeding season or no less than 21 days before arriving at an approved facility.~~

~~[(B)2] Mares being bred to a carrier stallion, or inseminated with semen from a carrier stallion, shall remain [on] in the approved facility for a minimum of 21 days after the initial breeding date.~~

~~[(C)3] Adequate biosecurity precautions shall be in place during the breeding season. The adequacy of biosecurity may be monitored periodically by the [Utah] Department [of Agriculture].~~

#### **[R58-23-7. Equine Viral Arteritis is a Reportable Disease.**

~~(A) All EVA positive equids shall be reported to the State Veterinarian by the private veterinary practitioner immediately upon receiving a positive laboratory report on EVA.~~

~~(B) All EVA positive test results processed at a state owned laboratory shall be immediately reported to the State Veterinarian.~~

~~(C) The State Veterinarian may require testing of any stallion suspected of being exposed to EAV.]~~

**KEY: Equine Viral Arteritis (EVA), inspections**

**Date of Last Change: 2023 [February 28, 2007]**

**Notice of Continuation: December 28, 2021**

**Authorizing, and Implemented or Interpreted Law: 4-2-103(l)(i)**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R68-26</b>	<b>Filing ID:</b> <b>55227</b>
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#### **Agency Information**

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

#### **Contact persons:**

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Brandon Forsyth	801-816-3842	bforsyth@utah.gov
Kelly Pehrson	385-977-2147	kwpehrson@utah.gov

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

#### **General Information**

##### **2. Rule or section catchline:**

R68-26. Cannabinoid Product Registration and Labeling

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

Changes are needed to clarify the labeling requirements for different types of cannabinoid products to ensure that only necessary information is required and that it is appropriately accessible to the Department of Agriculture and Food (Department) consumers.

##### **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):**

Duplicative language is removed. Federal labeling requirements are removed from Section R68-26-5 and replaced with clearer state specific labeling requirements that better fit the needs of the program. Language is added to address labeling requirements for products



intended for consumption by animals, with clarifications included to ensure such products are not characterized as animal feed.

#### Fiscal Information

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

###### A) State budget:

These changes are clarifying in nature and will not impact the state budget because the costs of inspecting products will not change and no additional fees are being charged.

###### B) Local governments:

Local governments do not administer this program or produce cannabinoid products and will not be impacted by the changes.

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

The changes clarify labeling requirements and make them easier to understand by removing references to federal code and will not have a fiscal impact on small businesses.

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

The changes clarify labeling requirements and make them easier to understand by removing references to federal code and will not have a fiscal impact on non-small businesses.

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

The changes clarify labeling requirements and make them easier to understand by removing references to federal code and will not have a fiscal impact on other persons.

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

Compliance costs will not change. Fees charged by the Department, as well as compliance requirements have remained the same. The changes provide additional clarification.

###### 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

#### Citation Information

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

Subsection 4-41-103(4)		
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#### Public Notice Information

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

<b>A) Comments will be accepted until:</b>	03/31/2023
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<b>9. This rule change MAY become effective on:</b>	04/07/2023
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**

<b>Agency head or designee and title:</b>	Craig W Butters, Commissioner	<b>Date:</b>	02/03/2023
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**R68. Agriculture and Food, Plant Industry.****R68-26. Cannabinoid Product Registration and Labeling.****R68-26-1. Authority and Purpose.**

(1) Pursuant to Subsections 4-41-103(4) and 4-41-403(1), this rule establishes the requirements for labeling and registration of products made from and containing industrial hemp.

**R68-26-2. Definitions.**

(1) "Cannabinoid product" means a product that:

(a) contains or is represented to contain one or more naturally occurring cannabinoids; and

(b) contains less than the cannabinoid product THC level, by dry weight; and

(c) after December 1, 2022, contains a combined amount of total THC and any THC analog that does not exceed 10% of the total cannabinoid content.

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

(3) "CBD" or "Cannabidiol" means the cannabinoid identified as CAS# 13956-29-1.

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

(5) "Conventional Food" means:

(a) an article used for food or drink for human consumption or the components of the article; or

(b) chewing gum or chewing gum components.

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

(7) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

(8) "Industrial hemp product class" means group of cannabinoid products:

(a) that have all ingredients in common; and

(b) are produced by and for the same company.

(9) "Label" means the display of each written, printed, or graphic matter upon the immediate container or statement accompanying an industrial hemp product.

(10) "Manufacturer" means a person who makes any industrial hemp products.

(11) "Non-compliant material" means:

(a) a hemp plant that does not comply with this rule, including a cannabis plant with a concentration of 0.3% tetrahydrocannabinol or greater by dry weight; and

(b) a cannabinoid product, chemical, or compound with a concentration that exceeds the cannabinoid product THC level.

(12) "Person" means an individual, partnership, association, firm, trust, limited liability company, or corporation or any employees of such.

(13) "THC" or "Tetrahydrocannabinol" means delta-9-tetrahydrocannabinol, the cannabinoid identified as CAS # 1972-08-3.

(14)(a) "THC analog" means a substance that is structurally or pharmacologically substantially similar to, or is represented as being similar to, delta-9-THC.

(b) "THC analog" does not include the following substances or the naturally occurring acid forms of the following substances:

(i) cannabichromene (CBC), the cannabinoid identified as CAS# 20675-51-8;

(ii) cannabicyclol (CBL), the cannabinoid identified as CAS# 21366-63-2;

(iii) cannabidiol (CBD), the cannabinoid identified as CAS# 13956-29-1;

(iv) cannabidivariol (CBDV), the cannabinoid identified as CAS# 24274-48-4; cannabidiol (CBD), the cannabinoid identified as CAS# 13956-29-1;

(v) cannabielsoin (CBE), the cannabinoid identified as CAS# 52025-76-0;

(vi) cannabigerol (CBG), the cannabinoid identified as CAS# 25654-31-3;

(vii) cannabigerovarin (CBGV), the cannabinoid identified as CAS# 55824-11-8;

(viii) cannabinol (CBN), the cannabinoid identified as CAS# 521-35-7;

(ix) cannabivarin (CBV), the cannabinoid identified as CAS# 33745-21-0; or

(x) delta-9-tetrahydrocannabivarin (THCV), the cannabinoid identified as CAS# 31262-37-0.

(15) "Third-party laboratory" means a laboratory with no direct interest in a grower or processor of industrial hemp or industrial hemp products that is capable of performing mandated testing utilizing validated methods.

**R68-26-3. Product Registration.**

(1) Each cannabinoid product or industrial hemp product class distributed or available for distribution in Utah shall be officially registered annually with the department.

(2) Application for registration shall be made to the department on a form provided by the department including the following information:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicants;

(b) the name of the product;

(c) the type and use of the product;

(d) a complete copy of the label as it will appear on the product in a legible format; and

(e) if the product has been assigned a National Drug Code in accordance with 21 CFR 207.33, the applicant shall provide the National Drug Code number.

(3) The application shall include a certificate of analysis from a third-party laboratory for the product in compliance with Section R68-26-4. The certificate of analysis shall show the cannabinoid profile of the product by percentage of mass.

(4) A registration fee per product, as set forth in the fee schedule approved by the [H]Legislature, shall be paid to the department with the submission of the application.

## NOTICES OF PROPOSED RULES

(5) The department may deny registration for an incomplete application.

(6) A new registration is required for any of the following:

- (a) any change in the cannabinoid product ingredients;
- (b) any change to the directions for use; and
- (c) any change of name for the product.

(7) Other changes shall not require a new registration but the registrant shall submit copies of each label change to the department as soon as they are effective.

(8) The person registering the cannabinoid product is responsible for the accuracy and completeness of information submitted.

(9) A registration is good for one calendar year from the date of registration and shall be renewed through payment of an annual renewal fee before expiration.

(10) A cannabinoid product that has been discontinued shall continue to be registered in the state until the product is no longer available for distribution.

(11) A late fee shall be assessed for a renewal of an industrial hemp product registration submitted after June 30th and shall be paid before the registration renewal is issued.

(12) The department shall not register a cannabinoid product if the product:

(a) uses the cannabinoid as a food additive; or  
(b) is represented for use as a conventional food, with the exception of:

(i) a gummy if the gummy is shaped as a gelatinous cube or gelatinous rectangular cuboid or in another basic geometric shape and not in a shape that could be considered appealing to children such as a star shape, fruit, or animal shape; or

(ii) a liquid suspension under two ounces.

### R68-26-4. Certificate of Analysis.

~~1) A certificate of analysis for any industrial hemp product containing a cannabinoid shall be available through a QR code or website listed on the label.~~

~~(2)~~ Testing shall be conducted on the product in its final form for:

- (a) the cannabinoid profile by percentage of mass;
- (b) solvents;
- (c) pesticides;
- (d) microbials;
- (e) heavy metals; and
- (f) mycotoxins.

~~(3)~~ The test results required in Subsection R68-26-4(1) shall be reported in accordance with the requirements for a cannabinoid product in Rule R68-~~29~~37 including the specified units of measure.

~~(4)~~ The certificate of analysis shall include the following information:

- (a) the batch identification number;
- (b) the date received;
- (c) the date of completion;
- (d) the method of analysis for each test conducted; and
- (e) proof that the certificate of analysis is connected to the product.

### R68-26-5. Label Requirements.

(1) The label of a [C]cannabinoid product[s] [produced for oral human consumption] shall contain the following information legibly displayed: [be labeled in accordance with:

~~a) 21 CFR 101.1, Principal display panel of package form food;~~

~~b) 21 CFR 101.2, Information panel of package form food;~~

~~c) 21 CFR 101.3, Identity labeling of food in packaged form;~~

~~d) 21 CFR 101.4, Food; designation of ingredients;~~

~~e) 21 CFR 101.5, Food; name and place of business of manufacturer, packer, or distributor;~~

~~f) 21 CFR 101.7, Declaration of net quantity of contents;~~

~~g) 21 CFR 101.9(j)(13) and (17), Nutrition labeling of food;~~

~~h) 21 CFR 101.15, Food; prominence of required statements; and~~

~~i) 21 CFR 101.36, Nutrition labeling of dietary supplements;~~

~~i) a label may contain the term "product facts" in place of "supplement facts" provided the information required in 21 CFR 101.36 is on the label; and]~~

~~(a) product name or common name, on the front of the label;~~

~~(b) brand name, on the front of the label;~~

~~(c) the size of the container or net count of individual items, on the front of the label;~~

~~(d) net weight;~~

~~(e) the suggested use of the product;~~

~~(f) list of ingredients, including the amount of any cannabinoid listed as present on the COA listed in milligrams per gram;~~

~~(g) list of allergens;~~

~~(h) manufacturer, packer, or distributor name and address; and~~

~~(i) batch number.~~

~~(2) A fact panel may be included on the product label if it is not identified as a Drug Fact Panel or Nutritional Fact Panel.~~

~~([3]) [4]The label of each product intended for human consumption or intended to be vaporized for inhalation shall include the following text, prominently displayed: "This product has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."~~

~~[2) A cannabinoid product intended to be vaporized for inhalation shall:~~

~~a) be labeled in accordance with Subsection R68-26-5(1); or~~

~~b) be labeled in accordance with 21 CFR 101.1, 21 CFR 101.2, 21 CFR 101.3, 21 CFR 101.4, 21 CFR 101.5, 21 CFR 101.7, 21 CFR 101.15, and contain the following text, prominently displayed: "This product has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."~~

~~([3])4 [Industrial hemp]Cannabinoid products containing a cannabinoid other than CBD produced for absorption by humans [shall be labeled in accordance with 21 CFR 701, Cosmetic Labeling.~~

~~4) Industrial hemp products containing cannabinoids other than CBD] shall contain the following text, prominently displayed: "Warning - The safety of this product has not been determined."~~

~~(5) Notwithstanding Subsection R68-26-5(1) [or R68-25-5(3)], an industrial hemp product containing a cannabinoid produced for human use that has a National Drug Code issued shall be labeled in accordance with 21 CFR 201.66.~~

~~(6) In addition to the requirements of Subsections R68-26-5(1) through R68-26-5([3])5 a[n industrial hemp product containing a cannabinoid] cannabinoid product shall have on the label a~~



scannable barcode, QR code, or web address with an easily identifiable link~~[linked]~~ to a document containing the following information:

- (a) the total quantity produced; and
- (b) a downloadable link for a certificate of analysis for the batch identified.

(7) Cannabinoid products shall not contain medical claims on the label unless the product has been registered with the FDA and is labeled in accordance with Subsection R68-26-5~~(4)~~(5).

(8) Cannabinoid product labeling shall clearly show that the product contains material derived from industrial hemp and not cannabis or medical cannabis.

(9) Cannabinoid product labeling shall not:

- (a) have any likeness bearing resemblance to a cartoon character or fictional character; or
- (b) appear to imitate a food or other product that is typically marketed toward or appealing to children.

(10) The label of cannabinoid products intended for oral consumption by animals shall include the amount of cannabinoids per serving determined by weight of the animal.

(11) The label of cannabinoid products intended for consumption by animal shall not:

- (a) contain any feed claims;
- (b) be labeled as food; or
- (c) contain any Food and Drug Administration evaluation statement.

#### **R68-26-6. Inspection and Testing.**

(1) The department shall conduct randomized inspection of cannabinoid products distributed or available for distribution in the state for compliance with this rule.

(2) The department shall periodically sample, analyze, and test industrial hemp products distributed within the state for compliance with registration and labeling requirements and the certificate of analysis.

(3) The department may conduct inspection of cannabinoid products distributed or available for distribution for any reason the department deems necessary.

(4) The sample taken by the department shall be the official sample.

#### **R68-26-7. Violation.**

(1) Each improperly labeled cannabinoid product shall be a separate violation of this rule.

(2) Cannabinoid products not meeting the labeling requirements shall be considered misbranded.

(3) Cannabinoid products shall be considered falsely advertised if they do not meet the labeling requirements of this rule.

(4) It is a violation to distribute or market a cannabinoid product that is not registered with the department.

(5) It is a violation to distribute or market industrial hemp flower as a final product.

(6) It is a violation to distribute or market a cannabinoid product that contains greater than 0.3% THC.

(7) It is a violation to distribute or market a cannabinoid product that has not been tested as required by Rule R68-29.

(8) It is a violation to distribute or market a cannabinoid product as a conventional food product, unless the product is exempted under Subsection R68-26-3(12)(b).

(9) It is a violation to distribute or market a cannabinoid product as a food additive.

(10) It is a violation to distribute or market a cannabinoid product that is marketed toward or is appealing to children.

(11) It is a violation to market a cannabinoid product as cannabis or medical cannabis.

(12) It is a violation to submit a fraudulent COA to the department.

#### **R68-26-8. Violation Categories.**

(1) Public Safety Violations: Each person shall be fined \$3,000-\$5,000 per violation. This category is for violations that present a direct threat to public health or safety including:

- (a) industrial hemp sold to an unlicensed source;
- (b) industrial hemp purchased from an unlicensed source;
- (c) refusal to allow inspection;
- (d) failure to comply with labeling requirements;
- (e) failure to comply with testing requirements;
- (f) possessing, manufacturing, or distributing a cannabinoid product that a person knows or should know appeals to children;~~or~~

(g) marketing a cannabinoid product that makes a medical claim; or

(~~g~~)h) engaging in or permitting a violation of the Title 4, Chapter 41, Hemp and Cannabinoid Act that amounts to a public safety violation as described in this subsection.

(2) Regulatory Violations: Each person shall be fined \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules under Title R68 including:

- (a) failure to register an industrial hemp product;
- (b) failure to provide a certificate of analysis as required by Section R68-26-4;
- (c) failure to keep and maintain records;
- (d) engaging in or permitting a violation of Title 4, Chapter 41a, Hemp and Cannabinoid Act or this rule that amounts to a regulatory violation as described in this subsection.

(3) Licensing Violations: Each person shall be fined \$500-\$5,000 per violation. This category is for violations involving licensing requirements including:

- (a) engaging in or permitting a violation of this rule, other applicable rules under Title R68, or Title 4, Chapter 41, Hemp and Cannabinoid Act, that amounts to a licensing violation; or
- (b) failure to respond to violations.

(4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

(5) The department may enhance or reduce the penalty based on the seriousness of the violation.

**KEY: CBD labeling, CBD products, cannabinoid product registration**

**Date of Last Change: ~~[August 23, 2022]~~ 2023**

**Authorizing, and Implemented or Interpreted Law: 4-41-403(1); 4-41-402(2); 4-41-103(4)**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Rule or Section Number:**

**R277-115**

**Filing ID:**  
**55245**

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R277-115. LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
This rule is being amended to clarify the responsibilities of Local Education Agencies (LEAs) in connection with third party providers providing instructional services directly to students.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
These amendments update definitions of "Education service provider" and adds a definition for "Section 504". These amendments also add legal references for third party provider requirements and clarify the requirements for LEAs to maintain records and documentation.
Furthermore, these amendments clarify requirements related to staff members of an education service provider.
Finally, these amendments add clarification to the corrective actions which the Board or Superintendent may take.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have fiscal impact on state government revenues or expenditures. These

changes largely relate to LEA responsibilities and do not create new reports or responsibilities for the Utah State Board of Education (USBE).

**B) Local governments:**

This rule change is not expected to have major fiscal impact on local governments' revenues or expenditures. LEAs using education service providers may have minor impacts to increase monitoring of education service providers and maintain records and documentation. LEAs generally have recordkeeping processes in place and these changes are not expected to add measurable costs for LEAs.

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

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

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. These changes mostly affect LEAs.

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

There are no compliance costs for affected persons. USBE does not estimate measurable compliance costs for LEAs.

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

Regulatory Impact Table			
Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>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:</b>		
Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-401(10)

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	03/31/2023

<b>9. This rule change MAY become effective on:</b>	04/07/2023
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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	02/15/2023
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**R277. Education, Administration.****R277-115. LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts.****R277-115-1. Authority and Purpose.**

(1) This rule is authorized by:

(a) 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

(b) Subsection 53E-3-401(10), which allows the Board to ~~require~~ direct an LEA to require in a contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:

(i) Titles 53E, 53F, and 53G; and

(ii) Board rule.

(2) The purpose of this rule is:

(a) to provide standards for an LEA working with a third party provider to ensure the third party provider complies with applicable law.

**R277-115-2. Definitions.**

(1) "Educational good or service" means the same as that term is defined in Section 53E-3-401.

(2) "Education service provider" means a third party provider that provides academic instruction to students that yields grades or credit.

(3) "Section 504" means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(2)(4) "Third party provider" means a third party who provides an educational good or service on behalf of an LEA.

**R277-115-3. Third Party Provider Provision of Services.**

(1) An LEA that contracts with a third party provider to provide an educational good or service on behalf of the LEA shall:

(a) require in the LEA's contract with a third party provider that the third party provider shall provide, upon request of the LEA, information necessary for the LEA to verify that the educational good or service complies with:

(i) Titles 53E, 53F, and 53G; and

(ii) Board rule;

(b) establish monitoring and compliance procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with ~~the provisions of~~ this rule;

(c) develop a written monitoring plan to supervise the educational good or service provided by the third party provider;

(d) ensure the third party provider is complying with:

(i) federal law;

## NOTICES OF PROPOSED RULES

(ii) state law; and  
 (iii) Board rules;  
 (e) monitor and supervise all activities of the third party provider related to the educational good or service provided by the third party provider to the LEA; and  
 (f) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule.

(2) An LEA shall:

(a) verify the accuracy and validity of a student's enrollment verification data, prior to enrolling a student in the LEA; and

(b) provide a student and the student's parent or guardian with notification of the student's enrollment in a school or program within the LEA.

(3) In accordance with Section 63A-12-103, an LEA shall maintain records documenting:

(a) services provided by third party providers; and

(b) payments made to third party providers.

(4) An LEA has direct and full responsibility for all actions of its third party providers and the third party provider's employees for actions performed in the scope of services provided on behalf of the LEA.

### **R277-115-4. LEA Requirements of Education Service Providers.**

(1) An LEA shall ensure that each staff member of an education service provider:

(a) receives a background check and has ongoing monitoring in accordance with Title 53G, Chapter 11, Part 4 Background Checks; and

(b) holds appropriate license, license areas of concentration, and endorsements as set forth in Rule R277-309.

(2) An LEA shall ensure that a student identified as having a disability under the IDEA or Section 504 receiving instruction from an education service provider receives a free and appropriate public education.

(3) An LEA shall require each education service provider provide the LEA with information about any student receiving services that the education service provider suspects of having a disability, so that the LEA can conduct child find responsibilities under the IDEA.

(4)(a) An LEA shall register all students receiving services from an education service provider.

(b) An education service provider may not register a student on behalf of an LEA.

(5) An LEA shall pay an education service provider on a reimbursement basis.

(6) An LEA may not record education service provider staff as teachers with an assignment in CACTUS or USIMS.

### **R277-115-5. Corrective Action.**

~~[(3)]~~The Board or the Superintendent may withhold funds or require an LEA to repay public funds to the Superintendent if:

~~[(a)]~~1 the LEA fails to comply with ~~[the provisions of]~~ this rule or the law; and

~~[(b)]~~2 the repayment is made in accordance with the procedures established in Rule R277-114.

**KEY: third party providers, contracts, monitoring**

**Date of Last Change: 2023[May 23, 2019]**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4) and (10)**

## **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Rule or Section Number:** R277-303

**Filing ID:** 55246

### **Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

### **General Information**

<b>2. Rule or section catchline:</b>
R277-303. Educator Preparation Programs
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This rule is being amended in order to increase flexibility in demonstrating competencies in educator preparation programs.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
These amendments add a definition for "Flexibility". These amendments clarify monitoring responsibilities of the Superintendent and also clarify that approved preparation programs must be based in Utah.

### **Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have fiscal impact on state government revenues or expenditures. This adds flexibility but does not create new programs or require additional staff time.

**B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. These changes do not require additional resources from Local Education Agencies (LEAs) but allow for some flexibility in educator preparation programs.

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

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

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. USBE does not anticipate any fiscal impact for other individuals as it mostly impacts LEAs.

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

There are no compliance costs for affected persons. This rule change does not add costs for USBE or LEAs.

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

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

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

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-6-201(3)(a)
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**Public Notice Information****8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 03/31/2023

**9. This rule change MAY become effective on:** 04/07/2023

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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	02/15/2023
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**R277. Education, Administration.****R277-303. Educator Preparation Programs.****R277-303-1. Authority and Purpose.**

(1) This rule is authorized by:

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

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

(c) Subsection 53E-6-201(3)(a), which directs the Board to establish the criteria for obtaining licenses; and

(d) Section 53E-6-302, which requires the Board to establish standards for approval of educator preparation programs.

(2) The purpose of this rule is to establish flexible criteria for demonstration of competency in educator preparation programs in the State of Utah.

**R277-303-2. Definitions.**

(1)(a) "Educator preparation program" means a comprehensive program administered by an entity that is intended to prepare individuals to meet the requirements for a Utah professional license or license area of concentration.

(b) "Educator preparation program" may include a program developed by or associated with an institution of higher education, individual LEA, a consortium of LEAs, or the Board.

(2) "Flexibility," for alternative preparation programs, means the process by which a program exercises local decision-making to design and implement focused options to meet program and applicant licensing needs, without adding additional requirements beyond those outlined in Board rule, and allowing a teacher to demonstrate competency where reasonably possible in lieu of coursework or other requirements, consistent with the purpose of Board licensing rules.

([2]3) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

([3]4) "License area" has the same meaning as set forth in Subsection R277-301-2(5)(a).

(4) "Professional license" means the educator license described in Section R277-301-6.

**R277-303-3. Educator Preparation Program Review and Approval.**

(1) The Superintendent shall establish uniform procedures for initial approval and review of educator preparation programs to ensure compliance with this ~~[R277-303]~~rule.

(2) The Superintendent shall approve an educator preparation program that meets the requirements of this rule and the standards for program approval established in:

(a) Rule R277-304;

(b) Rule R277-305;

(c) Rule R277-306; and

(d) all other applicable Board rules.

(3)(a) The Superintendent shall conduct an ongoing review of approved educator preparation programs and shall renew or deny approval for a program at least every seven years.

(b) The review described in Subsection (3)(a) shall include monitoring whether:

(i) an educational preparation program is in compliance with Board rules; and

(ii) an alternative preparation program has reasonable flexibility for candidates to demonstrate required competencies.

(4) The Superintendent may grant preliminary approval to a new educator preparation program within a Utah public college or university pending approval by the Utah ~~[State Board of Regents]~~Board of Higher Education.

(5) The Superintendent shall make a report to the Board when an educator preparation program's initial application for approval is granted or denied.

(6) The Superintendent may place an approved educator preparation program on probation for:

(a) failure to meet program requirements detailed in applicable Board rules; or

(b) failure to submit complete and accurate information in a report required under this rule.

(7) The Board may revoke the approval of a probationary program that fails to meet probationary requirements with at least one year's notice to the educator preparation program.

(8) The Superintendent may require a program or subset of programs to submit reports to inform the annual report to the Board required in Section R277-301-10.

(9) The Superintendent shall accept an approved educator preparation program's recommendations for a professional license or license area if the prospective licensee meets all other requirements of Board rule.

**R277-303-4. Educator Preparation Programs.**

(1) An educator preparation program that applies for approval by the Superintendent shall demonstrate how it will ensure that participants:

(a) are prepared to meet the Utah Effective Educator Standards established in Rule R277-530;

(b) successfully complete or are prepared to complete the pedagogical performance assessment required in Rule R277-301;

(c) have met the competencies required in all applicable Board rules;

(d) have sufficiently demonstrated the ability to work in the applicable license area and subject area; and

(e) successfully completed or are prepared to complete a pedagogical performance assessment meeting standards established by the Superintendent and approved by the Board for all new students enrolled in the program after January 1, 2020 and recommended for a Utah educator license after September 1, 2021 in all license areas for which such an assessment is available.

(2) In addition to the requirements of Subsection (1), an educator preparation program that is not also a Utah LEA shall:

(a) have a physical location in the state of Utah where participants attend classes; or

(b) if the program provides only online instruction:

(i) have the program's primary headquarters located in Utah; and

(ii) be licensed to do business through the Utah Department of Commerce; and

(c) establish entry requirements that are designed to ensure that only high quality individuals enter the preparation program, which include measures of:

(i) previous academic success;

(ii) disposition for employment in an educational setting; and

(iii) basic skills in reading, writing, and mathematics; and  
(d) include a pedagogical performance assessment meeting standards established by the Superintendent and approved by the Board for all new students enrolled in the program after January 1, 2020 and recommended for a Utah educator license after August 1, 2021 in all license areas for which such an assessment is available.

(3)(a) If the Superintendent denies an application from an educator preparation program, the proposed educator preparation program may appeal the Superintendent's decision to the Board by submitting a written appeal to the Board Secretary.

(b) The Board shall assign an appeal under Subsection (3)(a) to a standing committee to make a recommendation to the full Board for final action.

(4) An approved educator preparation program may recommend an individual that completed the program for a professional license or license area for up to five years after the individual completed the program, as long as all current license requirements have been met.

(5) If five years have passed since an individual completed an approved educator preparation program, the program may recommend the individual for a professional license or license area if the program:

(a) reviews the individual's program; and

(b) requires the individual to complete any additional necessary requirements to meet current programs standards [~~prior to~~ before] making a licensing recommendation.

(6)(a) An approved educator preparation program may recommend an individual who began the program before January 1, 2020 for a professional license or license area without meeting the pedagogical performance assessment requirement in Rule R277-301, but must present documentation showing that the individual met the appropriate license requirements in effect [~~prior to~~ before] that date.

(b) Subsection (6)(a) supersedes Subsections (4) and (5).

#### **R277-303-5. Superintendent Responsibilities.**

(1) The Superintendent shall provide support to educator preparation programs and potential licensees to the extent that funding allows by:

(a) maintaining a website to:

(i) facilitate collaboration between educator preparation programs;

(ii) facilitate communication between potential educators and approved programs; and

(iii) provide access to up-to-date research on educator preparation and education practices;

(b) reviewing third-party preparation materials for alignment with the Utah Effective Educator Standards in Rule R277-530; [~~and~~]

(c) working with potential licensed educators to help them become licensed educators[~~;~~ and]

(d) ensuring that alternative preparation program applicants be grandfathered from new program requirements added after an applicant's acceptance into the program.

(2) The Superintendent shall design and maintain a model educator preparation program that:

(a) meets all requirements of all applicable Board rules;

(b) may be adopted by an LEA or an accredited private school, subject to Section R277-303-4; and

(c) is overseen by staff distinct from the staff responsible for ensuring educator preparation program compliance with all applicable Board rules.

**KEY: educator preparation program, pedagogical assessment, professional competency, programs**

**Date of Last Change: 2023** [~~April 8, 2024~~]

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-6-201(3)(a)**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Repeal

**Rule or Section Number:** **R277-463**

**Filing ID:** **55247**

#### **Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

#### **General Information**

##### **2. Rule or section catchline:**

R277-463. Class Size Average and Pupil-Teacher Ratio Reporting

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

These funds are not used to reduce teacher to pupil ratios due to growth having been so high for so many years. With this repeal, Local Education Agencies (LEAs) will still be able to use these funds mainly to help sustain the classroom sizes/teacher to current pupil ratios, as much as possible, and to keep the classroom sizes from increasing exponentially.

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

The rule is being repealed in its entirety.

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

This rule change is not expected to have fiscal impact on state government revenues or expenditures. Removal of this rule does not change the funds or distributions from the Utah State Board of Education (USBE).

**B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The rule being repealed does not change the allowable uses of the funds or distributions to LEAs.

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

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

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

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

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

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

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

There are no compliance costs for affected persons. There are no costs associated with the repeal.

**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**

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

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

Article X, Section 3	Section 53E-3-301	Subsection 53E-3-401(4)
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**Public Notice Information****8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	03/31/2023
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<b>9. This rule change MAY become effective on:</b>	04/07/2023
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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	02/15/2023
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**R277. Education, Administration.****~~R277 463. Class Size Average and Pupil Teacher Ratio Reporting.~~****~~R277 463 1. Authority and Purpose.~~**

- ~~(1) This rule is authorized by:~~
- ~~(a) Utah Constitution Article X, Section 3, which places general control and supervision of the public school system under the Board;~~
- ~~(b) Section 53E-3-301, which directs the Board to report average class sizes and pupil teacher ratios; and~~
- ~~(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.~~
- ~~(2) The purpose of this rule is to establish uniform class size and pupil teacher ratio reporting procedures, including definitions and codes.~~

**~~R277 463 2. Definitions.~~**

- ~~(1) "Course" means the subject matter taught to students.~~
- ~~(a) Elementary courses are designated by grade level.~~
- ~~(b) Secondary courses are determined by course content.~~
- ~~(2) "EL" means English Learner.~~
- ~~(3)(a) "Individual class" means a group of students organized for instruction and assigned to one or more teachers or other staff members for a designated time period.~~
- ~~(b) A class may include:~~
- ~~(i) students from multiple grades; or~~
- ~~(ii) students taking multiple courses.~~
- ~~(c) The Superintendent shall determine an individual class from course data submitted to the Superintendent using a combination of course elements, such as:~~
- ~~(i) CACTUS identification number;~~
- ~~(ii) teacher of record;~~
- ~~(iii) class period;~~
- ~~(iv) term of student enrollment; and~~
- ~~(v) course cycle.~~
- ~~(4) "Pupil" means a student enrolled in a public school as of October 1 of the reported school year.~~
- ~~(5) "Teacher" means a full time equivalent licensed educator, such as:~~
- ~~(a) a regular classroom teacher;~~
- ~~(b) a school based specialist; or~~
- ~~(c) a special education teacher.~~

**~~R277 463 3. Class Size Average for Elementary Classes.~~**

- ~~(1)(a) An LEA shall report student level course data providing sufficient course information to determine the number of students in individual classes.~~

~~(b) An LEA shall calculate a class with students in multiple grades as one class.~~

~~(c) An LEA shall calculate an extended day classes in which one portion of the class arrives early and the other portion stays late as one class.~~

~~(2)(a) The Superintendent shall calculate average class size by grade.~~

~~(b) The Superintendent shall exclude special education, EL, online, and other non-traditional classes from class size average calculations.~~

~~(3) The Superintendent shall derive state and district level class sizes from the median of school level class sizes.~~

**~~R277 463 4. Class Size Average for Secondary Classes.~~**

~~(1)(a) An LEA shall report student level course data providing sufficient course information to determine the number of students in individual classes.~~

~~(b) An LEA shall calculate classes including students enrolled in multiple courses as one class.~~

~~(2)(a) The Superintendent shall calculate average class size for core language arts, mathematics, and science courses.~~

~~(b) The Superintendent shall exclude special education, EL, online, and other non-traditional classes from class size averages.~~

~~(3) The Superintendent shall derive state and district level class sizes from taking the median of school level class sizes.~~

**~~R277 463 5. Pupil Teacher Ratio Calculation.~~**

~~(1)(a) The Superintendent shall calculate pupil teacher ratios by school.~~

~~(b) The Superintendent shall calculate the pupil teacher ratio for each school by dividing the number of enrolled pupils by the number of full-time equivalent teachers assigned to the school.~~

~~(2) The Superintendent shall derive district level ratios by taking the median of school level ratios.~~

~~(3) The Superintendent shall derive state level ratios for charter schools and traditional schools by taking the median of school level data.~~

**~~R277 463 6. Reporting Format and Timeline.~~**

~~The Superintendent shall report school, district and state-level ratios and class size averages to the public as required under Section 53E-3-301.~~

**KEY: public schools, enrollment reporting, class size average reporting, pupil teacher ratio reporting**

**Date of Last Change: July 2, 2019**

**Notice of Continuation: April 8, 2019**

**Authorizing, and Implemented or Interpreted Law: Art. X, Sec 3; 53E-3-301; 53E-3-401(4)]**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Rule or Section Number:**

**R277-552**

**Filing ID:**  
**55248**

**Agency Information**

**1. Department:** Education

**Agency:** Administration

**Building:** Board of Education

<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

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

R277-552. Charter School Timelines and Approval Processes

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

This rule is being amended due to a motion made by the Legislature's Administrative Rules Review and General Oversight Committee (Administrative Rules Committee) to include not reauthorizing Rule R277-552 in the Legislature's annual bill to reauthorize administrative rules if the Utah State Board of Education (USBE) does not amend this rule.

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

These amendments delete all of Subsection R277-552-7(2) from this rule and include a provision requiring a charter schools' authorizer establish a standard for how the authorizer will determine that the school is academically high performing and in good standing and requiring a charter school requesting a large expansion or satellite school to meet the authorizer's standards. The rule amendments also include the elimination of a two-step review process, provides more autonomy for authorizers to approve small expansion requests, and make other technical changes.

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

This rule change is not expected to have fiscal impact on state government revenues or expenditures. These changes do not directly impact state budgets or revenue. Authorizers can now establish what determines a charter

school is in good standing for expansion requests as it was unclear prior to this change.

**B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This relates only to expanding or satellite charter schools. The charter school's authorizer can now determine what qualifies as being in good academic standing. All other processes for expansion or satellites continue to apply. Therefore, USBE does not estimate a measurable impact for Local Education Agencies (LEAs).

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

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

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

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

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

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

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

There are no compliance costs for affected persons. This does not add any costs for USBE and LEAs; it will only apply to charter schools attempting to expand or create a satellite.

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

**Citation Information**

<b>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:</b>		
Article X, Section 3	Section 53E-3-401	Section 53G-5-205
Section 53F-2-702	Section 53G-6-503	

**Public Notice Information**

<b>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.)</b>	
<b>A) Comments will be accepted until:</b>	03/31/2023

<b>9. This rule change MAY become effective on:</b>	04/07/2023
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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	02/15/2023
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**R277. Education, Administration.****R277-552. Charter School Timelines and Approval Processes.****R277-552-1. Authority and Purpose.**

(1) This rule is authorized by:

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

(b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;

(c) Subsection 53G-6-504(5), which requires the Board to make rules regarding a charter school expansion or satellite campus;

(d) Sections 53G-5-304 through 53G-5-306, which require the Board to make a rule providing a timeline for the opening of a charter school;

(e) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school;

(f) the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information [prior to] before a charter school's receipt of federal funds; and

(g) Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that an authorizer is required to apply in authorizing and monitoring charter schools.

(2) The purpose of this rule is to:

(a) establish procedures for timelines and approval processes for new charter schools; and

(b) provide criteria and standards for consideration of high performing charter schools to expand and request new schools that are satellite schools.

**R277-552-2. Definitions.**(1) "Large expansion" means a charter school's request for expansion if the expansion request:(a) is for more than 50 students;(b) would necessitate significant renovation; or(c) is for more than one additional grade level.

(2) "Market analysis" means a qualitative and quantitative analysis of the educational market near a proposed charter school, including:

[(1)](a) the school's target demographics;

[(2)](b) population and development trends in the area;

[(3)](c) nearby competing public schools;

[(4)](d) the proposed school's own forecasts, along with supporting data; and

[(5)](e) any risks, barriers, or regulations that may impact a proposed school's success.

(3) "Significant school remodel" means new construction or a renovation that requires:(i) a building permit from a local municipality or county;  
or

(ii) a project number from the Board as described in Rule R277-471.

(4) "Small expansion request" means a charter school's request for expansion if the expansion request:

(a) is for 50 or fewer students;

(b) would not necessitate a significant renovation; and

(c) is for no more than one additional grade.

### **R277-552-3. Charter School Authorization Process.**

(1) An individual or non-profit organization as described in Subsection 53G-5-302(2)(b) may apply to open a charter school from any statutorily approved authorizer.

(2) An authorizer shall submit a process to the Board for approval of:

(a) a new charter school;

(b) a request from a school to change authorizers;

(c) a charter school expansion; or

(d) a satellite school.

(3) A new authorizer shall submit a new charter school application process to the Board for approval at least six months ~~[prior to]~~ before accepting applications for a new charter school.

(4) An existing authorizer may not authorize a new charter school for the 2021-22 school year and beyond until the Board approves the authorizer's application process.

(5)(a) The Board shall approve or deny an authorizer's proposed application process, including expansion and satellite approval processes, within 90 days of receipt of the proposed process from an authorizer.

(b) If the Board denies an application process, the Superintendent shall provide a written explanation of the reasons for the denial to the applicant within 45 days.

(c) If an authorizer's application process is denied, the authorizer may submit a revised application process for approval at any time.

(6) An authorizer shall have an application and charter agreement, which shall include all elements required by Title 53G, Chapter 5, Part 3, Charter School Authorization.

(7) An authorizer shall maintain the official signed charter agreement, which shall presumptively be the final, and complete agreement between a school and the school's authorizer.

(8) An authorizer's review process for a new charter school shall include:

(a) a plan for mandatory pre-operational and other trainings;

(b) an evaluation of the school's governing board, including:

(i) a review of the resumes of and background information of proposed governing board members; and

(ii) a capacity interview of the proposed governing board;

(c) an evaluation of the school's financial viability, including:

(i) a market analysis;

(ii) anticipated enrollment; and

(iii) anticipated and break even budgets;

(d) an evaluation of the school's academic program and academic standards by which the authorizer will hold the school accountable; and

(e) an evaluation of the school's proposed pre-operational plan, including implementation of:

(i) applicable legal requirements for public schools;

(ii) required policies;

(iii) student data systems, including student data privacy requirements;

(iv) reporting; and

(v) financial management.

(9) An authorizer's review process shall include contacting the school district in which a proposed charter school will be located and consideration of any feedback provided by the district.

(10) An authorizer shall design its approval process so that the authorizer notifies the Superintendent of an authorizer approval of a request identified in Subsection (2) no later than October 1, one fiscal year ~~[prior to]~~ before the state fiscal year the charter school intends to serve students.

### **R277-552-4. Timelines - Charter School Starting Date and Facilities.**

(1) A charter school may receive state start-up funds if the charter school is approved as a new charter school by October 1, one fiscal year ~~[prior to]~~ before the state fiscal year the charter school intends to serve students.

(2) ~~[Prior to]~~ Before receiving state start-up funds an authorizer, other than the State Charter School Board, shall certify in writing to the State Charter School Board that a charter school has:

(a) completed all required financial documents;

(b) completed background checks for each governing board member; and

(c) executed a signed charter agreement, which includes academic goals.

(3) ~~[Prior to]~~ Before an LEA ~~[receiving]~~ receives state start-up funds, the State Charter School Board shall require the LEA to submit documentation supporting the information required in Subsections (2)(a) and (c) to the Superintendent.

(4) A charter school may receive state funds, including minimum school program funds, if the charter school authorizer certifies in writing to the Superintendent by June 30 ~~[prior to]~~ before the school's first operational year that:

(a) the charter school meets the requirements of Subsection (2);

(b) the charter school's governing board has adopted all policies required by statute or Board rule, including a draft special education policies and procedures manual;

(c) the charter school's governing board has adopted an annual calendar in an open meeting and has submitted the calendar to the Superintendent;

(d) the authorizer has received the charter school's facility contract as required by Subsection 53G-5-404(9);

(e) the charter school has met the requirements of Subsections (5) and (6) and that the school's building is scheduled for completion, including all required inspections, ~~[prior to]~~ before occupancy;

(f)(i) the charter school has hired an executive director and a business administrator; or

(ii)(A) the charter school governing board has designated an executive director or business administrator employed by a third party; and

(B) the charter school governing board has established policies regarding the charter school's supervision of the charter school's third-party contractors;

(g) the charter school's enrollment is on track to be sufficient to meet the school's financial obligations and implement the charter school agreement;

(h) the charter school has an approved student data system that has successfully communicated with UTREx, including meeting the compatibility requirements of Subsection R277-484-5(3);

(i) the charter school has a functional accounting system; and

(j) the charter school has a budgeted net lease adjusted debt burden ratio of under 30% based on the school's executed facility agreement; and

(k) the charter school has complied with all legal requirements for new charter schools in a school's pre-operational year.

(5) An authorizer shall:

(a) create a process to verify the requirements in Subsection (4);

(b) maintain documentation of Subsection (5)(a); and

(c) provide the documentation described in Subsection (5)(b) to the Superintendent upon request; and

(d) submit a copy of the process required in Subsection (5)(a) to the Board for approval along with the authorizer's process for approving new charters under Subsection R277-552-3(2).

(6) A charter school shall begin construction on a new or existing facility requiring ~~[major]~~significant renovation~~[- such as requiring a project number consistent with Rule R277-471,]~~ no later than January 1 of the year the charter school is scheduled to open.

(7) A charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277-471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.

(8) If a charter school fails to meet the requirements of this section within 36 months of approval, the approval of the charter school shall expire.

#### **R277-552-5. Charter Amendment Requests.**

(1) An authorizer shall have a policy establishing a process for consideration of proposed amendments to a school's charter agreement.

(2) An authorizer's timeline for consideration of an amendment to a charter agreement may not conflict with any funding deadline established in Board rule.

#### **R277-552-6. Charter School Small Expansion Requests.**

(1) An authorization process developed by an authorizer in accordance with Subsection R277-552-~~[2]~~3(2) shall comply with ~~[this-]~~Sections R277-552-~~[5]~~6 and R277-552-7 for a charter school expansion.

~~[(2) An authorizer may only consider an application from a charter school for an expansion if:~~

~~(a) the charter school is in compliance with the requirements of federal and state law, regulations, and Board rule, including:~~

~~(i) Title 53E, Chapter 9, Student Privacy and Data Protection;~~

~~(ii) Title 53G, Chapter 7, Part 5, Student Fees;~~

~~(iii) Title 53G, Chapter 9, Part 7, Suicide Prevention;~~

~~(iv) Title 53G, Chapter 8, Discipline and Safety;~~

~~(v) Title 52, Chapter 4, Open and Public Meetings Act;~~

~~(vi) Title 63G, Chapter 6a, Utah Procurement Code; and~~

~~(vii) the IDEA and Rule R277-750, with no unresolved audit exceptions;~~

~~(viii) Rule R277-113, Local Education Agency (LEA) Fiscal and Auditing Policies;~~

~~(ix) Section 53G-9-207, Child sexual abuse prevention; and~~

~~(x) Subsection 63G-7-301(3) and Rule R277-322;~~

~~(b) the request is consistent with the charter school's charter agreement;~~

~~(c) the expanding school or LEA is performing:~~

~~(i) consistent with or above the charter school's stated academic goals; and~~

~~(ii) at or above the average student performance of other nearby schools on statewide assessments, unless serving a specialized population consistent with the school's charter agreement;~~

~~(d) if the proposed expansion will require additional physical facilities, the charter school has maintained a net lease adjusted debt burden ratio of under 25% for each of the last three years;~~

~~(e) the charter school's financial statements report revenues in excess of expenditures for at least three of the last four fiscal years; and~~

~~(f) the charter school provides any additional information or documentation requested by the charter school authorizer.~~

~~(3) An authorizer shall provide documentation of an applicant school's eligibility to apply under Subsection (2) to the Superintendent upon request.]~~

(2) An authorizer may approve a small expansion request in accordance with an authorizer's standards and established criteria.

[(4)](3) An authorizer may ~~[only-]~~approve an application from a charter school for ~~[an]~~a large expansion if the charter school meets the requirements for a satellite school described in Section R277-552-7.~~if:~~

~~(a) the charter school is meeting the terms of its charter agreement;~~

~~(b) the charter school is academically and operationally successful, taking into consideration at least two years of academic performance data of students at the charter school;~~

~~(c) the charter school:~~

~~(i) provides educational services consistent with state law and Board rule;~~

~~(ii) administers and has capacity to carry out statewide assessments including proctoring statewide assessments, consistent with Section 53E-4-303 and Rule R277-404; and~~

~~(iii) provides evidence-based instruction for special populations as required by federal law;~~

~~(d) the charter school has adequate qualified administrators and staff to meet the needs of the proposed student population at the school;~~

~~(e) the school is in compliance with all applicable school legal obligations;~~

~~(f) the charter school has maintained for each of the last three years:~~

~~(i) a re-enrollment rate of at least 80%;~~

~~(ii) a wait list of at least 40% of its annual enrollment; or~~

~~(iii) other evidence of market demand satisfactory to the authorizer;~~

~~(g) the charter school is financially viable, as evidenced by the charter school's financial records, including the charter school's:~~

~~(i) most recent annual financial report (AFR);~~

~~(ii) annual program report (APR); and~~

~~(iii) audited financial statements;~~

~~(g) the charter school's proposal provides an adequate facility for the school; and~~

~~(h) the charter school has appropriately dealt with student safety issues, if any;~~

~~(4) An authorizer may provide additional requirements in addition to the requirements described in Sections R277-552-6 and R277-552-7.~~

~~(5) An authorizer shall provide documentation of an applicant school's eligibility for an expansion under Subsection (2) or Section R277-552-7 to the Superintendent upon request.~~

~~[(5)](6) An authorizer shall:~~

~~(a) approve a proposed expansion before October 1 of the state fiscal year [prior to] before the school year that the charter school intends to expand; and~~

~~(b) provide the total number of students by grade that the charter school expansion is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year [prior to] before the school year that the school intends to expand.~~

**R277-552-7. Requests for a New Satellite School or Large Expansion[for an Approved Charter School].**

~~(1) An authorization process developed by an authorizer in accordance with Subsection R277-552-3(2) shall comply with this Section R277-552-7 for a satellite school or large expansion request.~~

~~[(2) An authorizer may only consider an application from a charter school for a satellite school if:~~

~~(a) the charter school is in compliance with the requirements of federal and state law, regulations, and Board rule, including:~~

~~(i) Title 53E, Chapter 9, Student Privacy and Data Protection;~~

~~(ii) Title 53G, Chapter 7, Part 5, Student Fees;~~

~~(iii) Title 53G, Chapter 9, Part 7, Suicide Prevention;~~

~~(iv) Title 53G, Chapter 8, Discipline and Safety;~~

~~(v) Title 52, Chapter 4, Open and Public Meetings Act;~~

~~(vi) Title 63G, Chapter 6a, Utah Procurement Code; and~~

~~(vii) the IDEA and Rule R277-750, with no unresolved audit exceptions;~~

~~(viii) Rule R277-113, Local Education Agency (LEA) Fiscal and Auditing Policies;~~

~~(ix) Section 53G-9-207, Child sexual abuse prevention; and~~

~~(x) Subsection 63G-7-301(3) and Rule R277-322;~~

~~(b) the request is consistent with the charter school's charter agreement;~~

~~(c) all schools operating under the governance of the existing charter school are performing:~~

~~(i) consistent with or above the charter school's stated academic goals; or~~

~~(ii) if no student performance goals have been established, above the standardized student assessment measures of other comparable nearby schools;~~

~~(d) the charter school has maintained a net lease adjusted debt burden ratio of under 25% for each of the last three years;~~

~~(e) the charter school's financial statements report revenues in excess of expenditures for at least three of the last four years;~~

~~(f) the charter school provides a market analysis, including documentation of the school's potential for enrollment stability, covering all public schools within a ten-mile radius, including analysis of whether nearby schools are at enrollment capacity; and~~

~~(g) the charter school provides any additional information or documentation requested by the charter school authorizer.]~~

~~[(3)](2) An authorizer may not consider an application for a satellite school from a charter school governed by a different authorizer.~~

~~[(4) An authorizer shall provide documentation of an applicant school's eligibility to apply under Subsection (2) to the Superintendent upon request.]~~

~~[(5)](3) An authorizer may only approve an application from a charter school for a satellite school or large expansion if:~~

~~(a) the charter school is in compliance with the requirements of federal and state law, regulations, and Board rule;~~

~~(b) the charter school meets the requirement of the charter school authorizer's standards and requirements;~~

~~(c) the charter school is academically high performing and in good standing according to the standards established by the charter school's authorizer in the authorizer's process for charter school expansion or satellite school described in Subsection R277-552-3(2), including whether the charter LEA, as a whole, qualifies as high performing under the charter school's authorizer's approved definition of high performing;~~

~~[(a) the charter school is meeting the terms of its charter agreement;~~

~~(b) the charter school has maintained for each of the last three years:~~

~~(i) a re-enrollment rate of at least 80%;~~

~~(ii) a wait list of at least 40% of its annual enrollment; or~~

~~(iii) there is a demonstrated demand for the proposed satellite, taking into consideration the market analysis required under Subsection (2)(f);]~~

~~[(e)](d) subject to Subsection (4), the charter school is [academically and] operationally successful, taking into consideration at least two years of [academic performance data of students at] data for every school under the charter agreement; [the charter school, including whether the charter school is performing at or above:~~

~~(i) the academic goals established in the charter school's agreement; and~~

~~(ii) the average academic performance of other district and charter schools in the area or schools targeting similar populations or demographics;]~~

~~[(e)](c) the charter school has plans for the new satellite school or large expansion to:~~

~~(i) provide educational services consistent with state law and Board rule;~~

~~(ii) administer and have capacity to carry out statewide assessments including proctoring statewide assessments, consistent with Section 53E-4-303 and Rule R277-404; and~~

~~(iii) provide evidence-based instruction for special populations as required by federal law;~~

~~[(e)](f) the charter school has adequate qualified administrators and staff to meet the needs of the proposed student population at the new school;~~

~~[(f)](g) the school is in compliance with all public school legal obligations;~~

~~[(g)](h) the charter school is in good standing with its authorizer; [and]~~

~~(i) the charter school has no outstanding corrective action that has not yet been resolved by the completion of a corrective action plan;~~

~~[(h) the charter school is financially viable, as evidenced by the charter school's financial records, including the charter school's:~~

~~(i) most recent annual financial report (AFR);~~

~~(ii) annual program report (APR); and~~  
~~(iii) audited financial statements;]~~  
 (j) the charter school provides a market analysis, including documentation of the school's potential for enrollment stability; and  
 (k) the charter school provides any additional information or documentation requested by the authorizer.

(4)(a) For purposes of this Subsection (4), "debt coverage ratio" means:

(i) a debt coverage ratio calculated using (revenue - expenditures + interest cost + depreciation) divided by annual debt service; or

(ii) if the charter school's facilities are leased and not owned, a debt coverage ratio calculated using (revenue - expenditures + facility lease payment + real property taxes + depreciation) divided by annual debt service.

(b) A charter school is considered to be operationally successful if:

(i) for each of the schools under the charter agreement, the charter school meets the following criteria:

(A) for a school with 350 or less students enrolled in the school, at least 120% debt coverage ratio for each of the three years before the request for a satellite;

(B) for a school with between 351 and 499 students enrolled in the school, at least 115% debt coverage ratio for each of the three years before the request for a satellite;

(C) for a school with between 500 and 750 students enrolled in the school, at least 110% debt coverage ratio for each of the three years before the request for a satellite; or

(D) for a school with more than 750 students enrolled in the school, at least 105% debt coverage ratio for each of the three years before the request for a satellite;

(ii) the charter school is financially viable, as evidenced by the charter school's financial records, including the charter school's:

(A) most recent annual financial report (AFR);

(B) annual program report (APR); and

(C) audited financial statements;

(iii) the charter school has maintained a net lease adjusted debt burden ratio of under 25% for each of the last three years; and

(iv) the charter school's financial statements report revenues in excess of expenditures for at least three of the last four years;

(v) the charter school is meeting the terms of its charter agreement;

(vi) the charter school has maintained for each of the last three years:

(A) a re-enrollment rate of at least 80%;

(B) a wait list of at least 40% of its annual enrollment; or

(C) there is a demonstrated demand for the proposed satellite or large expansion, taking into consideration the market analysis required under Subsection (3)(i).

(5) An authorizer may provide additional requirements for a charter school in addition to the minimum requirements described in this Section R277-552-7.

(6) An authorizer shall provide documentation of an applicant school's eligibility for a satellite school or large expansion under Subsection (3) to the Superintendent upon request.

~~(6)~~(7) An authorizer shall:

(a) approve a proposed large expansion request or satellite school before October 1 of the state fiscal year ~~prior to~~ before the school year that the proposed school intends to first serve students;

(b) provide the total number of students by grade that the expanded or satellite school is authorized to enroll to the

Superintendent on or before October 1 of the state fiscal year ~~prior to~~ before the school year that the proposed school intends to first serve students; and

(c) ensure that a proposed school that will receive School LAND Trust funds has a charter trust land council and satisfies all requirements of Rule R277-477, including transparency of information for parents.

~~(7)~~(8) A charter school and all of the charter school's satellite schools are a single LEA for purposes of public school funding and reporting.

~~(8)~~(9) If a satellite charter school does not open within 36 months of approval, the approval shall expire.

~~(9)~~(10) If an authorizer denies an application for a satellite school, the school may immediately apply for a new charter in accordance with an authorizer's approved processes.

#### **R277-552-8. Procedures and Timelines to Change Charter School Authorizers.**

(1) A charter school may transfer to another charter school authorizer.

(2) A charter school shall submit an application to the new charter school authorizer at least 90 days ~~prior to~~ before the proposed transfer.

(3) The charter school authorizer transfer application shall include:

(a) the name and contact information of all current governing board members;

(b) financial records that demonstrate the charter school's financial position, including the following:

(i) most recent annual financial report (AFR);

(ii) annual program report (APR); and

(iii) audited financial statements;

(c) test scores, including all state required assessments;

(d) current employees and assignments;

(e) board minutes for the most recent 12 months; and

(f) affidavits, signed by all board members certifying:

(i) the charter school's compliance with all state and federal laws and regulations, including documentation if requested;

(ii) all information on the transfer application is complete and accurate;

(iii) the charter school is current with all required charter school governing board policies;

(iv) the charter school is operating consistent with the charter school's charter agreement; and

(v) there are no outstanding lawsuits, judgments, or liens against the charter school.

(4) The current authorizer of a charter school seeking to transfer charter school authorizers shall submit a position statement to the new charter school authorizer about:

(a) the charter school's status;

(b) compliance with the charter school authorizer requirements; and

(c) unresolved concerns.

(5) If a school applies to change authorizer's, the existing authorizer shall advise the proposed authorizer if there is any outstanding debt to the existing authorizer or the state.

(6) If a school applies to change authorizers, the request shall extend to all satellite schools.

(7) A new charter school authorizer shall review an application for transferring to another charter school authorizer within 60 days of submission of a complete application, including all required documentation.



## NOTICES OF PROPOSED RULES

(8) ~~[Prior to]~~Before accepting a charter school's transfer from another authorizer, the new authorizer shall request and consider information from the Board and current authorizer concerning the charter school's financial and academic performance.

(9) The Superintendent and current authorizer shall provide the information described in Subsection (7) to a new charter authorizer within 30 days of request described in Subsection (7).

(10) If an authorizer accepts the transfer of a charter school, the new authorizer shall notify the Superintendent within 30 days.

### **R277-552-9. Requirements for Board Approval of Process Updates Due to Changes in Board Rule.**

(1) An authorizer with a previously Board approved process shall re-submit the authorizer's updated processes described in Subsection R277-552-3(2) within six months of the new effective date of this rule if the updates to this rule include new or amended requirements.

(2) An authorizer may submit only those portions of the processes that were impacted by the updates to this rule.

**KEY:** training, timelines, expansion, satellite  
**Date of Last Change:** ~~2023~~**February 9, 2021**  
**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-401; 53G-5-205; 53F-2-702; 53G-6-503

### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R277-600</b>	<b>Filing ID:</b> <b>55249</b>
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### **Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

### **General Information**

<b>2. Rule or section catchline:</b>
R277-600. Student Transportation Standards and Procedures

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

This rule is being amended to add clarifications to the standards under which school districts may qualify for and receive state transportation funds.

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

These amendments make a change to the general provisions specific to the approval of B Category costs, clarify the requirements needed to receive state transportation funds for transporting eligible students, and make updates to the student with disabilities transportation requirements for school districts, as well as the approval of bus routes and alternative transportation.

### **Fiscal Information**

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

#### **A) State budget:**

This rule change is not expected to have fiscal impact on state government revenues or expenditures. This will not add costs for the Utah State Board of Education (USBE) or other state budgets.

#### **B) Local governments:**

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. These changes largely clarify transportation requirements for school districts. These changes may have small impacts on which expenses are approved for reimbursement; however, these changes will not have large impacts on Local Education Agency (LEA) transportation budgets.

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

This rule change is not expected to have fiscal impacts on small businesses' revenues or expenditures. This only affects LEA transportation.

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

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



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

This rule change is not expected to have fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This only affects LEA transportation.

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

There are no compliance costs for affected persons. This does not add any costs for USBE or LEAs to comply with the changes.

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

**Regulatory Impact Table**

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

**Citation Information**

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

Article X, Section 3	Subsection 53E-3-501(1)(d)	Subsection 53E-3-401(4)
Section 53F-2-415	Section 53F-2-403	

**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:** 03/31/2023

**9. This rule change MAY become effective on:** 04/07/2023

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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	02/15/2023
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**R277. Education, Administration.**

**R277-600. Student Transportation Standards and Procedures.**

**R277-600-1. Authority and Purpose.**

(1) This rule is authorized by:

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

(b) Subsection 53E-3-501(1)(d), which directs the Board to establish rules for bus routes, bus safety and other transportation needs;

(c) Sections 53F-2-402 and 53F-2-403, which provide for distribution of funds for transportation of public school students;

(d) Section 53F-2-417, which directs the Board to make rules to implement rural school district transportation grants; and

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

(2) The purpose of this rule is to specify the standards under which school districts may qualify for and receive state transportation funds.

**R277-600-2. Definitions.**

(1) "ADA" means average daily attendance.

(2) "ADM" means average daily membership.

## NOTICES OF PROPOSED RULES

(3) "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.

(4) "Annual Program Report" or "APR" has the same meaning as defined in Section R277-484-2.

(5)(a) "Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices.

(b) All approved costs are adjusted by the Superintendent consistent with a Board[-] approved formula per the annual legislative transportation appropriation.

(6) "Deadhead miles" means miles traveled while operating a bus with no passengers on board.

(7) "Extended school year" or "ESY" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parent or guardian.

(8) "Hazardous" means in a state of danger or potential danger, which may result in injury or death.

(9) "Local school board" means a local school district board of education.

(10) "Multipurpose passenger vehicle" or "MPV" means any motor vehicle with less than ~~[40]~~ten passenger positions, including the driver's position, which cannot be certified as a bus.

(11) "Public route" means a road, thoroughfare, walkway, or highway.

(12) "Pupil Transportation Advisory Committee" means the committee described in Subsection 53F-2-403(5).

(13) "Pupil Transportation Schedule A1" means a report submitted annually to the Superintendent covering all estimated miles and minutes of to~~[7]~~ and from pupil transportation within an LEA.

~~[(14) "Out-of-pocket expense" means gasoline, oil, and tire expenses.]~~

### R277-600-3. General Provisions.

(1)(a) The Superintendent shall use state transportation funds to reimburse school districts for the costs reasonably related to transporting students to and from school.

(b) The Board shall define the limits of a school district's transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

(2) Allowable transportation costs are divided into two categories:

(a) A Category costs include expenditures for regular and special education bus routes established by the school district, and approved by the state.

(b) B Category costs include other methods of transporting students to and from school.

(3) The Superintendent shall develop a formula to allocate A Category costs based on a calculated rate.

(4) The Superintendent shall approve reasonable and necessary B Category costs on a line-by-line basis. ~~[-after: comparing the costs submitted by a school district with the costs of alternative methods of performing the designated functions; and~~

~~[(b) accounting for legislative appropriation variations.]~~

(5) The Superintendent shall develop a uniform accounting procedure for the financial reporting of transportation costs, which

shall specify the methods used to calculate allowable transportation costs.

(6) The Superintendent shall develop uniform forms for the administration of the transportation program.

(7)(a) An LEA shall record all student transportation costs, including accurate mileage, minute, and trip records.

(b) An LEA ~~[may]~~shall maintain records and financial worksheets during the fiscal year for audit purposes.

### R277-600-4. Eligibility.

(1) The Superintendent shall only disburse state transportation funds for transporting eligible students.

(2) The Superintendent shall determine transportation eligibility for elementary students (k-6) and secondary students (7-12) in accordance with the mileage from home, specified in Subsections 53F-2-403(1) and (2), to the school attended by assignment of the local school board.

(3) A student whose IEP identifies transportation as a necessary related service is eligible for transportation regardless of distance from the school attended by assignment of the local school board.

(4) A student who attends school for at least one-half day at a location other than the local school board designated school is not eligible for transportation for distances up to one and one-half miles.

(5) A school district that implements double sessions as an alternative to new building construction may transport, one[-] way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local school board determines the transportation would improve safety affected by darkness or other hazardous conditions.

(6) The distance from a student's home to the student's school or the student's bus stop is determined as follows: From the center of the public route open to public use, opposite the regular entrance where the ~~[pupil]~~student is living, over the nearest public route open regularly for use by the public, to the center of the public route open to public use, opposite the nearest public entrance to the school grounds which the student is attending, or the student's bus stop.

### R277-600-5. Student with Disabilities Transportation.

(1)~~[(a)]~~ A student with a disability shall be transported on regular buses and regular routes when~~[ever]~~ possible, unless the IEP team determines otherwise.

~~[(b) A school district may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.]~~

(2) A school district may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

(3) During the regular school year, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ~~[fifteen]~~15 days with primarily the same group of students.

(4) During the ESY, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ten days with primarily the same group of students.

(5) ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and Board Special Education Rules.

(6) The Utah Schools for the Deaf and the Blind shall provide transportation for students who are transported to its self-contained classes, unless an exception is approved by the Superintendent.

#### **R277-600-6. Bus Route Approval.**

(1)(a) A local school board shall propose bus routes subject to approval by the Superintendent.

(b) A local school board shall provide information requested by the Superintendent prior to approval of a route.

(c) During the regular school year, an eligible route from the assigned school site to an alternative program location shall be for a minimum of ~~[fifteen]~~ 15 days with primarily the same group of students.

(d) The Superintendent may not approve a route for reimbursement if an equitable student transportation allowance or a subsistence allowance for the necessary transportation is more cost-effective.

~~[(2) The Superintendent may approve exceptions for good cause shown.]~~

([3]2) A bus route shall:

(a) traverse the most direct public road;

(b) be reasonably cost-effective in comparison to other feasible alternatives;

(c) provide adequate safety for students;

(d) traverse roads that are constructed and maintained in a manner that does not cause property damage; and

(e) include an economically appropriate number of students.

([4]3)(a) The minimum number of general education students required to establish ~~[a bus route]~~ full eligibility for state-supported transportation is ten.

(b) The minimum number of students with disabilities required to establish ~~[a bus route]~~ full eligibility for state-supported transportation is five.

(c) A bus route may be established for fewer students upon special permission of the Superintendent.

([5]4) A school district shall designate safe areas for bus stops~~[-]~~, subject to the following, where possible:

(a) a school district shall place bus stops at least 3/10 miles apart; and

(b) a school district shall avoid placing bus stops on dead end roads.

([6]5)(a) A student's parent or guardian is responsible for the student's own transportation to bus stops up to one and one-half miles from home.

(b) A parent or guardian with a student that has a disability is responsible for the student's own transportation to bus stops unless the IEP team determines otherwise.

([7]6)(a) A school district shall report changes made in existing routes or the addition of new routes to the Superintendent as they occur.

(b) The Superintendent shall review and may refuse to fund route changes.

([8]7) The Superintendent may reimburse a school district for transporting another district's students across school district boundaries so long as:

(a) the route promotes efficient transportation for both districts;

(b) the route serves a group or community of students and families rather than a single student or a single family;

(c) the local school boards of both participating districts vote in an open meeting that students who reside in one district can be better and more economically served by another district; and

(d) both districts and the Superintendent maintain documentation annually of the boards' votes and ~~[the map of]~~ the approved route.

([9]8) A school district may transport eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day and receive approved route mileage.

([10]9)(a) The Superintendent may approve atypical routes as alternatives to building construction if routes are needed to allow more efficient school district use of school facilities.

(b) Building construction alternatives include:

(i) ~~[elementary]~~ double sessions;

(ii) year-round school; and

(iii) attendance across school district boundaries.

([11]10)(a) A school district may use local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

(i) the local school board has a policy that includes approval of trips at the appropriate administrative level;

(ii) the school or school district has considered the purpose of the trip or activity and any competing risk or liability;

(iii) given the distance, purpose, and length of the trip, the school district has determined that the use of a publicly owned school bus is appropriate for the trip or activity; and

(iv) the local school board has consulted with State Risk Management.

(b) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing a school district maintains documentation that:

(i) the routes are necessary;

(ii) the routes are more cost-effective; or

(iii) the routes provide greater safety for students than in-state routes.

#### **R277-600-7. Alternative Transportation.**

(1) ~~[The Superintendent]~~ A district shall analyze bus routes that involve a large number of deadhead miles to determine if an alternative method of transporting students is more efficient.

(2) Approved alternatives include the alternatives described in Subsections (3) through (9).

(3)(a) The costs incurred in transporting eligible pupils in a school district MPV are approved costs as long as the costs demonstrate efficiency; or

(b) The costs incurred in paying a parent or guardian of an eligible student an allowance in lieu of school district-supplied transportation are approved costs.

(4)(a) A parent or guardian of a student may be reimbursed for the mileage to the bus stop or school, whichever is closer to the student's home.

(b) The allowance under this Subsection (4)(a) may not be less than \$0.35 per mile, nor greater than the reimbursement allowance permitted by the Utah Department of ~~[Administrative Services]~~ Government Operations for use of privately owned vehicles set forth in the Utah Travel Regulations.

## NOTICES OF PROPOSED RULES

(5) A district shall annually perform a cost-benefit analysis as part of its determination of the LEA specific reimbursement rate and make this analysis available to the public.

(6)(a) A district shall make a student mileage allowance under this Section R277-600-7 to only one student per family for each trip that is necessary for all the students within a family to attend school.

(b) If siblings are on different school schedule or ride buses that are on significantly different schedules, a parent or guardian may claim and be paid for student mileage allowances for multiple students.

(7) If a student eligible for reimbursement under this Section R277-600-7 or the student's parent or guardian ~~[is unable to]~~cannot provide private transportation, with prior approval from the Superintendent~~[-]~~:

~~(a) the Superintendent may reimburse an amount equivalent to the student allowance [may be paid] to the school district to help pay the costs of school district transportation[-]; or~~

~~(b) the Superintendent may reimburse a school district costs paid for school contracted transportation, commercial bus passes, or alternative specialized transportation services.~~

(8)(a) A district shall measure and certify a student's mileage in school district records.

(b) A student's ADA, as entered in school records, is used to determine the student's attendance.

(9)(a) The cost incurred in providing a subsistence allowance is an approved cost under the following conditions:

(i) a student lives more than 60 miles (one way) on well-maintained roads from the student's assigned school, a parent or guardian may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school;

(ii) payment may not exceed the Substitute Care Rate for Family Services for the current fiscal year;

(iii) adjustments for changes made in the rate during the year shall be included in the allowance; and

(iv) in addition to the reimbursement for room and board, the subsistence allowance may include the costs of up to 18 round trips per year.

(b)(i) A subsistence allowance is not available to a parent or guardian who maintains a separate home during the school year for the convenience of the family.

(ii) A parent or guardian's primary residence during the school year is the residence of the child.

(10) A school district may contract or lease with a third party provider for pupil transportation services.

(11)(a) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(b) The Superintendent shall determine reimbursements for school districts using a leasing arrangement in accordance with the comparable cost for the school district to operate its own transportation.

(c) Under a contract or lease, a school district's transportation administrator's time may not exceed ~~[one percent]~~1% of the commercial contract cost.

(12) If a school district contracts or leases with a third party provider or other LEA for pupil transportation services, it shall maintain and provide to the Superintendent upon request the following items as if it operated its own transportation:

(a) eligible student counts;

(b) bus route mileage;

(c) bus route minutes; and

(d) service to students with disabilities and bus inventory data.

### **R277-600-8. Other Reimbursable Expenses.**

The Superintendent may reimburse a school district for the following costs with state transportation funds:

(1) salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics, and other personnel necessary to operate the transportation program, subject to the following limitations:

(a) a full time supervisor may be paid at the same rate as other professional directors in the school district; and

(b) a school district shall ensure that a supervisor's salary is commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions;

(2) a school district may claim a percentage of the school district superintendent's or other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is maintained; and

(3) the wage time for bus drivers may include to and from school time consisting of:

(i) 10 minute pre-trip inspection;

(ii) actual driving time;

(iii) 10 minute post-trip inspection and bus cleanup; and

(iv) 10 minute bus servicing and fueling;

(4) a proportionate amount of a superintendent's or supervisor's employee benefits ~~[(health, accident, life insurance)]~~such as health, accident, or life insurance;

(5) purchased property services;

(6) property, comprehensive, and liability insurance;

(7) communication expenses;~~[-and]~~

~~(8)~~ travel for supervisors to workshops or national conventions;

~~([8]9)~~ supplies and materials for vehicles, the school district transportation office and the garage;

~~(9)10~~ training expenses to complete bus driver instruction and certification required by the Board; and

~~(10)11~~ other related costs approved by the Superintendent, which may include additional bus driver training.

### **R277-600-9. Non-reimbursable Expenses.**

(1) AFR for all pupil transportation costs may only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

(2) In determining expenditures for eligible to and from school transportation, all related costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

(3) Expenses determined by the Superintendent as not directly related to transportation of eligible students to and from school may not be reimbursed.

(4)(a) A local school board may determine appropriate non-school uses of school buses.

(b) A local school board may lease or rent public school buses to:

(i) federal, state, county, or municipal entities;

(ii) entities insured by State Risk Management;

(iii) non-government entities; or

(iv) entities not insured through State Risk Management.

(c) As part of any agreement to allow non-school use of a school bus, a local school board shall:

(i) require full cost reimbursement for any non-public school use including:

- (A) cost per mile;
- (B) cost per minute; and
- (C) bus depreciation;

(ii) require a non-school user to provide:

(A) proof of insurance through State Risk Management or private insurance coverage; and

(B) a fully executed agreement for full release of indemnification;

(iii) require that any non-school use is revenue neutral; and

(iv) consult with State Risk Management to determine adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

(5) A local school board shall approve the use of school buses by a non-governmental entity or an entity not insured through State Risk Management in an open meeting.

(6)(a) In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency.

(b) A local school board shall grant a request under Subsection (a) so long as the use can be accommodated consistent with continuing student transportation and student safety requirements.

#### **R277-600-10. Board Local Levy.**

(1) Costs for school district transportation of students which are not reimbursable may be paid for from general school district funds or from the proceeds of the Board Local Levy authorized under Section 53F-8-302.

(2) The revenue from the Board Local Levy may be used for transporting students and for school bus replacement.

(3)(a) A local school board may approve the transportation of students in areas where walking constitutes a hazardous condition from general local school board funds or from the Board Local Levy.

(b) A local school board shall determine hazardous walking conditions by an analysis of the following factors:

- (i) volume, type, and speed of vehicular traffic;
- (ii) age and condition of students traversing the area;
- (iii) condition of the roadway, sidewalks and applicable means of access in the area; and
- (iv) environmental conditions.

(c) A local school board may designate hazardous conditions.

#### **R277-600-11. Exceptions.**

(1)(a) When undue hardships and inequities are created through exact application of these standards, a school district may request an exception to ~~these~~ this rule[s] from the Superintendent for individual cases.

(b) Hardships or inequities under Subsection (1)(a) may include written evidence demonstrating that no significant increased costs, ~~[(c)]less than [one percent]~~ 1% of a school district's transportation budget, ~~[.]~~ is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation exigencies.

(c) The Superintendent may consult with the Pupil Transportation Advisory Committee in considering the exemption.

(2) A school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route.

(3) There is an appreciable increase in cost under Subsection (2) if, because of the presence of ineligible students, any of the following occurs:

- (a) another route is required;
- (b) a larger or additional bus is required;
- (c) a route's mileage is increased;
- (d) the number of pick-up points below the mileage limits for eligible students exceeds one; and

(e) significant additional time is required to complete a route.

(4)(a) An ineligible student may ride a school bus on a space available basis.

(b) An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

#### **R277-600-12. Rural School Transportation Reimbursement Program.**

(1) The Superintendent shall annually determine which LEAs are eligible for rural school transportation reimbursement using the criteria described in ~~S[ub]~~ Section 53F-2-520.

(2) The Superintendent shall measure eligibility based on:

- (a) the most recent October 1 UTREx submission; and
- (b) the prior year's transportation data submitted in accordance with Section R277-484-3.

(3) By November 1 annually, the Superintendent shall notify an LEA that the LEA may seek reimbursement.

(4) An LEA eligible for reimbursement shall:

(a) provide evidence to the Superintendent in the first year of the LEA's eligibility that the LEA has provided transportation to and from the school for the past five years;

(b) submit to the Superintendent in the first year of the LEA's eligibility the LEA's current year pupil transportation Schedule A1 by December 30; and

(c) in subsequent years of eligibility, submit all transportation reports in accordance with Section R277-484-3.

(5) Submission of the pupil transportation Schedule A1 shall constitute an annual application and request for reimbursement by an LEA with an eligible school.

(6)(a) The Superintendent shall calculate and process reimbursements to LEAs once a year.

(b) The Superintendent shall determine allowable costs eligible for reimbursement taking into account:

- (i) eligible routes; and
- (ii) eligible miles and minutes as reported on the pupil transportation Schedule A1.

(c) The Superintendent shall reimburse an LEA based on the LEA's percentage of total unreimbursed eligible costs submitted.

(d) If the annual appropriation is insufficient to fund all submitted eligible cost payments, the Superintendent shall prorate the reimbursement up to the amount of the appropriation.

(7) An LEA shall permit the Superintendent to review accounting ledgers, student records, and transportation records upon request in order to determine:

(a) a school's eligibility in accordance with Subsection (1); and

(b) allowability of an LEA's submitted costs.

#### **R277-600-13. Rural School District Transportation Grant Program.**

(1) The Superintendent shall annually determine which school districts are eligible for the rural school district transportation

## NOTICES OF PROPOSED RULES

grant program using the criteria described in Subsection 53F-2-417(2).

(2) The Superintendent shall measure school district eligibility based on:

(a) the prior year's transportation data submitted in accordance with Section R277-484-3; and

(b) the most recent county classification.

(3)(a) By November 1 annually, the Superintendent shall notify a school district that the school district may apply for a grant and the amount of available grant funds based on the prior[-]year eligible miles for unreimbursed costs associated with activities described in Subsection 53F-2-417(3).

(b) The Superintendent shall prorate an eligible school district's award amount up to the amount of the appropriation.

(4) A school district eligible for the grant program shall:

(a) provide assurance within the school district's application that matching funds from the school district's board local levy will be utilized for the purposes outlined in Subsection 53F-2-417(1); and

(b) report revenue from the board local levy and related expenditures for the grant program in the school district's Annual Program Report for that specific fiscal year.

(5)(a) The Superintendent shall process the grant award in the state's grants management system

(b) The Superintendent shall allocate funds to eligible school districts once a year.

(6) A school district shall permit the Superintendent to review accounting ledgers, student records, and transportation records upon request in order to determine:

(a) a school's eligibility in accordance with Subsection (1); and

(b) allowability of an LEA's submitted program costs.

(7) If a school district does not comply with the requirements of the grant program, the Superintendent may impose corrective action in accordance with Rule R277-114.

**KEY: school buses, school transportation**

**Date of Last Change: 2023[August 19, 2019]**

**Notice of Continuation: June 4, 2021**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(1)(d); 53E-3-401(4); 53F-2-415; 53F-2-403**

### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Repeal

<b>Rule or Section Number:</b>	<b>R277-617</b>	<b>Filing ID:</b> <b>55250</b>
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### Agency Information

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state and zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 144200
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200

### Contact persons:

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

### General Information

#### 2. Rule or section catchline:

R277-617. Smart School Technology Program

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

This rule is being repealed because the Smart School Technology Program is no longer funded.

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

The rule is being repealed in its entirety.

### Fiscal Information

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

##### A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The funding has already been repealed by the Legislature so there is no need for this rule.

##### B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The funding has already been repealed by the Legislature so there is no need for this rule.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The funding has already been repealed by the Legislature so there is no need for this rule.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are

not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses, and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The funding has already been repealed by the Legislature so there is no need for this rule.

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

There are no compliance costs for affected persons. The funding has already been repealed by the Legislature so there is no need for this rule.

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

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

**Citation Information**

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-6-202
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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:** 03/31/2023

**9. This rule change MAY become effective on:** 04/07/2023

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**

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	02/15/2023
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**R277. Education, Administration.**

~~**R277-617. Smart School Technology Program.**~~

~~**R277-617 1. Authority and Purpose.**~~

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

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

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

~~(c) Subsection 53F-6-202(8)(d), which directs the Board to make rules specifying procedures and criteria to be used for selecting schools that may participate in the Smart School Technology Program.~~

~~(2) The purpose of this rule is to provide criteria and procedures for the Board to select schools to participate in the Smart School Technology Program.~~



**R277-617-2. Definitions.**

(1) "Independent Evaluating Committee" means the committee established under Subsection 53F-6-202(5).

(2) "Smart School Technology Program" or "Program" means a three-year program developed by a selected technology provider for a customized whole-school technology deployment plan individualized for each school selected by the Board.

(3) "Technology", means components provided as examples under Subsection 53F-6-202(7) or other components approved by the independent evaluating committee.

**R277-617-3. School Selection Criteria.**

(1) A public school that includes any combination of grades K-12 shall be eligible for the Program

(2) An applicant school shall provide a technology implementation plan with its application, which shall, at a minimum:

(a) identify technologies that the school will employ;

(b) estimate numbers of technology devices needed based on numbers of students expected to be in the school for identified school years;

(c) provide a supported explanation about how technology will support the improvement of student achievement with respect to the core curriculum;

(d) explain how technology will improve students' skill using technology;

(e) explain what filtering devices or protections will be used by the school to protect students from inappropriate technology use and sites;

(f) agree that the school will provide all data and information required by the Superintendent for evaluation purposes;

(g) explain the current technology capabilities and equipment available at the applicant school; and

(h) provide additional information requested by the Superintendent on the application.

**R277-617-4. Required Matching Funds.**

(1) The Superintendent shall provide an application form, which will require specific information about the level or amount of matching funds or resources that the school must provide and when the matching funds must be available.

(2) An application shall explain how the school or LEA will provide matching funds to satisfy the requirement of Subsection 53F-6-202(8)(d)(ii) for matching funds.

(3) An application shall include assurance that a school or LEA will meet the requirement for matching local funds through the duration of the Program or may be obligated to repay the state funds to the Board.

**R277-617-5. School Selection and Evaluation.**

(1) The Superintendent shall set application and funding deadlines based on funding availability.

(2) The Superintendent shall screen all applications for compliance with all state laws, this Rule R277-617, and application requirements.

(3) The Superintendent shall seek the participation and advice of the independent evaluating committee in selecting final applications to recommend for funding.

(4) The Board shall make final school selections.

(5) To the extent possible, the independent evaluation committee shall recommend schools, which represent geographic, economic and demographic diversity, in addition to other criteria provided in the application.

(6) The Board and the education technology provider shall evaluate the program consistent with Subsection 53F-6-202(9).

**KEY:** schools, technology

**Date of Last Change:** May 24, 2021

**Notice of Continuation:** June 7, 2018

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-401(4); 53F-6-202]

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Rule or Section Number:** R309-700

**Filing ID:** 55217

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Drinking Water	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144830	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4830	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Grange	801-674-2563	mgrange@utah.gov

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

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

R309-700. Financial Assistance: State Drinking Water State Revolving Fund (SRF) Loan Program

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

The Division of Drinking Water (Division) is proposing this rule change to correct outdated references, update language, and add new language to implement the requirements of H.B. 269, Capital Assets Related to Water, passed in the 2022 General Legislative 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):**

This rule outlines the process for political subdivisions of the state to apply for and receive financial assistance for water system infrastructure improvement projects. The

new language defines the elements of a capital asset management plan as required by H.B. 269 (2022).

### Fiscal Information

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

##### A) State budget:

Enacting this rule could cost the Department of Environmental Quality (DEQ) up to \$150,000 annually for one full-time FTE to manage the asset management program within the Division. This position will be funded through a combination of set-aside funds from the annual Drinking Water State Revolving Fund capitalization grant authorized by Congress through the federal Safe Drinking Water Act and funds allocated to the Division from the state legislature.

Program management activities include, but are not limited to, public outreach to water systems and other interested parties, working with water systems and consulting engineers to help them understand the benefits of and how to prepare and implement an acceptable asset management plan and program, and receiving and reviewing asset management plans submitted by water systems.

##### B) Local governments:

Enacting this rule could have a fiscal impact for local governments required to develop, adopt, and implement a capital asset management plan and an asset management program. Cost to develop such a plan could be as much as \$100,000 depending on water system size and complexity. Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan. Annual cost savings to local governments are expected but will vary depending on system size and complexity, as well as how effectively the asset management program is implemented.

Cost savings may be realized through better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

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

This rule applies only to political subdivisions. No fiscal impact to small businesses is anticipated.

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

This rule applies only to political subdivisions. No fiscal impact to non-small businesses is anticipated.

##### 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**):

Enacting this rule could have a fiscal impact for governmental entities, such as local districts, water conservation districts, and special service districts, required to develop, adopt, and implement a capital asset management plan and an asset management program.

This rule applies only to political subdivisions. No fiscal impact to individuals, corporations, associations, or private organizations is expected.

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

Cost to develop an asset management plan and implement an asset management program at a governmental entity could be as much as \$100,000 depending on water system size and complexity.

Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan.

Annual cost savings to local government entities are expected but will vary depending on system size and complexity, as well as how effectively the asset management program is implemented.

Cost savings may be realized through better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

##### 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	\$150,000	\$150,250
Local Governments	\$0	\$175,000	\$180,250
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$175,000	\$180,250

## NOTICES OF PROPOSED RULES

<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$500,000</b>	<b>\$510,750</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>(\$500,000)</b>	<b>(\$500,000)</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this regulatory impact analysis.			

## Citation Information

<b>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:</b>		
Section 73-10g-5	Subsection 73-10c-3(2)	

## Public Notice Information

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	03/31/2023

<b>9. This rule change MAY become effective on:</b>	05/31/2023
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

<b>Agency head or designee and title:</b>	Kim Shelley, Executive Director	<b>Date:</b>	02/13/2023
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**R309. Environmental Quality, Drinking Water.****R309-700. Financial Assistance: State Drinking Water State Revolving Fund (SRF) Loan Program.****R309-700-1. Purpose.**

This rule establishes criteria for financial assistance to public drinking water systems in accordance with Title 73, Chapter 10c, Water Development Coordinating Council [~~Utah Code Annotated~~] using funds made available by the [~~Utah legislature~~] Legislature from time to time for this purpose.

**R309-700-2. Statutory Authority.**

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue loans to political subdivisions to finance all or part of drinking water project costs and to enter into ["credit enhancement agreements," "interest buy-down agreements,"] and ["Hardship Grants"] is provided in Title 73, Chapter 10c, Water Development Coordinating Council, [~~Utah Code~~].

**R309-700-3. Definitions and Eligibility.**

Subsection 73-10c-4(2)(1) [~~Title 73, Chapter 10c, subsection 4(2)(a)~~] limits eligibility for financial assistance under this section to political subdivisions.

Definitions for terms used in this rule are given in Rule R309-110. Definitions for terms specific to this rule are as follows: [~~given below~~].

"Asset Management Plan" A written plan developed by a water system to implement asset management or an asset management program within the system. The asset management plan describes the five core asset management components at Subsection R309-800-5(3) and provides an outline the water system can use to make appropriate improvements.

"Asset Management Program" The practice of managing infrastructure assets to maximize the efficiency and life expectancy of operating these assets while delivering the desired service levels.

"Board" means the Drinking Water Board.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system to provide methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income including local income surveys or questionnaires when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city.

"Drinking Water Project" means any work or facility that is necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities; and also includes studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks.

"Drinking Water Project Obligation" means any bond, note, or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading, or improving a drinking water project, including preliminary planning studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Eligible Water System" means any community drinking water system owned by a political subdivision of the State.

"Emergency" means an unexpected, serious occurrence or situation requiring urgent or immediate action resulting from the failure of equipment or other infrastructure, or contamination of the water supply, threatening the health or safety of the public or water users.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, to reduce the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary project, easement or right of way, engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; costs for studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

~~"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city).~~

~~"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.~~

~~"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to~~

~~eligible water systems to improve the security for and marketability of drinking water project obligations.~~

~~"Eligible Water System" means any community drinking water system owned by a political subdivision of the State.~~

~~"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.~~

~~"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.~~

~~"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.~~

~~"Emergency" means an unexpected, serious occurrence or situation requiring urgent or immediate action resulting from the failure of equipment or other infrastructure, or contamination of the water supply, threatening the health and / or safety of the public / water users.]"~~

#### **R309-700-4. Application and Project Initiation Procedures.**

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal, and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) The applicant~~[is required to]~~ shall submit a completed application form, an engineering report listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan that includes an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project, and documents necessary to perform a financial capability assessment, ~~[e]when requested[)], and capacity assessment, if the Board determines such documentation will[ -(when determined to) be beneficial for evaluating project feasibility[)].~~ Comments from the local health department ~~[and]for the Department of Environmental Quality's resident district engineer may accompany the application.~~ Comments from other interested parties such as an association of governments will also be accepted. Those costs incurred ~~[subsequent to]after the submission of a completed funding application form to the Board and [prior to]before the execution of a financial assistance agreement and which meet the criteria for project costs are eligible for reimbursement from the proceeds of the financial assistance agreement.~~

(3) Division staff will evaluate the application and supporting documentation, calculate proposed terms of financial assistance, prepare a report for review by the Board, and present said report to the Board for its consideration.

(4) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and approve the project schedule as described in Section [(see)]R309-700-13[)]. The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant, as described in Section [(see)]R309-700-5[)]. If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to ~~[Chapter 10c, Title 73 Utah Code, ]Title 73, Chapter 10c, Water Security Council,~~ which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan

## NOTICES OF PROPOSED RULES

only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant; provided, that for purposes of this ~~[paragraph]~~ subsection and for purposes of ~~[Section]~~ Subsection 73-10c-4(2), ~~[Utah Code,]~~ the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in Subsection R309-700-10(2) or in connection with any other interest buy-down arrangement.

(5) Planning Grant - The applicant must submit an application provided by the Division and attach a scope of work, project schedule, cost estimates, and a draft contract for planning services.

(6) Planning Loan - The applicant requesting a Planning Loan must complete an application for a Planning Loan, prepare a plan of study, satisfactorily demonstrate procurement of planning services, and prepare a draft contract for planning services including financial evaluations and a schedule of work.

(7) Design Grant or Loan - The applicant requesting a Design Grant or Loan must have completed an engineering plan meeting program requirements.

(8) The applicant must demonstrate public support for the project. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the rate of interest, the repayment schedule and shall describe the impact of the project on the user including ~~[any increase in]~~ any increase in user rates, and impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing. The public hearing shall be held within ten days after the date of the notice. A copy of all written responses and a certified record of [a] the public hearing shall be forwarded to the Division of Drinking Water.

(9) For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant, as described in Subsection [see] R309-700-13(3)[3], must be submitted to the [Assistant Attorney General] Board's bond counsel for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to ~~[the Utah Code,]~~ Section 11-14-21. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant.

(10) Hardship Grant - The Board or its designee executes a grant agreement setting forth the terms and conditions of the grant.

(11) As authorized in Subsection 19-4-106(2)(c) ~~[of the Utah Code,]~~ the ~~[Director]~~ Executive Secretary may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to ~~[insure]~~ ensure proper design and construction, as specified in ~~[rule]~~ Section R309-500-4 General. Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the ~~[Director]~~ Executive Secretary.

(12) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement as described in

Subsection R309-700-10(2) to cover any part of project costs an escrow account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement as described in Subsection R309-700-10(1) all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

(13) If a revenue bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to ~~[insure]~~ ensure adequate provisions for debt retirement and ~~[or]~~ infrastructure operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to ~~[insure]~~ ensure the system will have adequate resources to provide acceptable service.

~~[----- (14) A plan of operation for the completed project, including staffing with an appropriately certified (in accordance with R309-300) operator, staff training, and procedures to assure efficient start up, operation and maintenance of the project, must be submitted by the applicant and approved by the Board, its Director or other designee.]~~

~~[(15)]~~ 14 The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(15) A position fidelity bond may be required by the Board insuring the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system and payable to the State of Utah through the Drinking Water Board.

(16) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to easements and rights-of-way ~~[and]~~ at the project site and throughout the system, and adequacy of bidding and contract documents.

(17) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board executes the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds, as described in Sections R309-700-9 and R309-700-10 ~~[(See R309-700-9 and 10)].~~

(18) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant sells the bonds and notifies the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by ~~[Section]~~ Subsection 73-10c-6(3)(d) ~~[, Utah Code].~~ If an interest buy-down agreement is utilized, the bonds shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(19) The applicant opens bids for the project.

(20) LOAN ONLY - The Board approves purchase of the bonds and executes the loan contract, as described Subsection R309-700-4(24) ~~[(see R309-700-4(24))].~~

(21) LOAN ONLY - The loan closing is conducted.

(22) A preconstruction conference shall be held.

(23) The applicant issues a written notice to proceed to the contractor.

(24) The applicant must have adopted a Water Conservation Plan ~~before~~~~[prior to]~~ executing the loan agreement.

**R309-700-5. Implementing an Asset Management Program.**

(1) Retail water suppliers seeking financial assistance through Utah's State Revolving Fund must commit to develop and implement an asset management program. An asset management program provides the following benefits to water systems:

- (a) Prolonging asset life.
- (b) Reducing overall costs for operations, maintenance, and capital expenditures.
- (c) Improving decisions about asset maintenance, rehabilitation, repair, and replacement.
- (d) Meeting consumer demands with a focus on system sustainability.
- (e) Meeting service expectations and regulatory requirements.
- (f) Improving responses to emergencies.
- (g) Improving the security and safety of assets.
- (h) Budgeting focused on critical activities for sustained performance.

(i) Setting rates based on sound operational and financial planning.

(2) An effective asset management program includes detailed asset inventories, operation and maintenance tasks, and long-range financial planning. These items should be captured in an asset management plan, which can be tailored to fit individual water system size and complexity.

(3) The asset management plan shall address the following five core components.

- (a) The current state of the utility's assets.
  - (i) Prepare an asset inventory.
  - (ii) Develop a system map.
  - (iii) Develop a method to assess and prioritize assets based on condition.
  - (iv) Assess remaining useful life of the asset.
  - (v) Determine asset value and replacement cost.
- (b) The utility's required sustainable level of service.
  - (i) Analyze current customer demand and satisfaction.
  - (ii) Analyze anticipated customer demand and satisfaction.
  - (iii) Understand current regulatory requirements.
  - (iv) Communicate system performance goals with the public.

(v) Identify standard levels of service and track system performance.

- (c) Assets that are critical to sustained performance.
  - (i) Conduct a failure analysis on all assets.
  - (ii) Determine probability of failure.
  - (iii) Analyze risk and consequences of failure.
  - (iv) Prioritize system assets based on criticality to system operation.

(v) Develop specific response plans based on potential asset failure.

- (d) Minimum infrastructure life cycle cost.
  - (i) Implement an appropriate maintenance schedule including costs for all assets.
  - (ii) Identify life cycle costs for all assets.
  - (iii) Develop a capital improvement plan and an operations and maintenance strategy.
  - (iv) Identify and compare the cost of rehabilitation versus replacement.

(v) Determine the related costs of responding to asset failure.

- (e) Long-term budgeting strategy.
  - (i) Regularly review system budget.
  - (ii) Establish and fund a capital facilities account.
  - (iii) Implement a rate structure to ensure financial sustainability.
  - (iv) Explore asset renewal and replacement financing.
  - (v) Identify financial assistance options for major asset repair or replacement.
  - (vi) Prioritize financial resources based on asset condition and importance.

(4) All water systems subject to this rule shall complete the following:

- (a) Prepare an asset management plan as described in this subsection.
- (b) Systems governing body shall formally adopt the asset management plan.
- (c) System shall submit proof of adoption to the Division.

(5) In addition to the requirements of this subsection, water systems applying for financial assistance under Utah's State Revolving Fund Financial Assistance Program must also submit their asset management plan to the Division of Drinking Water or request sufficient funds to create an asset management plan.

**R309-700-[5]6. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.**

(1) Board Priority Determination. ~~[In determining]~~To determine an applicant's ~~[the]~~priority for financial assistance, the Board shall consider~~[:]~~ the following.

(a) The ~~[ability of the applicant]~~applicant's ability to obtain funds for the drinking water project from other sources or to finance such project from its own ~~[resources;]~~resources.

(b) The ~~[ability of the applicant]~~applicant's ability to repay the loan or other project ~~[obligations;]~~obligations.

(c) Whether a good faith effort ~~has been made~~ to secure all or part of the services needed from the private sector.~~[through privatization has been made; and]~~

- (d) Whether the drinking water project:
  - (i) meets a critical local or state need;
  - (ii) is cost effective;
  - (iii) will protect against present or potential hazards;
  - (iv) is needed to comply with the minimum standards of

the Federal Safe Drinking Water Act, ~~[42 USC, 300f;]~~42 U.S.C. Section 300(f) et. seq. or similar or successor statute;

(v) is needed to comply with the minimum standards of the Utah Safe Drinking Water Act, Title 19, Chapter 4, or similar or successor statute~~[;]~~; or

(vi) is needed ~~[as a result of]~~due to an Emergency.

(e) The overall financial impact of the proposed project on the citizens of the community, including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, or special assessments,~~[etc.,]~~ resulting from the proposed project, and anticipated operation and maintenance costs versus the median income of the community.~~[;]~~

(f) Consistency with other funding source commitments which may have been obtained for the project.~~[;]~~

(g) The point total from an evaluation of the criteria listed in Table 1.~~[;]~~

(h) Other criteria that the Board may consider appropriate.

# NOTICES OF PROPOSED RULES

[TABLE 1

## NEED FOR PROJECT

POINTS

### 1. PUBLIC HEALTH AND WELFARE (SELECT ONE)

- A. There is evidence that waterborne illnesses have occurred 15
- B. There are reports of illnesses which may be waterborne 10
- C. No reports of waterborne illness, but high potential for such exists 5
- D. No reports of possible waterborne illness and low potential for such exists 0

### 2. WATER QUALITY RECORD (SELECT ONE)

- A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months 15
- B. In the past 12 months violated a primary MCL 4 to 6 times 12
- C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double 9
- D. In the past 12 months violated MCL 1 time 6
- E. Violation of the Secondary Drinking Water Standards 5
- F. Does not meet all applicable MCL goals 3
- G. Meets all MCLs and MCL goals 0

### 3. VERIFICATION OF POTENTIAL SHORTCOMINGS (SELECT ONE)

- A. Has had sanitary survey within the last year 5
- B. Has had sanitary survey within the last five years 3
- C. Has not had sanitary survey within last five years 0

### 4. GENERAL CONDITIONS OF EXISTING FACILITIES (SELECT ALL THOSE WHICH ARE TRUE AND PROJECT WILL REMEDY)

- A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR) 10
- B. Sources are not developed or protected according to UPDWR 10
- C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures 10
- D. Significant areas within distribution system have inadequate fire protection 8
- E. Existing storage tanks leak excessively or are structurally flawed 5
- F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year 2
- G. Existing facilities are generally sound and meeting existing needs 0

### 5. ABILITY TO MEET FUTURE DEMANDS (Select One)

- A. Facilities have inadequate capacity and cannot reliably meet current demands 10
- B. Facilities will become inadequate within the next three years 5
- C. Facilities will become inadequate within the next five to ten years 3

### 6. OVERALL URGENCY (Select One)

- A. System is generally out of water. There is no fire protection or water for flushing toilets 10
- B. System delivers water which cannot be rendered safe by boiling 10
- C. System delivers water which can be rendered safe by boiling 8
- D. System is occasionally out of water 5

F. Situation should be corrected, but is not urgent 0

TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT

100]

TABLE 1

NEED FOR PROJECT	
1. PUBLIC HEALTH AND WELFARE, SELECT ONE	POINTS
A. There is evidence that waterborne illnesses have occurred	15
B. There are reports of illnesses which may be waterborne	10
C. No reports of waterborne illness, but high potential for such exists	5
D. No reports of possible waterborne illness and low potential for such exists	0
2. WATER QUALITY RECORD, SELECT ONE	
A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months	15
B. In the past 12 months violated a primary MCL 4 to 6 times	12
C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double	9
D. In the past 12 months violated MCL 1 time	6
E. Violation of the Secondary Drinking Water Standards	5
F. Does not meet all applicable MCL goals	3
G. Meets all MCLs and MCL goals	0
3. VERIFICATION OF POTENTIAL SHORTCOMINGS, SELECT ONE	
A. Has had sanitary survey within the last year	5
B. Has had sanitary survey within the last five years	3
C. Has not had sanitary survey within last five years	0
4. GENERAL CONDITIONS OF EXISTING FACILITIES, SELECT ALL APPLICABLE THAT PROJECT WILL RESOLVE	
A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR)	10
B. Sources are not developed or protected according to UPDWR	10
C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures	10
D. Significant areas within distribution system have inadequate fire protection	8
E. Existing storage tanks leak excessively or are structurally flawed	5
F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year	2



G. Existing facilities are generally sound and meeting existing needs	<u>0</u>
5. ABILITY TO MEET FUTURE DEMANDS, SELECT ONE	
A. Facilities have inadequate capacity and cannot reliably meet current demands	<u>10</u>
B. Facilities will become inadequate within the next three years	<u>5</u>
C. Facilities will become inadequate within the next five to ten years	<u>3</u>
6. OVERALL URGENCY, SELECT ONE	
A. System is generally out of water. There is no fire protection or water for flushing toilets	<u>10</u>
B. System delivers water which cannot be rendered safe by boiling	<u>10</u>
C. System delivers water which can be rendered safe by boiling	<u>8</u>
D. System is occasionally out of water	<u>5</u>
E. Situation should be corrected, but is not urgent	<u>0</u>
TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT	<u>100</u>

[~~Other criteria that the Board may deem appropriate.~~]

(2) Drinking Water Board Financial Assistance Determination. The amount and type of financial assistance offered will be based on the following considerations[?].

(a) An evaluation based upon the criteria in Table 2 of the applicant's financial condition, the project's impact on the community, and the applicant's commitment to operating a responsible water system.

The interest rate to be charged by the Board for its financial assistance will be computed using the number of points assigned to the project from Table 2 to reduce, in a manner determined by Board resolution from time to time, the most recent Revenue Bond [Buyer] Index [~~RBB~~]~~[RBI]~~ as published by the Bond Buyer's Guide. The interest rate so calculated will be assigned to the financial assistance. [To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.]

For hardship grant consideration, exclusive of planning and design grants or loans described in Sections 309-700-6 through R309-700-8[Sections R309-700-6, 7 and 8], the estimated annual cost of drinking water service for the average residential user should exceed 1.75% of the median adjusted gross household income from the most recent available State Tax Commission records or the local median adjusted gross income (MAGI) is less than or equal to [eighty percent (80.0%)]80% of the State's median adjusted gross income. When considering funding for planning and design grants and loans described in Sections 309-700-6 through R309-700-8[Sections R309-700-6, 7 and 8], the Board will consider whether or not the applicant's local MAGI meets the [above-]criteria for hardship grant funding. If, in the judgment of the Board, the State Tax Commission data is insufficient, the Board may accept other measurements of the water users' income, including a [(i.e.)]local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the

number of tax filings for a given zip code or city[?]. The Board will also consider the applicant's level of contribution to the project.

[TABLE 2

FINANCIAL CONSIDERATIONS

POINTS

1. COST EFFECTIVENESS RATIO (SELECT ONE)

A. Project cost \$0 to \$500 per benefitting connection	<u>16</u>
B. \$501 to \$1,500	<u>14</u>
C. \$1,501 to \$2,000	<u>11</u>
D. \$2,001 to \$3,000	<u>8</u>
E. \$3,001 to \$5,000	<u>4</u>
F. \$5,001 to \$10,000	<u>1</u>
G. Over \$10,000	<u>0</u>

2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)

A. Less than 70% of State Median AGI	<u>19</u>
B. 71 to 80% of State Median AGI	<u>16</u>
C. 81 to 95% of State Median AGI	<u>13</u>
D. 96 to 110% of State Median AGI	<u>9</u>
E. 111 to 130% of State Median AGI	<u>6</u>
F. 131 to 150% of State Median AGI	<u>3</u>
G. Greater than 150% of State Median AGI	<u>0</u>

3. APPLICANT'S COMMITMENT TO PROJECT

PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)

A. Greater than 25% of project funds	<u>17</u>
B. 15 to 25% of project funds	<u>14</u>
C. 10 to 15% of project funds	<u>11</u>
D. 5 to 10% of project funds	<u>8</u>
E. 2 to 5% of project funds	<u>4</u>
F. Less than 2% of project funds	<u>0</u>

4. ABILITY TO REPAY LOAN.

4. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)

A. Greater than 2.50% of local median AGI	<u>16</u>
B. 2.01 to 2.50% of local median AGI	<u>12</u>
C. 1.51 to 2.00% of local median AGI	<u>8</u>
D. 1.01 to 1.50% of local median AGI	<u>3</u>
E. 0 to 1.00% of local median AGI	<u>0</u>

5. SPECIAL INCENTIVES: Applicant (SELECT ALL THAT APPLY.)

A. Has a replacement fund receiving annual deposits of about 5% of the system's annual drinking water (DW) budget and fund has already accumulated a minimum of 10% of said annual DW budget in this reserve fund.	<u>5</u>
B. Has, in addition to item 5.A., accumulated an amount equal to at least 20% of its annual DW budget in its replacement fund.	<u>5</u>
C. Is creating or enhancing a regionalization plan	<u>16</u>
D. Has a rate structure encouraging conservation	<u>6</u>

TOTAL POSSIBLE POINTS FOR FINANCIAL NEED 100

TABLE 2

FINANCIAL CONSIDERATIONS	
1. COST EFFECTIVENESS RATIO, SELECT ONE	POINTS
Project Cost per benefitting connection	
A. \$0 to \$500	<u>16</u>
B. \$501 to \$1,500	<u>14</u>
C. \$1,501 to \$2,000	<u>11</u>
D. \$2,001 to \$3,000	<u>8</u>
E. \$3,001 to \$5,000	<u>4</u>
F. \$5,001 to \$10,000	<u>1</u>
G. Over \$10,000	<u>0</u>

## NOTICES OF PROPOSED RULES

<b>2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (MAGI), SELECT ONE</b>	
A. Less than 70% of State Median AGI	19
B. 71 to 80% of State Median AGI	16
C. 81 to 95% of State Median AGI	13
D. 96 to 110% of State Median AGI	9
E. 111 to 130% of State Median AGI	6
F. 131 to 150% of State Median AGI	3
G. Greater than 150% of State Median AGI	0
<b>3. APPLICANT'S COMMITMENT TO PROJECT PROJECT FUNDING CONTRIBUTED BY APPLICANT, SELECT ONE</b>	
A. Greater than 25% of project funds	17
B. 15 to 25% of project funds	14
C. 10 to 15% of project funds	11
D. 5 to 10% of project funds	8
E. 2 to 5% of project funds	4
F. Less than 2% of project funds	0
<b>4. WATER BILL, INCLUDING TAXES, AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME, SELECT ONE</b>	
A. Greater than 2.50% of local median MAGI	16
B. 2.01 to 2.50% of local median MAGI	12
C. 1.51 to 2.00% of local median MAGI	8
D. 1.01 to 1.50% of local median MAGI	3
E. 0 to 1.00% of local median MAGI	0
<b>5. SPECIAL INCENTIVES, SELECT ALL THAT APPLY: The Applicant has the following:</b>	
A. A replacement fund receiving annual deposits of about 5% of the system's annual drinking water (DW) budget and fund has already accumulated a minimum of 10% of said annual DW budget in this reserve fund.	5
B. In addition to item 5.A., accumulated an amount equal to at least 20% of its annual DW budget in its replacement fund.	5
C. Created or enhanced, or will create or enhance, a regionalization plan.	16
D. Implemented a rate structure encouraging conservation.	6
<b>TOTAL POSSIBLE POINTS FOR FINANCIAL NEED</b>	
	100

- (b) Optimizing return on the security account while still allowing the project to proceed.
- (c) Local ~~political and~~ economic conditions.
- (d) Cost effectiveness evaluation of financing alternatives.
- (e) Availability of funds in the security account.
- (f) Environmental need.
- (g) Other criteria the Board may consider ~~deem~~ appropriate.

**R309-700-[6]7. Planning Grant.**

(1) ~~[A Planning Grant can only be made to a political subdivision with a population less than 10,000 people demonstrating an urgent need to evaluate its drinking water system's technical, financial and managerial capacity, and lacks the financial means to readily accomplish such an evaluation.]~~ The Drinking Water Board may make loans or grants from the security account to political subdivisions for planning for drinking water projects.

(2) Qualifying for a Planning Grant will be based on the criteria listed in Subsection R309-700-[5]6(2)(a).

(3) The applicant must demonstrate that all funds necessary to complete project planning will be available ~~[prior to]~~ before commencing the planning effort. The Planning Grant will be deposited with these other funds into a supervised escrow account ~~[at the time]~~ when the grant agreement between the applicant and the Board is executed or the Board may choose to provide the funds in incremental disbursements as the applicant incurs expenses on the project.

(4) Failure ~~[on the part of]~~ by the recipient of a Planning Grant to implement the findings of the plan may prejudice any future applications for drinking water project funding.

(5) The recipient of a Planning Grant must first receive written approval for any cost increases or changes to the scope of work.

(6) The Planning Grant recipient must provide a copy of the planning project results to the Division. The planning effort shall conform to rules under Title R309.

**R309-700-[7]8. Planning Loan.**

~~[(1) A Planning Loan can only be made to a political subdivision which demonstrates a financial hardship preventing the completion of project planning.]~~

~~[(2)]~~ (1) A Planning Loan is made to a political subdivision with the intent to provide interim financial assistance for project planning until the long-term project financing can be secured. The Planning Loan must be repaid to the Board unless the payment obligation is waived by the Board.

~~[(3)]~~ (2) The applicant must demonstrate that all funds necessary to complete project planning will be available ~~[prior to]~~ before commencing the planning effort. The Planning Loan will be deposited with these other funds into a supervised escrow account ~~[at the time]~~ when the loan agreement between the applicant and the Board is executed or the Board may choose to provide the funds in incremental disbursements as the applicant incurs expenses on the project.

~~[(4)]~~ (3) The recipient of a Planning Loan must first receive written approval from the Division Director for any cost increases or changes to the scope of work.

~~[(5)]~~ (4) ~~[A copy of the document(s) prepared by means of the planning loan.]~~ Copies of all prepared documents required by the planning loan shall be submitted to the Division.

**R309-700-[8]9. Design Grant or Loan.**

~~[(1) A Design Grant or Loan can only be made to a political subdivision demonstrating financial hardship preventing completion of project design. For purposes of this Section R309-700-8, project design means engineering plans and specifications, construction contracts, and associated work.]~~

(1) For purposes of Section R309-700-9, project design means preparing engineering plans and specifications, construction contracts, and associated work.

(2) A Design Grant or Loan is made to a political subdivision with the intent to provide interim financial assistance for the completion of the project design until the long-term project financing can be secured. The Design ~~[Grant or]~~ Loan must be repaid to the Board unless the payment obligation is waived by the Board as authorized by Subsection 73-10c-4(3)(b).

(3) The applicant must demonstrate that all funds necessary to complete the project design will be available ~~[prior to]~~ before commencing the design effort. The Design Grant or Loan will be deposited with these other funds into a supervised escrow account ~~[at the time]~~ when the grant or loan agreement between the applicant and the Board is executed.

(4) The recipient of a Design Grant or Loan must first receive written approval from the Board before incurring any cost increases or changes to the scope of work.

#### **R309-700-[9]10. Credit Enhancement Agreements.**

The Board will determine whether a project may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement subject to the criteria in Section R309-700-[5]6. To provide security for project obligations the Board may agree to purchase project obligations of applicants or make loans to the applicants to prevent defaults in payments on project obligations. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. In addition, the Board may consider other methods and assistance to applicants to properly enhance the marketability of or security for project obligations.

#### **R309-700-[40]11. Interest Buy-Down Agreements.**

Interest buy-down agreements may consist of:

(1) A financing agreement between the Board and applicant whereby a specified sum is loaned or granted to the applicant to be placed in a trust account. The trust account shall be used exclusively to reduce the cost of financing for the project.

(2) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(3) Any other legal method of financing which reduces the annual payment amount on locally issued bonds. After credit enhancement agreements have been evaluated by the Board and it is determined that this method is not feasible or additional assistance is required, interest buy-down agreements and loans may be considered. Once the level of financial assistance required to make the project financially feasible is determined, a ~~[cost-effective]~~ cost-effective evaluation of interest buy-down options and loans must be completed. The financing alternative chosen should be the one most economically advantageous for the state and the applicant.

#### **R309-700-[44]12. Loans.**

The Board may make loans to finance all or part of a drinking water project only after credit enhancement agreements and interest buy-down agreements have been evaluated and found either unavailable or unreasonably expensive. The financing alternative chosen should be the one most economically advantageous for the state and its political subdivisions. A loan origination fee is a fee assessed to the loan recipient as a percentage of the principal balance

of the loan. This fee will not be charged to any disadvantaged community receiving a loan subsidy as part Drinking Water State Revolving Fund financial assistance.

#### **R309-700-[42]13. Project Authorization (Reference R309-700-4(4)).**

A project may be "Authorized" for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant in writing by the Board following submission and favorable review of an application form, engineering report ~~[(if required)]~~, financial capability assessment, staff feasibility report, and capacity assessment, if the Board determines the assessment [when determined to] will be beneficial for evaluating project feasibility ~~[(when determined to)]~~. The engineering report shall include a cost effectiveness analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations. If it is anticipated that a project will be a candidate for financial assistance from the Board, ~~[the Staff]~~ Division staff should be contacted, and the plan of study for the engineering report ~~[(if required)]~~ should be approved before the planning is initiated.

Once the application form and other related documents have been reviewed and assessments made, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include a detailed evaluation of the project with regard to the Board's funding priority criteria~~[s]~~ and will contain recommendations for the type of financial assistance which may be extended such as a loan, [i.e., for a loan,] credit enhancement agreement, interest buy-down agreement, or hardship grant~~[s]~~.

Project Authorization is not a contractual commitment and is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, interest buy-down, or grant agreement and upon adherence to the project schedule approved at that time. If the project is not proceeding according to the project schedule the Board may withdraw the project Authorization so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

#### **R309-700-[43]14. Financial Evaluations.**

(1) The Board considers it a proper function to assist and give direction to project applicants in obtaining funding from such State, Federal or private financing sources as may be available to achieve the most effective utilization of resources in meeting the needs of the State. This may also include joint financing arrangements with several funding agencies to complete a total project.

(2) Hardship Grants will be evidenced by a grant agreement.

(3) In providing any form of financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel ~~[to the effect]~~ that the bonds are legal and binding under applicable Utah law ~~[(including, if applicable, the Utah Municipal Bond Act)]~~. For bonds of \$150,000 or less the Board will not require this opinion.

## NOTICES OF PROPOSED RULES

(a) In providing any form of financial assistance in the form of a loan, the Board may purchase either ~~[a-]~~taxable or non-taxable bonds; provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt and are accompanied by a legal opinion of recognized municipal bond counsel ~~[to the effect]~~ that interest on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(i) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(ii) Bonds which are not subject to the arbitrage rebate ~~[provisions]~~ of Section 148 of the Internal Revenue Code of 1986, ~~[or successor provision of similar intent]~~, including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986, ~~[or any successor provision of similar intent]~~, and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(b) In any other situations, the Board may purchase taxable bonds if it determines, after evaluating all relevant circumstances including the applicant's ability to pay, that the purchase of the taxable bonds is in the best interests of the State and applicant.

(c) If more than ~~[25 percent]~~ 25% of the project is to serve industry, bond counsel must evaluate the loan to ensure the ~~[tax exempt]~~ tax-exempt status of the loan fund.

(d) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service, including principal, interest, and applicable fees ~~(principal and/or interest)~~ on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(4) The Board will consider the financial feasibility and cost effectiveness of the project in detail. The financial capability assessment must be completed as a basis for the review. The Board may require that a full capacity assessment be made for a given project. The Board will generally use these reports and assessments to determine whether a project will be Authorized to receive a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant, as described in Sections R309-700-9 through R309-700-12 ~~(Reference R309-700-9, -10 and -11)~~. If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. The Board will require the applicants to repay the loan as rapidly as is reasonably consistent with the financial capability of the applicant. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

(5) Normal engineering and investigation costs incurred by the Department of Environmental Quality or Board during preliminary project investigation and ~~[prior to]~~ before Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the ~~[Application prior to]~~ application before the Board's Authorization. ~~[If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board, then administrative costs will not be charged to the project. However, if the project is Authorized to receive a loan or grant of funds from the Board, all costs from the beginning of the project will be charged to the project and paid by the applicant as a part of the total project~~

~~cost. If the applicant decides not to build the project after the Board has Authorized the project, all costs accruing after the Authorization will be reimbursed by the applicant to the Board.]~~

(6) The Board shall determine the date on which the scheduled payments of principal and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system ~~[one year]~~ up to 18 months of actual use of the project facilities before the first repayment of principal is required.

(7) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(8) **LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY** - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(9) The Board will not forgive the applicant of any payment after the payment is due.

(10) The Board will require a debt service reserve account be established by the applicant at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on ~~[the bond(s)]~~ any bonds purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. ~~[Annual reports/statements will be required.]~~ Failure to maintain the reserve account will constitute a technical default on the ~~[bond(s)]~~ any bonds and may result in penalties being assessed. Annual reports ~~[or]~~ statements will be required.

(11) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of ~~[five percent (5%)]~~ 5% of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or interest on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system and to notify the Board ~~[prior to]~~ before making any disbursements from the fund so the Board can confirm that any expenditure is for an acceptable purpose. The applicant will not need the consent of the Board ~~[prior to]~~ before making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on ~~[the bond(s)]~~ any bonds and may result in penalties being assessed. Annual reports ~~[or]~~ statements will be required.

(12) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% or such other amount as the Board may determine of the total annual debt service.

### **R309-700-[44]15. Committal of Funds and Approval of Agreements.**

~~[After the has issued a Plan Approval and received the appropriate legal documents and other items required by Rule R309-700, the Board will determine whether the project loan, interest buy-down, credit enhancement, and/or grant meets the conditions of its authorization. If so, the Board will give its final approval. The Executive Secretary or designee may then execute the financial assistance agreement if no aspects of the project have changed~~

significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, interest buy-down agreement, or grant agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.]

(1) The Executive Secretary, or designee, may execute the loan agreement, credit enhancement agreement, or interest buy-down agreement when the following are complete.

(i) All financial assistance authorization conditions, as outlined in the Authorization Letter sent to the recipient, have been met; including Division approval of all submitted legal documents and other items required by this rule.

(ii) The recipient has received written plan approval of the engineering plans and specifications for the authorized project from the Division of Drinking Water.

(2) If the approved scope of work has changed significantly since the Board's initial authorization, the Board shall review the modified project scope of work to determine if it meets the Board's requirements. If satisfied, the Board shall authorize the Executive Secretary, or designee, to proceed with executing the loan agreement, credit enhancement agreement or interest buy-down agreement.

#### **R309-700-[45]16. Construction.**

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated with the contractor and approved in writing. [Change orders in excess of \$10,000 must receive prior written approval by the Director before execution.] [All Change orders must be reviewed by staff to determine eligibility for reimbursement within the SRF program requirements and determine there are sufficient funds in the amount authorized by the Drinking Water Board to complete the project as authorized.] The applicant shall notify the [Director]Executive Secretary when the project is near completion and request a final inspection. [When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Director, written approval will be issued by the Director in accordance with R309-500.9 to commence using the project facilities.] [When the project is complete, but before facilities can be placed into service, the recipient must request an operating permit in accordance with current Division of Drinking Water rules.]

**KEY:** financial assistance, loans, interest buy-downs, credit enhancements, hardship grants

**Date of Last Change:** [July 1, 2014]2023

**Notice of Continuation:** March 12, 2020

**Authorizing, and Implemented or Interpreted Law:** 19-4-104; 73-10c; 73-10g-5

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R309-705</b>	<b>Filing ID:</b> <b>55218</b>
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#### **Agency Information**

<b>1. Department:</b>	Environmental Quality
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<b>Agency:</b>	Drinking Water	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144830	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4830	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Grange	801-674-2563	mgrange@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

#### **General Information**

##### **2. Rule or section catchline:**

R309-705. Financial Assistance: Federal Drinking Water State Revolving Fund (SRF) Loan Program

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

The Division of Drinking Water (Division) is proposing this rule change to correct outdated references, update language, and add new language to implement the requirements of H.B. 269, Capital Assets Related to Water, passed in the 2022 General Legislative Session, and the federal America's Water Infrastructure Act (AWIA) of 2018.

##### **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 outlines the process for political subdivisions of the state to apply for and receive financial assistance for water system infrastructure improvement projects. The new language defines the elements of a capital asset management plan as required by H.B. 269 (2022), and AWIA.

#### **Fiscal Information**

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

###### **A) State budget:**

Enacting this rule could cost the Department of Environmental Quality (DEQ) up to \$150,000 annually for one full-time FTE to manage the asset management program within the Division. This position will be funded through a combination of set-aside funds from the annual Drinking Water State Revolving Fund capitalization grant authorized by Congress through the federal Safe Drinking Water Act and funds allocated to the Division from the state legislature.

Program management activities include, but are not limited to, public outreach to water systems and other interested parties, working with water systems and consulting engineers to help them understand the benefits of and how to prepare and implement an acceptable asset management plan and program, and receiving and reviewing asset management plans submitted by water systems.

#### **B) Local governments:**

Enacting this rule could have a fiscal impact for local governments required to develop, adopt, and implement a capital asset management plan and an asset management program. Cost to develop such a plan could be as much as \$100,000 depending on water system size and complexity.

Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan.

Annual cost savings to local governments are expected but will vary depending on system size and complexity, as well as how effectively the asset management program is implemented.

Cost savings may be realized through better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

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

Enacting this rule could have a fiscal impact for small businesses that own and operate public drinking water systems required to develop, adopt, and implement a capital asset management plan and implement an asset management program.

Cost to develop such a plan could be as much as \$100,000 depending on water system size and complexity. Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan.

Annual cost savings to small businesses that own and operate public drinking water systems are expected but will vary depending on system size and complexity as well as how effectively the asset management program is implemented. Cost savings may be realized through better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

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

Enacting this rule could have a fiscal impact for non-small businesses that own and operate public drinking water systems required to develop, adopt, and implement a capital asset management plan and implement an asset management program. Cost to develop such a plan could be as much as \$100,000 depending on water system size and complexity.

Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan.

Annual cost savings to non-small businesses that own and operate public drinking water systems are expected but will vary depending on system size and complexity, as well as how effectively the asset management program is implemented. Cost savings may be realized through better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

#### **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**):

Enacting this rule could have a fiscal impact for governmental entities, such as local districts, water conservation districts, and special service districts that own and operate public drinking water systems, required to develop, adopt, and implement a capital asset management plan and an asset management program.

No fiscal impact to individuals, corporations, associations, or private organizations that do not own or operate public drinking water systems is expected.

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

Costs to affected persons to develop an asset management plan and implement an asset management program for a public drinking water system could be as much as \$100,000 depending on water system size and complexity.

Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan.

Annual cost savings to affected persons who own or operate public drinking water systems are expected but will vary depending on system size and complexity, as well as how effectively the asset management program is implemented. Cost savings may be realized through



better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

**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**

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
State Government	\$0	\$150,000	\$150,250
Local Governments	\$0	\$175,000	\$180,250
Small Businesses	\$0	\$175,000	\$180,250
Non-Small Businesses	\$0	\$175,000	\$180,250
Other Persons	\$0	\$175,000	\$180,250
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$850,000</b>	<b>\$871,250</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>(\$850,000)</b>	<b>(\$871,250)</b>

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

The Executive Director of the Department of Environmental Quality, Kim Shelley, 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 73-10g-5	Subsection 73-10c-3(2)	42 U.S.C. 300j, et seq.
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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:** 03/31/2023

**9. This rule change MAY become effective on:** 05/31/2023

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**

<b>Agency head or designee and title:</b>	Kim Shelley, Executive Director	<b>Date:</b>	02/13/2023
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**R309. Environmental Quality, Drinking Water.**

**R309-705. Financial Assistance: Federal Drinking Water State Revolving Fund (SRF) Loan Program.**

**R309-705-1. Purpose.**

The purpose of this rule is to establish criteria for financial assistance to public drinking water systems in accordance with a federal grant established under 42 U.S.C. 300j et seq., federal Safe Drinking Water Act (SDWA).

**R309-705-2. Statutory Authority.**

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue financial assistance for drinking water projects from a federal capitalization grant is provided in 42 U.S.C. 300j et seq. [~~federal Safe Drinking Water Act,~~] and [~~Title 73, Chapter 10c, Utah Code.~~] Title 73, Chapter 10c, Water Development Coordinating Council.

**R309-705-3. Definitions.**

Definitions for general terms used in this rule are given in Rule R309-110. Definitions for terms specific to this rule are given below.

"Asset Management Plan" A written plan developed by a water system to implement asset management or an asset management program within the system. The asset management plan describes the five-core asset management components at Subsection R309-800-5(3) and provides an outline the water system can use to make appropriate improvements.

"Asset Management Program" The practice of managing infrastructure assets to maximize the efficiency and life expectancy of operating these assets while delivering the desired service levels.

"Board" means the Drinking Water Board.

"Capacity Development" is a process for water systems to acquire and maintain adequate technical, managerial, and financial (TMF) capability. Capacity Development is a fundamental component of the SDWA Amendments that provides a framework for states and water systems to work together to protect public health.



## NOTICES OF PROPOSED RULES

Rule R309-800 Capacity Development Program governs the state's capacity development program.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system to provide methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income. Acceptable measurements may include a local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city.

"Drinking Water Project" means any work or facility that is necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities; and also includes studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks.

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.

"Emergency" means an unexpected, serious occurrence of situation requiring urgent or immediate action. With regard to a water system this would be a situation resulting from the failure of equipment or other infrastructure, or contamination of the water supply, which threatens the public health and safety.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Hardship Grant Assessment" means an assessment applied to a loan. The assessment shall be calculated as a percentage of outstanding principal balance of a loan, applied on an annual basis. Hardship grant assessment funds shall be subject to the requirements of Rule R309-700 for hardship grants.

"Interest" means an assessment applied to a loan. The assessment shall be calculated as a percentage of outstanding principal balance of a loan, applied on an annual basis.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, to reduce the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Negative Interest" means a loan with an interest rate at less than 0%. The repayment schedule for loans having a negative interest rate will be prepared by the Drinking Water Board.

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for

principal forgiveness will be as directed by Section R309-703-4 and by the Drinking Water Board.

"Programmatic Financing" is a financial assistance option under the DWSRF Program that is designed to provide funding for a water system's Capital Improvement Plan, or any portion thereof, so long as the projects are eligible and comply with DWSRF Program requirements.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way, except property condemnation costs, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; asset management plans and related system software, Hardship Grant Assessments, fees and interest accruing on loans made under this program during acquisition and construction of the project; costs for studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"SRF Technical Assistance Fund" means a fund or account that will be established for the express purpose of providing "Technical Assistance" to eligible drinking water systems.

[~~"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax Commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city).~~]

~~"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.~~

~~"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.~~

~~"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.~~

~~"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.~~

~~"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.~~

~~"Hardship Grant Assessment" means an assessment applied to a loan. The assessment shall be calculated as a percentage of outstanding principal balance of a loan, applied on an annual basis. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.~~

~~"Negative Interest" means a loan with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Drinking Water Board.~~

~~"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by section 4 of this rule and by the Drinking Water Board.~~

~~"Interest" means an assessment applied to a loan. The assessment shall be calculated as a percentage of outstanding principal balance of a loan, applied on an annual basis.~~

~~"Emergency" means an unexpected, serious occurrence of situation requiring urgent or immediate action. With regard to a water system this would be a situation resulting from the failure of equipment or other infrastructure, or contamination of the water supply, which threatens the health and /or safety of the public /water users.]~~

"Technical Assistance" means financial assistance provided for a feasibility study or master plan, to identify ~~[and /or correct]~~ system deficiencies, or to help a water system overcome other technical problems. The system receiving said technical assistance may or may not be required to repay the funds received. If repayment is required, the Board will establish the terms of repayment.

~~["SRF Technical Assistance Fund" means a fund (or account) that will be established for the express purpose of providing "Technical Assistance" to eligible drinking water systems.]~~

#### **R309-705-4. Financial Assistance Methods.**

##### **(1) Eligible Activities of the SRF.**

Funds within the SRF may be used for loans and other authorized forms of financial assistance. Funds may be used for ~~[the]~~ construction of publicly or privately owned works or facilities, or any work that is an eligible project cost as defined by Section 73-10c-2 [of the Utah Code] or as allowed by 42 U.S.C.A. 300f et seq. ~~[These]~~ Project costs which meet the criteria of Subsection R309-705-4(1) that are incurred ~~[subsequent to the submission of]~~ after the applicant's ~~[a funding application to]~~ funding application has been approved by the Board and ~~[prior to the execution of a]~~ before the financial assistance agreement is executed ~~[and which meet the above criteria]~~ are eligible for reimbursement from the proceeds of the financial assistance agreement.

##### **(2) Types of Financial Assistance Available for Eligible Water Systems.**

###### **(a) Loans.**

To qualify for ~~["negative interest"]~~ or ~~["principal forgiveness"]~~, the system must qualify as a ~~["disadvantaged community"]~~ as defined in ~~[section 3 of this rule]~~ Section R309-705-3. Upon application, the Board will make a ~~[case by case]~~ case-by-case determination whether the system is a ~~["disadvantaged community"]~~. To be eligible to be considered as a disadvantaged community, the system must meet the definition provided in ~~[section 3]~~ Section R309-705-3. ~~[of this rule.]~~ Additionally, the Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those

served by the system, factors relating to costs, charges and operation of the water system, and other such information as the Board determines relevant to making the decision to recognize the system as a ~~["disadvantaged community"]~~.

(i) Loan Origination Fee (LOF) is a fee assessed to the loan recipient as a percentage of the principal balance of the loan. This fee will not be charged to any disadvantaged community receiving a loan subsidy as part of DWSRF financial assistance.

###### **(ii) Hardship Grant Assessment.**

The assessment will be calculated based on the procedures and formulas shown in Section R309-705-6 ~~[section 6 of this rule]~~.

###### **(iii) Repayment.**

Annual repayments of principal, interest, fees ~~[and/or]~~ Hardship Grant Assessment generally commence ~~[not later than one year]~~ 18 months after project completion. Project completion ~~[shall be]~~ is defined as the date the funded project is capable of operation and a notice of ~~["beneficial occupancy"]~~ is given to the general contractor. Where a project has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments.

The loan must be fully amortized ~~[not later than 20]~~ 30 years after project completion or ~~[not later than 30]~~ 40 years after project completion if the community served by the water system is determined to be a disadvantaged community. The yearly amount of the principal repayment is set at the discretion of the Board.

###### **(~~[(iii)]~~ iv) Principal Forgiveness.**

Eligible water systems meeting the definition of ~~["disadvantaged community"]~~ may qualify for financial assistance in the form of forgiveness of a portion of the principal loan amount. Terms for principal forgiveness will be determined by Board resolution.

Eligible applicants for ~~["principal forgiveness"]~~ financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

###### **(~~[(i)]~~ v) Negative Interest Rate.**

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of a loan with a negative interest rate, as determined by Board resolution.

Eligible applicants for "negative interest" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

###### **(vi) Dedicated Repayment Source and Security.**

Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan. As a condition of financial assistance, the applicant must demonstrate a revenue source and security, as required by the Board.

###### **(b) Refinancing Existing Debt Obligations.**

The Board may use funds from the SRF to buy or refinance debt obligations of municipal, inter-municipal or interstate agencies, where the initial debt was incurred and construction started after July 1, 1993. Refinanced projects must comply with the requirements

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imposed by ~~the Safe Drinking Water Act (SDWA)~~ SDWA as though they were projects receiving initial financing from the SRF.

(c) Credit Enhancement Agreements and Interest Buy-Down Agreements.

The Board will determine whether a project's funding may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement. To provide security for project obligations, the Board may agree to purchase project obligations of applicants, or make loans to the applicants. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. The Board may also consider other methods of assistance to applicants to properly enhance the marketability of or security for project obligations.

Interest buy-down agreements may consist of any of the following:

(i) A financing agreement between the Board and applicant whereby a specified sum is loaned to the applicant. The loaned funds shall be placed in a trust account, which shall be used exclusively to reduce the cost of financing for the project.

(ii) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(iii) Any other legal method of financing which reduces the annual payment amount on publicly issued bonds. The financing alternative chosen should be the one most economically advantageous for the State and the applicant.

(d) Technical Assistance.

The Board may establish a fund ~~{}~~or account~~}~~ into which the proceeds of an annual fee on loans will be placed. These funds will be used to finance technical assistance for eligible water systems.

This fund will provide low interest loans for technical assistance and any other eligible purpose as defined by ~~[Section 1452 of the Safe Drinking Water Act (SDWA)]SDWA [Amendments of 1996]~~to water systems that are eligible for Federal SRF loans. ~~[Repayment of these loans may be waived in whole or in part (grant funds) by the Board whether or not the borrower is disadvantaged.]~~The Board may forgive the principal amount of a technical assistance loan, in whole or in part, for any eligible water system whether the system qualifies as a disadvantaged community or not.

(i) The Board may establish a fee to be assessed against loans authorized under the Federal SRF Loan Program. The revenue generated by this fee will be placed in a new fund called the ~~{}SRF~~ Technical Assistance Fund~~{}].~~

(ii) The amount will be assessed as a percentage of the Principal Balance of the loan on an annual basis, the same as the annual interest and hardship grant assessment are assessed. The borrower will pay the fee annually when paying the principal and interest or hardship grant assessments.

(iii) The Board may set ~~{}~~or change the amount of the fee from time to time as ~~they determine meets~~it determines the needs of the program.

(iv) This fee will be part of the ~~{}effective rate~~{}] calculated for the loan using Table 2, Section R309-705-6. This fee may be charged in lieu of or in addition to the interest rate or hardship grant assessment, but in no case will the total of the technical

assistance fee, the interest rate, and hardship grant assessment exceed the ~~{}effective rate~~{}].

(v) The proceeds of the fund will be used as defined ~~[above]~~ Subsection R309-705-4(2)(d) or as modified by the Board in compliance with ~~[Section 1452 of]~~the federal ~~[SDWA Amendments of 1996]~~SDWA.

(3) Ineligible Projects.

Projects ~~[which are]~~ineligible for financial assistance include~~{}~~ the following.

(a) Any project for a water system in significant non-compliance, ~~[as]~~measured by a ~~{}not approved~~{}] ~~[(R309-400)]~~rating defined in Rule R309-400, unless the project will resolve ~~[all outstanding]~~the issues causing the non-compliance.

(b) Any project where the Board determines that the applicant lacks the technical, managerial, or financial capability to achieve or maintain SDWA compliance, unless the Board determines that the financial assistance will allow or cause the system to maintain long-term capability to stay in compliance.

(c) Any project meant to finance the expansion of a drinking water system to supply or attract future population growth. Eligible projects, however, can be designed and funded at a level which will serve the population that a system expects to serve over the useful life of the facility.

(d) Projects which are specifically prohibited from eligibility by Federal guidelines. These include the following:

(i) Dams, or rehabilitation of dams;

~~[(ii) Water rights, unless the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;~~

~~[(iii)]~~(ii) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;

~~[(iv)]~~(iii) Laboratory fees for monitoring;

~~[(v)]~~(iv) Operation and maintenance costs;

~~[(vi)]~~(v) Projects needed mainly for fire protection.

### R309-705-5. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) A completed application form and project engineering report ~~or~~ ~~{}~~facility plan~~}~~ listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan including an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project and financial capability assessment and a history of the applicant's compliance with the SDWA are submitted to the Board. Comments from other interested parties such as an association of governments, the local health and planning departments, and the Department of Environmental Quality (DEQ) District Engineers will also be accepted. ~~[Those]~~Project costs which meet the criteria of Subsection R309-705-4(1) that are incurred [subsequent to the submission of] ~~[after the applicant's [a completed funding application form to] funding application has been approved by the Board and [prior to the execution of a -]before the financial assistance agreement is executed]~~and which meet the criteria for project costs] are eligible for reimbursement from the proceeds of the financial assistance agreement.

(3) An engineering and financial feasibility report and a capacity development analysis are prepared by Division staff for presentation to and consideration by the Board. A Capacity Assessment, as required by Rule R309-800, will be made by Division staff ~~[(See rule R309-352)]~~ for ~~["]~~equivalency~~["]~~ projects, essentially, those funded by the annual federal Capitalization Grant as defined by federal regulations. A capacity assessment may be prepared for a ~~["]~~non-equivalency project when it is determined to be beneficial for evaluating project feasibility.

(4) Retail water suppliers seeking financial assistance through the State Revolving Fund must commit to develop and implement an asset management program as defined in Rule R309-800. Capacity Development Program.

(5) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, or any combination thereof, is to be entered into, and approve the project schedule ~~[(see section 7 of this rule)]~~ as described in Section R309-705-7.

~~[(5)]~~(6) The applicant must demonstrate public support for the project ~~[prior to]~~before bonding, as deemed acceptable by the Drinking Water Board. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the ~~["]~~effective rate~~["]~~, the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of the public hearing shall be forwarded to the Division of Drinking Water.

~~[(6)]~~(7) For financial assistance mechanisms where the applicant's bond is purchased by the Board, the project applicant's bond documentation must include an opinion from recognized bond counsel. Counsel must be experienced in bond matters, and must include an opinion that the drinking water project obligation is a valid and binding obligation of the applicant ~~[(see section 8 of this rule)]~~ as described in Section R309-705-8. The opinion must be submitted to the ~~[Assistant Attorney General]~~Board's Attorney for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to Section 11-14-21 ~~[of the Utah Code]~~. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel, experienced in bond matters, that the drinking water project obligation is a valid and binding obligation of the applicant.

~~[(7)]~~(8) As authorized in Subsection 19-4-106(2)(c) ~~[of the Utah Code]~~, the Director may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to insure proper design and construction, as specified in ~~[rule]~~Section R309-500-4 General. Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Director.

~~[(8)]~~(9) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement, an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for eligible project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement,

all project funds will be maintained in a separate account, and a quarterly report of project expenditures will be provided to the Board.

Incremental disbursement bonds will be required. Cash draws will be based on a schedule that coincides with the rate at which project related costs are expected to be incurred for the project.

~~[(9)]~~(10) If a revenue bond is to be used to secure a loan, a User Charge Ordinance, or water rate structure, must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and ~~[for]~~ infrastructure operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

~~[(10)]~~(11) A ~~["]~~Private Company~~["]~~ will be required to enter into a Loan Agreement with the Board. The loan agreement will establish the procedures for disbursement of loan proceeds and will set forth the security interests to be granted to the Board by the Applicant to secure the Applicant's repayment obligations.

(a) The Board may require any of the following forms of security interest or ~~[additional]~~other forms of security interests it finds acceptable to guarantee repayment of the loan: deed of trust interests in real property, security interests in equipment and water rights, and personal guarantees.

(b) The security requirements will be established after the Board's staff has reviewed and analyzed the Applicants financial condition.

(c) These requirements may vary from project to project at the discretion of the Board.

(d) The Applicant will also be required to execute a Promissory Note in the face amount of the loan, payable to the order of the lender, and file a Utah Division of Corporations and Commercial Code Financing Statement, Form UCC-1.

(e) The Board may specify that loan proceeds be disbursed incrementally into an escrow account for expected construction costs, or it may authorize another acceptable disbursement procedure.

~~[(11)]~~(12) The applicant's contract with its engineer must be submitted to the Board for review to determine if there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

~~[(12)]~~(13) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, validity and quantity of water rights, and adequacy of bidding and contract documents, as required.

~~[(13)]~~(14) A position fidelity bond may be required by the Board insuring the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system and payable to the State of Utah through the Drinking Water Board.

~~[(14)]~~(15) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board shall execute the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and shall notify the applicant to sell the bonds.

~~[(15)]~~(16) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant shall sell the bonds and shall notify the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by Subsection 73-10c-6(3)(d) ~~[of the Utah Code]~~. If an interest buy-down agreement is being utilized, the bonds shall bear a legend referring to the interest buy-down agreement and state that such agreement does not constitute a pledge

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of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

~~[(16)](17)~~ The applicant shall open bids for the project.

~~[(17)](18)~~ LOAN ONLY - The Board shall give final approval to purchase the bonds and execute the loan contract.

~~[(18)](19)~~ LOAN ONLY - The closing of the loan is conducted.

~~[(19)](20)~~ A preconstruction conference shall be held.

~~[(20)](21)~~ The applicant shall issue a written notice to proceed to the contractor.

### R309-705-6. Applicant Priority System and Selection of Terms of Assistance.

(1) Priority Determination.

The Board will use Table 1 to assign applicants for financial assistance a priority rank. The Board may~~[-at its option,]~~ modify a project's priority rating~~[an applicant's priority rank]~~ based on the following considerations~~[s]~~.

(a) The project plans, specifications, contract, financing, ~~[etc.,]~~or other measures of a project's readiness to proceed to construction of a ~~[lesser-rated project]~~lower priority applicant are ready for execution.

(b) Available funding.

(c) Acute health risk.

(d) Capacity Development~~[-(f)]~~, financial, technical, or managerial issues needing resolution to avoid EPA intervention~~[g]~~.

(e) An Emergency.

The Board will utilize Table 1 to prioritize loan applicants as may be modified by (a), (b), (c), or (d) above.

**TABLE 1**  
Priority System

Deficiency Description	Points Received
Source Quality/Quantity	
Health Risk (select one)	
A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20
C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness	8
E. No evidence of potential health risks	0
Compliance with SDWA (select all that apply)	
A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
<del>or</del>	
System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10
Total	100
Treatment	
Deficiency Description	Points Available

Health Risk/Compliance with SDWA (select all that apply)	
A. Treatment system cannot consistently meet log removal requirements, turbidity standards, or other enforceable drinking water quality standards.	25
B. The required disinfection facilities are not installed, are inadequate, or fail to provide adequate water quality.	25
C. Treatment system is subject to impending failure, or has failed.	25
<del>or</del>	
Treatment system equipment does not meet demands of UPDWR including the lead and/or copper action levels.	20
<del>or</del>	
System equipment is projected to become inadequate without upgrades.	5
Total	75

#### Storage

Deficiency Description	Points Available
Health Risk / Compliance with SDWA (select all that apply)	
A. Storage system is subject to impending failure, or has failed.	25
<del>or</del>	
System is old, cannot be easily cleaned, or subject to contamination.	15
B. Storage system is inadequate for existing demands.	20
<del>or</del>	
Storage system demand exceeds 90% of storage capacity.	10
C. Applicable contact time requirements cannot be met without an upgrade.	15
D. System suffers from low static pressures.	15
Total	75

#### Distribution

Deficiency Description	Points Available
Health Risk/Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
<del>or</del>	
Distribution system is inadequate to meet 5 year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials (lead, asbestos, etc).	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10
Total	75

#### Emergencies

Upon the Board finding of an emergency as required by R309-705-9. Total 100]

Table 1 Priority System	
Deficiency Description	Points Received
Source Quality or Quantity	
Health Risk (select one)	
A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20

C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness.	8
E. No evidence of potential health risks.	0
Compliance with SDWA (select all that apply)	
A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
-or-	
System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10
Total	100
Treatment	
Deficiency Description	Points Available
Health Risk or Compliance with SDWA (select all that apply)	
A. Treatment system cannot consistently meet log removal requirements, turbidity standards, or other enforceable drinking water quality standards.	25
B. The required disinfection facilities are not installed, are inadequate, or fail to provide adequate water quality.	25
C. Treatment system is subject to impending failure or has failed.	25
-or-	
Treatment system equipment does not meet demands of UPDWR including the lead or copper action levels.	20
-or-	
System equipment is projected to become inadequate without upgrades.	5
Total	75
Storage	
Deficiency Description	Points Available
Health Risk and Compliance with SDWA (select all that apply)	
A. Storage system is subject to impending failure or has failed.	25
-or-	

System is old, cannot be easily cleaned, or is subject to contamination.	15
B. Storage system is inadequate for existing demands.	20
-or-	
Storage system demand exceeds 90% of storage capacity.	10
C. Applicable contact time requirements cannot be met without an upgrade.	15
D. System suffers from low static pressures.	15
Total	75
Distribution	
Deficiency Description	Points Available
Health Risk and Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
-or-	
Distribution system is inadequate to meet 5-year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials, such as lead or asbestos	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10
Total	75
Emergencies	
Upon the Board finding of an emergency as required by Section R309-705-9.	100

[Priority Rating = (Average Points Received) x (Rate Factor) x (AGI Factor)]

Where:

\* Rate Factor = (Average System Water Bill/Average State Water Bill)

\*\* AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive [zero percent]0% loans, or other financial assistance as described [herein]in this rule.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond [Buyer]Index [(RBDI)]RBI as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent [RBDI]rate down to a potential minimum of [zero percent]0%. [To encourage rapid repayment of a loan the Board will increase the interest rate

# NOTICES OF PROPOSED RULES

0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.]

[TABLE 2  
INTEREST, HARDSHIP GRANT FEE AND OTHER FEES REDUCTION FACTORS

	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost \$0 to \$500 per benefitting connection	16
B. \$501 to \$1,500	14
C. \$1,501 to \$2,000	11
D. \$2,001 to \$3,000	8
E. \$3,001 to \$5,000	4
F. \$5,001 to \$10,000	1
G. Over \$10,000	0
2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	19
B. 71 to 80% of State Median AGI	16
C. 81 to 95% of State Median AGI	13
D. 96 to 110% of State Median AGI	9
E. 111 to 130% of State Median AGI	6
F. 131 to 150% of State Median AGI	3
G. Greater than 150% of State Median AGI	0
3. APPLICANT'S COMMITMENT TO PROJECT PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
A. Greater than 25% of project funds	17
B. 15 to 25% of project funds	14
C. 10 to 15% of project funds	11
D. 5 to 10% of project funds	8
E. 2 to 5% of project funds	4
F. Less than 2% of project funds	0
4. ABILITY TO REPAY LOAN:	
4. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)	
A. Greater than 2.50% of local median AGI	16
B. 2.01 to 2.50% of local median AGI	12
C. 1.51 to 2.00% of local median AGI	8
D. 1.01 to 1.50% of local median AGI	3
E. 0 to 1.00% of local median AGI	0
5. SPECIAL INCENTIVES: Applicant (SELECT ALL THAT APPLY.)	
A. Has a replacement fund receiving annual deposits of about 5% of the system's annual drinking water (DW) budget and fund has already accumulated a minimum of 10% of said annual DW budget in this reserve fund.	5
B. Has, in addition to item 5.A., accumulated an amount equal to at least 20% of its annual DW budget in its replacement fund.	5
C. Is creating or enhancing a regionalization plan	16
D. Has a rate structure encouraging conservation	6
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100]

TABLE 2  
INTEREST, HARDSHIP GRANT FEE AND OTHER FEES  
REDUCTION FACTORS

1. COST EFFECTIVENESS RATIO, SELECT ONE	POINTS
Project Cost per benefitting connection	
A. \$0 to \$500	16
B. \$501 to \$1,500	14
C. \$1,501 to \$2,000	11
D. \$2,001 to \$3,000	8
E. \$3,001 to \$5,000	4

F. \$5,001 to \$10,000	1
G. Over \$10,000	0
2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (MAGI), SELECT ONE	
A. Less than 70% of State Median AGI	19
B. 71 to 80% of State Median AGI	16
C. 81 to 95% of State Median AGI	13
D. 96 to 110% of State Median AGI	9
E. 111 to 130% of State Median AGI	6
F. 131 to 150% of State Median AGI	3
G. Greater than 150% of State Median AGI	0
3. APPLICANT'S COMMITMENT TO PROJECT PROJECT FUNDING CONTRIBUTED BY APPLICANT, SELECT ONE	
A. Greater than 25% of project funds	17
B. 15 to 25% of project funds	14
C. 10 to 15% of project funds	11
D. 5 to 10% of project funds	8
E. 2 to 5% of project funds	4
F. Less than 2% of project funds	0
4. WATER BILL, INCLUDING TAXES, AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME, SELECT ONE	
A. Greater than 2.50% of local median MAGI	16
B. 2.01 to 2.50% of local median MAGI	12
C. 1.51 to 2.00% of local median MAGI	8
D. 1.01 to 1.50% of local median MAGI	3
E. 0 to 1.00% of local median MAGI	0
5. SPECIAL INCENTIVES, SELECT ALL THAT APPLY: The Applicant has the following:	
A. A replacement fund receiving annual deposits of about 5% of the system's annual drinking water (DW) budget and fund has already accumulated a minimum of 10% of said annual DW budget in this reserve fund.	5
B. In addition to item 5.A., accumulated an amount equal to at least 20% of its annual DW budget in its replacement fund.	5
C. Created or enhanced, or will create or enhance, a regionalization plan.	16
D. Implemented a rate structure encouraging conservation.	6
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100

## R309-705-7. Project Authorization.

A project may receive written authorization for financial or technical assistance from the Board following submission and favorable review of an application form, an engineering report[~~(if required)~~], a capacity development [(including financial capability) assessment] that include an assessment of financial capabilities, and



staff feasibility report. The engineering report shall include a ~~cost effective~~ cost-benefit analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.

Once the application submittals are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include an evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended ~~[(i.e., for) including a loan, credit enhancement agreement, or interest buy-down agreement{ }].~~

The Board may authorize financial assistance for any work or facility to provide water for human consumption and other domestic uses. Generally, work means planning, engineering design, or other eligible activities defined elsewhere in ~~these~~ this rule[s].

Project Authorization is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, or interest buy-down and upon adherence to the project schedule approved at that time. The Board, at its own discretion, may require the Applicant to enter into a "Commitment Agreement" with the Board ~~[prior to]~~ before execution of final loan documents or closing of the loan. This Commitment Agreement or Binding Commitment may specify the date[s] or dates by which the Applicant must complete the requirements set forth in the Project Authorization Letter. The Commitment Agreement shall state that if the Department of Environmental Quality acting through the Drinking Water Board ~~[is unable to]~~ cannot make the Loan by the Loan Date, this Agreement shall terminate without any liability accruing to the Department or the Applicant hereunder. Also, if the project does not proceed according to the project schedule, the Board may withdraw project Authorization, so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

### **R309-705-8. Financial Evaluations.**

(1) The Board considers it a proper function to assist project applicants in obtaining funding from such financing sources as may be available.

(2) In providing financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel. Bond counsel must provide an opinion that the bonds are legal and binding under applicable Utah law ~~[(including, if applicable, the Utah Municipal Bond Act{ }].~~ For bonds of \$150,000 or less the Board will not require this opinion.

(3) In providing financial assistance in the form of a loan, the Board may purchase either taxable or non-taxable bonds; or a secured promissory note provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt. Tax-exempt bonds must be accompanied by a legal opinion of recognized municipal bond counsel ~~[to the effect]~~ that the Interest and the Hardship Grant Assessment, or ~~[a fee (also interest)]~~ other fee on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(a) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(b) Bonds which are not subject to the arbitrage rebate ~~[provisions]~~ of Section 148 of the Internal Revenue Code of 1986, ~~[(or successor provision of similar intent{ }],~~ including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986, ~~[(or any successor provision of similar intent{ }],~~ and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(4) If more than ~~[25 percent]~~ 25% of the project is to serve industry, bond counsel must evaluate the loan to ensure the ~~[tax exempt]~~ tax-exempt status of the loan fund.

(5) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service, including principal and interest or fees assessed on the principal, ~~[(principal and/or Hardship Grant Assessment)]~~ on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(6) If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. It is the Board's intent to avoid repayment schedules exceeding the design life of the project facilities.

(7) Normal engineering and investigation costs incurred by the Department of Environmental Quality (DEQ) or Board during preliminary project investigation and ~~[prior to]~~ before Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the application ~~[Application prior to]~~ before the Board's Authorization.

If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board administrative costs will not be charged to the project. However, if the Board Authorizes a loan for the project, all costs incurred by the DEQ or Board on the project will be charged against the project and paid by the applicant as a part of the total project cost. Generally, this will include all DEQ and Board costs incurred from the beginning of the preliminary investigations through the end of construction and close-out of the project. If the applicant decides not to build the project after the Board has Authorized the project, all costs accrued after the Authorization date will be reimbursed by the applicant to the Board.

(8) The Board shall determine the date on which the scheduled payments of principal, Hardship Grant Assessment, and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system up to one year of actual use of the project facilities before the first repayment of principal is required.

(9) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(10) **LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY** - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction ~~[prior to]~~ before or concurrent with the committal of State funds.

(11) The Board will not forgive the applicant of any payment after the payment is due.

(12) The Board will require that a debt service reserve account be established by the applicant at or before the time that the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the ~~[bond(s)]bond or bonds~~ purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Failure to maintain the reserve account will constitute a technical default on the ~~[bond(s)]bond or bonds~~.

(13) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of ~~[five percent (5%)]5%~~ of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or Hardship Grant Assessment on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system. The applicant will not need the consent of the Board ~~[prior to]before~~ making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the ~~[bond(s)]bond or bonds~~ and may result in penalties being assessed.

(14) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% or such other amount as the Board may determine of the total annual debt service.

(15) The applicant must have adopted a Water Management and Conservation Plan ~~[prior to]before~~ executing the loan agreement.

#### **R309-705-9. Emergency Assistance.**

(1) Authority: Title 73, Chapter 10c, Water Development Coordinating Council, ~~[of State Statute]~~ and the SDWA Amendment of 1996 give the Board authority to provide emergency assistance to drinking water systems.

(2) Eligibility: Generally, any situation occurring as defined in Section R309-705-3 would qualify for consideration for emergency funding. However, ~~[prior to]before~~ authorizing funds for an emergency, the Board may consider one or more of the factors in Subsection R309-705-9(2). ~~[various factors listed below:]~~

(i) Was the emergency preventable? Did the ~~[utility /]water system~~ have knowledge that this emergency could be expected? If not, Should it have been aware of the potential for this problem? Did its management take reasonable action to either prevent it or to be as financially and technically prepared as reasonably possible to correct the problem when it occurred ~~[(prepared financially and technically for the event causing the problem)]?~~

(ii) Has the ~~[utility /]water system~~ established a capital improvement replacement reserve fund? Has the ~~[utility /]water system~~ been charging reasonably high rates ~~[in order]~~ to establish a reserve fund to cover normal infrastructure replacement and emergencies?

(iii) Is the community a disadvantaged ~~[(hardship)]community~~?

(iv) While the state has no legal obligation to provide financial assistance, is ~~[is]~~ the potential for illness, injury, or other harm to the public or system operators sufficiently high that the value

of providing financial assistance outweighs other factors that would preclude providing this assistance. ~~[(Even though the State does not have any legal obligation to provide financial assistance to help correct the problem.)]~~

(3) Requirements for the Applicant: The applicant will be required to do the following as a condition of receiving financial assistance to cope with a drinking water emergency:

(i) To the extent feasible, the ~~[utility /]water system~~ shall first use its own resources, ~~[e.g.]such as a~~ capital improvement replacement fund, to correct the problem.

(ii) If the ~~[utility /]water system~~ is not placing funds into a reserve fund on a regular basis ~~[and /]or~~ is charging relatively low water rates it shall be required to examine its current rate structure and policies for placing funds into a reserve account. The Board may require the ~~[utility /]water system~~ to establish a reserve account ~~[and /]or~~ to revise its rate structure ~~[(increasing its rate)]~~ as a condition of the loan.

(iii) The Board may place other requirements on the ~~[utility /]water system~~.

(4) Financial Agreements ~~[, and Bonding, etc.]~~ The State will work with the Applicant to help secure obligating documents. For example, the Board:

(i) Could waive the 30-day notice period, if legally possible.

(ii) Could accept a generic bond.

(iii) Could accept an unsecured loan or bond.

(5) Funding Alternatives: An Applicant may be authorized to receive a loan by any of the financial assistance methods specified in Section R309-705-4 for funding an emergency project. The Board may set and revise the methodology and factors to be considered when determining the terms of any financial assistance it provides including assigning a priority it deems appropriate. The terms of the loan, including length of repayment period, interest or hardship grant assessment, and principal forgiveness or grant, ~~[(grant)]~~ or repayment waivers will be determined ~~[at the time the]~~ when the emergency funding is authorized.

(6) Funding Process - The Board must find that an emergency exists according to the criteria in Subsection R309-705-9(2). It is anticipated that under normal emergency conditions time restraints will not allow a request for emergency funding to be placed on the agenda of a regularly scheduled Board meeting or adoption and advertisement of a project priority list. Therefore, the following procedures will be followed in processing a loan application for emergency assistance:

(i) Division staff will evaluate each application for emergency funding according to the criteria listed in Subsection R309-705-9(2). Staff will solicit recommendations from the LHD and District Engineer about the proposed project to mitigate the emergency. Staff will submit a report of its findings to the Board Chair ~~[person]~~ or designee.

(ii) The Board Chair ~~[person]~~ or designee will arrange for a timely meeting of the Board to consider authorizing assistance for the emergency. This meeting may be conducted by telephone or virtual means using readily available computer platforms.

#### **R309-705-10. Committal of Funds and Approval of Agreements.**

~~[(After the Director has issued a Plan Approval, the loan, credit enhancement, interest buy down, or hardship grant will be considered by the Board for final approval. The Board will determine whether the agreement is in proper order. The Executive Secretary, or designee, may then execute the loan or credit enhancement agreement if no aspects of the project have changed significantly)]~~

~~since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, or interest buy-down agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.]~~

(1) The Executive Secretary, or designee, may execute the loan agreement, credit enhancement agreement, or interest buy-down agreement when the following are complete:

(i) all financial assistance authorization conditions, outlined in the Authorization Letter sent to the Recipient, have been met, including Division approval of all submitted legal documents and other items required by this rule; and

(ii) the Recipient has received written plan approval of the engineering plans and specifications for the authorized project from the Division of Drinking Water.

(2) If the approved scope of work has changed significantly since the Board's initial authorization, the Board shall review the modified project scope of work to determine if it meets the Board's requirements. If satisfied, the Board shall authorize the Executive Secretary, or designee, to proceed with executing the loan agreement, credit enhancement agreement, or interest buy-down agreement.

### **R309-705-11. Construction.**

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of \$10,000 must receive prior written approval by the Executive Secretary before execution. When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Director, written approval will be issued by the Director in accordance with Section R309-500-9 to commence using the project facilities.

### **R309-705-12. Compliance with Federal Requirements.**

(1) Applicants must show the legal, institutional, managerial, and financial capability to construct, operate, and maintain the drinking water system or systems ~~[system(s)]~~ that the project will serve.

(2) ~~[Applicant(s)]~~ Applicants shall require its contractors to comply with federal provisions for disadvantaged business enterprises and exclusions for businesses under suspension ~~[and]~~ or debarment. Any bidder not complying with these requirements shall be considered a non-responsive bidder.

(3) As required by Federal Code, applicants may be subject to the following federal requirements, ~~[(all assessments shall consider the impacts of the project twenty (20) years into the future).]~~ Assessments made under the federal requirements in this section shall consider potential impacts at least 20 years into the future.

Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended

Build America, Buy America Act Pub. L. No. 117-58, Sections 70901-52

Clean Air Act, Pub. L. 84-159, as amended

Coastal Barrier Resources Act, Pub. L. 97-348

Coastal Zone Management Act, Pub. L. 92-583, as amended

Davis-Bacon Wage Act, Pub. L. 107-217

Endangered Species Act, Pub. L. 92-583

Environmental Justice, Executive Order 12898

Floodplain Management, Executive Order 11988 as amended by Executive Order 12148

Protection of Wetlands, Executive Order 11990

Farmland Protection Policy Act, Pub. L. 97-98

Fish and Wildlife Coordination Act, Pub. L. 85-624

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190

National Historic Preservation Act of 1966, PL 89-665, as amended

Safe Drinking Water Act, Pub. L. 93-523, as amended

Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Age Discrimination Act of 1975, Pub. L. 94-135

Title VI of the Civil Rights Act of 1964, Pub. L. 88-352

Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)

Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, including Executive Orders 11914 and 11250 ~~[(including Executive Orders 11914 and 11250)]~~

~~[(The Drug Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient))]~~

Equal Employment Opportunity, Executive Order 11246

Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432

Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

Anti-Lobbying Provisions (40 CFR Part 30)

Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended

Procurement Prohibitions under Section 306 of the Clean Water Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Debarment and Suspension, Executive Order 12549

Accounting procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements.

**KEY: SDWA, financial assistance, loans**

**Date of Last Change: ~~July 1, 2011~~ 2023**

**Notice of Continuation: March 12, 2020**

**Authorizing, and Implemented or Interpreted Law: 19-4-104; 73-10c**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Repeal and Reenact

**Rule or Section Number:**

**R309-800**

**Filing ID: 55219**

#### **Agency Information**

**1. Department:** Environmental Quality

**Agency:** Drinking Water

**Building:** Multi-Agency State Office Building

<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144830	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4830	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Grange	801-674-2563	mgrange@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

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

R309-800. Capacity Development Program

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

The Division of Drinking Water (Division) is proposing this rule change to correct outdated references, update language, and add new language to implement the requirements of H.B. 269, Capital Assets Related to Water, passed in the 2022 General Legislative Session, and the federal America's Water Infrastructure Act (AWIA) of 2018.

**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 outlines the process for political subdivisions of the state to apply for and receive financial assistance for water system infrastructure improvement projects. The reenacted rule language defines the elements of a capital asset management plan as required by H.B. 269 (2022), and AWIA. The current rule did not contain asset management language compatible with H.B. 269 (2022) or AWIA.

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

Enacting this rule could cost the Department of Environmental Quality (DEQ) up to \$150,000 annually for one full-time FTE to manage the asset management program within the Division of Drinking Water. This position will be funded through a combination of set-aside funds from the annual Drinking Water State Revolving Fund capitalization grant authorized by Congress through the federal Safe Drinking Water Act and funds allocated to the Division from the state legislature.

Program management activities include, but are not limited to, public outreach to water systems and other interested parties, working with water systems and consulting engineers to help them understand the benefits of and how to prepare and implement an acceptable asset management plan and program, and receiving and reviewing asset management plans submitted by water systems.

**B) Local governments:**

Enacting this rule could have a fiscal impact for local governments required to develop, adopt, and implement a capital asset management plan and an asset management program.

Cost to develop such a plan could be as much as \$100,000 depending on water system size and complexity.

Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan.

Annual cost savings to local government entities are expected but will vary depending on system size and complexity as well as how effectively the asset management program is implemented. Cost savings may be realized through better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

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

Enacting this rule could have a fiscal impact for small businesses that own and operate public drinking water systems required to develop, adopt, and implement a capital asset management plan and implement an asset management program.

Cost to develop such a plan could be as much as \$100,000 depending on water system size and complexity. Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan.

Annual cost savings to small businesses that own and operate public drinking water systems are expected but will vary depending on system size and complexity, as well as how effectively the asset management program is implemented. Cost savings may be realized through better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

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

Enacting this rule could have a fiscal impact for non-small businesses that own and operate public drinking water systems required to develop, adopt, and implement a capital asset management plan and implement an asset management program.

Cost to develop such a plan could be as much as \$100,000 depending on water system size and complexity. Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan.

Annual cost savings to non-small businesses that own and operate public drinking water systems are expected but will vary depending on system size and complexity, as well as how effectively the asset management program is implemented. Cost savings may be realized through better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

**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**):

Enacting this rule could have a fiscal impact for governmental entities, such as local districts, water conservation districts, and special service districts that own and operate public drinking water systems, required to develop, adopt, and implement a capital asset management plan and an asset management program.

No fiscal impact to individuals, corporations, associations, or private organizations that do not own or operate public drinking water systems is expected.

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

Costs to affected persons to develop an asset management plan and implement an asset management program for a public drinking water system could be as much as \$100,000 depending on water system size and complexity.

Annual costs could be an additional \$75,000 for water system staff to manage the asset management program and maintain the asset management plan. Annual cost savings to affected persons who own or operate public drinking water systems are expected but will vary depending on system size and complexity, as well as how effectively the asset management program is implemented.

Cost savings may be realized through better asset maintenance, better planning for asset rehabilitation or replacement, establishing a proactive maintenance schedule based on the importance the asset has to system operation, as well as other operations and maintenance efficiencies gained through implementing the plan.

**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**

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
State Government	\$0	\$150,000	\$150,250
Local Governments	\$0	\$175,000	\$180,250
Small Businesses	\$0	\$175,000	\$180,250
Non-Small Businesses	\$0	\$175,000	\$180,250
Other Persons	\$0	\$175,000	\$180,250
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$850,000</b>	<b>\$871,250</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>(\$850,000)</b>	<b>(\$871,250)</b>

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

The Executive Director of the Department of Environmental Quality, Kim Shelley, 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 73-10g-5	Subsection 73-10c-3(2)	42 U.S.C. 300j, et seq.
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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:** 03/31/2023

**9. This rule change MAY become effective on:** 05/31/2023

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**

<b>Agency head or designee and title:</b>	Kim Shelley, Executive Director	<b>Date:</b>	02/13/2023
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**R309. Environmental Quality, Drinking Water.****R309-800. Capacity Development Program.****R309-800-1. Authority.**

(1) Under authority granted in ~~[Utah Code]~~ Subsection 19-4-104(1)(a)(v), the Drinking Water Board adopts this rule implementing the capacity development program for new community and non-transient non-community systems and existing community, non-transient non-community, and transient non-community systems and governing the allotment of federal funds to public water systems to assist them to comply with the ~~[Federal 1996 Reauthorized]~~ Safe Drinking Water Act (SDWA).

**R309-800-2. Purpose.**

(1) The SDWA makes certain federal funds available to states, through the Drinking Water State Revolving Fund Financial Assistance Program ~~[Loan Program as defined in section 1452(k)(2)(C)]~~ to provide assistance to ~~[any public water system]~~ eligible public water systems as part of a capacity development strategy developed and implemented in accordance with ~~[section]~~ 42 U.S.C. 1420(c) to ensure all new public water systems will be able to comply with the SDWA, to enhance existing public water systems' capability to comply with the SDWA, and determine which public water systems applying for financial assistance are eligible to use the State Revolving Funds.

(2) The purpose of the Capacity Development Program for new and existing systems is to enhance and ensure the system technical, managerial, and financial capacity of water systems and encourage water systems to develop and implement an asset management program. The Program's goals are:

(a) to promote long-term compliance with federal drinking water regulations ~~[and]~~;

(b) to promote the public health protection objectives of the SDWA ~~[and]~~;

(c) ~~[to promote compliance with the requirements of the State of Utah's Groundwater Rule, R309-215-16, in identifying and correcting significant deficiencies in technical, managerial, and/or~~

~~financial capacity]~~ to promote and encourage water systems to implement best practices and other activities associated with an asset management program.

**R309-800-3. Definitions.**

~~[(1) Definitions for terms used in this rule are given in R309-110, except as modified below.]~~

~~[(2)]~~ "Asset Management Plan" A written plan developed by a water system to implement asset management or an asset management program within the system. The asset management plan describes the five core asset management components at Subsection R309-800-5(3) and provides an outline the water system can use to make appropriate improvements.

"Asset Management Program" The practice of managing infrastructure assets to maximize the efficiency and life expectancy of operating these assets while delivering the desired service levels.

"Capacity Development" means the technical, managerial, and financial capabilities of the water system to plan for, achieve, and maintain compliance with applicable drinking water standards.

"Community Water System" An existing system providing water for human consumption and other domestic uses through pipes or other constructed conveyances, which has at least 15 service connections or serves an average of at least 25 individuals at least 60 days out of the year.

~~[(3)]~~ "Drinking Water Region Planning" means a county wide water plan, administered locally by a coordinator, who facilitates the input of representatives of each public water system in the county with a selected consultant, to determine how each public water system will either collectively or individually comply with ~~source protection, operator certification, monitoring including consumer confidence reports, capacity development including technical, financial and managerial aspects, environmental issues, available funding and related studies.~~

~~[(4)]~~ "Small Water System" means a water system with less than 3,300 people being served.

~~[(5)]~~ "Public Water System" means a system providing water for human consumption and other domestic uses through pipes or other constructed conveyances, which has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year.

~~[(6)]~~ "Non-Community Water System" (NCWS) means a public water system that is not a community water system. There are two types of NCWS's: transient and non-transient.]

~~[(7)]~~ "New Water System" means a system that will become a community water system or non-transient, non-community water system on or after October 1, 1999.

"Non-Transient Non-Community Water System" (NTNCWS) ~~[means a]~~ An existing public water system, that is not a community water system, that regularly serves at least 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those serving the same individuals such as ~~[(4)]~~ industrial workers, school children, or church members ~~[by means of]~~ using a separate system.

~~[(8)]~~ "New Water System" means a system that will become a community water system or non-transient, non-community water system on or after October 1, 1999.]

~~[(9)]~~ "Required ~~[reserve]~~ Reserve" ~~[means funds]~~ Funds set aside to meet requirements set forth in a loan or bond covenant ~~[bond]~~ or indenture.

"Transient Non-community Water System" An existing public water system, that is not a community water system, that regularly serves at least 25 of the same people over 6 months per year.

Examples of such systems include commercial or not-for-profit establishments that have their own water supply such as restaurants, roadside stops, campgrounds, and hotels.

Additional definitions are provided in Rule R309-110.

#### **R309-800-4. General.**

(1) Capacity development criteria ~~are to be used as a guideline for all water systems. These criteria~~ constitute a standard applied ~~when reviewing new systems applications, reviewing applications for financial assistance and assessing capacity of water systems rated unapproved or in significant non-compliance with SDWA requirements or State drinking water rules by the State or the EPA.~~ in the following situations:

(a) when reviewing new or proposed water system applications, including newly discovered water systems previously unknown to the Division that are providing drinking water to the public;

(b) when reviewing applications for financial assistance;  
or

(c) when assessing capacity of all water systems that are rated unapproved or are in significant noncompliance with SDWA requirements or State drinking water rules as determined by the state's Improvement Priority System or the Environmental Protection Agency's (EPA) Enforcement Targeting Tool.

These criteria may be used as a guideline for other water systems. Water systems may refer to the State's Existing System Capacity Development Strategy, available on the Division's website, for additional information on capacity development and assessments.

(2) ~~Water systems shall meet the following criteria~~ Capacity Development Criteria:

(a) Technical Capacity ~~Criteria~~:

(i) Finished water shall meet all drinking water standards as required by Utah State Rules~~;~~.

(ii) Personnel shall operate the system in accordance with the operations and maintenance manual~~;~~.

(iii) ~~A valid water right shall be obtained;~~ Water systems shall provide proof of sufficient water rights or valid water purchase contracts.

(iv) Water systems shall meet source, storage, and distribution requirements as per Utah State Rules~~;~~.

(v) ~~Water system shall not be rated unapproved or in significant noncompliance by the State or the EPA.~~ Existing systems rated unapproved or with a history of significant noncompliance, as determined by the state or the EPA, shall agree to undertake appropriate action to resolve noncompliance or become an approved system.

(b) Managerial Capacity ~~Criteria~~:

(i) The system owner ~~(s)~~ and any management or ownership changes shall be clearly identified to the ~~Director;~~ Executive Secretary of the Drinking Water Board.

(ii) The system shall meet all ~~of the operator~~ certification requirements ~~as per~~ defined in Rules R309-300 and ~~backflow technician certification requirements as per~~ R309-305.

(iii) ~~A~~ The system shall implement a program ~~or method shall be in place~~ to effectively ~~maintain~~ manage all ~~requisite~~ system records, such as distribution system histories, ~~maps, asset inventory, and compliance information.~~ ~~and~~

(iv) ~~An~~ The system shall develop and maintain an operating plan ~~shall include~~ that includes system operator names and certification levels ~~of the system operator(s)~~, facility operation and maintenance manuals, routine maintenance procedures, water quality monitoring plan and violations response procedures, ~~water~~

~~quality monitoring plan,~~ training plan, and emergency response plan.~~;~~

~~(v) The Director shall be informed of management changes.~~

(c) Financial Capacity ~~Criteria~~:

(i) Revenues shall be greater than expenses~~;~~.

(ii) A ~~financial statement compilation by a~~ Certified Public Accountant must prepare a financial statement or perform ~~an audit if otherwise required of the water system,~~ ~~shall be completed~~ at least every three years~~;~~.

(iii) The water system shall devise and implement a managerial budget and accounting process in accordance with generally accepted principals~~;~~.

(iv) The operating ratio, calculated as the ~~(c)~~ operating revenue divided by operating expenses excluding depreciation and required reserves~~;~~, shall be greater than 1.0~~;~~.

(v) The coverage ratio, calculated as the ~~(c)~~ total revenues minus operating expenses excluding depreciation and required reserves divided by annual debt service~~;~~, shall be greater than 1.0~~;~~.

(vi) Customers shall be metered ~~and~~ or the water system shall take action to install meters.

(vii) ~~An~~ The water system shall create and fund an emergency account ~~or a replacement reserve account.~~ ~~shall be created and funded.~~

(d) Asset Management.

(i) Existing systems are encouraged to develop and implement an asset management plan that addresses the technical, managerial, and financial aspects of the five core components of asset management defined in Subsection R309-800-5(3).

(ii) Retail water suppliers seeking financial assistance through Utah's State Revolving Fund must commit to develop and implement an asset management program as referenced in Section R309-700-5.

(iii) Retail water suppliers seeking financial assistance through the federal State Revolving Fund must commit to develop and implement an asset management program as referenced in Section R309-705-5.

~~(3) Public Water Systems that use ground water, except those that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment, but including consecutive systems receiving finished ground water shall be subject to the sanitary survey requirements of R309-100-7 and the significant deficiency requirements of R309-215-16(3) in order to be in compliance with the Capacity Development Program requirements.~~

Capacity Development Worksheets are required for all systems seeking financial assistance from the Drinking Water State Revolving Fund Program.

#### **R309-800-5. Implementing an Asset Management Program.**

(1) Water systems are encouraged to develop and implement an asset management program. An asset management program provides the following benefits to water systems:

(a) Prolong asset life.

(b) Reducing overall costs for operations, maintenance, and capital expenditures.

(c) Improving decisions about asset maintenance, rehabilitation, repair, and replacement.

(d) Meeting customer demands with a focus on system sustainability.

(e) Meeting service expectations and regulatory requirements.



(f) Improving responses to emergencies.  
 (g) Improving asset safety and security.  
 (h) Budgeting focused on critical activities for sustained performance.  
 (i) Setting rates based on sound operational and financial planning.  
 (2) An effective asset management program includes detailed asset inventories, operation and maintenance tasks and long-range financial planning. These items should be captured in an asset management plan, which can be tailored to fit individual water system size and complexity.  
 (3) The asset management plan shall address the following five core components:  
 (a) The current state of the utility's assets.  
 (i) Prepare an asset inventory.  
 (ii) Develop a system map.  
 (iii) Develop a method to assess and prioritize assets based on condition.  
 (iv) Assess the asset's remaining useful life.  
 (v) Determine asset value and replacement cost.  
 (b) The utility's required sustainable level of service.  
 (i) Analyze current customer demand and satisfaction.  
 (ii) Analyze anticipated customer demand and satisfaction.  
 (iii) Understand current regulatory requirements.  
 (iv) Communicate system performance goals with the public.  
 (v) Identify standard levels of services and track system performance.  
 (c) Assets that are critical to sustained performance.  
 (i) Conduct a failure analysis on all assets.  
 (ii) Determine probability of failure.  
 (iii) Analyze risk and consequences of failure.  
 (iv) Prioritize system assets based on importance to system operation.  
 (v) Develop specific response plans based on potential asset failure.  
 (d) Minimum infrastructure life-cycle costs.  
 (i) Implement an appropriate maintenance schedule, including costs for all assets.  
 (ii) Identify life-cycle costs for all assets.  
 (iii) Develop a capital improvement plan and an operations and maintenance strategy.  
 (iv) Identify and compare the cost of rehabilitation versus replacement.  
 (v) Determine the related costs of responding to asset failure.  
 (e) Long-term budgeting strategy.  
 (i) Regularly review system budget.  
 (ii) Establish and fund a capital facilities account.  
 (iii) Implement a rate structure to ensure financial sustainability.  
 (iv) Explore asset renewal and replacement financing.  
 (v) Identify financial assistance resources based on asset condition and importance.  
 (4) All water systems subject to this rule shall complete the following:  
 (a) Prepare an asset management plan as described in Subsection R309-800-5(3).  
 (b) System's governing body shall formally adopt the asset management plan.  
 (c) Submit proof of adoption to the Division.

(5) In addition to the requirements in Subsection R309-800-5(4), water systems applying for financial assistance from either the federal or state Drinking Water State Revolving Fund Financial Assistance Program must also submit their asset management plan to the Division for review or request sufficient funds to create an asset management plan. Asset management plans prepared using financial assistance from the Drinking Water Board shall be submitted to the Division for review.

**R309-800-6. Requirements for New Community and New Non-transient, Non-community Water Systems.**

~~[(1)]~~ (1) Feasibility Review, (See R309-100-6-).

~~[(2)]~~ (1) Each proposed, new water system must demonstrate that it has adequate technical, managerial, and financial capacity before it may provide water for human consumption. ~~Proposed~~ These water systems shall submit the following for Capacity Assessment Review[?].

~~[(3)]~~ (a) Project Notification form, available on the ~~Internet~~ at [www.drinkingwater.utah.gov/blank\\_forms.htm](http://www.drinkingwater.utah.gov/blank_forms.htm). Division's website.

~~[(4)]~~ (b) A business plan, which includes a facilities plan, management plan, ~~and~~ financial plan, and an asset management plan.

~~[(a)]~~ (i) Facilities plan. The facilities plan shall describe the scope of the water services to be provided and shall include the following[?].

~~[(+)]~~ (A) A description of the nature and extent of the area to be served[?] and provisions for extending the water supply system to include additional area. The description shall include population and land use projections and forecasts of water usage[?].

~~[(+)]~~ (B) An assessment of current and expected drinking water compliance based on monitoring data from the proposed water source[?].

~~[(+)]~~ (C) A description of the alternatives considered, including interconnections with other existing water systems, and the reasons for selecting the method of providing water service. This description shall include the technical, managerial, financial, and operational reasons for the selected method~~[?and]~~.

~~[(+)]~~ (D) An engineering description of the facilities to be constructed, including ~~the~~ construction ~~[phases]~~ and future phases, and ~~future~~ plans for expansion. This description shall include an estimate of the full cost of any required construction, operation, and maintenance[?].

~~[(b)]~~ (ii) Management plan. The management plan shall describe what is needed to provide for effective management and operation of the system, and shall include the following:

~~[(+)]~~ (A) Documentation that the ~~[applicant]~~ water system has the legal right and authority to take the measures necessary for the construction, operation, and maintenance of the system. The documentation shall include evidence of ownership~~[?if the applicant is the owner of the system or, if the applicant is not the owner, legally enforceable management contracts or agreements;]~~

~~[(+)]~~ (B) An operating plan that describes the tasks to be performed in managing and operating the system. The operating plan shall consist of administrative and management organization charts, plans for staffing the system with certified operators, and provisions for an operations and maintenance manual~~[?and]~~.

~~[(+)]~~ (C) Documentation of credentials of management and operations personnel, cooperative agreements, or service contracts including demonstration of compliance with Rule R309-300 water system operator certification rule~~[?and]~~.

~~(c)~~(iii) Financial plan. The financial plan shall describe the water system's expected revenues, cash flow, ~~income~~ and issuance and repayment of debt for meeting the costs of construction, and the estimated costs of operation and maintenance for at least five years from the date the ~~applicant~~ water system expects to begin ~~system~~ operation.

(iv) Asset Management Plan. The asset management plan shall include all the elements described in Subsection R309-800-5(3).

~~(5)~~(c) After the information required in this section has been submitted by the applicant water system and is deemed complete, the Division ~~of Drinking Water~~ shall conduct a Capacity Assessment Review. The ~~applicant~~ water system shall be notified in writing whether or not the new system has demonstrated adequate capacity. No new community or non-transient, non-community system will be approved if it lacks adequate capacity.

~~(6)~~(d) ~~Those systems~~ Water systems constructed without approval shall be subject to ~~points as specified in Rule R309-400, and~~ administrative ~~and~~ or civil penalties and fines.

### **R309-800-~~6~~7. Minimum Capacity Required for Financial Assistance Under ~~Provisions of~~ Rules R309-700 and R309-705.**

(1) Applicants for financial assistance shall complete an application form, available on the ~~Internet at www.drinkingwater.utah.gov/blank\_forms.htm~~ Division website. The application shall include project information and water system financial information, ~~and~~ This information will be used to determine project and water system eligibility, establish project priority ranking, and provide a basis for determining financial assistance parameters.

~~(2)(a) As described in (3) below, applicants for financial assistance from the Federal Drinking Water State Revolving Loan Program are required to complete and submit Capacity Development worksheets to the Executive Secretary.~~

~~(b) As described in (4) below, the Executive Secretary may require an applicant for a loan from the State's Revolving Loan Program to complete and submit Capacity Development worksheets for review.]~~

~~(3)~~(2) Financial assistance under the ~~provisions of~~ Rule R309-705 ~~is~~ Financial Assistance: Federal Drinking Water State Revolving Fund Loan Program. Applicants for financial assistance from the Federal Drinking Water State Revolving Loan Program are required to complete and submit Capacity Development worksheets to the Executive Secretary. Financial assistance shall not be available to a water system that lacks the technical, managerial, or financial capability to maintain SDWA compliance, or is in significant ~~non-compliance~~ noncompliance with any provisions of Rules R309-200 through R309-225 or Rules R309-500 through R309-550, unless:

(a) The use of the financial assistance will ensure compliance with SDWA and Utah rules; or

(b) The owner of the system agrees to undertake feasible and appropriate changes in operation to ensure technical, managerial, and financial capacity to maintain long-term compliance with SDWA.

~~(4)~~(3) Financial assistance under ~~the provisions of~~ Rule R309-700, Financial Assistance: State Drinking Water State Revolving Fund Loan Program. [A Capacity Development Assessment may be necessary.] The Executive Secretary may require an applicant for a loan from the state Revolving Loan Program to complete and submit Capacity Development worksheets for review before [the Executive Secretary considers] considering whether a project is eligible for financial assistance [under the State's Revolving Loan Program]. The decision will be based on available water

system information obtained through sanitary surveys, site visits, monitoring and reporting data, or other valid means. If, after review of available information, the Executive Secretary determines that a Capacity Development Assessment is necessary, ~~he will require that~~ the applicant must complete and submit the Capacity Development worksheets to the Division. Otherwise, a Capacity Development Assessment is not required.

**KEY: drinking water, funding, regionalization, capacity development**

**Date of Last Change: ~~May 23, 2014~~ 2023**

**Notice of Continuation: March 12, 2020**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R311-200</b>	<b>Filing ID:</b> <b>55229</b>
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### **Agency Information**

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

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

### **General Information**

#### **2. Rule or section catchline:**

R311-200. Petroleum Storage Tanks: Definitions

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

Refining the definition in statute to meet the intent of S.B. 40 from the 2021 General Session. This will exempt specific AST systems that had not been considered when the statute was proposed.

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

In Subsection R311-200-1(2)(a)(iii)(A), removed a redundancy from this rule that is appropriate in statute but not in rule. Added exceptions to the definition of an APST.

#### Fiscal Information

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

**A) State budget:**

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.

**B) Local governments:**

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.

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

This rule change is not expected to have any fiscal impact to small businesses' revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.

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

This rule change is not expected to have any fiscal impact to non-small businesses' revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.

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

This rule change is not expected to have any fiscal impact on other persons' revenues or expenditures because these AST systems are currently exempt and will remain exempt from regulations.

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

No compliance costs are anticipated to affected parties because these AST systems are currently exempt and will remain exempt from regulations.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

No fiscal impacts on businesses are expected by this rule. Kim Shelley, Executive Director of the Department of Environmental Quality

#### Citation Information

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

Section 19-6-105	Section 19-6-403	
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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.)

<b>A) Comments will be accepted until:</b>		03/31/2023
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
03/13/2023	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT in Room 1015

<b>9. This rule change MAY become effective on:</b>	06/29/2023
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

<b>Agency head or designee and title:</b>	Brent Everett, Director	<b>Date:</b>	02/09/2023
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#### R311. Environmental Quality, Environmental Response and Remediation.

##### R311-200. Petroleum Storage Tanks: Definitions.

##### R311-200-1. Definitions.

- (1) Terms used in this rule are defined in Section 19-6-402.
- (2) In addition, for purposes of this rule:
- (a) Aboveground petroleum storage tank" or "APST" means a storage tank that is, by volume, less than 10 % buried in the ground, including the pipes connected to the storage tank and:
- (i) has attached underground piping; or
  - (ii) rests directly on the ground;
- (A) contains regulated substances;
- (B) has the capacity to hold 501 gallons or more; and
- (iii) is not:
- (A) used in agricultural operations~~[-as defined by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act];~~
- (B) used for heating oil for consumptive use on the premises where stored;
- (C) related to a petroleum facility under SIC Code 2911 or 5171 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;
- (D) directly related to oil or gas production, ~~[and gathering and transmission operations; -or]~~
- (E) used in the fueling of aircraft or ground service equipment at a commercial airport that serves passengers or cargo, with commercial airport defined in Section 72-10-102;[-]
- (F) oil filled electrical equipment, including, but not limited to, transformers, circuit breakers, or capacitors;
- (G) a stationary aboveground storage tank that is installed, rendered immobile, and intended for use on a property for no more than 180 consecutive days;
- (H) an used oil collection tank regulated under Section 19-6-710;
- (I) an airport hydrant fuel distribution system at a military facility;

(J) any AST that contains a de minimis concentration of regulated substances;

(K) an AST used to store liquefied petroleum gases that are not liquid at standard temperature and pressure; or

(L) an aboveground hot-oil tank or container that is used to store petroleum products that will be manufactured into asphalt paving material.

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

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

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

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

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

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

(h) "Certified environmental laboratory" means a laboratory certified by the Utah Department of Health and Human Services as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for PST sampling in Subsection R311-205-2(5).

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

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

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

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

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

(n) "Consultant" is a person who is a certified PST consultant according to Subsection 19-6-402(7) and Section R311-201-2.

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

(p) "Customary, reasonable, and legitimate expenses" means costs incurred during the investigation, abatement, and corrective actions that address a release which are normally charged

## NOTICES OF PROPOSED RULES

according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

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

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

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

(t) "Eligible exempt UST" for eligibility for the Petroleum Storage Tank Fund means a tank specified in Subsection 19-6-415(1).

(u) "Environmental media sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for evaluating environmental contamination.

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

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

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

(y) "Full installation" for the purposes of Subsection 19-6-411(2) means the installation of a PST.

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

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

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

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

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

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

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

(ee) "Lapse" in reference to the certificate of compliance and coverage under the EAP, means to terminate automatically.

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

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

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

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

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

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

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

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

(nn) "Petroleum Storage Tank Fund" means the Fund created by Section 19-6-409.

(oo) "Potable drinking water well" means any hole, dug, driven, drilled, or bored, that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use, consisting of drinking, bathing, and cooking, or other similar uses. Such a well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

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

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

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

- (i) the integrity of the system;
- (ii) protection of the environment; and
- (iii) qualifying for a certificate of compliance.

(ss) "PST testing" means:

- (i) a testing method which can detect leaks in a PST system;
- (ii) testing for compliance with corrosion protection requirements;
- (iii) testing or inspection for proper operation of overfill prevention devices and electronic or mechanical leak detection components;

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

(v) testing methods that meet applicable performance standards:

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

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

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

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

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

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

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

(uu) "Registration fee" means PST registration fee.

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

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

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

(yy) "Secondary containment"

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

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

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

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

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

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

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

(i) fire and explosion hazards have been abated;

(ii) free flow of the product out of the tank has been stopped;

(iii) free product is being removed from the soil, groundwater, or surface water according to a work plan or corrective action plan approved by the director, except as allowed by Subsections 19-6-420(3)(b) and 19-6-420(6);

(iv) alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release; and

(v) a soil or groundwater management plan or both have been submitted for approval by the director.

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

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

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

(iii) "Suspected release" means a release that may have occurred from a regulated PST system, for example: petroleum contamination discovered at the PST site or in the surrounding area; unusual operating conditions of the PST system; release detection methods indicating a release may have occurred; inventory control records indicating unexplained product loss; or, a spill or overflow that occurs outside secondary containment and exceeds 25 gallons.

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

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

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

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

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

(i) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;

(ii) vent and product piping assembly;

(iii) cathodic protection installation, service, and repair;

(iv) internal lining;

(v) secondary containment construction; and

(vi) UST repair and service.

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



## NOTICES OF PROPOSED RULES

(nnn) "UST installer" means an individual who engages in PST installation.

(ooo) "UST removal" means the removal or permanent closure of a PST system by taking out of service all or part of a PST system.

(ppp) "UST remover" means an individual who engages in PST tank removal.

(qqq) "UST tester" means an individual who engages in PST testing.

**KEY: petroleum, underground storage tanks**

**Date of Last Change: 2023[July 15, 2022]**

**Notice of Continuation: March 8, 2022**

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

### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R311-202</b>	<b>Filing ID:</b> <b>55230</b>
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### Agency Information

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

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

### General Information

<b>2. Rule or section catchline:</b>
R311-202. Federal Underground Storage Tank Regulations
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Clarifying which Subparts of 40 CFR 280, the Division of Environmental Response and Remediation will use as the standards for APST release investigation, cleanup, and

financial responsibility that were implemented by S.B. 40 passed in the 2021 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):

Format and numbering are updated to match the Utah Rulewriting Manual requirements. Incorporates portions of the Federal Underground Storage Tank Regulations to be used as the standards for APST owners and operators to follow. APST owners and operators must meet the same standards for release reporting, investigation, confirmation, corrective action, and financial responsibility as UST owners and operators.

### Fiscal Information

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

#### A) State budget:

Any fiscal cost to state government was accounted for in the fiscal note attached to S.B. 40 (2021).

#### B) Local governments:

Any fiscal cost to local government was accounted for in the fiscal note attached to S.B. 40 (2021).

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

Any fiscal cost to small businesses was accounted for in the fiscal note attached to S.B. 40 (2021).

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

Any fiscal cost to non-small businesses was accounted for in the fiscal note attached to S.B. 40 (2021).

**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**):

Any fiscal cost to other persons was accounted for in the fiscal note attached to S.B. 40 (2021).

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

Any compliance costs for affected persons was accounted for in the fiscal note attached to S.B. 40 (2021).

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

No fiscal impacts on businesses are expected by this rule. Kim Shelley, Executive Director of the Department of Environmental Quality

#### Citation Information

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

Section 19-6-105	Section 19-6-403	
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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.)

<b>A) Comments will be accepted until:</b>	03/31/2023
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#### B) A public hearing (optional) will be held:

On:	At:	At:
03/13/2023	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT in Room 1015

**9. This rule change MAY become effective on:** 06/29/2023

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

<b>Agency head or designee and title:</b>	Brent Everett, Director	<b>Date:</b>	02/09/2023
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#### R311. Environmental Quality, Environmental Response and Remediation.

##### R311-202. Federal Underground Storage Tank Regulations.

##### R311-202-1. Incorporation by Reference.

(1) This rule incorporates by reference 40 CFR Part 280, the federal underground storage tank regulations, in effect as of October 13, 2015, except that:

([1]a) 40 CFR 280 Subpart J is not incorporated by reference;

([2]b) the definitions of Class A operator, Class B operator, Class C operator, and Training program in 40 CFR 280.12 are not incorporated by reference;

([3]c) [F]the date October 13, 2015 in 280.10(a)(1)(ii), 280.10(a)(1)(iii), 280.20(c)(3), 280.35(b)(1), 280.35(b)(2), 280.42(a) note, 280.42(e), 280.45(a), 280.251(a)(1), 280.251(a)(2), 280.251(b), 280.252(b), 280.252(e), 40 CFR Part 280 appendix 1, and 40 CFR Part 280 appendix 2 is, in each instance, changed to January 1, 2017; and

([4]d) [F]the date April 11, 2016 in 280.20, 280.20(f), 280.41(a)(1), 280.41(a)(2), 280.41(b)(1), and 280.41(b)(2) is, in each instance, changed to January 1, 2017.

(2) Owners or operators of APSTs must follow the requirements and standards as set forth in 40 CFR Part 280 Subparts E, F, and H.

(a) Any references in these Subparts to USTs, UST systems, UST owners or operators, UST excavation zones, UST program, UST release, or UST sites also apply to APSTs.

(b) Releases of hazardous substances, as referenced in 40 CFR 280.12, from ASTs are not subject to Subsection R311-202-1(2)(a).

**KEY:** hazardous substances, petroleum, underground storage tanks

**Date of Last Change:** 2023[January 1, 2017]

**Notice of Continuation:** March 8, 2022

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

**NOTICE OF PROPOSED RULE****TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R311-206</b>	<b>Filing ID:</b> <b>55231</b>
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**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
David Wilson	385-251-0893	djwilson@utah.gov
Therron Blatter	801-554-6762	tblatter@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R311-206. Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
Clarifying that APST owners or operators financial assurance amounts must meet the same amounts and scope defined in 40 CFR 280.93 for USTs. The changes will specifically require owners or operators to declare on their application for a Certificate of Compliance whether they are participating in the EAP or demonstrate the FA meets the requirements in Subsection R311-206-2(1)(b) and Section R311-206-5.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
In Subsection R311-206-2(1)(b), in response to S.B. 40 passed in the 2021 General Session, added FA for APST facilities must meet the same coverage amounts as USTs specified in 40 CFR 280.93.
In Subsection R311-206-3(1)(e), added that owners or operators must declare on their application for a Certificate

of Compliance that they are participating in the EAP or demonstrate their FA meets the requirements found in Subsection R311-206-2(1)(b) and Section R311-206-5.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impact on state government revenues or expenditures because all state owned facilities with PSTs are required to participate in the Environmental Assurance Program.
<b>B) Local governments:</b>
This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because all proposed changes to the rule are clarifications of what was required by S.B. 40 (2021).
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because all proposed changes to the rule are just clarifications of what was required by S.B. 40 (2021).
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because all proposed changes to the rule are just clarifications of what was required by S.B. 40 (2021).
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This rule change is not expected to have any fiscal impact on other persons revenues or expenditures because proposed changes to the rule are clarifications of what was required by S.B. 40 (2021).
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
No compliance costs are anticipated to affected parties because proposed changes to this rule are clarifications of what was required by S.B. 40 (2021).
<b>G) Regulatory Impact Summary Table</b> (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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
No fiscal impacts on businesses are expected by this rule. Kim Shelley, Executive Director of the Department of Environmental Quality			

**Citation Information**

<b>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:</b>		
Section 19-6-105	Section 19-6-403	Section 19-6-428
Section 19-6-410.5		

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	03/31/2023

<b>B) A public hearing (optional) will be held:</b>		
On:	At:	At:
03/13/2023	02:00 PM	Multi Agency State Office Building, 195 N 1950 W, Salt Lake City, UT in Room 1015

<b>9. This rule change MAY become effective on:</b>	06/29/2023
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**

<b>Agency head or designee and title:</b>	Brent Everett, Director	<b>Date:</b>	02/09/2023
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**R311. Environmental Quality, Environmental Response and Remediation.****R311-206. Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.****R311-206-1. Definitions.**

Definitions are found in Rule R311-200.

**R311-206-2. Declaration of Financial Assurance Mechanism.**

(1) To demonstrate financial assurance, as required by Section 19-6-412 and Subsection 19-6-407(2)(c), owners or operators of petroleum storage tanks must:

(a) declare they will participate in the EAP and meet the requirements for participation in the EAP under Sections 19-6-410.5, 19-6-428 and R311-206-4; or

(b) demonstrate financial assurance that meets the coverage amounts specified in 40 CFR 280.93, by an allowable method specified in Section R311-206-5.

(2) For the purposes of Subsection 19-6-412(6), tanks at a facility must be covered by the same financial assurance mechanism, and must be considered to be in one area, unless the director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

**R311-206-3. Requirements for Issuance of Certificates of Compliance.**

(1) The director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(a) the owner or operator has a certificate of registration;

(b) the owner or operator must certify that the PST is in substantial compliance with state and federal statutes, rules, and regulations applicable to PST systems;

(i) APSTs using the EAP for financial responsibility, the owner or operator may meet the requirements outlined in Subsection R311-206-4(6).

(c) the tank tightness test, as required by Section 19-6-413 conducted within six months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual PST is not leaking;

(d) the owner or operator has submitted a letter to the director stating that based on customary business inventory practices there has been no release from the tank;

(e) the owner or operator has submitted a completed application according to a form provided and approved by the director, and participates in the EAP or demonstrates that the financial assurance that will be used meets the requirements of Subsection R311-206-2(1)(b) and Section R311-206-5~~(demonstrated the financial assurance mechanism that will be used)~~;

(f) the owner or operator has met the requirements for the financial assurance mechanism chosen, including payment of applicable fees;

(g) the owner or operator has submitted an as-built drawing, for newly-installed systems, that meets the requirements of Subsection R311-200-1(2)(d) or a site plat, for existing systems, that meets the requirements of Subsection R311-200-1(2)(ccc); and

(h) the owner or operator has, for newly-installed tanks, submitted the completed tank manufacturer's installation checklist.

#### **R311-206-4. Requirements for Environmental Assurance Program Participants.**

(1) In accordance with Subsection 19-6-411(1)(a), the annual facility throughput rate, if reported, shall be reported to the director as a specific number of gallons, based on the throughput for the previous calendar year.

(2) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the director, any petroleum storage tank fee for that tank for the current fiscal year is due when the tank is brought into use, as a requirement for receiving a certificate of compliance.

(3) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(4) Auditing of PST facility throughput records.

(a) owners and operators must retain for seven years the monthly tank throughput records of the facility.

(b) tank throughput records shall include financial and product documentation for receipts, deliveries, transfers, and inventories.

(c) the director may audit or commission an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(i) records must be made available at the department for inspection within 30 calendar days after receiving notice from the director.

(ii) audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(iii) auditing tank throughput may be accomplished by any method approved by the director.

(iv) costs of an independent audit shall be paid by the owner or operator.

(5) Owners or operators eligible for participation in the EAP must demonstrate financial assurance for the difference between coverage provided by the EAP and coverage amounts required by 40 CFR 280 Subpart H.

(a) if the owner or operator chooses self-insurance as the mechanism for demonstrating financial assurance for the difference, they must document a tangible net worth of \$10,000 upon request and to the satisfaction of the director.

(i) the director may require the owner or operator to submit an independent audit to demonstrate new worth for self-insurance.

(A) the owner or operator will bear the expense for the audit.

(B) the criteria for an audit are the same as set forth in Subsection R311-206-4(4)(b).

(b) an owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference.

(c) the processing fee requirement referenced in Subsection R311-206-5(2) is not applicable because the administrative cost is covered by the EAP fee.

(6) For a facility with an APST using the EAP for financial responsibility, the director shall issue a certificate of compliance to an owner or operator for individual APSTs, if:

(a) before July 1, 2026, the owner or operator:

(i) documents compliance with spill prevention equipment requirements and submits a spill prevention equipment test; and

(ii) documents compliance with applicable leak detection and testing requirements outlined in Section R311-203-5.

(b) on or after July 1, 2026, the owner or operator:

(i) if applicable, documents compliance with cathodic protection requirements and submits a cathodic protection test, if required by Subsection R311-203-5(10)(d) indicating that the cathodic protection system is functioning properly;

(ii) documents compliance with overfill prevention requirements and submits an overfill prevention equipment inspection per Subsection R311-203-5(10)(e);

(iii) documents compliance with automatic line leak detector and submits an automatic line leak detector test, if required by Subsection R311-203-5(10)(f), indicating that each individual automatic line leak detector is functioning properly; and

(iv) documents compliance with APST secondary containment requirements as outlined in International Fire Code 2306.5 & 5704.2.10 referenced in the Utah State Fire Code pursuant to Section 15A-5-103.

#### **R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.**

(1) Owners and operators who elect to utilize an alternate form of financial assurance must meet the minimum coverage amounts using one or a combination of mechanisms as outlined in 40 CFR 280.94.

(a) owners and operators must submit to the director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(b) formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(c) if the financial assurance documentation submitted to the director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(2) The processing fee established in Subsection 19-6-408(2) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department.

(a) processing fees for subsequent reviews of financial assurance documents are due on July 1 of the fiscal year for which the review is required.

(b) pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the

provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer.

(i) this provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95 through 280.102 and 280.104 through 280.107.

(ii) a showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(2).

(c) if an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the director, and an additional processing fee shall be paid in circumstances as determined by the director.

(3) Evidence of a current and approved financial assurance mechanism must be reported to the director as follows:

(a) owners and operators using the financial test of self-insurance must submit the "Letter from Chief Financial Officer" to the director within the maximum 120-day period specified in 40 CFR 280.95.

(b) owners and operators using insurance and risk retention group coverage for financial assurance must submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the director within 30 days of acceptance of such policy by the insurer or risk retention group.

(i) if the insurance policy or risk retention group coverage is canceled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 280.97(b)(2)2.d. to the director as well as the insured.

(ii) the insurer must have a rating of A- or greater by A.M. Best Co.

(c) owners and operators using an irrevocable letter of credit must submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the director within 30 days of issuance from the issuing institution.

(d) owners and operators using a fully funded trust fund for financial assurance must submit proof of the trust fund and formal certification of acknowledgement to the director within 30 days after implementation of the trust fund.

(e) owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(i) the owner or operator must also submit the guarantor's letter from the chief financial officer within the 120-day period specified in 40 CFR 280.95.

(f) owners and operators using a surety bond for financial assurance must submit the surety bond document, standby trust fund, and certification of acknowledgement to the director within 30 days of issuance.

(g) guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(h) owners and operators using one of the local government methods specified in 40 CFR 280.104 through 280.107 must submit the letter from the chief financial officer and associated documents to the director within 120 days of the end of the owner, operator, or guarantor's fiscal year.

(4) The director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time.

(a) information requested must be reported to the director within 30 calendar days after receiving the request.

(b) owners and operators must maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(c) owners and operators must keep records of all financial assurance mechanisms in accordance with 40 CFR 280.111 and 280.113.

(d) the director may audit or commission an audit of records supporting the financial assurance mechanism at any time.

(i) audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(ii) auditing of financial assurance methods may be accomplished by any method approved by the director.

(5) Any costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the director is the sole responsibility of the owner or operator.

(6) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the director.

#### **R311-206-6. Voluntary Admission of Eligible Exempt Underground Petroleum Storage Tanks and Eligible Exempt Aboveground Storage Tanks Containing Petroleum to the Environmental Assurance Program.**

(1) Owners or operators of eligible exempt USTs specified in Subsection 19-6-415(1)(a) may voluntarily participate in the EAP by:

(a) performing a site check in accordance with Rule R311-205;

(b) meeting the requirements of Subsections 19-6-428(3)(a), 19-6-415(1) and R311-206-3(1);

(c) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(d) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(2) Owners or operators of eligible exempt aboveground storage tanks containing petroleum may voluntarily participate in the EAP by

(a) performing a site check in accordance with Rule R311-205; and

(b) meeting the requirements of Subsections 19-6-415(2) and 19-6-428(3)(a), and Sections R311-206-3 and R311-206-4.

#### **R311-206-7. Revocation and Lapsing of Certificates.**

(1) The director shall revoke a certificate of compliance or registration if the director determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(2) A PST owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(1) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Subsections 19-6-412(2), 19-6-428(3), and Section R311-206-3.

(3) A PST owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the director after the owner or operator demonstrates compliance with Sections 19-6-412 and R311-206-3.

(4) A PST owner or operator who has had eligibility to receive payments for claims against the fund lapse under Subsection 19-6-411(3)(c)(ii) must:

- (a) meet the requirements of Subsection 19-6-428(3); and
- (b) pay fees, interest, and penalties due to reinstate eligibility.

(5) Upon permanent closure of a tank which is covered by the Petroleum Storage Tank Fund, the eligibility to make a claim against the Petroleum Storage Tank Fund will terminate as specified in Section R311-207-2.

(a) permanently closed tanks are not eligible to be reissued a certificate of compliance.

(6) In accordance with Section 19-6-414, the director may revoke a certificate of compliance for the owner's or operator's failure to comply with the following requirements as outlined in 40 CFR 280:

- (a) release reporting;
- (b) abatement;
- (c) investigation;
- (d) corrective action; or
- (e) other measures to bring the release site under control.

#### **R311-206-8. Delivery Prohibition.**

(1) In accordance with Subsections 19-6-411(7) and 19-6-407(2)(d)(ii), the director shall authorize the placement of a delivery prohibition tag identifying a tank:

- (a) for which the certificate of compliance has been revoked in accordance with Section 19-6-414;
- (b) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5);
- (c) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(1)(d); or
- (d) that is a new installation, and has not been issued a certificate of compliance.

(2) For USTs, in accordance with Subsection 19-6-403(1)(b)(i), the director shall authorize the placement of a delivery prohibition tag to be placed on the UST as soon as practicable after the determination is made that a tank does not have:

- (a) spill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);
- (b) overfill prevention equipment required under 40 CFR 280.20(c) or 280.21(d);
- (c) equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D; or
- (d) equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(3) For APSTs, the director shall authorize the placement of a delivery prohibition tag to be placed on the APST as soon as practicable after the determination that the APST was not in service after May 5, 2021.

(4) The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(5) A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under Subsection R311-206-8(5).

(6) The director may issue written approval for a delivery of petroleum to:

- (a) provide ballast for a new tank during installation, or
- (b) allow for the tank tightness test required under Section 19-6-413.

(7) The delivery prohibition tag must remain in place until the director issues:

(a) for tanks that have a tag in place in accordance with Subsection R311-206-8(1):

- (i) a new certificate of compliance for the tank; and
- (ii) written authorization to remove the delivery prohibition tag; or

(b) for tanks that have a tag in place in accordance with Subsection R311-206-8(2):

- (i) written authorization to remove the delivery prohibition tag.

(8) If a delivery prohibition tag is removed without the authorization specified in Subsection R311-206-8(6)(a)(ii) or R311-206-8(6)(b)(i), the PST owner or operator is subject to:

- (a) a re-inspection and any applicable fees; and
- (b) placement of a new delivery prohibition tag on the tank.

#### **R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.**

(1) Owners and operators of PSTs who have voluntarily elected to participate in the EAP may cease participation in the EAP and be exempted from the requirements described in Section R311-206-4 by:

- (a) permanently closing tanks as outlined in 40 CFR 280, subpart G and Rules R311-204 and R311-205; or
- (b) meeting the following requirements:

- (i) demonstrating compliance with Section R311-206-5; and
- (ii) notifying the director in writing at least 30 days before the date of cessation of participation in the EAP, and specifying the date of cessation.

(A) the director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under Section R311-206-5 for other petroleum storage tanks owned or operated by the owner or operator.

(B) the date of cessation of participation in the EAP may occur after the date designated in Subsection R311-206-9(1)(b)(ii) if the owner or operator does not document compliance with Section R311-206-5 by the date originally designated.

(2) prorata refunds will not be given.

(3) For tanks being removed voluntarily from the EAP, the date of cessation of participation in the EAP shall be the date on which coverage under the EAP ends.

(a) subsequent claims for payments from the Petroleum Storage Tank Fund must be made in accordance with Sections 19-6-424 and R311-207-2.

(4) For any facility that participates in the EAP and is sold to a company with facilities that do not participate in the EAP, the date of termination of coverage is the closing date for the real estate transaction.

(a) the purchaser shall provide documentation of the closing date to the director within 30 days of closing.

#### **R311-206-10. Participation in the Environmental Assurance Program After a Period of Non-participation.**

(1) Owners and operators not participating in the EAP must, before any subsequent participation in the EAP, meet the following requirements:



- (a) notify the director of the intent to participate in the EAP;
- (b) comply with the requirements of Subsection 19-6-428(3); and
- (c) meet the requirements of Section R311-206-3 to qualify for a new certificate of compliance.

**R311-206-11. Environmental Assurance Fee Rebate.**

(1) To meet the requirements of Subsection 19-6-410.5(5)(d), for each UST Facility participating in the EAP, a risk value will be calculated according to the "Environmental Assurance Program Risk Factor Table and Calculation," which is incorporated by reference.

(a) the table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(2) The risk value for each facility participating in the EAP shall be:

- (a) calculated on a facility basis;
- (b) valid for the calendar year;
- (c) based on the facility characteristics as of December 15 of the prior calendar year; and
- (d) determined, at sites with mixed equipment, by considering the highest risk-valued petroleum storage tank system component for each risk factor.

(3) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

- (a) meet the requirements for secondary containment in 40 CFR 280.20; and
- (b) meet one of the following:
  - (i) use an interstitial sensor and documentation of monthly interstitial monitoring; or
  - (ii) documentation of monthly visual checks of a brine-filled interstitial space.

(4) To qualify as secondarily contained for purposes of risk calculation, piping shall:

- (a) meet the requirements for secondary containment outlined in 40 CFR 280.20; and
- (b) meet one of the following:
  - (i) maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or
  - (ii) use an interstitial monitoring method not listed in Subsection R311-206-11(4)(b)(i).

(5) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps, and under-dispenser containment shall be double-walled with monthly documentation of monitoring of the space between the walls.

(6) Each facility that participates in the EAP may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table," dated June 2, 2014, which is incorporated by reference.

(7) A facility that begins participation in the EAP after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the EAP.

(8) The Environmental Assurance Fee rebate does not apply to APSTs until July 1, 2026 as per Subsections 19-6-410.5(5)(d) and 19-6-410.5(5)(e).

**KEY: petroleum, underground storage tanks**

**Date of Last Change: 2023|September 27, 2022|**

**Notice of Continuation: March 8, 2022**

**Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-410.5; 19-6-428**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R313-16-230</b>	<b>Filing ID:</b> <b>55240</b>
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**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Waste Management and Radiation Control, Radiation	
<b>Room number:</b>	2nd Floor	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144880	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4880	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Tom Ball	801-536-0251	tball@utah.gov

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

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

R313-16-230. Registration of Radiation Machines

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

As currently written, Subsection R313-16-230(3)(a) requires that a person wanting to register an ionizing radiation producing machine must use form DWMRC-10. The Division of Waste Management and Radiation Control, Radiation (Division) is in the process of developing an online, electronic system for the submission of a registration application that will be more efficient and more convenient for applicants. The current rule does not allow for the electronic process.

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

Subsection R313-16-230(3)(a) is being revised to provide flexibility to applicants by allowing applications to be submitted electronically or by using the paper form. Additionally, formatting errors are being corrected and minor wording changes are being made in this rule.



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

It is not anticipated that there will be any cost or savings to the state budget due to this amended rule because the Division will still review and process registration applications no matter what method is used to submit them.

Any state government agencies that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

**B) Local governments:**

It is not anticipated that there will be any cost to local governments because of this amended rule.

Any local governments that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

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

It is not anticipated that there will be any cost to small businesses because of this amended rule.

Small businesses that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

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

It is not anticipated that there will be any cost to non-small businesses because of this amended rule.

Non-small businesses that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

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

It is not anticipated that there will be any cost to persons other than small businesses, non-small businesses, state, or local governments because of this amended rule.

Persons other than small businesses, non-small businesses, state, or local governments that need to submit an application to register or renew a registration that submit the application electronically may see a small savings due to not having to print, fill out, and mail a paper form, however; the Division does not have enough data to calculate these savings and it is believed that any savings will be minimal.

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

There will not be any additional compliance costs for affected persons because of this amended rule.

Persons who need to register an ionizing radiation producing machine must still submit an application. This amended rule simply provides options for the submission of the application.

**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**

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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

<b>Total Fiscal Benefits</b>	\$0	\$0	\$0
<b>Net Fiscal Benefits</b>	\$0	\$0	\$0
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>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:</b>
Section 19-3-104

**Public Notice Information**

<b>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.)</b>	
<b>A) Comments will be accepted until:</b>	03/31/2023

<b>9. This rule change MAY become effective on:</b>	04/17/2023
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**

<b>Agency head or designee and title:</b>	Douglas J. Hansen, Director	<b>Date:</b>	02/09/2023
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**R313. Environmental Quality, Waste Management and Radiation Control, Radiation.****R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.****R313-16-230. Registration of Radiation Machines.**

(1) Ionizing radiation producing machines not exempted by Section R313-16-220 shall be registered with the [D]director.

(2) Registration shall be required annually in accordance with a schedule established by the [D]director.

(3) Registration [for the facility] is achieved when the [D]director receives the following:

(a) a current and complete application for registration of radiation machines submitted electronically through the division's website or using form DWMRC-10[for registration of radiation machines]; and

(b) annual registration fees.

(4) Registration for the current fiscal year shall be acknowledged by the [D]director through receipts for the remittance of the registration fee.

**KEY:** x-rays, inspections

**Date of Last Change:** 2023[December 13, 2021]

**Notice of Continuation:** April 8, 2021

**Authorizing, and Implemented or Interpreted Law:** 19-3-104

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R392-100</b>	<b>Filing ID:</b>	<b>55242</b>
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**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Room number:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R392-100. Food Service Sanitation
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the Utah Rulewriting Manual. As required, the amendments to Rule R392-100 provide technical and conforming changes in accordance with the Utah Rulewriting Manual.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The amendments to Rule R392-100 provide technical and conforming changes throughout this rule and remove superfluous and repetitive language. Other sections have

been changed to improve clarity and ease of use, and to reflect current food sanitation and safety practices.

In Section R392-100-2:

1) added definitions for: agritourism food establishment, Department, Local health department, Microenterprise home kitchen; and

2) amended definition for: food truck, and Ice cream truck.

The Department of Health and Human Services (Department) made numerous nonsubstantive revisions including the rewording and restructuring of these sections to simplify the language and to clarify the intent to align more closely with the authorizing statute and the Utah Rulewriting Manual. The Department made substantive amendments are described below within each section description.

Section R392-100-3 was amended to exempt certain food service establishments from this rule and to direct the reader to the applicable rule for each exempted food service establishment type.

In Section R392-100-4:

1) this section was amended to allow toilet rooms to be constructed without exterior doors under certain conditions; and

2) this section was amended to allow dogs in the outdoor patio areas of a food establishment under certain conditions.

#### Fiscal Information

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

###### A) State budget:

No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures at the Department of Health and Human Services.

###### B) Local governments:

No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures at the local health departments.

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

Allowing toilet rooms to be constructed without exterior doors under certain conditions will result in an inestimable fiscal benefit to certain newly constructed food establishments. There are no other fiscal impact because the amendments are reflective of current food safety and sanitation practices.

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

Allowing toilet rooms to be constructed without exterior doors under certain conditions will result in an inestimable fiscal benefit to certain newly constructed food establishments. There are no other fiscal impact because the amendments are reflective of current food safety and sanitation practices.

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

There are no fiscal impact to persons because the amendments are reflective of current food safety and sanitation practices.

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

The proposed amendments will not result in additional compliance costs because the proposed substantive amendments are less restrictive than the currently enacted rule.

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

##### Regulatory Impact Table

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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

<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>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:</b>		
Section 26-15-2	Section 26-1-30	Section 26-1-5

**Public Notice Information**

<b>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.)</b>	
<b>A) Comments will be accepted until:</b>	03/31/2023

<b>9. This rule change MAY become effective on:</b>	04/07/2023
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**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	01/28/2023
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**R392. Health and Human Services, Disease Control and Prevention, Environmental Services.****R392-100. Food Service Sanitation.****~~R392-100 1. Authority and Purpose.~~**

~~(1) This rule is authorized by Sections 26-1-5, 26-1-30, and 26-15-2.~~

~~(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.~~

**R392-100 2. Definitions.**

~~(1) "Food Cart" means a cart:~~  
~~(a) that is not motorized; and~~  
~~(b) that a vendor, standing outside of the frame of the cart, uses to prepare, sell, or serve food or beverages for immediate human consumption.~~

~~(2)(a) "Food Truck" means a fully encased food service establishment:~~

~~(i) on a motor vehicle or on a trailer that a motor vehicle pulls to transport; and~~

~~(ii) from which a food truck vendor, standing within the frame of the vehicle, prepares, cooks, sells, or serves food or beverages for immediate human consumption.~~

~~(b) "Food Truck" does not include a food cart or an ice cream truck.~~

~~(3) "Ice Cream Truck" means a fully encased food service establishment:~~

~~(a) on a motor vehicle or on a trailer that a motor vehicle pulls to transport;~~

~~(b) from which a vendor, from within the frame of the vehicle, serves prepackaged ice cream products;~~

~~(c) that attracts patrons by traveling through a residential area and signaling the truck's presence in the area, including by playing music; and~~

~~(d) that may stop the vehicle to serve packaged ice cream products at the signal of a patron.~~

~~(4) "Recovery residence" has the same meaning as provided in Subsection 62A-2-101(33)(a).~~

~~(5) "Residential support" has the same meaning as provided in Subsection 62A-2-101(35).~~

~~(6) "Residential treatment" has the same meaning as provided in Subsection 62A-2-101(36).~~

**R392-100 3. General Requirements.**

~~(1) The following food service establishments are exempt from the requirements of this rule:~~

~~(a) Food trucks as defined in this rule and in Rule R392-102;~~

~~(b) Certified or licensed child care facilities, including residences, that provide care for 16 or fewer children; and~~

~~(c) Residential treatment programs, residential support programs, and recovery residences as defined in this rule and in Rule R392-110.~~

~~(2) Food trucks shall abide by the requirements of Rule R392-102.~~

~~(3) Certified or licensed childcare facilities, including residences, that provide care for 16 or fewer children; residential treatment programs; residential support programs; and recovery residences shall abide by the requirements of Rule R392-110.~~

**R392-100 4. Incorporation by Reference.**

~~(1) The Department incorporates by reference the following:~~

~~(a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342.~~

~~(b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Model Code"); Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments set out below.~~

~~(2) Exceptions to Incorporation. The following subsections of the Model Code are not incorporated into this rule:~~

~~(a) Subsection 5-203.15(B);~~

~~(b) Subsections 5-402.11(B), (C) and (D);~~

~~(c) Subsections 8-302.14(D) and (E);~~

~~(d) Subsection 8-304.11(K);~~

~~(e) Annex 1, Section 8-905.40;~~

~~(f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);~~

## NOTICES OF PROPOSED RULES

~~(g) Annex 1, Section 8 909.20;~~  
~~(h) Annex 1, Subparagraphs 8 911.10(B)(1) and (2).~~  
~~(3) The following amendments and additions to the Model Code shall be made. All other incorporated provisions remain the same.~~

~~(a) In section 1 201.10(B), Terms Defined, a specified definition is added or the definitions or its specific subsections set out in the definition are amended as follows:~~

~~(i) Core Item(1) is amended to read:~~

~~"(1) 'Core Item' also referred to as 'non-critical' means a provision in the Model Code that is not designated as a Priority Item or a Priority Foundation Item."~~

~~(ii) Food Establishment(2) is amended to add paragraph (C) to read:~~

~~"(2)(c) Catering operation which is a business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, the client's guests and/or customers at a different location. A catering operation may cook or perform final preparation of food at the service location. A catering operation does not include routine services offered at the same location, or meal that are individually purchased with the exception of cash bars."~~

~~(iii) A definition of Potentially Hazardous Food is added to read:~~

~~"Potentially Hazardous Food means the same as Time/Temperature Control for Safety Food."~~

~~(iv) Priority Item(1) is amended to read:~~

~~"(1) 'Priority Item' also referred to as 'critical 1' means a provision in the Model Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with food-borne illness or injury and there is no provision that more directly controls the hazard."~~

~~(v) Priority Foundation Item(1) is amended to read:~~

~~"(1) 'Priority Foundation Item' also referred to as 'critical 2' means a provision in the Model Code whose application supports, facilitates or enables one or more Priority Items."~~

~~(b) After section 2 102.12, a new section is added to read: "2 102.13 Food Employee Training. Food managers shall be trained and certified as required under Chapter 26 15a, UCA and R392 101. Food employees shall be trained in food safety as required under Section 26 15 5 and shall hold a valid food handler's card issued by a local health department."~~

~~(c) Paragraph 3 201.16(A) is amended to read:~~

~~"(A) Except as specified in paragraph (B) of this section, mushroom species picked in the wild shall not be offered for sale or service by a food establishment."~~

~~(d) Section 3 501.17 is amended to include additional paragraph (H):~~

~~"(H) A date marking system that meets the criteria stated in paragraph (A) of this section shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date:~~

~~(1) before which food must be used as specified in paragraph (A) or this section; or~~

~~(2) be the date of Day 1."~~

~~(e) Subparagraph 3 501.19(B)(2) is amended to read:~~

~~"(2) Only one time marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either:~~

~~(a) the time food is removed from temperature control; or~~

~~(b) the time before which the food shall be cooked and served at any temperature if ready to eat, or discarded."~~

~~(f) After Section 4 204 123 a new section is added to read: "4 204.124 Restraint of Pressurized Containers.~~

~~Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."~~

~~(g) Section 5 101.12, shall be amended to add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."~~

~~(h) Section 5 202.13 is deleted and replaced to read:~~

~~"(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch).~~

~~(B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, and air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."~~

~~(i) Paragraph 5 203.15(A) is amended to read:~~

~~"(A) If not provided with an air gap as specified under Section 5 202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed upstream from a carbonating device and downstream from any eopper in the water supply."~~

~~(j) Paragraph 5 402.11(A) is amended to read:~~

~~"(A) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed."~~

~~(k) Section 8 103.10 Modifications and Waivers is amended to read:~~

~~"(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8 103.11 in its records for the food establishment.~~

~~(B) A copy of the variance or waiver issued by the regulatory authority and the documentation required in section 8 103.11 shall be provided to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.~~

~~(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."~~

~~(l) Section 8 103.11 is amended to add paragraph (D) to read:~~

~~"(D) In addition, a variance from section 3 301.11 may be issued only when:~~

~~(1) the variance is limited to a specific task or work station;~~

~~(2) the applicant has demonstrated good cause why section 3 301.11 cannot be met;~~

~~(3) suitable utensils are used to the fullest extent possible with ready to eat foods in the rest of the establishment; and~~

~~(4) the applicant can demonstrate active managerial control of this risk factor at all times."~~

~~(m) Paragraph 8 302.14(C) is amended to read:~~

\_\_\_\_\_ "A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

\_\_\_\_\_ (n) Paragraph 8 304.10(A) is amended to read:

\_\_\_\_\_ "(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

\_\_\_\_\_ (o) Paragraph 8 401.10(A) is amended to read:

\_\_\_\_\_ "(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."

\_\_\_\_\_ (p) Subparagraph 8 401.10(B)(2) is amended to read:

\_\_\_\_\_ "(2) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or"

\_\_\_\_\_ (q) Section 8 501.10 is amended to read:

\_\_\_\_\_ "(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

\_\_\_\_\_ (C) Meeting reporting requirements under Communicable Disease Rule R386 702 and Injury Reporting Rule R386 703."

\_\_\_\_\_ (r) Annex 1, Section 8 601.10 is amended to read:

\_\_\_\_\_ "Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

\_\_\_\_\_ (s) Annex 1, Section 8 801.30 is amended to read:

\_\_\_\_\_ "Service is effective at the time the notice is served or when service is made as specified in Paragraph 8 801 20(B)."

\_\_\_\_\_ (t) Annex 1, Section 8 903.10 is amended to read:

\_\_\_\_\_ "8 903.10 Impoundment of Adulterated Food Products Authorized:

\_\_\_\_\_ (A) The impoundment of adulterated food is authorized under Section 26 15 9, UCA.

\_\_\_\_\_ (B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

\_\_\_\_\_ (C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

\_\_\_\_\_ (D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

\_\_\_\_\_ (E) Within the limits set in paragraphs (B), (C), and (D) of this section, the regulatory authority may impound, by use of a hold order, molluscan shellfish that are not tagged or labeled according to Paragraph 3 202.18(A) of this code. Other actions may be taken in accordance with Paragraph 3 202.18(B) of this code."

\_\_\_\_\_ (u) Annex 1, Section 8 903.60 is amended to read:

\_\_\_\_\_ "The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8 402.11."

\_\_\_\_\_ (v) Annex 1, Section 8 903.90 is amended to read:

\_\_\_\_\_ "The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

\_\_\_\_\_ (w) Annex 1 Section 8 904.30 heading is amended to read:

\_\_\_\_\_ "8 904.30 Contents of the Summary Suspension Notice."

\_\_\_\_\_ (x) Annex 1, Paragraph 8 905.10(A) is amended to read:

\_\_\_\_\_ "(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to

respond may result in license suspension, license revocation, or other administrative penalties."

\_\_\_\_\_ (y) Annex 1, Section 8 905.20 is amended to read:

\_\_\_\_\_ "A response to a hearing notice or a request for a hearing as specified in section 8 905.10 shall be in written form and contain the following:

\_\_\_\_\_ (A) Response to a notice of hearing must include:

\_\_\_\_\_ (1) An admission or denial of each allegation of fact;

\_\_\_\_\_ (2) A statement as to whether the respondent waives the right to a hearing;

\_\_\_\_\_ (3) A statement of defense, mitigation, or explanation concerning all claims; and

\_\_\_\_\_ (4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

\_\_\_\_\_ (B) A request for hearing must include:

\_\_\_\_\_ (1) A statement of the issues of fact specified in section 8 905.30 paragraph (B) for which a hearing is requested; and

\_\_\_\_\_ (2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

\_\_\_\_\_ (C) Witnesses In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

\_\_\_\_\_ (D) Legal Representation Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

\_\_\_\_\_ (z) Annex 1, Subparagraph 8 905.50(A)(1) is amended to read:

\_\_\_\_\_ "(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:"

\_\_\_\_\_ (aa) Annex 1, Subparagraph 8 905.50(A)(2) is amended to read:

\_\_\_\_\_ "(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8 905.10(C) or for matters as determined necessary by the regulatory authority."

\_\_\_\_\_ (ab) Annex 1, Section 8 905.60 heading is amended to read:

\_\_\_\_\_ "8 905.60 Notice of Hearing Contents."

\_\_\_\_\_ (ac) Annex 1, Section 8 905.80 heading is amended to read:

\_\_\_\_\_ "8 905.80 Expeditious and Impartial Hearing."

\_\_\_\_\_ (ad) Annex 1, Section 8 905.90 heading is amended to read:

\_\_\_\_\_ "8 905.90 Confidentiality of Hearing and Proceedings."

\_\_\_\_\_ (ae) Annex 1, Paragraph 8 905.90(A) is amended to read:

\_\_\_\_\_ "(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

\_\_\_\_\_ (af) Amend section 8 906.30 paragraph (B) to read:

\_\_\_\_\_ "(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

\_\_\_\_\_ (ag) Annex 1, Section 8 907.60 is amended to read:

\_\_\_\_\_ "Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

\_\_\_\_\_ (ah) Annex 1, Section 8 908.20 is amended to read:



~~"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."~~

~~(ai) Annex 1, Subparagraphs(B)(1) and (2) are deleted and Paragraph 8-911.10(B) is amended to read:~~

~~"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6, UCA."~~

~~(aj) Annex 1, Section 8-913.10 headline is amended to read:~~

~~"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."~~

~~(ak) Annex 1, Paragraph 8-913.10(B) is amended to read:~~

~~"In addition to any criminal fines and sentences imposed as specified in Paragraph 8-911.10, or to being enjoined as specified in Paragraph 8-912.10, a person who violates a provision of this code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition, or limitation of a permit issued as specified in Paragraphs 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding \$5,000."~~

~~(al) Annex 1, Section 8-913.10 is amended to add the paragraph (D) to read:~~

~~"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."~~

#### **R392-100-5. Construction Standards.**

~~(1) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the requirements of Title 15A, State Construction and Fire Codes Act.]~~

#### **R392-100-1. Authority and Purpose.**

~~(1) Sections 26-1-5, 26-1-30, and 26-15-2 authorize this rule.~~

~~(2) The purpose of this rule is to safeguard public health and provide consumers with food that is safe, unadulterated, and honestly presented by:~~

~~(a) setting standards for management, personnel, food operations, equipment, and facilities; and~~

~~(b) providing conditions for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension.~~

#### **R392-100-2. Definitions.**

~~(1) "Agritourism food establishment" has the same meaning as defined in Section 26-15b-102.~~

~~(2) "Department" means the Utah Department of Health and Human Services.~~

~~(3) "FDA Food Code" or "Food Code" means the version of U.S. Public Health Service, Food and Drug Administration, Model Food Code as incorporated by reference with exceptions and amendments in this rule.~~

~~(4) "Food Cart" has the same meaning as defined in Section 11-56-102.~~

~~(5)(a) "Food Truck" has the same meaning as defined in Section 11-56-102.~~

~~(6) "Ice Cream Truck" has the same meaning as defined in Section 11-56-102.~~

~~(7) "Local health department" has the same meaning as defined in Section 26A-1-102.~~

~~(8) "Microenterprise home kitchen" has the same meaning as defined in Section 26-15c-102.~~

~~(9) "Recovery residence" has the same meaning as defined in Subsection 62A-2-101(33)(a).~~

~~(10) "Residential support" has the same meaning as defined in Subsection 62A-2-101(35).~~

~~(11) "Residential treatment" has the same meaning as defined in Subsection 62A-2-101(36).~~

#### **R392-100-3. General Requirements.**

~~(1) The following food service establishments are exempt from the requirements of this rule:~~

~~(a) a food truck;~~

~~(b) a certified or licensed child care facility, including a residence, that provides care for 16 or fewer children;~~

~~(c) a residential treatment program, residential support program, or recovery residence, as defined in this rule and in Rule R392-110, that provides a 24-hour group living environment for between four and 16 individuals unrelated to the owner or provider;~~

~~(d) an agritourism food establishment; and~~

~~(e) a microenterprise home kitchen.~~

~~(2) A food truck operator shall comply with the requirements of Rule R392-102, Food Truck Sanitation.~~

~~(3) Certified or licensed childcare facilities, including residences, that provide care for 16 or fewer children; residential treatment programs; residential support programs; and recovery residences providing a 24-hour group living environment for between four and 16 individuals unrelated to the owner or provider shall comply with the requirements of Rule R392-110, Food Service Sanitation in Residential Care Facilities.~~

~~(4) An agritourism food establishment operator shall comply with the requirements of Rule R392-105, Agritourism Food Establishment Sanitation.~~

~~(5) A microenterprise home kitchen shall comply with the requirements of Rule R392-106, Microenterprise Home Kitchen Sanitation.~~

#### **R392-100-4. Incorporation by Reference.**

~~(1) The Department incorporates by reference the following:~~

~~(a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342; and~~

~~(b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Food Code"), Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments as established in Subsection R392-100-4(2).~~

~~(2) The following subparts of the Food Code are not incorporated into this rule:~~

~~(a) Subpart 5-203.15(B);~~

~~(b) Subparts 5-402.11(B), (C) and (D);~~

~~(c) Subparts 8-302.14(D) and (E);~~

~~(d) Subpart 8-304.11(K);~~

~~(e) Annex 1, Subpart 8-905.40;~~

~~(f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);~~

~~(g) Annex 1, Subpart 8-909-20; and~~

~~(h) Annex 1, Subparagraphs 8-911.10(B)(1) and (2).~~

~~(3)(a) This rule incorporates by reference Subpart 1-201.10(B) of the Food Code.:~~

~~(i) "Core Item(1)" is changed to read, "Core Item' also referred to as "non-critical" means a provision in the Food Code that is not designated as a Priority Item or a Priority Foundation Item;~~



(ii) "Food Establishment(2)" is changed to add Paragraph (c) to read:

"(2)(c) A catering operation that is a licensed business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, or the client's guests or customers at a different location. A catering operation may cook or perform final preparation of food at the service location. A catering operation does not include routine services offered at the same location, or a meal that is individually purchased with the exception of cash bars."

(iii) "Food Establishment(3)" is changed to add Subparagraph (h), (i), (j), and (k) to read:

"(3)(h) an agritourism food establishment

(3)(i) a food truck;

(3)(j) a microenterprise home kitchen

(3)(k) a certified or licensed childcare facility, including a residence, that provides care for 16 or fewer children; a residential treatment program; a residential support program; and recovery residence providing a 24-hour group living environment for between four and 16 individuals unrelated to the owner or provider"

(iv) A definition of "Potentially Hazardous Food" is added to read:

"Potentially Hazardous Food' means the same as 'Time/Temperature Control for Safety Food.'

(v) "Priority Item(1)" is changed to read:

"Priority Item' also referred to as 'critical 1' means a provision in the Food Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no provision that more directly controls the hazard."

(vi) "Priority Foundation Item(1)" is changed to read:

"Priority Foundation Item' also referred to as 'critical 2' means a provision in the Food Code whose application supports, facilitates or enables one or more priority items."

(b) After Subpart 2-102.12 of the Food Code, a new subpart is added to read:

"2-102.13 Food Employee Training. The person in charge shall obtain training and certification as required under Chapter 26-15a, and Rule R392-101. Food employees shall obtain training in food safety as required under Section 26-15-5 and Rule R392-103, Food Handler Training and Certificate."

(c) Paragraph 3-201.16(A) of the Food Code is changed to read:

"Except as specified in Paragraph (B), mushroom species picked in the wild shall not be offered for sale or service by a food establishment."

(d) Subpart 3-501.17 of the Food Code is changed to include additional Paragraph (H):

"(H) A date marking system that meets the criteria stated in Paragraph (A) shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date:

(A) before which food must be used as specified in Paragraph (A); or

(B) be the date of Day 1."

(e) Subparagraph 3-501.19(B)(2) of the Food Code is changed to read:

"Only one time-marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either:

(a) the time food is removed from temperature control; or

(b) the time before which the food shall be cooked and served at any temperature if ready-to-eat, or discarded."

(f) Paragraph 3-603.11(A) of the Food Code is changed to read:

"(A) Except as specified in Paragraphs 3-401.11(C) and 3401.11(D)(4), and under Paragraph 3-801.11(C), if an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in Paragraphs (B) and (C) using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means."

(g) After Subpart 4-204.123 of the Food Code a new subpart is added to read:

"4-204.124 Restraint of Pressurized Containers. Carbon dioxide, helium, or other similar pressurized containers shall be restrained or secured to prevent the tanks from toppling."

(h) Subpart 5-101.12 of the Food Code is changed to add:

"The process shall be in accordance with the American Water Works Association (AWWA) C651-2015 for disinfection and testing."

(i) Subpart 5-202.13 of the Food Code is deleted and replaced to read:

"(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch); and

(B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, and air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."

(j) Subpart 5-203.14 of the Food Code is changed to read:

"(A) a plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached, by:

(1) providing an air gap as specified under Subpart 5-202.13; or

(2) installing an approved backflow prevention device as specified under Subpart 5-202.14; and

(B) Each chemical dispenser shall connect to a separate dedicated water supply line, and not a sink faucet."

(k) Paragraph 5-203.15(A) of the Food Code is changed to read:

"(A) If not provided with an air gap as specified under Subpart 5-202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed downstream from any copper in the water supply and upstream from any:

(i) carbonated beverage dispenser;

(ii) coffee machine; or

(iii) noncarbonated drink dispenser."

NOTICES OF PROPOSED RULES

(l) Paragraph 5-402.11(A) of the Food Code is changed to read:

"(A) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed."

(m) Subpart 6-202.14 of the Food Code is changed to read:  
"6-202.14 Toilet Rooms, Enclosed. A toilet room shall be completely enclosed and provided with a solid self-closing door, except where a toilet room:

(A) is located outside a food establishment;

(B) does not open directly into the food establishment such as a toilet room that is provided in a shopping mall; or

(C) does not open directly into the food preparation area, food service area, or a hallway leading directly into a food preparation or food service area."

(n) Paragraph 6-501.115(B) is changed to read:

"(B) Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:

(1) edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(2) patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(3) In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

(4) Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

(a) effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

(b) condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(c) dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.

(5) In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals; and

(6) Dogs other than service animals or patrol dogs in the outdoor patio areas of a food establishment if:

(a) a separate entrance is provided from the outside of the food establishment to the outdoor patio to ensure that a dog will have direct access to the patio without entering the interior food preparation, storage, sales, display, or dining areas of the food establishment;

(b) a dog is not allowed within eight feet of any entrance to an interior area of the food establishment, except as necessary to enter or exit the patio;

(c) signs are conspicuously posted at the entrance of the food establishment and patio to notify patrons that dogs may be on the premises;

(i) The signs shall state: "Notice to patrons, dogs may be on the premises but are restricted to the outdoor patio. Dog owners are responsible for keeping their animal under control at all times."

(ii) Signs shall be at least 8" x 10" in size, and the lettering shall be high contrast and at least 5/8" in height.

(d) doors equipped with self-closing devices are provided at all entrances to the outdoor patio from the interior of the food establishment;

(e) no food preparation is done in the outdoor patio area, except that a beverage glass may be filled on the patio from a pitcher or other container that has been filled or otherwise prepared inside the food establishment;

(f) the outdoor patio area is continuously maintained free of visible dog hair and other dog related wastes or debris;

(g) while on duty, wait staff, servers, or food employees do not care for or handle a dog that may be present;

(h) a dog is kept on a leash and remains in the control of the patron while on the outdoor patio;

(i) a dog is wearing a collar or harness with a rabies tag attached to it;

(j) a dog is not allowed on a chair, table, countertop, or similar surface in the outdoor patio area; and

(k) a dog does not have contact with any of the food establishment's condiments, equipment, or reusable utensils."

(o) Subpart 8-103.10 Modifications and Waivers is changed to read:

"(A) The local health department may grant a variance by modifying or waiving the requirements of FDA Food Code if in the opinion of the local health department a health hazard or nuisance will not result from the variance. If a variance is granted, the local health department shall retain the information specified under Subpart 8-103.11 in its records for the food establishment.

(B) A copy of any variance or waiver issued by the local health department and the documentation required in Subpart 8-103.11 shall be provided to the Department, Environmental Sanitation Program within five working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health department jurisdiction in the state shall be approved by the Department before issuance."

(p) Subpart 8-103.11 is changed to add Paragraph (D) to read:

"(D) In addition, a variance from Subpart 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or workstation;

(2) the applicant has demonstrated good cause why Subpart 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active managerial control of this risk factor at all times."

(q) Paragraph 8-302.14(C) is changed to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(r) Paragraph 8-304.10(A) is changed to read:

"(A) Upon request, the local health department shall provide a copy of Rule R392-100 according to the policy of the local health department."

(s) Subparagraph 8-401.10(B)(2) is changed to read:

"(2) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction."

(t) Subpart 8-501.10 is changed to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

(u) Annex 1, Subpart 8-601.10 is changed to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

(v) Annex 1, Subpart 8-801.30 is changed to read:

"Service is effective when the notice is served or when service is made as specified in Paragraph 8-801-20(B)."

(w) Annex 1, Subpart 8-903.10 is changed to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9.

(B) The local health department may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(C) Upon five days' notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

(D) If the local health department has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the local health department may remove the food that is subject to the hold order to a place of safekeeping.

(E) Within the limits set in Paragraphs (B), (C), and (D), the local health department may impound, by use of a hold order, molluscan shellfish that are not tagged or labeled according to Paragraph 3-202.18(A) of FDA Food Code. Other actions may be taken in accordance with Paragraph 3-202.18(B) of Food Code."

(x) Annex 1, Subpart 8-903.60 is changed to read:

"The local health department may examine, sample, and test food to determine its compliance with Food Code in Subpart 8-402.11."

(y) Annex 1, Subpart 8-903.90 is changed to read:

"The local health department shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

(z) Annex 1 Subpart 8-904.30 heading is changed to read, 8-904.30 Contents of the Summary Suspension Notice.

(aa) Annex 1, Paragraph 8-905.10(A) is changed to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."

(ab) Annex 1, Subpart 8-905.20 is changed to read:

"A response to a hearing notice or a request for a hearing as specified in Subpart 8-905.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all claims made by the local health department.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in Subpart 8-905.30 Paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

(ac) Annex 1, Subparagraph 8-905.50(A)(1) is changed to read:

"(1) Except as provided in Paragraph (B) of this Subpart, within 5 calendar days after receiving a written request for an appeal hearing from:"

(ad) Annex 1, Subparagraph 8-905.50(A)(2) is changed to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in Subpart 8-905.10(C) or for matters as determined necessary by the local health department."

(ae) Annex 1, Subpart 8-905.60 heading is changed to read:

"8-905.60 Notice of Hearing Contents."

(af) Annex 1, Subpart 8-905.80 heading is changed to read:

"8-905.80 Expeditious and Impartial Hearing."

(ag) Annex 1, Subpart 8-905.90 heading is changed to read:

"8-905.90 Confidentiality of Hearing and Proceedings."

(ah) Annex 1, Paragraph 8-905.90(A) is changed to read:

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

(ai) Subpart 8-906.30 Paragraph (B) is changed to read:

"(B) Unless a party appeals to the head of the local health department within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer."

(aj) Annex 1, Subpart 8-907.60 is changed to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party before the hearing as ordered by the hearing officer."

(ak) Annex 1, Subpart 8-908.20 is changed to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

(al) Annex 1, Subparagraphs(B)(1) and (2) are deleted and Paragraph 8-911.10(B) is changed to read:

"(B) Any person who violates this rule may be assessed a civil penalty as provided in Section 26-23-6."

(am) Annex 1, Subpart 8-913.10 headline is changed to read:

"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

(an) Annex 1, Paragraph 8-913.10(B) is changed to read:

"In addition to any criminal fines and sentences imposed as specified in Paragraph 8-911.10, or to being enjoined as specified in Paragraph 8-912.10, a person who violates a provision of this code,

## NOTICES OF PROPOSED RULES

any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition, or limitation of a permit issued as specified in Paragraphs 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding \$5,000."

(ao) Annex 1, Subpart 8-913.10 is changed to add Paragraph (D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

### **R392-100-5. Construction Standards.**

The food establishment shall be designed, constructed, maintained, and operated to meet the requirements of Title 15A, State Construction and Fire Codes Act.

**KEY:** public health, food services, sanitation

**Date of Last Change:** 2023~~December 12, 2019~~

**Notice of Continuation:** November 1, 2021

**Authorizing, and Implemented or Interpreted Law:** ~~26-1-30(2);~~26-1-5; 26-1-30(23); 26-15-2

### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R392-510</b>	<b>Filing ID:</b> <b>52237</b>
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### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Room number:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov

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

### **General Information**

<b>2. Rule or section catchline:</b>
R392-510. Utah Indoor Clean Air Act
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>

Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the Utah Rulewriting Manual. As required, the amendments to Rule R392-510 provide technical and conforming changes in accordance 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):

The amendments to Rule R392-510 provide technical and conforming changes throughout this rule and remove superfluous and repetitive language. The Department of Health and Human Services (Department) made numerous nonsubstantive revisions including the rewording and restructuring of these sections to simplify the language and to clarify the intent to align more closely with the authorizing statute and the Utah Rulewriting Manual.

The Department created new sections and moved existing provisions from other sections in this rule to improve readability and flow. The Department made substantive amendments as described below within each section description.

Section R392-510-1 was expanded to explain the purpose of this rule. Authorizing statutory references were also revised.

Section R392-510-2 was added to clearly designate areas in which this rule applies.

In Section R392-510-3, added definitions for "Department", "Educational Facility", and "Premises". Amended definition for "local health officer". Also, removed definitions for "Executive Director", "Lighted tobacco", "Nonsmoker", and "Non-tobacco shisha".

Section R392-510-8 was removed because HVAC operation and maintenance requirements are specified in Building Code.

In Section R392-510-13, the requirements of this section were modified from previous Section R392-510-14 Enforcement action by Proprietors.

In Section R392-510-14, a severability clause was added, consistent with other rules managed under Title R392.

### **Fiscal Information**

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

**A) State budget:**

No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures at the Department.

<b>B) Local governments:</b>			
No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures at the local health departments.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures within small businesses.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
No anticipated cost or savings because the substantive changes do not result in a change in current practice or procedures within non-small businesses.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
No anticipated cost or savings because the substantive changes continue to reflect current practice.			
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):			
No anticipated cost or savings because the substantive changes reflect current industry practice.			
<b>G) Regulatory Impact Summary Table</b> (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.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>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:</b>		
Section 26-15-11	Section 26-15-12	

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (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.)	
<b>A) Comments will be accepted until:</b>	03/31/2023

<b>9. This rule change MAY become effective on:</b>	04/07/2023
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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**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/08/2023
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**R392. Health and Human Services, Disease Control and Prevention, Environmental Services.****R392-510. Utah Indoor Clean Air Act.****~~R392-510-1. Authority.~~**

~~(1) This rule is authorized by Sections 26-1-30(2), 26-15-12, and Title 26 Chapter 38.~~

~~(2) This rule does not preempt other restrictions on smoking that are otherwise allowed by law.~~

**R392-510-2. Definitions.**

(1) "Agent" means the person to whom a building owner has delegated the maintenance and care of the building.

(2) "Area" means a three dimensional space.

(3) "Building" means an entire free standing structure enclosed by exterior walls.

(4) "Building owner" means the person(s) who has an ownership interest in any public or private building.

(5) "E cigarette" means any electronic oral device that provides a vapor of nicotine or other substance and which simulates smoking through its use or through inhalation of the device; and includes an oral device that is composed of a heating element, battery, or electronic circuit and marketed, manufactured, distributed, or sold as an e cigarette, e cigar, e pipe, or any other product name or descriptor, if the function of the product meets the definition of an electronic oral device.

(6) "Employer" means any individual, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons.

(7) "Enclosed" means space between a floor and ceiling which is designed to be surrounded on all sides at any time by solid walls, screens, windows or similar structures (exclusive of doors and passageways) which extend from the floor to the ceiling.

(8) "Executive Director" means the Executive Director of the Utah Department of Health or his designee.

(9) "Facility" means any part of a building, or an entire building.

(10) "HVAC system" means the collective components of a heating, ventilation and air conditioning system.

(11) "Lighted Tobacco" means both tobacco that is under self sustained combustion and tobacco that is heated to a point of smoking or vaporizing.

(12) "Local Health Officer" means the director of the jurisdictional local health department as defined in Title 26A, Chapter 1, or his designee.

(13) "Nonsmoker" means a person who has not smoked a tobacco product in the preceding 30 days.

(14) "Non tobacco shisha" means any product that does not contain tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

(15) "Operator" means a person who leases a place from a building owner or controls, operates or supervises a place.

(16) "Place of public access" or "Place" means any enclosed indoor place of business, commerce, banking, financial service, or other service related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the place of public access have general and regular access or which the public uses, including:

- (a) buildings, offices, shops, elevators, or restrooms;
- (b) means of transportation or common carrier waiting rooms;
- (c) restaurants, cafes, or cafeterias;
- (d) taverns as defined in Section 32B-1-102, or cabarets;
- (e) shopping malls, retail stores, grocery stores, or arcades;
- (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas;
- (g) barber shops, hair salons, or laundromats;
- (h) sports or fitness facilities;

- (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any of these;
- (j)(i) any child care facility or program subject to licensure or certification under this title, including those operated in private homes, when any child cared for under that license is present; and
- (ii) any child care, other than child care as defined in Section 26-39-102, that is not subject to licensure or certification under this title, when any child cared for by the provider, other than the child of the provider, is present;
- (k) public or private elementary or secondary school buildings and educational facilities or the property on which those facilities are located;
- (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families;
- (m) any facility rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor;
- (n) any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner operators of the business;
- (o) any area where the proprietor or manager of the area has posted a conspicuous sign stating "no smoking", "thank you for not smoking", or similar statement; and
- (p) a holder of a bar establishment license, as defined in Section 32B-1-102.

(17) "Publicly owned building or office" means any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county, or municipal taxes.

(18) "Shisha" means any product that contains tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

(19) "Smoking" means:

- (a) the possession of any lighted or heated tobacco product in any form;
- (b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or hookah that contains:
  - (i) tobacco or any plant product intended for inhalation;
  - (ii) shisha or non tobacco shisha;
  - (iii) nicotine;
  - (iv) a natural or synthetic tobacco substitute; or
  - (v) a natural or synthetic flavored tobacco product;
- (c) using an e cigarette; or
- (d) using an oral smoking device intended to circumvent the prohibition of smoking in this rule.

(20) "Workplace" means any enclosed space, including a vehicle, in which one or more individuals perform any type of service or labor for consideration of payment under any type of employment relationship. This includes such places wherein individuals gratuitously perform services for which individuals are ordinarily paid.

**R392-510-3. Responsibility for Compliance.**

Where this rule imposes a duty on a building owner, agent, or operator, each is independently responsible to assure compliance and each may be held liable for noncompliance.

**R392-510-4. Proprietor Right to Prohibit Smoking.**

\_\_\_\_\_ (1) The owner, agent or operator of a place may prohibit smoking anywhere on the premises.

\_\_\_\_\_ (2) The owner, agent or operator of a place may also prohibit smoking anywhere outdoors on the premises.

**R392-510-5. Smoking Prohibited Entirely in Places of Public Access and Publicly Owned Buildings and Offices.**

\_\_\_\_\_ (1) Places listed in Section 26-38-2(3)(a) through (p) are places of public access and smoking is prohibited in them except as provided for in Section 26-38-3(2).

\_\_\_\_\_ (2) It is the responsibility of the owner or operator to provide evidence to the local health department upon request that the facility is in compliance with this rule.

**R392-510-6. Requirements for Smoking Permitted Areas.**

\_\_\_\_\_ (1) Any enclosed area where smoking is permitted must be designed and operated to prevent exposure of persons outside the area to tobacco smoke generated in the area.

\_\_\_\_\_ (2) If a lodging facility permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed guest rooms, or if a nursing home, assisted living facility, small health care facility, or hospital with a certified swing bed program permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed private residential sleeping rooms, the facility's air handling system or systems must not allow air from any smoking-allowed area to mix with air in or to be used in:

\_\_\_\_\_ (a) any part of the facility defined as a place of public access in Section 26-38-2(3);

\_\_\_\_\_ (b) another room designated as a non-smoking room; or

\_\_\_\_\_ (c) common areas of the facility, including dining areas, lobby areas and hallways.

\_\_\_\_\_ (d) If an operator of a lodging facility chooses to modify the status of a room from a smoking to a non-smoking room, then the operator shall perform a full deep cleaning of the room. The deep cleaning shall include cleaning of carpets, bedding, drapes, walls, and any other object in the room which absorbs smoking particles or smoking fumes.

**R392-510-7. HVAC System Documentation.**

\_\_\_\_\_ (1) If a building has a smoking permitted area under Section 26-38-3(2), the building owner must obtain and keep on file a signed statement from an air balancing firm certified by the Associated Air Balance Council or the National Environmental Balancing Bureau, or an industrial hygienist certified by the American Board of Industrial Hygiene that the smoking permitted area meets the requirements of Subsections R392-510-6(1). If a building's HVAC System is altered in any way, the building owner must obtain new certification on the system.

\_\_\_\_\_ (2) The building owner must provide the information required in Subsection R392-510-7(1) within three working days upon request from the operator, executive director or local health officer.

\_\_\_\_\_ (3) The operator must provide the information required in Subsection R392-510-7(1) within five working days upon the request of the executive director or local health officer.

\_\_\_\_\_ (4) The building owner must provide the HVAC operation specifications and maintenance guidelines to the HVAC operation and maintenance personnel or contractor. The maintenance guidelines must include the manufacturer's recommended procedures and time lines for maintenance of HVAC system components. If the manufacturer's recommended procedures for operation and

maintenance of the HVAC system are not available, the building owner must obtain and use guidelines developed by a mechanical engineer licensed by the State of Utah who has expertise in the design and evaluation of HVAC systems or by a mechanical contractor licensed by the State of Utah who has expertise in the repair and maintenance of HVAC systems.

\_\_\_\_\_ (5) The building owner must maintain HVAC inspection and maintenance records or logs for the three previous years and must make them available to the operator, executive director or local health officer within three working days of a request.

\_\_\_\_\_ (6) The operator must make the record or logs required in Subsection R392-510-7(5) available to the executive director or local health officer within five working days of a request.

\_\_\_\_\_ (7) The records or logs required in Subsection R392-510-7(5) must include:

\_\_\_\_\_ (a) The specific maintenance and repair action taken, and reasons for actions taken;

\_\_\_\_\_ (b) The name and affiliation of the individual performing the work; and

\_\_\_\_\_ (c) The date of the inspection or maintenance activity.

**R392-510-8. Operation and Maintenance of HVAC Systems.**

\_\_\_\_\_ (1) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) shall identify a person responsible for the operation and maintenance of the HVAC system.

\_\_\_\_\_ (2) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must maintain and operate the HVAC system to meet the requirements of Subsections R392-510-6.

\_\_\_\_\_ (3) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must cause the HVAC system components to be inspected, adjusted, cleaned, and calibrated according to the manufacturer's recommendations, or replaced as specified in the maintenance guidelines required in Subsection R392-510-7(4). The building owner, agent, or operator's experience with the HVAC system may establish that more frequent maintenance activities are required.

\_\_\_\_\_ (4) Visual or olfactory observation is sufficient to determine whether a smoking permitted area meets the requirements of Section R392-510-6.

**R392-510-9. Protection of Air Used for Ventilation.**

\_\_\_\_\_ (1) Smoking is not permitted within 25 feet of any entrance way, exit, open window, or air intake of a building where smoking is prohibited.

\_\_\_\_\_ (2) Ashtrays may be placed near entrances only if they have durable and easily readable signage indicating that the ashtray is provided for convenience only and the area around it is not a smoking area. The sign shall include a reference to the 25-foot prohibition.

\_\_\_\_\_ (3) An employer shall establish a policy to prohibit employee smoking within 25 feet of any entrance way, exit, open window, or air intake of a building where smoking is prohibited.

**R392-510-10. Educational and Cultural Activities Not Exempted.**

\_\_\_\_\_ (1) Educational facilities, as used in the Utah Indoor Clean Air Act, means any facility used for instruction of people, including preschools, elementary and middle schools, junior and senior high schools.

\_\_\_\_\_ (2) Smoking is prohibited in facilities used by, vocational schools, colleges and universities, and any other facility or



educational institution operated by a commercial enterprise or nonprofit entity, including hotel, motel, and convention center rooms, for the purpose of providing academic classroom instruction, trade, craft, computer or other technical or professional training, or instruction in dancing, artistic, musical or other cultural skills as well as all areas supportive of instruction including classrooms, lounges, lecture halls, study areas and libraries.

**~~R392-510-11. Private Dwellings Which Are Places of Employment.~~**

~~(1) A private dwelling is subject to these rules while an individual who does not reside in the dwelling is engaged to perform services in the dwelling on a regular basis is present. This includes situations where an individual performs services such as, but not limited to:~~

- ~~\_\_\_\_\_ (a) domestic services;~~
- ~~\_\_\_\_\_ (b) secretarial services for a home-based business; or~~
- ~~\_\_\_\_\_ (c) bookkeeping services for a home-based business.~~
- ~~(2) In a private dwelling in which a business or service is operated and into which the public enters for purposes related to the business or service smoking is prohibited in the business or service area during hours when the dwelling is open to the public.~~
- ~~(3) A private dwelling in which an individual is employed on a nonregular basis only is not subject to these rules. This includes situations where individuals perform services such as:~~
- ~~\_\_\_\_\_ (a) baby-sitting services;~~
- ~~\_\_\_\_\_ (b) trade services for the owner of the dwelling or individuals residing in the dwelling such as those services performed by plumbers, electricians and remodelers;~~
- ~~\_\_\_\_\_ (c) emergency medical services;~~
- ~~\_\_\_\_\_ (d) home health services; and~~
- ~~\_\_\_\_\_ (e) part-time housekeeping services.~~

**~~R392-510-12. Signs and Public Announcements.~~**

~~Signs required in this section must be easily readable and must not be obscured in any way. The words "No Smoking" must be not less than 1.5 inches in height. If the international "No Smoking" symbol is used alone, it must be at least 4 inches in diameter.~~

~~(1) In a place where smoking is prohibited entirely, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted in this establishment" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.~~

~~(2) In a place where smoking is partially allowed, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted except in designated areas" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.~~

~~(3) In a place where smoking is allowed in its entirety, the building owner, agent, or operator must conspicuously post a sign using the words, "This establishment is a smoking area in its entirety" or similar statement.~~

~~(4) The building owner, agent, or operator must post a sign at all smoking permitted areas provided for under Section 26-38-3(2)(a), (b), and (c). The sign must have the words, "smoking permitted" or similar wording and include the international smoking symbol.~~

~~(5) The building owner, agent, or operator must post a sign inside the exit of all smoking permitted areas, if the exit leads to a smoking prohibited area. The sign must have the words, "smoking~~

~~not permitted beyond this point" or similar wording and include the international no-smoking symbol.~~

~~(6) In public lodging facilities that designate guest rooms as smoking allowed, the building owner, agent, or operator must conspicuously post a permanent sign on the smoking-allowed guest room door and meet the requirements of R392-510-6(1) and (2).~~

~~(7) In nursing homes, assisted living facilities, small health care facilities and hospitals with a certified swing bed program that designate private residential sleeping rooms as "smoking allowed," the building owner, agent, or operator must conspicuously post a permanent sign on the door and meet the requirements of R392-510-6(1) and (2).~~

~~(8) The building owner, agent, or operator of an airport terminal, bus station, train station, or similar place must provide announcements on a public address system as often as necessary but not less than four times per hour during the hours that the place is open to the public, as follows:~~

~~(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.~~

~~(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.~~

~~(9) The building owner, agent, or operator of a sports arena, convention center, special events center, concert hall or other similar place must provide announcements on a public address system prior to the beginning of any event, at intermissions, at the conclusion of the event and any other break in the program or event, as follows:~~

~~(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.~~

~~(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.~~

~~(10) The building owner, agent, or operator of a large place, such as an airport, university, hotel or motel, or sports arena may, in writing, request the assistance of the local health officer to establish an effective signage and public announcements plan. The local health officer may cause the plan to be modified at any time to protect nonsmokers from being exposed to tobacco smoke.~~

~~(11) Buildings that are places of worship operated by a religious organization are not required to post signs.~~

~~(12) In a place of public access where the smoking of non-tobacco products is allowed and smoking of tobacco is prohibited, a sign shall be posted indicating that tobacco products may not be smoked.~~

**~~R392-510-13. Discrimination.~~**

~~An employer may not discriminate or take any adverse action against an employee or applicant because that person has sought enforcement of the provisions of Title 26, Chapter 38, Rule R392-510, the smoking policy of the workplace or otherwise protests the smoking of others.~~

**~~R392-510-14. Enforcement action by Proprietors.~~**

~~An owner, agent, or employee of the owner of a place where smoking is prohibited by this rule who observes a person smoking in apparent violation of this rule shall request the person to stop smoking. If the person fails to comply, the proprietor, agent, or employee shall ask the person to leave the premises.]~~

**R392-510-1. Authority and Purpose.**

(1) Sections 26-15-11 and 26-15-12 authorize this rule.  
 (2) The purpose of this rule is to implement the provisions of Title 26, Chapter 38, Utah Indoor Clean Air Act.

**R392-510-2. Applicability.**

(1) This rule applies to any enclosed indoor place of public access and to publicly owned buildings and offices, except as described in Subsection (2).  
 (2) Only Section R392-510-7, Section R392-510-12, and Subsection R392-510-11(7) of this rule apply to the following:  
 (a) Native American ceremony as specified in Section 26-38-3.5; and  
 (b) Areas where smoking is permitted by Subsection 26-38-3(2).

**R392-510-3. Definitions.**

For this rule:

(1) "Agent" means the person to whom a building owner has delegated the maintenance and care of the building.  
 (2) "Area" means a three-dimensional space.  
 (3) "Building" means an entire free-standing structure enclosed by exterior walls.  
 (4) "Building owner" means the individual who has an ownership interest in any public or private building.  
 (5) "Department" means the Utah Department of Health and Human Services.  
 (6) "Educational facility" means any facility used for instruction of people, including a:  
 (a) preschool;  
 (b) elementary school;  
 (c) middle school;  
 (d) junior high school; or  
 (e) senior high school.  
 (7) "Employer" means any individual, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such persons.  
 (8) "Enclosed" means space between a floor and ceiling that is designed to be surrounded on each side at any time by solid walls, screens, windows, or similar structures, exclusive of doors and passageways, which extend from the floor to the ceiling.  
 (9) "Heating, Ventilation, and Air Conditioning system" or "HVAC system" means the collective components of a heating, ventilation, and air conditioning system.  
 (10) "Local Health Officer" means the director of the jurisdictional local health department, or a designated representative.  
 (11) "Operator" means a person who leases a place of public access from a building owner or controls, operates, or supervises a place.  
 (12) "Place of public access" has the same meaning as provided in Subsection 26-38-2(3).  
 (13) "Premises" means any lot, parcel, or plot of land, including any buildings or structure.  
 (14) "Public lodging facility" means a place that is maintained, advertised, offered, used, or kept to provide temporary lodging for the general public, including a hotel, motel, and bed and breakfast lodging facility.  
 (15) "Publicly owned building" or "office" has the same meaning as provided in Section 26-38-2.

(16) "Shisha" has the same meaning as provided in Section 26-38-2.

(17) "Smoking" means:

(a) the possession of any lighted or heated tobacco product in any form;  
 (b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or hookah that contains:  
 (i) tobacco or any plant product intended for inhalation;  
 (ii) shisha or non-tobacco shisha;  
 (iii) nicotine;  
 (iv) a natural or synthetic tobacco substitute; or  
 (v) a natural or synthetic flavored tobacco product;  
 (c) using an electronic cigarette; or  
 (d) using an oral smoking device intended to circumvent the prohibition of smoking in this chapter.  
 (18) "Workplace" means any enclosed space, including:  
 (a) a vehicle, in which one or more individuals perform any type of service or labor for consideration of payment under any type of employment relationship; and  
 (b) places wherein individuals voluntarily perform services for which individuals are ordinarily paid.

**R392-510-4. Proprietor Right to Prohibit Smoking.**

The building owner, agent, or operator of a place of public access may prohibit smoking anywhere on the premises.

**R392-510-5. Smoking Prohibition.**

(1) Except for areas where smoking is permitted by Subsection 26-38-3(2), smoking is prohibited in places of public access and publicly owned buildings and offices.  
 (2) Upon request, the building owner, agent, or operator shall provide evidence to the local health officer that the facility is in compliance with this rule.

**R392-510-6. Requirements for Smoking Permitted Areas.**

(1) Any enclosed area where smoking is permitted must be designed and operated to prevent exposure of persons outside the area to tobacco smoke generated in the area.  
 (2) A building's HVAC system may not allow air from any smoking-permitted area to mix with air in or to be used in:  
 (a) any part of the facility defined as a place of public access;  
 (b) another room designated as a non-smoking room; or  
 (c) any common area of the facility, including dining areas, lobby areas, and hallways.  
 (3) If an operator of a public lodging facility chooses to modify the status of a guest room from a smoking to a non-smoking guest room, then the operator shall perform a full deep cleaning of the guest room, which shall include cleaning of:  
 (a) carpets;  
 (b) bedding;  
 (c) drapes;  
 (d) walls; and  
 (e) any other object in the room that may have absorbed smoke particles or fumes.  
 (4) Visual or olfactory observation is sufficient to determine whether a smoking-permitted area meets the requirements of this section.

**R392-510-7. HVAC System Documentation.**

(1) In an area where smoking is permitted as specified in Subsection 26-38-3(2), the building owner shall:

(a) obtain and keep on file a signed statement from an air balancing firm certified by the Associated Air Balance Council or an industrial hygienist certified by the American Board of Industrial Hygiene that the smoking permitted area meets the requirements of Subsection R392-510-6(1); and

(b) obtain new system certification if the HVAC system is altered in any way.

(2) The building owner shall provide the information in Subsection (1) within three working days upon request from the operator, department, or local health officer.

(3) The operator shall provide the information in Subsection (1) within five working days upon the request of the department or local health officer.

#### **R392-510-8. Protection of Air Used for Ventilation.**

(1) Smoking is not permitted within 25 feet of any entranceway, exit, open window, or air intake of a building where smoking is prohibited.

(2) Ashtrays may be placed near entrances if they have durable, and easily readable signage that:

(a) refers to the 25-foot prohibition described in Subsection (1);

(b) indicates that the ashtray is provided for convenience only; and

(c) states that the area around the ashtray is not a smoking area.

(3) An employer shall establish a written policy to prohibit employee smoking within 25 feet of any entranceway, exit, open window, or air intake of a building where smoking is prohibited.

#### **R392-510-9. Smoking Prohibited in Educational Facilities and Cultural Activities.**

(1) Smoking is prohibited in any educational facility used by:

(a) a vocational school, college, or university; and

(b) any educational institution operated by a commercial enterprise or nonprofit entity, including any operating from a hotel, motel, or convention center room.

(2) Smoking is prohibited in any educational facility used to provide academic classroom instruction in:

(a) a trade, craft, computer, or other technical or professional training;

(b) dance, art, music, or other cultural skill; and

(3) Smoking is prohibited in each area of an educational facility that is supportive of instruction, including a classroom, lounge, lecture hall, study area, and library.

#### **R392-510-10. Private Dwellings That Are Places of Employment.**

(1) An employer of a business located in a private dwelling shall comply with this rule for any individual who:

(a) does not reside in the dwelling;

(b) is present in the dwelling; and

(c) is employed to perform work services on a regular basis in the dwelling including:

(i) domestic services;

(ii) secretarial services for a home-based business; or

(iii) bookkeeping services for a home-based business.

(2) In a private dwelling in which a business or service is operating, and which the public enters for purposes relating to the business or service, smoking is prohibited in the business or service area during hours when the dwelling is open to the public.

(3) A private dwelling in which an individual is employed on a nonregular basis only to perform services, including baby-sitting, trade service performed by a plumber, electrician or remodeler, emergency medical service, home health service, or part-time housekeeping service, is not subject to this rule.

#### **R392-510-11. Signs and Public Announcements.**

(1) Signs required in this section shall be easily readable and may not be obscured in any way.

(2) The words "No Smoking" shall be at least one inch in height.

(3) If the international "No Smoking" symbol is used alone, it shall be at least four inches in diameter.

(4) In a place where smoking is prohibited entirely, the building owner, agent, or operator shall conspicuously post a sign:

(a) using the words, "No smoking is permitted in this establishment," or a similar statement;

(b) including the international no smoking symbol; and

(c) placed at each entrance or in a position clearly visible on entry into the place of public access.

(5) In a place where smoking is partially allowed, the building owner, agent, or operator shall conspicuously post a sign:

(a) using the words, "No smoking is permitted except in designated areas" or a similar statement;

(b) including the international no smoking symbol; and

(c) placed at each entrance or in a position clearly visible on entry into the place of public access.

(6) In a place where smoking is allowed in its entirety, the building owner, agent, or operator shall conspicuously post a sign using the words, "This establishment is a smoking area in its entirety," or similar statement.

(7) The building owner, agent, or operator shall post a sign:

(a) in each smoking-permitted area described in Subsection 26-38-3(2);

(b) using the words, "smoking permitted" or similar wording; and

(c) including the international smoking symbol.

(8) The building owner, agent, or operator shall post a sign:

(a) inside the exit of each smoking-permitted area, if the exit leads to a smoking-prohibited area;

(b) using the words, "smoking not permitted beyond this point" or similar wording; and

(c) including the international no smoking symbol.

(9) In a public lodging facility that designates a public lodging unit as smoking allowed, the building owner, agent, or operator shall conspicuously post:

(a) a permanent sign on the smoking-allowed unit door; and

(b) meet the requirements of Subsection (7).

(10) In a nursing home, assisted living facility, small health care facility, and a hospital with a certified swing-bed program that designates a private residential sleeping room as "smoking allowed," the building owner, agent, or operator shall conspicuously post a permanent sign on the door, and meet the requirements of Subsection (7).

(11) The building owner, agent, or operator of an airport terminal, bus station, train station, or similar place shall provide announcements on a public address system as often as necessary, but not less than four times per hour, during the hours that the place of public access is open as follows:

(a) if smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place of public access.

(b) if smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act allows smoking only in those areas specifically designated for smoking.

(12) The building owner, agent, or operator of a sports arena, convention center, special events center, concert hall or other similar place of public access shall provide announcements on a public address system:

(a) before the beginning of any event;

(b) at intermissions;

(c) at the conclusion of the event; and

(d) any other break in the program or event, as follows:

(i) if smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place of public access; or

(ii) if smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act allows smoking only in those areas specifically designated for smoking.

(13)(a) The building owner, agent, or operator of a large place of public access may request, in writing, the assistance of the local health officer to establish an effective signage and public announcements plan.

(b) The local health officer may require modification of the plan described in Subsection (13) at any time.

(14) Buildings that are places of worship operated by a religious organization are not required to post signs.

#### **R392-510-12. Discrimination.**

An employer may not discriminate against an employee or applicant because that person has protested the smoking of others or sought enforcement of:

(1) Title 26, Chapter 38, Utah Indoor Clean Air Act;

(2) this rule; or

(3) the smoking policy of the workplace.

#### **R392-510-13. Responsibility for Compliance.**

(1) A business owner, agent, operator, or employee of a place of public access, where smoking is prohibited, who observes a person smoking in apparent violation of this rule, shall request the person to stop smoking.

(2) If the person fails to comply, the business owner, agent, operator, or employee shall ask the person to leave the premises.

#### **R392-510-14. Severability.**

If any provision of this rule, or its application to any person or circumstance is declared invalid, the applications of such provisions to other persons or circumstances, and the remainder of this rule shall be given effect without the invalidated provision or application.

**KEY:** public health, indoor air pollution, smoking, ventilation

**Date of Last Change:** 2023~~December 12, 2019~~

**Notice of Continuation:** November 16, 2021

**Authorizing, and Implemented or Interpreted Law:** ~~26-1-30(2); 26-15-1 et seq.; 26-38-1~~26-15-11; 26-15-12

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Rule or Section Number:**

**R432-9**

**Filing ID:**  
**55197**

#### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Family Health and Preparedness, Licensing	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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:**

R432-9. Specialty Hospital - Rehabilitation Construction Rule

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

The purpose of this filing is to modify and replace outdated language and citations in accordance with the Utah Rulewriting Manual standards.

##### **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):**

All changes made to the rule text are nonsubstantive stylistic changes to adhere to the Utah Rulewriting Manual standards.

#### **Fiscal Information**

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

###### **A) State budget:**

State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language with the Utah Rulewriting

Manual standards. None of the changes will result in any fiscal impact to the state.

**B) Local governments:**

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

The Specialty Hospital Standards are regulated by the state health department and not local governments. There will be no change in local business licensing or any other item(s) with which local government is involved. None of the changes will result in any fiscal impact to local governments.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. None of the changes will result in any fiscal impact to small businesses.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. None of the changes will have any fiscal impact on non-small businesses.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. None of the changes will have any fiscal impact on persons other than small businesses, non-small businesses, state or local government.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. None of the changes will result in any fiscal impact 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

**Citation Information**

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

Title 26, Chapter 21		
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**Public Notice Information**

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

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

**A) Comments will be accepted until:** 03/31/2023

**9. This rule change MAY become effective on:** 04/07/2023

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

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	01/12/2023
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#### **R432. Health and Human Services, Family Health and Preparedness, Licensing.**

##### **R432-9. Specialty Hospital - Rehabilitation Construction Rule.** **R432-9-1. Legal Authority.**

This rule is adopted pursuant to Title 26, Chapter 21, [?] Health Care Facility Licensing and Inspection Act.

##### **R432-9-2. Purpose.**

The purpose of this rule is to promote the public health and welfare through the establishment of construction standards for rehabilitation hospitals.

##### **[R432-9-3. General Design Requirements.**

~~R432-4-1 through 22 apply to this rule.]~~

##### **R432-9-[4]3. General Construction Ancillary Support Facilities.**

(1) The licensee shall ensure that the facility is compliant with Rule R432-4[-23 applies] with the following modifications:

([1]a) [C]orridors in patient use areas shall be a minimum eight feet wide[-];

([2]b) [H]andrails [shall comply with the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines and] are located on both sides of hallways and corridors used by patients[-];

([a]c) [F]the top of the rail [shall be]is 34-38 inches above the floor, except for areas serving children and other special care areas[-]; and

([b]d) [E]nds of handrails and grab bars [shall be]are constructed to prevent persons from snagging their clothes.

([3]2) [Standards for the Disabled. A]Any fixtures in [all] toilet and bath[-]room[s] areas, except those in the activities for daily living unit, [shall be]are wheelchair accessible with wheelchair turning space within the room.

~~(4) Plumbing.~~

([a]3) Oxygen and suction systems [shall be]are installed to serve 25% [percent] of [all] patient beds.

([b]a) Installation [shall be]is in accordance with Rule R432-4[-and NFPA 99].

([e]b) Systems serving additional patient beds are optional. ~~(5) Emergency Electrical Service.]~~

([a]4) ~~[An on-site emergency generator shall be provided.]~~The licensee shall ensure an on-site emergency generator is provided and the following services are connected to the emergency generator:

~~[(b) The following services shall be connected to the emergency generator:]~~

~~[(i)a] life safety branch[-, as defined in section 517-32 of the National Electric Code NFPA 70];~~

~~[(ii)b] critical branch[-, as defined in 517-33 of the National Electrical Code NFPA 70];~~

~~[(iii)c] equipment system[-, as defined in section 517-34 of the National Electric Code NFPA 70];~~

~~[(iv)d] telephone;~~

~~[(v)e] nurse call;~~

~~[(vi)f] heating equipment necessary to provide adequate heated space to house [all]any patients under emergency conditions;~~

~~[(vii)g] one duplex convenience outlet in each patient room;~~

~~[(viii)h] one duplex convenience outlet at each nurse station; and~~

~~[(ix)i] duplex convenience outlets in the emergency heated area at a ratio of one for [each]every ten patients.~~

##### **R432-9-[5]4. General Construction, Patient Facilities.**

(1) The licensee shall ensure compliance with the construction requirements listed in[The requirements of] Rule R432-4.[-24 and the requirements of Sections 2.1 and 2.6 of Guidelines for Design and Construction of Health Care Facilities (Guidelines) 2010 edition shall be met except as modified in this rule. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines.] Rule R432-9 supersedes any conflicting requirements of Rule R432-4.

(2) [Other Required Units, Guidelines section 2.6-3.2 is modified to allow p]Psychological services, social services, and vocational services are permitted to share the same office space when the licensee provides evidence in the functional program that the needs of the population served are met in the proposed space arrangement.

(3) The licensee shall ensure that a [R]rehabilitation [N]nursing [U]unit[-, Section 2.6-2.2 is modified as follows] is compliant with the following:

(a) [F]fixtures in patient rooms [shall be]are wheelchair accessible[-];

(b) [P]patient rooms [shall-]contain space for wheelchair storage separate from normal traffic flow areas[-];

(c) [T]toilet room doors [shall-]swing out from the toilet room or [shall be]are double[-]acting[-]; and

(d) [P]patient rooms [shall-]provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 22 inches by 36 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf [shall be]are provided.

(4) The licensee shall ensure [A]a clean workroom or clean holding room [shall be]is provided for preparing patient care items [which]and [shall-]contains a counter, handwashing facilities, and storage facilities. The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supplies[y materials].

(5) The licensee shall ensure [A]a soiled workroom [shall be]is provided and contains[ing] a clinical sink, a sink equipped for handwashing, a work counter, waste receptacles, and a linen receptacle. The work counter and handwashing facilities may be omitted in rooms used only for storage and holding.

(6) [In addition to Guideline Section 2.6-2.2.6.6, t]The licensee shall ensure the medicine preparation room or unit [shall



## NOTICES OF PROPOSED RULES

be]is under visual control of the nursing staff and has[ve] the following:

- (a) a minimum area of 50 square feet[7]; and
- (b) a locking mechanism to prohibit unauthorized access.

(7) The licensee shall ensure e[E]ach nursing unit [shall have]has equipment to provide ice for patient treatment and nourishment.

(a) Ice-making equipment may be located in the clean workroom or at the nourishment station if access is controlled by staff.

(b) Ice intended for human consumption shall be dispensed by self-dispensing ice makers.

(8) The licensee shall ensure y[Y]ard equipment and supply storage areas [shall be]are located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

### ~~R432-9-6. Exclusions from the Guidelines.~~

~~The following sections of the Guidelines do not apply:~~

- ~~(1) Linen services, Section 2.6-5.2.~~
- ~~(2) Patient Storage section 2.6-2.2.2.8(2).]~~

### R432-9-[7]5. Penalties.

The [D]department may assess a civil money penalty of up to \$10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the [Bureau of Licensing]department. The [D]department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow [D]department-approved architectural plans. The [D]department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied before[prior to] licensing agency approval.

**KEY: health care facilities**

**Date of Last Change:** ~~2023~~February 21, 2012]

**Notice of Continuation:** February 28, 2019

**Authorizing, and Implemented or Interpreted Law:** 26-21-5; 26-21-2.1; 26-21-20

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R432-14</b>	<b>Filing ID:</b>	<b>55192</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Family Health and Preparedness, Licensing
<b>Room number:</b>	1st Floor
<b>Building:</b>	MASOB
<b>Street address:</b>	195 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 144103
<b>City, state and zip:</b>	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 or section catchline:

R432-14. Birthing Center Construction Rule

#### 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 modify and replace outdated language with the Utah Rulewriting Manual standards.

#### 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 revisions include more specific language consistent with the Utah Rulewriting Manual standards.

### Fiscal Information

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

##### A) State budget:

State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

##### B) Local governments:

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

The Birthing Center Construction Rule Standards are regulated by the Department of Health and Human Services and not local governments. There will be no change in local business licensing or any other item(s) with



which local government is involved. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

**Regulatory Impact Table**

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

**Citation Information**

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

Title 26, Chapter 21		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	03/31/2023
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**9. This rule change MAY become effective on:**

04/07/2023  
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**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	01/12/2023
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**R432. Health and Human Services, Family Health and Preparedness, Licensing.****R432-14. Birthing Center Construction Rule.****R432-14-1. Legal Authority.**

This rule is ~~adopted pursuant to~~ authorized by Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

**R432-14-2. Purpose.**

This rule provides construction and physical plant standards for birthing centers.

**R432-14-3. General Design Requirements.**

(1) ~~[Birthing centers shall be constructed in accordance with the requirements of]~~ The licensee shall ensure compliance with the construction requirements listed in Rule R432-4 [1 through R432-4-23 and the requirements of section 5.2 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition (Guidelines) and are adopted and incorporated by reference]. Rule R432-14 supersedes any conflicting requirements of Rule R432-4.

(2) The licensee shall ensure [B] birthing centers [shall] consist of at least one, but not more than five birth rooms. Licensure is not required for birthing centers with only one birth room.

(3) The licensee shall ensure [B] birthing rooms and ancillary service areas [shall be] are organized in a contiguous physical arrangement.

(4) The licensee shall ensure [B] birthing centers with [4]four [or]to [5]five birth rooms [shall] comply with Rule R432-4. ~~[NFPA 101, Life Safety Code, Chapter 20, New Ambulatory Health Care Occupancies. Birthing centers with one to three birth rooms shall comply with NFPA 101, Life Safety Code, Chapter 38, New Business Occupancies and NFPA 101 A.3.3.178.3, as indicated in section 5.2.7.1 of the Guidelines.]~~

(5) The licensee shall ensure birthing centers with one to three birth rooms comply with Rule R432-4.

([5]6) A [B] birthing center located contiguous with a general hospital may share: ~~[radiology services, laboratory services, pharmacy services, engineering services, maintenance services, laundry services, housekeeping services, dietary services, and business functions. The owner shall retain in the birthing center a written agreement for the shared services.]~~

- ~~(a) radiology services;~~
- ~~(b) laboratory services;~~
- ~~(c) pharmacy services;~~
- ~~(d) engineering services;~~
- ~~(e) maintenance services;~~
- ~~(f) laundry services;~~
- ~~(g) housekeeping services;~~
- ~~(h) dietary services; and~~
- ~~(i) business functions.~~

(7) The owner shall retain in the birthing center a written agreement for the shared services.

**R432-14-4. General Construction Patient Facilities.**

~~(1) Requirements of section 5.2 of the Guidelines shall be met except as modified in this section.~~

~~(2) When a modification is cited, the modification supersedes conflicting requirements of the Guidelines.]~~

~~([3]1) The licensee shall ensure [T] the facility [shall be] is designed to allow access to service areas and common areas without compromising patient privacy.~~

~~([4]2) The licensee shall ensure [B] birth rooms and service areas [shall be] are grouped to form a physically defined service unit.~~

~~([5]3) The licensee shall ensure [S] spaces [shall be] are provided for each of the required services.~~

~~([6]4) The licensee shall ensure [I] interior finishes, lighting, and furnishings [shall] reflect a residential rather than an institutional setting.~~

~~([7]5) The licensee shall ensure [M] maximum room occupancy [shall be] is one mother and her newborn infant or infants.~~

~~([8]6) The licensee shall ensure [W] windows in a birth room with a sight line [which] that permit[s] observation from the exterior [shall be] are arranged or draped to ensure patient privacy.~~

~~([9]7) The licensee shall ensure [B] birth rooms [shall] provide each patient a wardrobe, closet, or locker, having minimum clearance dimensions of 24 inches by 20 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.~~

~~([10]8) The licensee shall ensure [A] a toilet room with direct access from the birth room [shall be] is accessible. [to each birth room.]~~

(a) The toilet room shall contain a toilet and a lavatory. A shower or tub shall be accessible to each birth room and may be located in the toilet room.

(b) A toilet room may serve two birth rooms.

(c) ~~[All] Each~~ toilet room fixture[s] shall be handicap ~~[ped]-~~ accessible and shall have grab bars ~~[in compliance with ADA/ABA AG].~~

~~([11]9) The licensee shall ensure [N] newborn infant resuscitation equipment, including electrical receptacles, oxygen, and suction [shall be] are immediately available to each birth room in addition to resuscitation equipment provided for the mother. Portable oxygen and suction equipment shall be permitted.~~

~~([12]10) The licensee shall ensure [A] a mechanically exhausted area for storage of facility maintenance materials and equipment [shall be] is provided and may be combined with the environmental services room.~~

~~[(13) Special surgical lighting is not required.]~~

~~([14]11) The licensee shall ensure [A] an examination light [shall be] is readily available in each birth room. Special surgical lighting is not required.~~

~~([15]12) The licensee shall ensure [A] an emergency lighting system is required and [must] includes:~~

- ~~(a) emergency exit signs;~~
- ~~(b) [sufficient] enough lighting to safely exit the building;~~
- and
- ~~(c) an examination light.~~

**[R432-14-5. Excluded Guidelines and Administrative Code.**

~~(1) The following sections of the Guidelines do not apply:~~

- ~~(a) Location, Subsection 5.2-1.3.1.1;~~
- ~~(b) Soiled workroom 5.2-2.6.10.1; and~~
- ~~(c) Soiled holding room 5.2-2.6.10.2;~~
- ~~(d) Ventilation of Health Care Facilities, Part 6.~~

~~(2) The following sections of Administrative Code do not apply:~~

- ~~(a) General construction R432-4-23(5); and~~
- ~~(b) General construction R432-4-23(17).]~~

**R432-14-~~6~~5. Penalties.**

The ~~[D]~~department may assess a civil money penalty of up to \$10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the department~~[Bureau of Licensing]~~. The ~~[D]~~department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow ~~[D]~~department-approved architectural plans. The ~~[D]~~department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied ~~[prior to]~~before licensing agency approval.

**KEY:** health care facilities

**Date of Last Change:** ~~2023~~~~August 26, 2016~~

**Notice of Continuation:** March 21, 2019

**Authorizing, and Implemented or Interpreted Law:** 26-21-5; 26-21-16

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Rule or Section Number:	R432-40	Filing ID: 55251

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Family Health and Preparedness, Licensing	
<b>Room number:</b>	1st Floor	
<b>Building:</b>	Multi-Agency State Office Bldg	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144103	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4103	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Erica Pryor	801-273-2994	ericapryor@utah.gov
Kristi Grimes	385-214-9187	kristigrimes@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R432-40. Long-Term Care Facility Immunizations
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>

The purpose of this amendment is to modify and replace outdated language with the Utah Rulewriting Manual standards.

**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 revisions include more specific language consistent with the Utah Rulewriting Manual standards.

**Fiscal Information**

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

**A) State budget:**

State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

**B) Local governments:**

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

The Long-Term Care Facility Standards are regulated by the Department of Health and Human Services and not local governments. There will be no change in local business licensing or any other item with which local government is involved. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

**Regulatory Impact Table**

Fiscal Cost	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
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Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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

<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

**Citation Information**

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

Title 26, Chapter 21		
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**Public Notice Information**

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

**A) Comments will be accepted until:** 03/31/2023

**9. This rule change MAY become effective on:** 04/07/2023

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**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	01/26/2023
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**R432. Health and Human Services, Family Health and Preparedness, Licensing.**

**R432-40. Long-Term Care Facility Immunizations.**

**[R432-40-1. Legal Authority.**

~~This rule is adopted pursuant to Title 26, Chapter 21.]~~

**R432-40-[2]1. Purpose and Authority.**

~~[Influenza and pneumococcal immunizations are recommended for persons aged 65 years and older and for persons of any age who have medical conditions that place them at high risk for complications of influenza. The purpose of this rule is to require long term care facilities to have policies and procedures in place to protect vulnerable patients and residents from vaccine preventable illnesses.]~~

(1) The purpose of this rule is to require long-term care facility licensees to have policies and procedures in place to protect vulnerable patients and residents from vaccine-preventable illnesses

(2) This rule is adopted pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

**R432-40-~~[3]~~2. Definitions.**

~~[As used in this rule:~~

~~"Long-term care facility" means a nursing care facility, small health care facility, assisted living type I and type II, intermediate care facility for the mentally retarded, and swing bed unit of a general acute care hospital~~

~~"Pneumococcal immunization" means an immunization using the 23-valent pneumococcal polysaccharide vaccine (PPV23).]~~

~~As used in this rule:~~

~~(1) "Long-term care facility" means a nursing care facility, small health care facility, assisted living type I and type II, intermediate care facility for the intellectually disabled; and~~

~~(2) "Pneumococcal vaccination" means use of Advisory Committee on Immunization Practices (ACIP) recommended vaccines to prevent pneumococcal disease, including pneumococcal conjugate vaccines PCV 13, PCV15, or PCV20, or the 23-valent pneumococcal polysaccharide vaccine (PPSV23) administered per the recommendations. Recommendations may be found in the 15-Valent Pneumococcal Conjugate Vaccine and 20-Valent Pneumococcal Conjugate Vaccine Among U.S. Adults: Updated Recommendations of the Advisory Committee on Immunization Practices --- United States, 2022 which is incorporated by reference.~~

**R432-40-~~[4]~~3. Policy, ~~and~~ Procedures, and Employee Training.**

~~(1) Each [long-term health care facility]licensee shall implement written policies and procedures that include:~~

~~(1)a) a comprehensive assessment and immunization program for residents and employees;~~

~~(2)b) how and when to provide the influenza, ~~and~~ ]pneumococcal, and COVID-19 [immunizations]vaccinations;~~

~~(3)c) standing orders from a qualified health care [practitioner]practitioner to ensure residents obtain influenza, ~~and~~ ]pneumococcal, and COVID-19[ immunizations] vaccinations unless exempted as outlined in Section R432-40-4; and~~

~~(4)d) collection and recording of resident-specific immunization history information for each resident admitted to the facility[;].~~

~~(2) The licensee shall ensure that employees responsible for assessing, documenting, and reporting according to this rule complete an online training regarding Rule R432-40, as well as an overview of reporting requirements upon hire.~~

**R432-40-~~[5]~~4. [Immunization]Vaccination Offer and Exemptions.**

~~(1) Each long-term health care facility shall make available to all employees an influenza immunization during the recommended vaccine season. The facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization under their existing health plan coverage. If the employee does not have health plan coverage for influenza immunization, then the facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization at a cost to the employee that is at or below that charged by their local health department.~~

~~(2) Each long-term health care facility shall document circumstances beyond its control that prevent it from providing immunizations, such as non-availability of vaccine. If the facility is unable to obtain the necessary vaccines, it shall provide documentation and request an alternative plan from the local health department or Utah Department of Health.~~

~~(3) The following are exempt from influenza and pneumococcal immunizations:~~

~~(a) a resident, or the resident's responsible person if the resident is unable to act for himself, who has refused the immunization(s) after having been given the opportunity to be immunized and;~~

~~(b) an employee who has refused the immunization(s) after having been given the opportunity to be immunized;~~

~~(c) a resident or employee who has a condition contraindicated for immunization according to the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practice (ACIP) recommendations for influenza vaccine or for pneumococcal vaccine.~~

~~(2) For each resident and employees who is not immunized, the facility shall document in the resident's or employee's respective files the reason for not becoming immunized. The long-term care facility shall annually make influenza and pneumococcal immunizations available to all residents and employees who have claimed an exemption. The long-term care facility shall document each refusal to receive and medical contraindication to influenza and pneumococcal immunizations.]~~

~~(1) Each licensee shall make an influenza immunization available to each employee during the recommended vaccine season.~~

~~(a) The licensee shall be deemed to have made influenza immunization available if the licensee documents that each employee on staff had the opportunity to receive an influenza immunization under their existing health plan coverage.~~

~~(b) If the employee does not have health plan coverage for influenza immunization, then the licensee shall be deemed to have made influenza immunization available if the licensee documents that each employee on staff had the opportunity to receive an influenza immunization at a cost to the employee that is at or below that charged by their local health department.~~

~~(2) Each licensee shall document circumstances beyond its control that prevent it from providing immunizations, such as non-availability of vaccine. If the licensee cannot obtain the necessary vaccines, they shall provide documentation and request an alternative plan from the local health department or Utah Department of Health and Human Services.~~

~~(3) The following are exempt from the influenza and pneumococcal immunizations:~~

~~(a) a resident, or the resident's responsible person if the resident cannot act for themselves, who has refused the immunization after having been given the opportunity to be immunized;~~

~~(b) an employee who has refused the immunization after having been given the opportunity to be immunized; or~~

~~(c) a resident or employee who has a condition contraindicated for immunization according to the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practice recommendations for influenza vaccine or for pneumococcal vaccine.~~

~~(4) For each resident and employee who is not immunized, the licensee shall document in the resident's or employee's file the reason for not becoming immunized.~~

~~(a) The licensee shall make influenza and pneumococcal immunizations annually available to all residents and employees who have claimed an exemption.~~

~~(b) The licensee shall document the following:~~

~~(i) each refusal to receive influenza and pneumococcal immunizations; and~~

~~(ii) each medical contraindication to influenza and pneumococcal immunizations.~~



# NOTICES OF PROPOSED RULES

## R432-40-[6]5. Reporting of Data.

[~~By January 31 of each year, each long-term care facility shall report to the Utah Department of Health the number of residents who have received influenza and pneumococcal immunizations from May 1 to December 31 of the prior year, even if the resident is no longer in the facility.~~]

(1) By April 30 of each year, each licensee shall report to the Department the number of residents who have received influenza, COVID-19, and pneumococcal vaccinations from October 1 of the prior year to March 31 of the reporting year, even if the residents are no longer in the facility.

(2) By April 30 of each year, each licensee shall report to the Department the number of current and past employees who have received influenza and COVID-19 vaccinations from October 1 of the prior year to March 31 of the reporting year.

## R432-40-[7]6. Civil Money Penalty.

The Department may assess up to a \$500 civil money penalty for failure to maintain and report annual [immunization]vaccination data to the [Utah]Department[~~of Health~~], Immunization Program, by[~~January~~] April 30 of each year. The Department may assess up to a \$100 civil money penalty per resident or employee who, for reasons under the control of the facility, does not obtain[~~an~~] appropriate vaccinations[immunization(s)] or if the facility does not have documentation of a refusal or medical contraindication.

**KEY:** health care facilities, vaccinations

**Date of Last Change:** 2023[~~December 19, 2002~~]

**Notice of Continuation:** January 24, 2022

**Authorizing, and Implemented or Interpreted Law:** 26-21

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R432-600</b>	<b>Filing ID:</b> <b>55195</b>
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## Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Family Health and Preparedness, Licensing	
<b>Room number:</b>	1st Floor	
<b>Building:</b>	Multi-Agency State Office Bldg	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144103	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4103	
<b>Contact persons:</b>		
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Erica Pryor	801-273-2994	ericapryor@utah.gov

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

## General Information

### 2. Rule or section catchline:

R432-600. Abortion Clinic Rule

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

This amendment addresses outdated language, terms and citations and aligns with the requirements of the Utah Rulewriting Manual standards.

### 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 addresses outdated language, terms and citations and aligns with the requirements of the Utah Rulewriting Manual standards.

## Fiscal Information

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

#### A) State budget:

State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

#### B) Local governments:

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

The General Health Facilities are regulated by the state and not local governments. There will be no change in local business licensing or any other item(s) with which local government is involved. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

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

Title 26, Chapter 21		
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**Public Notice Information****8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 03/31/2023

**9. This rule change MAY become effective on:** 04/07/2023

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**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	01/12/2023
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## **R432. Health and Human Services, Family Health and Preparedness, Licensing.**

### **R432-600. Abortion Clinic Rule.**

#### **R432-600-1. Legal Authority.**

This rule is ~~[adopted pursuant to]~~ authorized by Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

#### **R432-600-2. Definitions.**

(1) ~~[The terms used in these rules are defined]~~ Definitions in Rule R432-1[3] additionally apply to abortion clinics.

(2) ~~[An "[a]" Abortion [e] Clinic " (Clinic) means a facility, including] or a physician's office [but not including a general acute or a specialty hospital-] that performs abortions. A general acute hospital or a specialty hospital that performs abortions is not an abortion clinic.~~

(3) "Department" means the Department of Health and Human Services.

(4) "Type I Abortion Clinic" is defined in Section 26-21-2.

(5) "Type II Abortion Clinic" is defined in Section 26-21-2.

#### **R432-600-3. Purpose.**

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of abortion clinics for providing safe and effective facilities and services.

#### **R432-600-4. Licensure.**

(1) A license is required to operate an abortion clinic. The licensee ~~[and facility-]~~ shall maintain documentation that they are members in good standing with the National Abortion Federation or the Abortion Care Network, which is required for licensure.

(2) A ~~[n abortion]~~ clinic may be licensed as a Type I ~~[facility-] abortion clinic if the [facility] licensee only performs abortions as defined in Section 76-7-301 during the first trimester of pregnancy.[.]~~

~~[(a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and~~

~~[(b) does not perform abortions, as defined in section 76-7-301, after the first trimester of pregnancy.]~~

(3) A ~~[n abortion]~~ clinic may be licensed as a Type II ~~[facility-] abortion clinic if the licensee [facility-] performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy or after the first trimester of pregnancy.~~

~~[(a) performs abortions, as defined in Section 76-7-301, after the first trimester of pregnancy; or~~

~~[(b) performs abortions, as defined in section 76-7-301, during the first trimester of pregnancy and after the first trimester of pregnancy.]~~

(4) An a[A]bortion clinic[s] licensee[must] shall comply with requirements of Title 76, Chapter 7, Part 3 Abortion.

#### **R432-600-5. Construction.**

(1) Each ~~[facility]~~ licensee shall conform with the requirements of Rule R432-4[1 through R432-4-22, with the exception of R432-4-8(1)(b)].

(2) Each ~~[facility]~~ licensee shall conform to the functional, space, and equipment construction requirements of Rule R432-4, ~~[of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, sections 3.1 and 3.2 with the following exceptions:~~

~~[(a) Section 3.1 6.1.1 Vehicular Drop Off and Pedestrian Entrance is deleted;~~

~~[(b) Section 3.1 7.1.1.1 NFPA 101 is deleted;~~

~~[(c) Section 3.1 7.2.2.1 Corridor Width is deleted;~~

~~[(d) Section 3.1 7.2.2.3(1)(b) is deleted;~~

~~[(e) Section 3.1 8.2.6 Heating Systems and Equipment is deleted;~~

~~[(f) 3.2 6.2.4 Multipurpose Rooms is deleted; and]~~

~~[(g)]~~ [Further modifications or deletion of space and functional requirements may be made with Departmental written approval.] Modifications of space and functional requirements may only be made with department approval.

~~[(3)]~~ [4] A licensee shall ensure that a t[T]reatment room[s shall be] measures a minimum of 110 square feet exclusive of vestibules or cabinets.

#### **R432-600-6. Organization.**

(1) ~~[Each clinic shall be operated by a licensee]~~ A licensee shall operate each clinic. If the licensee is not[other than] a single individual, there shall be an organized functioning governing body to [assure-]ensure accountability.

(2) The licensee shall be responsible for the organization, management, operation, and control of the facility to include the following:-]

~~[(3) Responsibilities shall include at least the following:]~~

(a) ~~[E]comply with [all-]applicable federal, state and local laws, rules, and requirements;~~

(b) ~~[A]adopt and institute by-laws, protocols, policies, and procedures relative to the operation of the clinic;~~

(c) ~~[A]appoint, in writing, a qualified administrator to be responsible for the implementation of facility by-laws, policies and procedures, and for the overall management of the facility;~~

(d) ~~[A]appoint, in writing, a qualified medical director to be responsible for clinical services;~~

(e) ~~[E]establish a quality assurance committee in conjunction with the medical staff;~~

(f) ~~[S]secure contracts for services not provided directly by the clinic;~~

(g) ~~[R]receive and respond to the semi-annual inspection report by the [D]department; and~~

(h) ~~[C]compile statistics on the distribution of the informed consent material as required in Section 76-7-313.~~

#### **R432-600-7. Clinic Protocols, Policies, and Procedures.**

(1) The licensee shall develop and implement written policies and procedures with the medical director and the administrator in accordance with ~~[S]state law.[-including:]~~

(2) The licensee shall ensure that policies and procedures include the following:

(a) ~~[P]patient eligibility criteria;~~

(b) ~~[P]physician competency criteria;~~

(c) ~~[I]informed consent;~~

~~[(d) For Type II Clinics, policy must indicate a limit on the number of weeks within the second trimester of pregnancy during which abortions can be safely performed in the clinic;~~

~~[(e) For Type II Clinics, an emergency treatment transfer plan which shall include:~~

~~[(i) patient acknowledgment of the transfer plan;~~

~~[(ii) notification to the receiving hospital when a patient requires emergency transfer;~~

~~(iii) explanation of how information will be provided to receiving hospital for proper care and treatment of the individual transferred;~~

~~(iv) plan for security and accountability of the personal effects of the individual transferred; and~~

~~(v) mode of transportation for the transfer.~~

~~(f) If an abortion is performed when an unborn child is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that which, in the best medical judgment of the physician, will give the unborn child the best chance of survival. (Refer to Section 76-7-307.)~~

~~(g)d) [P]pre and post counseling;~~

~~(h)e) [C]clinic operational functions;~~

~~(i)f) [P]patient care and patient rights policies;~~

~~(j)g) [A]a quality assurance committee;~~

~~(k)h) [O]ngoing relevant training program for ~~all~~any clinic personnel;~~

~~(l)i) [E]emergency and disaster plans; and~~

~~(m)j) [F]fire evacuation plans.~~

~~(3) The licensee shall ensure a type II abortion clinic policy indicates a limit on the number of weeks within the second trimester of pregnancy when abortions can be safely performed in the clinic.~~

~~(4) The licensee shall ensure a type II abortion clinic emergency treatment transfer plan includes:~~

~~(a) patient acknowledgment of the transfer plan;~~

~~(b) notification to the receiving hospital when a patient requires emergency transfer;~~

~~(c) explanation of how information will be provided to the receiving hospital for proper care and treatment of the individual transferred;~~

~~(d) plan for security and accountability of the personal effects of the individual transferred; and~~

~~(e) mode of transportation for the transfer.~~

~~(5) If an abortion is performed when an unborn child is developed enough to have any reasonable possibility of survival outside its mother's womb, the medical procedure used shall, in the best medical judgment of the physician, give the unborn child the best chance of survival in accordance with Section 76-7-307.~~

#### **R432-600-8. Administrator.**

(1) Each ~~[facility]~~licensee shall designate, in writing, an administrator who shall have ~~[sufficient]enough~~ freedom from other responsibilities to be on the premises of the clinic ~~[a sufficient]enough [number of]~~hours in the business day to permit attention to the management and administration of the facility.

(2) The administrator shall designate a person to act as administrator in ~~[his or her]their~~ absence. This person shall have ~~[sufficient]enough~~ power, authority, and freedom to act in the best interests of patient safety and well-being. It is not the intent to permit a de facto administrator to supplant or replace the designated facility administrator.

(3) ~~The licensee shall ensure [F]the administrator [shall be]is~~ 21 years of age or older.

(4) ~~The licensee shall ensure [F]the administrator [shall be]is~~ experienced in administration and supervision of personnel, and ~~[shall be]is~~ knowledgeable about the medical aspects of abortions to interpret and be conversant in medical protocols.

(5) ~~The licensee shall ensure [F]the administrator's~~ responsibilities ~~[shall be]are~~ included in a written job description.

(6) Responsibilities ~~[shall]include [at least]the following:~~

(a) ~~[D]develop~~ and implement facility policies and procedures;

(b) ~~[M]maintain [an adequate number of]enough~~ qualified and competent staff to meet the needs of clinic patients;

(c) ~~[D]develop~~ clear and complete job descriptions for each position;

(d) ~~[I]implement~~ recommendations made by the quality assurance committee;

(e) ~~[N]otify the [D]department [of Health, Bureau of Health Facility Licensing]within [7]seven~~ days in the event of the death of a patient;

(f) ~~[N]otify~~ appropriate authorities when a reportable communicable disease is diagnosed;

(g) ~~[Administrator will]ensure~~ that a fetal death certificate is filed as required in Section 26-2-14, for each fetal death of 20 weeks gestation or more calculated from the date the last normal menstrual period began to date of delivery; ~~and~~

(h) ~~[R]review [all]any~~ incident and accident reports and document ~~[what]the~~ action ~~[was]taken~~.

#### **R432-600-9. Medical Director.**

(1) The licensee of the abortion clinic shall retain, by formal agreement, a physician to serve as medical director.

(2) The medical director shall meet the following qualifications:

(a) ~~[B]be~~ currently licensed to practice medicine in Utah;

(b) ~~[H]have [sufficient]enough~~ training and expertise in abortion procedures to enable supervision of the scope of service offered by the clinic;

(c) ~~[B]be~~ a diplomat of the American Board of Obstetrics and Gynecology or the American Board of Surgery; or submit evidence to the ~~[D]department~~ that other training and experience will qualify ~~[her or him]them~~ for admission to an examination by either board; or

(d) ~~[B]be~~ certified by the American College of Osteopathic Obstetricians and Gynecologists or the American Board of Osteopathic Surgeons~~[s]~~, or submit evidence to the ~~[D]department~~ that ~~[his]their~~ training and experience qualifies ~~[him or her]them~~ for admission to an examination by the College or Board; ~~and~~

(e) ~~[B]be~~ a member in good standing with the National Abortion Federation or the Abortion Care Network.

(3) The medical director shall have overall responsibility for the administration of medication and treatment delivered in the facility. Applicable laws relating to abortions, professional licensure acts, and clinic protocols shall govern both medical staff and employee performance.

(4) The medical director ~~[shall be]is~~ responsible ~~to[for at least the following]:~~

(a) ~~[To]develop~~ and review facility protocols;

(b) ~~[To]establish~~ competency criteria for staff physicians and personnel, including training in abortion procedures and abortion counseling;

(c) ~~[To]supervise~~ the performance of the medical staff;

(d) ~~[To]serve~~ as a member of the clinic's quality assurance committee;

(e) ~~[To]act~~ as consultant to the director of nursing; ~~and~~

(f) ~~[E]ensure~~ that a physician's report is filed as required in Section 76-7-313~~[s]~~ for each abortion performed.

#### **R432-600-10. Health Surveillance.**

(1) The ~~[Facility]licensee~~ shall establish a personnel health program through written personnel health policies and procedures

~~[which]that [shall-]~~protect the health and safety of personnel and clients.~~[-commensurate with the service offered.]~~

(2) An employee placement health evaluation to include ~~[at least-]~~a health inventory shall be completed when an employee is hired.

(3) The licensee shall ensure [F]the health inventory [shall] obtains ~~[at least-]~~the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases;~~and~~

(b) conditions ~~[which]that~~ may prevent the employee from performing ~~[certain-]~~assigned duties~~[-satisfactorily-]~~;

(4) The licensee shall ensure ~~[E]~~employee health screening and immunization components of a personnel health program[s] ~~[shall be]~~are developed in accordance with Rule R386-702. [Communicable Disease Rules];

(5) The licensee shall ensure [E]employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis ~~[shall be]~~is done in accordance with Rule R388-804, Special Measures for control of [F]tuberculosis[;].

(a) The licensee shall ensure that ~~[all]~~any employees are skin tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis;~~and~~or

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for ~~[all]~~any employee[s] with a known positive reaction to skin tests.

(6) The licensee shall ensure [All]any infections and communicable diseases reportable by law ~~[shall be]~~are reported by the ~~[facility]~~licensee to the local health department in accordance with Section R386-702-2.

#### **R432-600-11. Personnel.**

(1) The ~~[A]~~administrator shall employ ~~[a sufficient number of-]~~enough professional and support staff who are competent to perform their respective duties, services, and functions.

(a) ~~[All]~~Each staff member shall be licensed, certified, or registered as required by the Utah Department of Commerce.

(b) ~~[Copies shall be maintained for Department review that all licenses, registration and certificates are current.]~~The licensee shall maintain current licenses, registration, and certificates for department review.

~~[-(c) Failure to ensure that all personnel are licensed, certified or registered may result in sanctions to the facility license.]~~

(2) ~~[There shall be planned, documented, in service training program held regularly for all facility personnel.]~~The licensee shall plan, provide, and document and regularly hold an in-service training program for facility personnel.

(3) The training program shall address ~~[all]~~any clinic protocols and policies.

(4) ~~[All-]~~Each clinic staff member ~~[personnel-]~~shall have access to the facility's policies and procedures manuals and other information necessary to effectively perform assigned duties and carry out responsibilities.

#### **R432-600-12. Contracts.**

(1) The licensee shall make arrangements for professional and other required services not provided directly by the facility.

(2) If the [facility]licensee contracts for services, there shall be a signed[-]and dated agreement that details [all]any services provided[-] to include:

~~[-(2) The contract shall include:-]~~

(a) ~~[F]~~the effective and expiration dates;

(b) ~~[A]~~a description of goods or services to be provided;~~and~~

(c) ~~[E]~~a copy of the professional license, if applicable.

#### **R432-600-13. Quality Assurance.**

(1) The administrator, in conjunction with the medical ~~[staff]director,~~ shall establish a quality assurance committee and program. This committee shall regularly review the following:~~regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.]~~

(a) clinic operations;

(b) protocols;

(c) policies and procedures;

(d) incident reports;

(e) infection control;

(f) patient care policies; and

(g) safety.

(2) The committee shall include a representative from the clinic administration, a physician, and a nurse.

(3) The committee shall meet at least quarterly and keep minutes of the proceedings. The licensee shall ensure [F]the minutes [shall be]are available for department review.~~[-review by the Department.]~~

(4) The committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

#### **R432-600-14. Emergency and Disaster.**

(1) Each licensee ~~[facility has the responsibility to]~~shall ~~[assure]~~ensure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include ~~[but is not limited-]~~interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator shall be in charge of facility operations during any ~~[significant-]~~emergency or disaster. If not on the premises, the administrator shall make every reasonable effort to get to the facility to relieve subordinates and take charge during the emergency.

(3) The licensee and the administrator shall be responsible for the development of ~~[a]~~an emergency plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters.

(a) ~~[This]~~The licensee shall ensure the emergency plan [shall be]is in writing and [shall be]is distributed or made available to [all]each facility staff member to [assure]ensure prompt and efficient implementation.

(b) ~~[The plan shall be reviewed and updated at least annually by the administrator and the licensee.]~~The administrator and licensee shall review and update the emergency plan at least annually.

(4) The licensee shall ensure [F]the names and telephone numbers of clinic staff, emergency medical personnel, and emergency service systems [shall be]are posted.

(5) The ~~[facility's]~~licensee's emergency plan shall address the following:

(a) ~~[E]~~evacuation of occupants to a safe place within the facility or to another location;

(b) ~~[D]~~delivery of emergency care and services to facility occupants when staff is reduced by an emergency;

(c) ~~[F]the person[-or persons]~~ with decision-making authority for fiscal, medical, and personnel management;

(d) ~~[A]~~an inventory of available personnel, equipment, and supplies and instructions on how to acquire additional assistance;

(e) ~~[A]~~assignment of personnel to specific tasks during an emergency;

(f) ~~[N]~~names and telephone numbers of on-call physicians and staff ~~[shall be available]; and~~

(g) ~~[D]~~documentation of emergency events.

(6) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(a) The licensee shall ensure [F]the evacuation plan [shall identify] evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department and [shall be]are posted throughout the facility.

(b) The licensee shall ensure [F]the written fire emergency plan [shall]includes fire-containment procedures and instructions on how to use the facility alarm systems and signals.

(c) The licensee shall ensure [F]fire drills and documentation [shall be]are conducted in accordance with Section R710-4-3, State of Utah Fire Protection Board. The actual evacuation of patients during a drill is optional.

#### **R432-600-15. Patients' Rights.**

(1) The ~~[clinic]~~licensee shall provide informed consent material ~~[(see Section 76-7-305.5)]~~to any patient or potential patient in accordance with Section 76-7-305.

(2) The licensee shall make w~~[W]~~ritten policies regarding the rights of patients ~~[shall be made]~~available to the patient, public, and the ~~[D]~~department upon request.

(3) Each patient admitted to the facility ~~[shall have]~~has the ~~[following rights]~~right to:

(a) ~~[To]~~be fully informed, ~~[prior to]~~before or at the time of admission and during stay, of these rights and of ~~[all]~~any facility rules that pertain to the patient;

(b) ~~[To]~~be fully informed, ~~[prior to]~~before or at the time of admission and during stay, of services available in the facility and of any charges ~~[for which]~~that the patient may be liable;

(c) ~~[To]~~refuse to participate in experimental research;

(d) ~~[To]~~refuse treatment and to be informed of the medical consequences of such refusal;

(e) ~~[To]~~be assured of confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third-party payment contract; and

(f) ~~[To]~~be treated as an individual with consideration, respect, and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

#### **R432-600-16. General Patient Care Policies.**

~~[(1) Each patient shall be treated as an individual with dignity and respect.]~~

~~[(2)]~~1. Each ~~[clinic]~~licensee shall develop and implement patient care policies to be reviewed annually by the administrator or designee.

(a) The licensee shall ensure [P]patient care policies [shall be]are developed and revised through patient[-]care conferences with [all]any professionals involved in patient care.

(b) The licensee shall ensure [A]admission and discharge policies [shall be]are included in general patient care policies.

~~[(3)]~~2. The ~~[facility]~~licensee shall have a policy to notify next of kin in the event of serious injury to, or death of, the patient.

~~[(4)]~~3. The licensee shall ensure [E]each patient [shall be]is under the care of a physician who is a member of the clinic staff.

#### **R432-600-17. Nursing Services.**

(1) Each ~~[facility]~~licensee shall provide nursing services commensurate with the needs of the patients served.

(2) The licensee shall ensure [All]each non-medical patient service[s] [shall be]is under the general direction of the director of nursing, except as specifically exempted by facility policy.

(3) Each Type II ~~abortion~~ clinic licensee, shall employ and designate in writing a director of nursing who will be responsible for the organization and functioning of the nursing staff and related service.

(a) The director of nursing shall be a registered nurse who has academic or post graduate training acceptable to the medical director.

(b) The director of nursing, in consultation with the medical director, shall plan and direct the delivery of nursing care by nursing staff.

(4) Nursing service personnel shall assist the physician, plan and deliver nursing care, treatments, and procedures commensurate with the patient's needs and clinic protocols.

(5) The ~~[facility]~~licensee shall provide ~~[adequate]~~enough equipment in good working order to meet the needs of patients.

(6) The licensee shall ensure [D]disposable and single-use items [shall be]are properly disposed after use.

#### **R432-600-18. Pharmacy Service.**

(1) ~~[There shall be]~~The licensee shall have written policies and procedures, approved by the medical director and administrator, to govern the acquisition, storage, and disposal of medications.

(2) ~~[There shall be provision for the supply of]~~The licensee shall ensure necessary drugs and biologicals are provided on a prompt and timely basis.

(3) The ~~[clinic]~~licensee shall obtain reference material containing monographs on ~~[all]any~~ drugs used in the facility. The drug monographs shall include: ~~[- generic and brand names, available strengths, dosage forms, indications and side effects, and other pharmacological data.]~~

(a) generic and brand names;

(b) available strengths;

(c) dosage forms;

(d) indications and side effects; and

(e) other pharmacological data.

(4) The licensee shall ensure [All]any medications, solutions, and prescription items [shall be]are kept in a secure, controlled storage area and separate from non-medicine items.

(5) The licensee shall ensure [A]an accessible emergency drug supply [shall be]is maintained in the facility.

(a) Specific drugs and dosages to be included in the emergency drug supply shall be approved by the medical director.

(b) Contents of the emergency drug supply shall be listed on the outside of the container.

(c) The use and regular inventory of the contents shall be documented by nursing staff.

(6) The licensee shall ensure [M]medications stored at room temperature [shall be]are maintained [within]between 59 degrees [-]and 80 degrees [F]Fahrenheit (F) [or between 15 degrees [to]and 30 degrees Celsius (C)]). The licensee shall maintain [R]refrigerated medications [shall be maintained within]between 36 degrees [-]and 46 degrees F [or between 2 degrees [to]and 8 degrees C[)].

## NOTICES OF PROPOSED RULES

(7) The licensee shall ensure [M]medications and other items that require refrigeration [shall be]are stored securely and segregated from food items.

### R432-600-19. Laboratory and Radiology Services.

(1) The [facility]licensee shall [make provisions]provide, as appropriate, for [L]laboratory and [R]radiology services.

(2) [There shall be a valid order, documented in the patients medical record, from a physician or a person licensed to prescribe such services.]A physician or person licensed to prescribe services shall provide a valid order and document it in the patient's medical record.

(3) [Services shall be performed by a qualified licensed provider.]A qualified licensed provider shall perform any services.

(4) If the [facility]licensee provides its own laboratory service, these services shall be performed in compliance with[comply with] Section R432-100-23 in the General Hospital Facility Rules.

(5) If the [facility]licensee provides its own radiology services, these services shall be performed in compliance with[shall comply with] Section R432-100-22.

(6) If laboratory and radiology services are not provided directly, [provision shall be made for such services]these services shall be made available. The licensee shall ensure [R]reports or results [shall be]are reported promptly to the attending physician and documented in the patient's medical record.

### R432-600-20. Anesthesia Services.

The licensee shall ensure [A]anesthesia services provided in the clinic [shall]are performed in compliance with[comply with] the General Hospital Rules Sections R432-100-[15]16 and [Utah Code]76-7-305.

### R432-600-21. Medical Records.

(1) The licensee shall ensure a [M]medical record[s] [shall be]is complete, accurately documented, and systematically organized to facilitate storage and retrieval. The[re] licensee shall have [shall be—]written policies and procedures to accomplish this[ese] purpose[s].

(2) The licensee shall maintain a permanent, individual medical record for each patient.[A permanent individual medical record shall be maintained for each patient.]

(3) The licensee shall ensure [All]any record entries [shall be]are permanent and [capable of being]able to be photocopied. The licensee shall ensure [E]entries [must be]are authenticated [including]with the date, name or identified initials, and title of the person making the entry.

(4) The licensee shall ensure a r[R]ecord[s] [shall be]is kept for [all]each patient[s] admitted or accepted for treatment and care. The licensee shall ensure the [R]record[s] [shall be]is kept current and [shall—]conforms to [good medical and professional practice—]current professional standards based on the service provided to each patient.

(5) The licensee shall ensure [All]a record[s] of a discharged patient[s] [shall be]is completed and filed as soon as possible or within 30 days of discharge.

(6) The licensee shall ensure [E]each patient's medical record [shall—]includes the following:

(a) an admission record including:[An admission record (face sheet) including the patient's name; age; date of admission; name, address, and telephone number of physician and responsible person;]

(i) the patient's name;

(ii) the patient's age;

(iii) date of admission; and

(iv) the name, address, and telephone number of the physician and responsible person;

(b) [R]reports of physical examinations, laboratory tests and [X]x-rays prescribed and completed, including ultrasound reports;

(c) [S]signed and dated physician orders for drugs and treatments;

(d) [S]signed and dated nurse's notes regarding the care of the patient[—The notes] that [shall—]includes vital signs, medications, treatments, and other pertinent information;

(e) [D]discharge summary [which]that contains a brief narrative of conditions and diagnoses of the patient and final disposition;

(f) [T]the pathologist's report of human tissue removed during an abortion; and

(g) [All]any information [indicated in—]required by Section 76-7-313.

(7) The licensee shall ensure [M]medical records [shall be]are retained for at least seven years after the last date of patient care. The licensee shall ensure [R]records of minors [shall be]are retained until the minor reaches age 18 or the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(8) The licensee shall ensure [All—]patient records [shall be]are retained within the clinic upon change of ownership.

(9) [Provision shall be made for filing, safe storage, security, and easy accessibility of medical records—]The licensee shall ensure any medical records shall be filed, secured, safely stored, and be made easily accessible.

(10) Medical record information [shall be]is confidential. The licensee shall ensure [T]there [shall be]are written procedures for the use and removal of medical records and the release of patient information.

(a) Information may be disclosed only to authorized persons in accordance with federal and state laws, and clinic policy.

(b) Requests for information [which]that may identify the patient, [c]including photographs,[s] shall require the written consent of the patient.

### R432-600-22. Housekeeping Services.

(1) The[re] licensee shall provide [shall be adequate]enough housekeeping services to maintain a clean, sanitary, and healthful environment in the facility.

(2) [Written housekeeping policies and procedures shall be developed and implemented by each facility, and reviewed and updated as necessary—]The licensee shall:

(a) develop and implement housekeeping policies and procedures and ensure these policies and procedures are reviewed and updated as necessary;

([3]b) [The facility shall—]employ housekeeping staff to maintain both the exterior and interior of the facility in a safe, clean, and orderly manner[—];

([4]c) ensure that h[H]ousekeeping equipment [shall be]is designed for institutional use and properly maintained[—];

([5]d) prepare c[C]leaning solutions for floors [shall be prepared—]in proper strengths according to the manufacturer's instructions and [be]are checked to [i]ensure that [the—]proper germicidal concentrations are maintained[—]; and

~~[(6)e] [There shall be sufficient number of] ensure there are enough noncombustible trash containers to meet facility needs[-. Lids shall be provided] and provide lids where appropriate.~~

~~[(7)3] The licensee shall ensure that any [S]storage area[s] containing cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials, [shall be stored in a -]is locked [area-]to prevent unauthorized access. A [T]toilet room[s] [shall]may not be used [as]for storage.[- places.]~~

#### **R432-600-23. Laundry Services.**

~~(1) Each [facility]licensee shall [have provisions for storage and processing of]store and process clean and soiled linen as required for patient care and in accordance with the requirements of this subsection.~~

~~(2) Processing may be done within the facility, in a separate building or in a commercial or shared laundry.~~

~~(3) Each [facility]licensee shall develop and implement policies and procedures relevant to operation of the laundry.~~

~~(4) The licensee shall ensure that clean linen is:[Clean linen shall be stored, handled, and transported in a manner to prevent contamination.~~

~~\_\_\_\_\_ (a) Clean linen shall be stored in clean ventilated closets, rooms, or alcoves used only for that purpose.~~

~~\_\_\_\_\_ (b) Clean linen shall be covered if stored in alcoves and transported through the facility.~~

~~\_\_\_\_\_ (c) Clean linen from a commercial laundry shall be delivered to a designated clean area in a manner that prevents contamination.~~

~~\_\_\_\_\_ (d) Linens shall be maintained in good condition.~~

~~\_\_\_\_\_ (e) A supply of clean washcloths and towels shall be provided and available to staff to meet the care needs of patients.]~~

~~\_\_\_\_\_ (a) stored, handled, and transported in a manner to prevent contamination;~~

~~\_\_\_\_\_ (b) stored in clean, ventilated closets, rooms, or alcoves used only for that purpose;~~

~~\_\_\_\_\_ (c) covered if stored in alcoves and transported through the facility;~~

~~\_\_\_\_\_ (d) delivered to a designated clean area in a manner that prevents contamination, if provided by a commercial laundry; and~~

~~\_\_\_\_\_ (e) maintained in good condition.~~

~~(5) The licensee shall provide a supply of clean washcloths and towels available to staff to meet the care needs of patients.~~

~~[(5)6] The licensee shall ensure that soiled linen is:[Soiled linen shall be handled, stored and processed in a manner that will prevent the spread of infections.~~

~~\_\_\_\_\_ (a) Soiled linen shall be sorted in a separate room by methods affording protection from contamination, according to facility policy and applicable rules.~~

~~\_\_\_\_\_ (b) Soiled linen shall be stored and transported in a closed container which prevents airborne contamination of corridors, areas occupied by patients, and precludes cross contamination of clean linens.]~~

~~\_\_\_\_\_ (a) handled, stored, and processed in a manner that will prevent the spread of infections;~~

~~\_\_\_\_\_ (b) sorted in a separate room by methods that offer protection from contamination, according to facility policy and applicable rules; and~~

~~\_\_\_\_\_ (c) stored and transported in a closed container that prevents airborne contamination of corridors, areas occupied by patients, and precludes cross contamination of clean linens.~~

~~[(6)7] The licensee shall maintain [L]aundry chutes [shall be maintained-]in a clean and sanitary state.~~

#### **R432-600-24. Maintenance Services.**

~~(1) The licensee shall ensure there is[There shall be] adequate maintenance service to ensure that the facility, equipment, and grounds are maintained in a clean and sanitary condition and in good repair[at all times], and in accordance with any manufacturer specifications for the safety and well-being of patients, staff, and visitors.~~

~~(2) The administrator shall employ or contract with a person qualified by experience and training to be in charge of facility maintenance.~~

~~(3) The [facility]licensee shall develop and implement a written maintenance program, including preventive maintenance, to ensure continued operation and sanitary practices throughout the facility.~~

~~(4) [All-]The licensee shall ensure the following:[buildings, fixtures, equipment and spaces shall be maintained in operable conditions.]~~

~~\_\_\_\_\_ (a) buildings, fixtures, equipment, and spaces are maintained in operable condition;~~

~~[(5)b] [A]a pest control program [shall be]is conducted to ensure the facility is free from vermin and rodents[-];~~

~~[(6)c] [E]equipment used in the clinic [shall be]is approved by Underwriter's Laboratory and meet [all]any applicable United States Code, Title 69, Sections 651-678, Utah Occupational Safety and Health Act requirements in effect at the time of purchase[-];~~

~~[(7)d] [E]electrical systems including appliances, cords, equipment, call lights, and switches [shall be]are maintained to guarantee safe functioning and compliance with the National Electrical Code[-]; and~~

~~[(8)e] [There shall be-]regular inspections[-] are scheduled to clean or replace [all]any filters installed in heating, air conditioning, and ventilation systems, to maintain the systems in operating condition.~~

#### **R432-600-25. Emergency Electric Service.**

~~(1) The [clinic]licensee shall [make provision]ensure there is [for-]emergency electrical power to provide lighting and power to critical areas essential for patient safety in the event of an interruption of normal electrical power service.~~

~~(2) The method utilized for emergency electrical power is subject to [D]departmental review and approval.~~

~~(3) The licensee shall provide[There shall be provision for] emergency exit lighting.[- according to NFPA 101-]~~

~~(4) The licensee shall ensure the following:[Flashlights shall be available for emergency use by staff.]~~

~~\_\_\_\_\_ (a) flashlights are available for emergency use by staff;~~

~~[(5)b] [All]any emergency electrical power systems [shall be]are maintained in operating condition and tested as follows:~~

~~\_\_\_\_\_ (a)i [E]emergency generators [shall be]are tested[-in accordance with NFPA 99-]; and~~

~~\_\_\_\_\_ (b)ii [F]transfer switches and battery-operated equipment shall be functionally tested every 30 days and load tested at least annually, for 90 minutes.~~

~~[(6)5] The licensee shall maintain, for review, a[A-] written record of inspection, performance, test period, and repair of the emergency electrical system[-shall be maintained] on the premises[for review].~~

#### **R432-600-26. Storage and Disposal of Solid Wastes.**

~~The licensee shall provide [F]facilities and equipment [shall be provided-]for the sanitary storage and treatment or disposal of [all]any categories of waste, including hazardous and infectious~~

## NOTICES OF PROPOSED RULES

wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department, ~~having jurisdiction.~~

### R432-600-27. Oxygen.

(1) If oxygen is utilized the licensee shall ensure safe handling and storage of oxygen. ~~Provision shall be made for safe handling and storage of oxygen according to the NFPA 101, Life Safety Code and referenced NFPA standards.~~

(2) The licensee shall ensure that piped oxygen systems [shall be] are tested and installed in accordance with NFPA 99, and a written report is filed with the department as follows: ~~(3) A written report shall be filed with the Utah Department of Health as follows:~~

(a) ~~[U]~~ upon completion of initial piped oxygen system installation;

(b) ~~[W]~~ when ~~[ever]~~ changes are made to a system; and

(c) ~~[W]~~ when ~~[ever]~~ the integrity of the system has been breached.

### R432-600-28. Lighting.

(1) The licensee shall ensure ~~[A]~~ at least 30 foot-candles of light ~~[shall]~~ illuminates reading, bed level patient care, ~~[(bed level)]~~ and working areas in patient treatment areas and not less than 20 foot-candles of light ~~[shall be]~~ are provided in the rest of the room.

(2) ~~[All]~~ The licensee shall ensure any accessible storeroom, stairway, ramp, exit, and entrance area ~~[s shall be]~~ is illuminated by at least 20 foot-candles of light at floor level.

(3) ~~[All]~~ The licensee shall ensure any corridor ~~[s shall be]~~ are illuminated with a minimum of 20 foot-candles of light at floor level.

(4) The licensee shall ensure any of [O]ther area[s shall be] is provided with the following minimum foot-candles of light at working surfaces:

(a) ~~[O]~~ operating room[s] 50 ~~[F]~~ foot-candles;

(b) ~~[M]~~ medication preparation area[s] 50 foot-candles;

(c) ~~[C]~~ charting area[s] 50 foot-candles;

(d) ~~[R]~~ reading room[s] 50 foot-candles;

(e) ~~[L]~~ laundry area[s] 20 foot-candles; and

(f) ~~[B]~~ bath and shower room[s] 20 foot-candles.

### R432-600-29. Water Supply.

~~(1) Plumbing and drainage facilities shall be maintained in compliance with Utah Plumbing Code.~~

~~(2) Backflow prevention devices shall be maintained in operating condition and tested when required by the Utah Plumbing Code and Utah Public Drinking Water Regulations.]~~

~~(3) 1~~ The licensee shall ensure ~~[H]~~ hot water temperature controls ~~[shall]~~ automatically regulate temperatures of hot water delivered to plumbing fixtures used by patients. The ~~[facility]~~ licensee shall maintain hot water that is delivered to patient care areas at temperature between 105 degrees and 120 degrees F.

~~(4) 2~~ The licensee shall ensure ~~[F]~~ there ~~[shall be]~~ are grab bars at each toilet, bathtub, and shower used by patients.

~~(5) Toilet, hand washing facilities, shall be maintained in operating condition and in the number and types specified in construction requirements.]~~

### R432-600-30. Smoking Policy.

The licensee shall ensure ~~[F]~~ the smoking policy ~~[shall]~~ is compliant ~~[comply]~~ with the ~~["]~~ Utah Clean Air Act~~["]~~, Title 26, Chapter 38~~], and Section 20.7.4 of the Life Safety Code].~~

### R432-600-31. Penalties.

Any person who violates ~~[any provision of]~~ this rule may be subject to the penalties enumerated in Sections 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

### KEY: health care facilities

Date of Last Change: 2023~~September 13, 2017~~

Notice of Continuation: September 1, 2020

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-6; 26-21-16

## NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Rule or Section Number: R590-229

Filing ID: 55232

## Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

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

## General Information

### 2. Rule or section catchline:

R590-229. Annuity Disclosure

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

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.



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

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, remove the Enforcement Date (the old R590-229-9) section, and update the Severability (the new R590-229-7) section to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

#### Fiscal Information

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

**A) State budget:**

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

**B) Local governments:**

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

**G) 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

#### Citation Information

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

Section 31A-2-201	Section 31A-22-425	
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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.)

<b>A) Comments will be accepted until:</b>	03/31/2023
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<b>9. This rule change MAY become effective on:</b>	04/07/2023
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**

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	02/08/2023
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**R590. Insurance, Administration.****R590-229. Annuity Disclosure.****R590-229-1. Authority.**

This rule is promulgated ~~[pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for buyer's guides and disclosures and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A]by the commissioner pursuant to Sections 31A-2-201 and 31A-22-425.~~

**R590-229-2. [Purpose.**

~~The purpose of this rule is to:~~  
~~(1) provide standards for the disclosure of minimum information about annuity contracts to protect consumers by specifying:~~  
~~(a) the minimum information that must be disclosed; and~~  
~~(b) the method for disclosing it in connection with the sale of annuity contracts; and~~  
~~(2) foster consumer education by ensuring that purchasers of annuity contracts understand certain basic features of annuity contracts.~~

**R590-229-3. [Purpose and Scope.**

~~(1) The purpose of this rule is to provide a standard for the disclosure of information in connection with the sale of an annuity contract to protect a consumer and foster consumer education.~~  
~~(2) This rule applies to an insurer when offering an individual [and]or group annuity [contracts and certificates]contract or certificate except:~~  
~~(a) a registered or non-registered variable [annuities]annuity or other registered product[s];~~  
~~[(b)(i) annuities used to fund;](b) a structured settlement annuity;~~  
~~(c) a funding agreement; or~~  
~~(d) an annuity used to fund:~~  
~~[(A)](i) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);~~  
~~[(B)](ii) a plan described by [Internal Revenue Code (IRC) Sections]Section 401(a), 401(k), or 403(b) of the Internal Revenue Code where the plan is established or maintained by an employer;~~  
~~[(C)](iii) a government or church plan defined in [IRC Section 414 or]Section 414, Internal Revenue Code;~~  
~~(iv) a deferred compensation plan [or]of a state[or], a local government, or a tax[-]exempt organization under [IRC]Section 457, Internal Revenue Code; or~~

~~[(D)](v) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.~~

~~[(ii)](3) Notwithstanding Subsection [(1)(b)(i) of this section](2)(d), this rule [shall apply to annuities]applies to an annuity used to fund a plan or arrangement that:~~

~~(a) is funded [solely]only by contributions an employee elects to make [whether]on a pre-tax or after-tax basis; and~~

~~(b) where there is [a]direct solicitation of an individual employee by a producer for the purchase of an annuity contract[.As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement; and~~

~~(c) structured settlement annuities; and~~

~~(d) funding agreements].~~

~~[(2) The](4) An immediate or deferred annuity that does not contain a nonguaranteed element is exempt from the disclosure document requirement[s] of this rule[ do not apply to immediate and deferred annuities that contain no nonguaranteed elements].~~

**[R590-229-4. Incorporation by Reference.**

~~The following Buyer's Guides are hereby incorporated by reference within this rule:~~

~~(1) "Buyer's Guide for Deferred Annuities" dated 2013, as adopted by and available from the National Association of Insurance Commissioners;~~

~~(2) "Buyer's Guide for Deferred Annuities - Fixed" dated 2013, as adopted by and available from the National Association of Insurance Commissioners; and~~

~~(3) "Buyer's Guide for Deferred Annuities - Variable" dated 2013 as adopted by and available from the National Association of Insurance Commissioners.]~~

**R590-229-[5]3. Definitions.**

~~[In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule]Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~

~~(1) "Buyer's [Guide]guide" means a document [which]that contains, and is limited to, the language contained in the "Buyer's Guide for Deferred Annuities," [dated 2013, the]Buyer's Guide for Deferred Annuities - Fixed, [dated 2013, and the]and "Buyer's Guide for Deferred Annuities - Variable" [dated 2013]as adopted and periodically amended by the NAIC.~~

~~(2) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.~~

~~(3)(a) "Determinable element[s]" means [elements that are]an element derived from a process[es] or method[s] that [are]is guaranteed at issue and not subject to company discretion, but where the value[s] or amount[s] cannot be determined until some point after issue.[These elements include the premiums, credited interest rates with any applicable bonus, benefits, values, non interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue.]~~

~~(b) An element is considered determinable if all [of]the underlying elements that go into its calculation are either guaranteed or determinable.~~

~~[(4) "Disclosure document" means the document described in Subsection 6(2) of this rule.]~~

(4)(a) "Direct solicitation" means a personalized solicitation to a specific individual through an insurer or producer that is not a direct-response solicitation.

(b) "Direct solicitation" does not include a group meeting held by a producer solely educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual.

(5) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mail, telephone, the internet, or other mass communication media.

(6) "Disclosure document" means a document that describes, outlines, and specifies the required information to be provided to a prospective applicant.

~~(5)~~(7) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at a future date[s] in amounts that are not based on a mortality or morbidity ~~(contingencies)~~ contingency.

~~(4)~~(8) "Generic name" means a short title ~~[descriptive of the]~~ that describes the premium and benefit patterns of an annuity contract, ~~[being applied for]~~ such as "single premium deferred annuity." ~~[-]~~

~~[-]~~ (7) "Guaranteed elements" means premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9)(a) "Guaranteed element" means any of the following elements that are guaranteed and determined at issue:

- (i) a premium;
- (ii) a credited interest rate with applicable bonus;
- (iii) a benefit;
- (iv) a value;
- (v) a non-interest-based credit;
- (vi) a charge; or
- (vii) an element of a formula used to determine an element in Subsections (9)(a)(i) through (9)(a)(vi).

(b) An element is considered guaranteed if all the underlying elements that go into its calculation are guaranteed.

~~[-]~~ (8) "Non-guaranteed elements" means the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying elements that go into its calculation are non-guaranteed.

(10)(a) "Nonguaranteed element" means any of the following elements that are subject to company discretion and are not guaranteed or not determined at issue:

- (i) a premium;
- (ii) a credited interest rate with applicable bonus;
- (iii) a benefit;
- (iv) a value;
- (v) a non-interest-based credit;
- (iv) a charge; or
- (vii) an element of a formula used to determine an element in Subsections (10)(a)(i) through (10)(a)(vi).

(b) An element is considered nonguaranteed if any underlying element that goes into its calculation is nonguaranteed.

~~(9)~~(11) "Structured settlement annuity" means an annuity that is or would be a "qualified funding asset" as defined in ~~[IRC Section 130(d)]~~ or an annuity that would be a qualified funding asset under IRC ~~Section 130(d), Internal Revenue Code~~, but for the fact that it is not owned by an assignee under a qualified assignment.

#### **R590-229-~~[6]~~4. Appropriate Buyer's Guide.**

(1) The "Buyer's Guide for Deferred Annuities" ~~[shall be considered]~~ is the appropriate ~~[Buyer's Guide]~~ buyer's guide for an annuity product.

(2) Notwithstanding Subsection (1) ~~[- for a non-variable annuity product-]~~:

(a) the "Buyer's Guide ~~[to]~~ for Deferred Annuities - Fixed" may be used as the appropriate ~~[Buyer's Guide]~~ buyer's guide for a non-variable annuity product; and

~~(3) If an insurer elects to provide a Buyer's Guide for a variable annuity product, the insurer may use either the "Buyer's Guide for Deferred Annuities" or~~ ~~(b) the "Buyer's Guide for Deferred Annuities - Variable[-]" may be used as the appropriate buyer's guide for a variable annuity product.~~

#### **R590-229-~~[7]~~5. Standards for the Disclosure Document and Buyer's Guide.**

(1)(a) ~~[Where the]~~ When an application for an annuity contract is taken in a face-to-face meeting, the applicant shall, at or before the time of application, be given both the disclosure document described in Subsection ~~[7(2) of this section]~~ (2) and the appropriate ~~[Buyer's Guide, as described in Section 6]~~ buyer's guide described in Section R590-229-4.

(b) ~~[Where the]~~ When an application for an annuity contract is ~~not taken [by means other than]~~ in a face-to-face meeting, the applicant shall be sent both the disclosure document ~~described in Subsection (2)~~ and the appropriate ~~[Buyer's Guide]~~ buyer's guide described in Section R590-229-4 no later than five business days after the completed application is received by the insurer.

(i) ~~[With respect to]~~ For an application received as a result of a ~~[direct]~~ solicitation through the mail:

(A) providing a ~~[Buyer's Guide in a]~~ buyer's guide in the mailing inviting a prospective applicant[s] to apply for an annuity contract shall ~~[be deemed to]~~ satisfy the requirement that the appropriate ~~[Buyer's Guide be]~~ buyer's guide is provided no later than five business days after receipt of the application; and

(B) providing a disclosure document in ~~[a-]~~ the mailing inviting a prospective applicant to apply for an annuity contract shall ~~[be deemed to]~~ satisfy the requirement that the disclosure document ~~[be-]~~ is provided no later than five business days after receipt of the application.

(ii) ~~[With respect to]~~ For an application received via the ~~[i]~~ internet:

(A) ~~[taking reasonable steps to make-]~~ making the appropriate ~~[Buyer's Guide]~~ buyer's guide available for viewing and printing on the insurer's website shall ~~[be deemed to]~~ satisfy the requirement that the appropriate ~~[Buyer's Guide be]~~ buyer's guide is provided no later than five business days ~~[of-]~~ after receipt of the application; and

(B) ~~[taking reasonable steps to make-]~~ making the disclosure document available for viewing and printing on the insurer's website shall ~~[be deemed to]~~ satisfy the requirement that the disclosure document ~~[be-]~~ is provided no later than five business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the

## NOTICES OF PROPOSED RULES

prospective applicant can obtain from the insurer a free annuity [Buyer's Guide]buyer's guide upon request.

(2) ~~[At a minimum, the]~~Disclosure document. The following information shall be included in the disclosure document[required to be provided under this rule]:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, and examples, as appropriate, including~~examples where appropriate of~~:

(i) the guaranteed, non[-]guaranteed and determinable elements of the contract, ~~and~~their limitations, ~~if any,~~and an explanation of how they operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that the rate[s] may change from time to time and ~~are~~is not guaranteed;

(iii) periodic income options, both on a guaranteed and non-guaranteed basis;

(iv) any value reduction[s] caused by a withdrawal[s] from or surrender of the contract;

(v) how ~~values in~~the value of the contract can be accessed;

(vi) the death benefit, if available, and how it ~~will be~~is calculated;

(vii) a summary of the federal tax status of the contract and any ~~penalties~~penalty applicable on a withdrawal of a value[s] from the contract; and

(viii) the impact of any rider, such as a long-term care rider;

(d) the specific dollar amount or percentage ~~charges and fees~~of any charge or fee shall be listed with an explanation of how ~~they apply~~it applies; and

(e) information about the current guaranteed rate for a new contract that contains a clear notice that the rate is subject to change.

(3) An insurer shall define terms used in the disclosure ~~statement~~document in language that ~~facilitates the understanding~~is understandable by a typical person within the segment of the public to which the disclosure ~~statement~~document is directed.

### **R590-229-[8]6. Report to Contract Owners.**

(1) The insurer shall provide to a contract owner, at least annually, a report on the status of an annuity contract for:~~[For]~~

(a) an annuity in the payout period with changes in non[-]guaranteed elements~~and for~~; or

(b) a deferred annuity in the accumulation period~~of a deferred annuity, the insurer shall provide the contract owner with a report, at least annually, on the status of the contract that contains~~.

(2) The report shall contain at least the following information:

~~[(1)]~~(a) the beginning and end date of the current report period;

~~[(2) the]~~(b) any accumulation ~~and~~or cash surrender value~~, if any,~~ at the end of the previous report period and at the end of the current report period;

~~[(3) the total amounts, if any, that have]~~(c) any amount that has been credited, charged to the contract value, or paid during the current report period; and

~~[(4)]~~(d) the amount of any outstanding loan~~s, if any,~~ as of the end of the current report period.

[

### **~~R590-229-9. Enforcement Date.~~**

~~The commissioner will begin enforcing the provisions of this rule 65 days after the effective date.]~~

### **R590-229-[40]7. Severability.**

~~[If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]If any provision of this rule, Rule R590-229, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.~~

**KEY: insurance, annuity disclosure**

**Date of Last Change: 2023**~~[May 27, 2014]~~

**Notice of Continuation: August 20, 2019**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-425**

## **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Rule or Section Number:**

**R590-244**

**Filing ID:**  
**55233**

## **Agency Information**

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact persons:		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

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

## **General Information**

### **2. Rule or section catchline:**

R590-244. Individual and Agency Licensing Requirements

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

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, remove the Penalties (the old R590-244-14) section, and update the Severability (the new R590-244-14) section to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

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

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

**B) Local governments:**

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

**G) 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**

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

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

Section 31A-2-201	Section 31A-23a-102	Section 31A-23a-108
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# NOTICES OF PROPOSED RULES

Section 31A-23a-111	Section 31A-23a-115	Section 31A-23a-203.5
Section 31A-23a-302	Section 31A-23b-102	Section 31A-23b-205
Section 31A-23b-207	Section 31A-23b-209	Section 31A-23b-401
Section 31A-25-201	Section 31A-25-208	Section 31A-26-207
Section 31A-26-210	Section 31A-26-213	Section 31A-35-104
Section 31A-35-301	Section 31A-35-401	Section 31A-35-406

## 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:** 03/31/2023

**9. This rule change MAY become effective on:** 04/07/2023

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

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	02/08/2023
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## R590. Insurance, Administration.

### R590-244. Individual and Agency Licensing Requirements.

#### R590-244-1. Authority.

This rule is promulgated by the commissioner pursuant to:

[~~(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of Title 31A, Insurance Code;~~

~~(2) Subsections 31A-23a-104(2), 31A-23a-110(1), 31A-25-201(1), 31A-26-202(1), 31A-23b-203(2), 31A-23b-208(1), 31A-35-104, 31A-35-301(1) and 31A-35-401(2) that authorize the commissioner to prescribe the forms and manner in which an initial or renewal individual or agency license application under Title 31A, Chapters 23a, 23b, 25, 26, and 35 is to be made to the commissioner;~~

~~(3) Subsections 31A-23a-111(10), 31A-23b-401(9), 31A-25-208(9), 31A-26-213(10), and 31A-35-406(1) that authorize the commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licensees under Title 31A, Chapters 23a, 23b, 25, 26, and 35;~~

~~(4) Subsections 31A-23a-108(1), 31A-23b-205(2), 31A-23b-205(3), 31A-26-207(1), and 31A-26-207(5), that authorize the commissioner to adopt a rule prescribing how examination and training requirements may administered to licensees under Title 31A, Chapters 23a, 23b, and 26;~~

~~(5) Subsections 31A-23a-115(1) and 31A-23a-115(2) that authorize the commissioner to adopt a rule prescribing reporting and notification requirements to be utilized by an insurer for the initial appointment or the termination of appointment of a person authorized to act on behalf of the insurer under Title 31A, Chapter 23a, Insurance Marketing Licensing Producers, Consultants, and Reinsurance Intermediaries;~~

~~(6) Subsection 31A-23a-203.5(3) that authorizes the commissioner to adopt a rule prescribing the terms and conditions of any required legal liability insurance coverage to be maintained by or on behalf of a licensed resident individual producer;~~

~~(7) Subsection 31A-23b-207(1) that authorizes the commissioner to adopt a rule prescribing the amount of any surety bond required to be maintained by a licensed navigator to cover the legal liability of a navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator;~~

~~(8) Subsections 31A-23a-302(2), 31A-23a-302(3), 31A-23b-209(3), 31A-23b-209(4), 31A-26-210(2), and 31A-26-210(3) that authorize the commissioner to adopt a rule prescribing reporting and notification requirements to be utilized by an agency for the initial designation or the termination of designation of a person authorized to act on behalf of the agency under Title 31A, Chapters 23a, 23b, and 26; and~~

~~(9) Subsections 31A-23a-102(10) and 31A-23b-102(7) that authorize the commissioner to adopt a rule to define the word "resident".]~~

~~(1) Section 31A-2-201;~~

~~(2) Section 31A-23a-102;~~

~~(3) Section 31A-23a-108;~~

~~(4) Section 31A-23a-111;~~

~~(5) Section 31A-23a-115;~~

~~(6) Section 31A-23a-203.5;~~

~~(7) Section 31A-23a-302;~~

~~(8) Section 31A-23b-102;~~

~~(9) Section 31A-23b-205;~~

~~(10) Section 31A-23b-207;~~

~~(11) Section 31A-23b-209;~~

~~(12) Section 31A-23b-401;~~

~~(13) Section 31A-25-201;~~

~~(14) Section 31A-25-208;~~

~~(15) Section 31A-26-207;~~

~~(16) Section 31A-26-210;~~

~~(17) Section 31A-26-213;~~

~~(18) Section 31A-35-104;~~

~~(19) Section 31A-35-301;~~

~~(20) Section 31A-35-401; and~~

~~(21) Section 31A-35-406.~~

#### R590-244-2. Purpose and Scope.

(1) The purpose of this rule is to provide standards for:

(a) an individual or agency licensee for:

(i) obtaining, renewing, or reinstating a license;

(ii) maintaining any legal liability coverage or surety bond requirements; and

(iii) making other miscellaneous license amendments;

(b) an insurer for the initial appointment or the termination of an appointment of an individual or agency licensee; and

(c) an agency for the initial designation or the termination of a designation of an individual licensee to the agency's license.

[~~(2) Scope.~~

~~(a) This rule applies to each individual and agency licensed under Title 31A, Chapters 23a, 23b, 25, 26, and 35.~~  
~~(b) This rule applies to any admitted insurer doing business in Utah.]~~

(2) This rule applies to:

(a) an individual or agency licensed under:

- (i) Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries;
- (ii) Title 31A, Chapter 23b, Navigator License Act;
- (iii) Title 31A, Chapter 25, Third Party Administrators;
- (iv) Title 31A, Chapter 26, Insurance Adjusters; and
- (v) Title 31A, Chapter 35, Bail Bond Act; and
- (b) an admitted insurer doing business in Utah.

### **R590-244-3. Definitions.**

~~[For the purpose of this rule the commissioner adopts the definitions as set forth in ]~~Terms used in this rule are defined in Sections 31A-1-301, 31A-23a-102, 31A-23b-102, 31A-26-102, and 31A-35-102[and the following]. Additional terms are defined as follows:

(1) "Active license" means ~~[a license under which a licensee has been granted authority ]~~authorization by the commissioner to engage in [some]an activity that is part of or related to the insurance business.

(2) "Inactive license" means ~~[a formerly active license where-]~~a licensee is no longer authorized by the commissioner to engage in [some]an activity that is part of or related to the insurance business.

(3) "Lapse" means the inactivation of an active license by expiration of the period for which the license was issued or by operation of law.

(4) "License application" means information submitted by a license applicant ~~[to provide information about the license applicant ]~~that is used by the commissioner to evaluate the applicant's qualifications and decide whether to:

(a) issue or decline to issue a license;

(b) add or decline to add an additional line of authority to an active license;

(c) renew or decline to renew an active license; or

(d) reinstate or decline to reinstate an inactive license.

(5) ~~["Line of authority" means a line of insurance of a particular subject matter area within a license type for which the commissioner may grant authority to do business.]~~"License type" means a category of license identifying a specific functional area of insurance activity for which the commissioner may grant authority to do business.

(6) ~~["License type" means a category of license identifying a specific functional area of insurance activity for which the commissioner may grant authority to do business.]~~"Line of authority" means a line of insurance in a particular subject matter area within a license type for which the commissioner may grant authority to do business.

(7) "NIPR" means an electronic application software provided by the National Insurance Producer Registry~~[(NIPR)]~~.

(8) "Reinstate" means the activation of an inactive license within 365 days of the inactivation date.

(9) "Renewal" means the continuation of an active license from one two-year licensing period to another, except that the licensing period for a bail bond agency is one year.

~~(10) "Resident," for the purpose of a resident insurance license in this state, means a person who claims this state as the person's home state in which the person maintains the principal:~~

~~(a) place of residence; or~~

~~(b) place of business; and~~

~~(c) is licensed to do insurance business.]~~

(10) "Resident," for the purpose of a resident insurance license, means a person claims this state as the person's home state in which the person:

(a) maintains the person's principal place of business or residence; and

(b) is licensed to do insurance business.

(11) ~~["SIRCON"]~~Sircon means an electronic application software provided by ~~[Sircon Corporation-]~~Vertafore or its acquiring parent company~~[-Vertafore, Inc].~~

(12) "Termination for cause" means:

(a) an insurer or an agency has ended its relationship with a licensee or has cancelled the licensee's authority to act on behalf of the insurer or agency for one of the reasons identified in Subsection 31A-23a-111(5); or

(b) a licensee has been found to have engaged in any of the activities identified in Subsection[s] 31A-23a-111(5), 31A-23b-401(4), or 31A-26-213(5), by a court, government body, or self-regulatory organization authorized by law.

### **R590-244-4. Requirement to Electronically Submit a License Application[s], Appointment[s], Designation[s, and ], or License Amendment[s].**

(1) Except as otherwise provided in this rule, the following shall be submitted electronically to the department using SIRCON or NIPR:

(a) ~~[each]an individual [and]or agency license application [under Title 31A, Chapters 23a, 23b, 25, 26, and 35-]for a person listed in Subsection R590-244-2(a)~~ as prescribed in Sections R590-244-7, R590-244-9, and R590-244-10 for:

(i) a new license;

(ii) an additional license type or line of authority;

(iii) a license renewal; or

(iv) a license reinstatement;

(b) ~~[any]an appointment, termination of appointment, designation, [and]or termination of designation~~ as prescribed in Sections R590-244-11 and R590-244-12;

(c) ~~[all]a miscellaneous license amendment[s]~~ pertaining to ~~an individual [and]or agency license[s under Title 31A, Chapters 23a, 23b, 25, 26 and 35-]~~ for a person listed in Subsection R590-244-2(a) as prescribed in Section R590-244-13;

(d) ~~[all]any document[s]~~ related to reporting to the commissioner of criminal prosecution or administrative action taken against a licensee as required under~~[ Title 31A, Chapters 23a, 23b, 25, 26 and 35];~~

~~(i) Title 31A, Chapter 23a, Insurance Marketing - Licensing Procedures, Consultants, and Reinsurance Intermediaries;~~

~~(ii) Title 31A, Chapter 23b, Navigator License Act;~~

~~(iii) Title 31A, Chapter 25, Third Party Administrator;~~

~~(iv) Title 31A, Chapter 26, Insurance Adjusters; or~~

~~(v) Title 31A, Chapter 35, Bail Bond Act; and~~

(e) any additional documentation required in connection with an application, except as shown in Subsection (1)(c)(iv)[ below], including:

(i) written explanation and documentation for positive responses to background questions~~[on a license application];~~

(ii) evidence of ~~[meeting]-~~specific experience, bonding, or other requirements for certain license types or lines of authority; or



(iii) evidence of ~~[meeting]~~ continuing education requirements for a renewal or reinstatement application ~~[when]~~ if there is a question regarding the number of course hours completed.

(iv) If an electronic attachment function for attaching a document required ~~[in connection]~~ with an application is not available in the attachment utility from ~~[SIRCON]~~ Sircon or NIPR, the document shall be submitted electronically via ~~[a]~~ facsimile or as a PDF attachment to an email, until ~~[such time that]~~ an electronic attachment function for submitting the document in connection with the application becomes available from ~~[SIRCON]~~ Sircon or NIPR.

(2) ~~[Attestation]~~ Submission of an electronic application or other form under this rule constitutes the applicant's or submitter's attestation under penalties of perjury that the information contained in the application or form is true and correct.

~~[(3) Any submission subject to this rule]~~ (3) A submission that does not comply with this rule, including an application that remains incomplete for a period of 30 days following the initial submission, may be rejected as incomplete and returned to the submitter without being processed, with any paid fees forfeited to the ~~[State]~~ state.

#### **R590-244-5. Requirement of an Active License to Sell, Solicit, or Negotiate Insurance.**

~~[(1) A person must have the following to sell, solicit, or negotiate insurance:~~

~~— (a) an active license matching the type and line of insurance being sold, solicited, or negotiated; and~~

~~— (b) if the person is an agency, an appointment from an insurer; or~~

~~— (c) if the person is an individual:~~

~~— (i) an appointment from an insurer or a designation from an agency; and~~

~~— (ii) if the individual is a resident producer, legal liability errors and omissions insurance coverage in an amount not less than \$250,000 per claim and \$500,000 annual aggregate limit, as applicable in accordance with Section 31A-23a-203.5.]~~

(1) To sell, solicit, or negotiate insurance, a person shall have an active license matching the type and line of insurance being sold, solicited, or negotiated.

(2) If the person is an agency, the person shall have an appointment from an insurer in addition to an active license described in Subsection (1).

(3)(a) If the person is an individual, the person shall have an appointment from an insurer or a designation from an agency in addition to an active license described in Subsection (1).

(b) An individual licensed as a resident producer shall maintain legal liability errors and omissions insurance coverage not less than \$250,000 per claim and \$500,000 annual aggregate limit.

~~[(2)](4) A licensee whose license is [inactivated for any reason shall] inactive may not sell, solicit, or negotiate insurance from the date the active license is inactivated until the date the inactive license is reactivated.~~

#### **R590-244-6. Requirement of an Active License to Act as a Navigator.**

(1) A person ~~[must]~~ shall have the following to act as a navigator:

(a)(i) an active navigator license issued under Chapter 31A-23b, Navigator License Act, or

(ii) an active producer license issued under Chapter 31A-23a, Insurance Marketing - Licensing Producers, Consultants, and

Reinsurance Intermediaries, with an accident and health line of authority; and

(b)(i) a surety bond ~~[in an amount]~~ not less than \$50,000 to cover the legal liability of the navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator, as applicable ~~[in accordance with Section 31A-23b-207]~~; or

(ii) legal liability errors and omissions insurance coverage ~~[in an amount]~~ not less than \$250,000 per claim and \$500,000 annual aggregate limit, as applicable ~~[in accordance with Section 31A-23b-207]~~.

(2) A professional liability coverage plan is ~~[considered to be]~~ a form of errors and omissions insurance coverage.

(3) A navigator whose license is ~~[inactivated for any reason shall]~~ inactive may not act as a navigator from the date the active license is inactivated until the date the inactive license is reactivated.

(4) A navigator license includes the following lines of authority:

(a) navigator; and

(b) certified application counselor.

#### **R590-244-7. New License Application.**

~~[(4)]~~ A resident or non-resident license application for a new license, or for the addition of an additional license type or line of authority, shall be submitted using either ~~[SIRCON]~~ Sircon or NIPR, except ~~[as stated in Subsections R590-244-7(2) and R590-244-7(3)].~~

~~[(2) An]~~ (1) an application for a navigator license shall be submitted using ~~[SIRCON, except as stated in Subsection R590-244-7(3)]~~ Sircon; and

~~[(3) A]~~ (2) a non-resident license application for a license type or line of authority not offered in the person's home state shall be submitted to the commissioner via facsimile or as a PDF attachment to an email using a form available through the ~~[Department's website, until such time that]~~ department's website, <https://insurance.utah.gov>, until an electronic application becomes available from ~~[SIRCON]~~ Sircon or NIPR.

#### **R590-244-8. Examination and Training.**

(1) Examination and training requirements may be administered by:

(a) the commissioner;

(b) a testing vendor approved and contracted by the commissioner; or

(c) ~~[navigator related examination and training administered through]~~ the United States Department of Health and Human Services for a navigator.

(2) To act as a navigator in Utah, a person ~~[must]~~ shall successfully complete the federal navigator training and certification program requirements ~~[as established by federal regulation]~~ under PPACA and administered through the United States Department of Health and Human Services, including any applicable training, examination, certification or recertification requirements ~~[under that program]~~.

(3) A person who has successfully completed the federal navigator training and certification ~~[identified in Subsection R590-244-8(2) is considered to have]~~ has successfully completed the required Utah training and examination requirements for a navigator license ~~[in accordance with Section 31A-23b-205]~~.

~~[(4) An applicant for the crop insurance license class who has satisfactorily completed a national crop adjuster program is~~

~~exempt from an examination requirement under Section 31A-26-207].~~

#### **R590-244-9. Renewal and Non-renewal of an Active License.**

(1) An active license shall be renewed on or before the license expiration date by submitting a resident or non-resident license renewal application online via ~~[SIRCON]~~Sircon or NIPR.

(2) A new individual license ~~[shall expire]~~expires on the last day of the licensee's birth month following the two-year anniversary of the license issue date, unless renewed, except as shown in Subsection ~~[R590-244-9]~~(4).

(3) A renewed individual license ~~[shall expire]~~expires on the last day of the licensee's birth month every two years, unless renewed, except as shown in Subsection ~~[R590-244-9]~~(4).

(4) An individual navigator license ~~[shall expire]~~expires annually on the last day of the month from the most recent license issue or renewal date, unless renewed.

(5) An agency license ~~[shall expire]~~expires on the last day of the month every two years from the most recent license issue or renewal date, unless renewed, except as shown in Subsection ~~[R590-244-9]~~(6).

(6) A bail bond agency license ~~[shall expire]~~expires annually on August 14, unless renewed.

##### **(7) Renewal Notice.**

(a) ~~[Prior to]~~Before the license expiration date, the commissioner may, as a courtesy, send a renewal notice to the licensee's business email address as shown on the records of the department.

(b) A renewal notice sent by the commissioner to the business email address, as shown on the records of the department, shall be considered received by the licensee.

~~[(c) A licensee who fails to properly submit to, and maintain with, the commissioner a valid business email address may be subject to administrative penalties.]~~

(8) A license shall non-renew effective the license expiration date if it is not renewed on or before the expiration date, and:

(a) the non-renewed license shall be inactivated;

(b) all agency designations and insurer appointments shall be terminated; and

(c) a lapsed license notice will be sent to the affected licensee.

(9) An active licensee ~~[who]~~that fails to renew a license shall not engage in the business of insurance during the period of time from the expiration date of the license until the date the inactive license is reinstated or a new license is issued.

#### **R590-244-10. Reinstatement of Inactive License.**

(1) ~~[An inactive]~~A license that has been inactive for a period of one year or less following the license expiration date ~~[can]~~may be reinstated ~~[as stated in Subsections R590-244-10(3) through R590-244-10(7)]~~under the relevant provisions of this section.

(2) An inactive license that has not been reinstated within one year following its expiration date ~~[shall]~~may not be reinstated and the inactive license ~~[shall]~~may apply as a new license applicant.

(3) A reinstatement applicant shall:

(a) comply with ~~[all]~~each requirement[s] for renewal of a license, including any applicable continuing education or examination requirements if the reinstatement applicant is an individual; and

(b) pay a reinstatement fee~~[as shown in Rule R590-102]~~.

(4) A resident or non-resident license application for reinstatement of an inactive license shall be submitted using either ~~[SIRCON]~~Sircon or NIPR, except as stated in Subsection ~~[R590-244-10]~~(5).

(5)(a) The following license applications for reinstatement of an inactive license ~~[must]~~shall be submitted to the department via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic application becomes available from ~~[SIRCON]~~Sircon or NIPR:

~~[(a)]~~(i) a non-resident reinstatement application for a person whose license ~~[has been inactivated]~~is inactive for failure to maintain an active license in the person's home state;

~~[(b)]~~(ii) a resident or non-resident reinstatement application for a person whose license has been voluntarily surrendered; and

~~[(c)]~~(iii) a resident or non-resident reinstatement application for a person whose license ~~[has been inactivated]~~is inactive due to an incomplete renewal application, except as stated in Subsection ~~[R590-244-10(5)(c)(i)]~~(5)(b).

~~[(d)]~~(b) If a resident license ~~[has been inactivated]~~is inactive due to a renewal application that was incomplete solely for failure to meet the continuing education requirements, a resident reinstatement application ~~[must]~~shall be submitted to the department:

~~[(A)]~~(i) during the first 30 days after a license expiration date as a facsimile or as a PDF attachment to an email using a form available through the department's website; or

~~[(B)]~~(ii) 31 days to one year after a license expiration date through ~~[SIRCON]~~Sircon or NIPR.

~~[(7)]~~(6) A license that ~~[has been]~~is voluntarily surrendered:

(a) may be reinstated:

(i) during the license period in which the license was surrendered; and

(ii) no later than one year from the date the license was surrendered; and

(b) ~~[must]~~shall comply with the reinstatement requirements ~~[stated]~~in Subsection ~~[R590-244-10]~~(3), except that no continuing education requirement will apply for an individual license applicant because the reinstatement is within the current license period.

~~[(8)]~~(7) A reinstated license ~~[shall expire]~~expires on the same date it would have expired had the license not become inactive.

~~[(9)]~~(8) A person with a reinstated license ~~[must]~~shall complete any required insurer contracts and appointments or agency designations before the reinstated licensee can resume doing business.

#### **R590-244-11. Appointment and Termination of Appointment by an Insurer.**

(1) Appointment.

(a) An insurer shall appoint an individual or agency licensee with whom the insurer has a producer contract.

(b) An appointment is continuous until terminated by the insurer or canceled by the department.

(c) An insurer is not required to appoint an individual who is designated by an appointed agency.

(d) To appoint, an insurer shall:

(i) state the date on which the appointment is effective; and

(ii) submit the appointment to the commissioner using ~~[SIRCON]~~Sircon or NIPR no later than 15 days after:

(A) the date on which the producer contract is executed; or  
(B) the date on which the insurer receives the first insurance application from the licensee.

(2) Terminating an Appointment.

(a) An insurer shall terminate an appointment when a previously appointed individual or agency is no longer authorized to conduct business for the insurer in Utah.

(b) To terminate an appointment, an insurer shall:

(i) state the date on which the termination is effective; and

(ii) submit the termination to the commissioner using ~~[SIRCON]~~Sircon or NIPR no later than 30 days after the effective date of termination.

(c) Within 15 days after submitting a termination, an insurer shall notify the licensee of the termination and the reason for it by mail or email at the licensee's last known address or email address.

(3) Reporting Termination for Cause.

(a) An insurer that terminates an appointment for cause shall report to the commissioner the cause of termination if required by Subsection 31A-23a-115(3)(a).

(b) The report ~~[with]~~and attachments shall be submitted to licensing.uid@utah.gov within 15 days after submitting the notice of termination required by Subsection ~~[R590-244-11]~~(2)(c).

(c) The report shall:

(i) quote the specific reason or reasons from Subsection 31A-23a-111(5)(b);

(ii) state the specific facts and reasoning on which the decision to terminate was based;

(iii) list and include any document, photograph, video ~~[and]~~or audio recording, ~~[and]~~or other material[s] that supports the ~~[facts and reasoning on which the insurer relied in deciding]~~insurer's decision to terminate;

(iv) include a copy of ~~[every known]~~each written finding or conclusion by a court, government body, agency, or self-regulatory organization that supports the ~~[reason or reasons for]~~ termination; and

(v) include a copy of the notice required by Subsection ~~[R590-244-11]~~(2)(c).

~~[(d) A report of a termination for cause is not required to include information that is unknown to an insurer.]~~

**R590-244-12. Designation and Termination of Designation by an Agency.**

(1) Designation.

(a) An agency shall designate a licensed individual to the agency license to do business on behalf of the agency in Utah.

(b) A designation is continuous until terminated by the agency or canceled by the department.

(c) To designate, an agency shall:

(i) state the date on which the designation is effective; and

(ii) submit the designation to the commissioner using ~~[SIRCON]~~Sircon or NIPR no later than 15 days after the designation effective date.

(2) Terminating a Designation.

(a) An agency shall terminate a designation when a previously designated individual is no longer authorized to conduct business for the agency in Utah.

(b) To terminate a designation, an agency shall:

(i) state the date on which the termination is effective; and

(ii) submit the termination to the commissioner using ~~[SIRCON]~~Sircon or NIPR no later than 30 days after the termination effective date.

(c) Within 15 days after submitting a termination, an agency shall notify the licensee of the termination and the reason for it by mail or email at the licensee's last known address or email address.

(3) Reporting Termination for Cause.

(a) An agency that terminates a designation for cause shall report to the commissioner the cause of termination if required by Subsection 31A-23a-302(4).

(b) The report ~~[with]~~and attachments shall be submitted to licensing.uid@utah.gov within 15 days after submitting the notice of termination required by Subsection ~~[R590-244-12]~~(2)(c).

(c) The report shall:

(i) quote the specific reason or reasons from Subsection 31A-23a-111(5)(b);

(ii) state the specific facts and reasoning on which the decision to terminate was based;

(iii) list and include any document, photograph, video ~~[and]~~or audio recording, ~~[and]~~or any other material[s] that supports the ~~[facts and reasoning on which the agency relied in deciding]~~agency's decision to terminate;

(iv) include a copy of ~~[every known]~~each written finding or conclusion by a court, government body, agency, or self-regulatory organization that supports the ~~[reason or reasons for]~~ termination; and

(v) include a copy of the notice required by Subsection ~~[R590-244-12]~~(2)(c).

~~[(d) A report of a termination for cause is not required to include information that is unknown to an agency.]~~

**R590-244-13. Miscellaneous License Amendments and Changes to an Agency's Employer Identification Number~~[(EIN)]~~.**

~~[(1) Miscellaneous]~~(1) A miscellaneous license amendment[s] shall be submitted electronically.

(2) The following ~~[six]~~miscellaneous license amendments shall be submitted via ~~[SIRCON]~~Sircon or NIPR:

(a) a change of residence, business, or mailing address within the same state;

(b) a change of residence, business, or mailing address from one nonresident state to another nonresident state;

(c) a change of email address;

(d) a change of telephone number;

(e) a change of an individual licensee's name; or

(f) a change of the licensed individual designated as the person responsible for the regulatory compliance of the agency.

(3) The following ~~[four]~~miscellaneous license amendments shall be submitted electronically via facsimile or as a PDF attachment to an email, except that the license amendment identified in Subsection ~~[R590-244-13]~~(3)(d) shall be submitted via ~~[SIRCON]~~Sircon or NIPR once the amendment becomes available electronically from ~~[SIRCON]~~Sircon or NIPR:

(a) a voluntary surrender of a license or line or authority;

(b) a clearance letter request;

(c) a change of an agency name; or

(d) a change of an owner, partner, officer, or director of an agency.

(4) A submitted miscellaneous license amendment ~~[submitted in accordance with this section]~~ shall contain:

(a) the name and title of the individual submitting the amendment;

(b) the relationship to the licensee of the individual submitting the amendment; and

(c) the following attestation made by the individual submitting the amendment: "I hereby attest that the information submitted is true and correct, and that I am the individual licensee for whom the requested change is being submitted, or an authorized responsible representative of the individual or agency licensee for whom the requested change is being submitted."

(5) A change of Employer Identification Number[~~(EIN)~~]:

(a) cannot be processed as a miscellaneous license amendment; and

(b) requires the entity [~~must~~]to apply as a new license applicant.

**R590-244-14. [Penalties.**

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

**~~R590-244-15.~~ [Severability.**

If any provision of this rule, Rule R590-244, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: insurance licensing requirements**

Date of Last Change: 2023 January 8, 2021

Notice of Continuation: June 10, 2019

Authorizing, and Implemented or Interpreted Law: [31A-2-201; 31A-23a-102(10); 31A-23a-104; 31A-23a-108; 31A-23a-110; 31A-23a-111; 31A-23a-115; 31A-23a-302; 31A-23b-102; 31A-23b-102(7); 31A-23b-203; 31A-23b-205; 31A-23b-207; 31A-23b-208; 31A-23b-209; 31A-23b-401; 31A-25-201; 31A-25-208; 31A-26-202; 31A-26-207; 31A-26-210; 31A-26-213; 31A-35-104; 31A-35-301; 31A-35-401; 31A-35-406]31A-2-201; 31A-23a-102; 31A-23a-111; 31A-23a-115; 31A-23a-203.5; 31A-23a-302; 31A-23b-102; 31A-23b-205; 31A-23b-207; 31A-23b-209; 31A-23b-401; 31A-25-201; 31A-25-208; 31A-26-207; 31A-26-210; 31A-26-213; 31A-35-104; 31A-35-301; 31A-35-401; 31A-35-406

**NOTICE OF PROPOSED RULE**

TYPE OF RULE: Amendment

Rule or Section Number:	R590-252	Filing ID: 55234
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**Agency Information**

1. Department:	Insurance
Agency:	Administration
Room number:	Suite 2300
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901

**Contact persons:**

Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

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

**General Information**

**2. Rule or section catchline:**

R590-252. Use of Senior-Specific Certifications and Professional Designations

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

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

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

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, remove the Penalties (the old R590-252-6) and Enforcement Date (the old R590-252-7) sections, and update the Severability (the new R590-252-6) section to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

**Fiscal Information**

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

**A) State budget:**

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

**B) Local governments:**

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

**G) 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**

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Net Benefits</b>	<b>Fiscal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

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

Section 31A-2-201	Section 31A-23a-402	
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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.)

<b>A) Comments will be accepted until:</b>	03/31/2023
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**9. This rule change MAY become effective on:**

04/07/2023

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**

<b>Agency head or designee and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	02/08/2023
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**R590. Insurance, Administration.****R590-252. Use of Senior-Specific Certifications and Professional Designations.****R590-252-1. Authority.**

This rule is promulgated by the commissioner pursuant to [set forth] (1) Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A; and (2) Subsection 31A-23a-402(8)(a) that authorizes the commissioner to define by rule unfair methods of competition and unfair or deceptive acts or practices in the business of insurance] Sections 31A-2-201 and 31A-23a-402.

**R590-252-2. Purpose and Scope.**

(1) The purpose of this rule is to [set forth] establish standards to protect consumers from misleading or fraudulent marketing practices [with respect to] concerning the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product.

(2) This rule applies to a producer or consultant offering a solicitation, sale, purchase, or advice in connection with an annuity, accident and health, or life insurance product.

**R590-252-3. Scope.**

~~This rule shall apply to any solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product by an insurance producer or consultant.]~~

**R590-252-3. Definitions.**

~~Terms used in this rule are defined in Section 31A-1-301.~~

**R590-252-4. Findings.**

~~The commissioner finds that [the acts]an act prohibited by this rule [are]is unfair, misleading, and deceptive within the meaning of Section 31A-23a-402.~~

**R590-252-5. Prohibited Uses of Senior-Specific Certifications and Professional Designations.**

~~[(1)(a) An insurance producer or consultant may not use a senior specific certification or professional designation that indicates or implies, in such a way as to mislead a purchaser or prospective purchaser, that the insurance producer or consultant has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of any annuity, accident and health, or life insurance product or in the provision of advice as to the value of or the advisability of purchasing or selling an annuity, accident and health, or life insurance product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to an annuity, accident and health, or life insurance product.]~~

~~(1)(a) A producer or consultant may not use a senior-specific certification or professional designation that indicates or implies, in a way that misleads a consumer, that the producer or consultant has special certification or training in:~~

~~(i) advising or servicing seniors in connection with the solicitation, sale, or purchase of any annuity, accident and health, or life insurance product; or~~

~~(ii) the provision of advice as to the value of or the advisability of purchasing or selling an annuity, accident and health, or life insurance product.~~

~~(b) The prohibited use of senior-specific certifications or professional designations may not be provided:~~

~~(i) either directly or indirectly;~~

~~(ii) through a publication or writing; or~~

~~(iii) by issuing or promulgating an analysis or report related to an annuity, accident and health, or life insurance product.~~

~~[(b)](c) The prohibited use of senior-specific certifications or professional designations includes[, but is not limited to, the following]:~~

~~(i) use of a certification or professional designation by [an insurance]a producer or consultant who has not [actually]earned or is otherwise ineligible to use [such]the certification or designation;~~

~~(ii) use of a nonexistent or self-conferred certification or professional designation;~~

~~(iii) use of a certification or professional designation that indicates or implies a level of occupational qualification[s] obtained through education, training, or experience that the [insurance]producer or consultant using the certification or designation does not have; and~~

~~(iv) use of a certification or professional designation that was obtained from a certifying or designating organization that:~~

~~(A) is primarily engaged in the business of instruction in sales or marketing;~~

~~(B) does not have reasonable standards or procedures for assuring the competency of its certificants or designees;~~

~~(C) does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or~~

~~(D) does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.~~

~~(2) There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of [subsection (1)(b)(iv)]Subsection (1)(c)(iv) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:~~

~~(a) the American National Standards Institute[(-ANSI)];~~

~~(b) the National Commission for Certifying Agencies; or~~

~~(c) any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."~~

~~(3) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:~~

~~(a) use of one or more words such as ["senior," "retirement," "elder,"]senior, retirement, elder or like words combined with one or more words such as ["certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner,"]certified, registered, chartered, advisor, specialist, consultant, planner or like words, in the name of the certification or professional designation; and~~

~~(b) the manner in which those words are combined.~~

~~(4)(a) For purposes of this rule, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:~~

~~(i) indicates seniority or standing within the organization; or~~

~~(ii) specifies an individual's area of specialization within the organization.~~

~~(b) For purposes of this subsection, financial services regulatory agency includes[, but is not limited to,] an agency that regulates insurers, insurance producers, insurance consultants, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.~~

**R590-252-6. Penalties.**

~~A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

**R590-252-7. Enforcement Date.**

~~The commissioner will begin enforcing this rule 45 days from the rule's effective date.~~

**R590-252-8. Severability.**

~~[If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.]If any provision of this rule, Rule R590-252, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid~~

## NOTICES OF PROPOSED RULES

provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: senior-specific insurance designations**

**Date of Last Change: 2023**~~February 25, 2009~~

**Notice of Continuation: February 11, 2019**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402**

### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R926-12</b>	<b>Filing ID:</b> <b>55244</b>
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### Agency Information

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Program Development	
<b>Room no.:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton Bldg	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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

<b>2. Rule or section catchline:</b>
R926-12. Share the Road Bicycle Support Restricted Account
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The primary reason for the proposed rule change is to change the biannual distribution months from April and October to January and July. Secondary purposes for proposing this rule change are to make the text more

concise by dropping superfluous text and conform the text to requirements in 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 proposed rule change does the following:  
 1) changes the biannual distribution months from April and October to January and July;  
 2) drops language that is redundant to state statute and unnecessary; and  
 3) makes changes to conform 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:

This proposed change will not affect the state's budget. The change does not require the Department of Transportation (Department) to take on more responsibility or relieve the Department of responsibility. The proposed change is housekeeping in nature.

#### B) Local governments:

This proposed change will not affect local governments because it does not apply to them.

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

This proposed change will not affect small businesses because it does not require anything from them or relieve them of a duty.

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

This proposed change will not affect non-small businesses because it does not require anything from them or relieve them of a duty.

**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 proposed change will not fiscally affect persons other than small businesses, non-small businesses, state, or local government entities because it does not require anything from them or relieve them of a duty.

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



This proposed change will not cost affected persons anything. The change alters when the Department will pay grant money to affected persons eligible for grants.

**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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Transportation, Carlos M. Bracerias, PE, has reviewed and approved this fiscal analysis.

**Citation Information**

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

Section 72-2-127		
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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**

<b>Agency head or designee and title:</b>	Carlos M. Bracerias, PE, Executive Director	<b>Date:</b>	02/14/2023
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**R926. Transportation, Program Development.**

**R926-12. Share the Road Bicycle Support Restricted Account.**

**R926-12-1. Purpose.**

This rule describes the ~~[provides procedures and]~~ requirements for an organization to apply to the Department ~~[of Transportation]~~ to receive money ~~[a distribution]~~ from the Share the Road Bicycle Support Restricted Account.

**R926-12-2. Authority.**

This rule is enacted under the authority granted to the Department ~~[of Transportation]~~ by Section 72-2-127~~[(6)(e)]~~.

**R926-12-3. Definitions.**

As used in Rule R926-12~~[Terms used in these rules are defined as follows]:~~

(1) "Department" means the Utah Department of Transportation.

~~[(a)]~~(2) "Share the Road Bicycle Support Restricted Account" means the ~~[restricted]~~ account created in Section 72-2-127~~[the General Fund into which monies are deposited from the purchase of Share the Road special group license plates; appropriations by the Legislature, private contributions, and donations or grants.]~~

~~[(b)]~~(3) "Qualified applicant" means a charitable organization described in Section 72-2-127~~[an organization that qualifies as being tax exempt under Section 501(c)(3), Internal Revenue Code, and has as part of their primary mission the promotion and education of safe bicycle operations, safe motor vehicle operation around bicycles, healthy lifestyles, and contributes to the start-up fees associated with providing a Share the Road special group license plate.]~~

**R926-12-4. Proposals.**

(1) A qualified applicant may apply to the Department~~[of Transportation]~~ for funding from the Share the Road Bicycle Support Restricted Account~~[for use in support of safe bicycle operation, safe motor vehicle operation around bicycles and healthy lifestyles].~~

## NOTICES OF PROPOSED RULES

(2) An applicant shall provide to the Department as part of an application:

- (a) contact information for the applicant;
- (b) proof that the applicant is tax exempt under Section 501(c)(3), Internal Revenue Code;
- (c) proof that the applicant promotes safe bicycle operation, safe motor vehicle operation and healthy lifestyles as a primary part of ~~its~~ the applicant's mission;
- (d) a statement of the purpose for which the application is submitted, ~~including along with~~ an explanation of how the applicant would use ~~the funding~~ a disbursement of money to promote safe bicycle operation, safe motor vehicle operation around bicycles and healthy lifestyles; and
- (e) an explanation of the internal management controls and financial controls of the applicant that would ~~ensure~~ insure that any funds received would be used only for authorized purposes.

(3) A qualified applicant that receives funding from the Share the Road Bicycle Support Restricted Account may only spend the funding for a purpose described in Section 72-2-127.

### **R926-12-5. Selection of Recipients.**

The Department shall select recipients based on available funds, eligibility of the applicant, and verification of effective and efficient use of funds to promote safe bicycle operation, safe motor vehicle operation around bicycles, and healthy lifestyles.

### **R926-12-6. Distribution of Funds.**

(1) In ~~January~~ April and ~~July~~ October of each year, the Department will:

(a) review applications for funding from the Share the Road Bicycle Support Restricted Account;

(b) ~~[and approve funding distribution from the Share the Road Bicycle Support Restricted Account.]~~ provide notice to each applicant regarding the status of the applicant's application; and

(c) provide a distribution of funds to approved applicants. ~~[Notice of request status will be provided to the applicant and funding distributions made by the end of the months specified in this section.]~~

~~———— The Department is authorized to expend up to 5% of the monies appropriated to administer account distributions to eligible applicants.]~~

**KEY: share the road, bicycle support, restricted, account**

**Date of Last Change: 2023** ~~[October 22, 2009]~~

**Notice of Continuation: September 18, 2019**

**Authorizing, and Implemented or Interpreted Law: 72-2-127**

**End of the Notices of Proposed Rules Section**

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at [adminrules.utah.gov](http://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:	R25-5	Filing ID: 55028
Effective Date:	02/07/2023	

#### Agency Information

1. Department:	Government Operations	
Agency:	Finance	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 141031	
City, state and zip:	Salt Lake City, UT 84114-1031	
Contact persons:		
Name:	Phone:	Email:
Janica Gines	801-957-7727	jmgines@utah.gov

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

#### General Information

2. Rule catchline:
R25-5. Payment of Meeting Compensation (Per Diem) to Boards
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 63A-3-106 requires the director of the Division of Finance to make rules establishing per diem rates to defray subsistence costs for a board members attendance at an official meeting

#### 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 continues to be necessary because as boards are created reference is made in the statute creating the board to Section 63A-3-106 if they are allowed to receive meeting per diem for their work. This rule is set to define the allowed per diem rates for boards that are authorized to receive per diem. Therefore, this rule should be continued.

#### Agency Authorization Information

Agency head or designee and title:	Jenney Rees, Executive Director.	Date:	02/07/2023
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### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R25-7	Filing ID: 54697
Effective Date:	02/07/2023	

#### Agency Information

1. Department:	Government Operations
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<b>Agency:</b>	Finance	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 141031	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1031	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janica Gines	801-957-7727	jmgines@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R25-7. Travel Related Reimbursements for State Travelers
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule defines travel related reimbursement requirements and rates for employees and for board members. It is required by both Sections 63A-3-106 and 63A-3-107. Section 63A-3-107 requires the director of the Division of Finance to establish rules governing in-state and out-of-state travel expenses. Section 63A-3-106 allows board members to be reimbursed for travel expenses in accordance with Section 63A-3-107 for attendance at an official meeting.
<b>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:</b>
No written comments were received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is required by statute and is adopted by reference throughout the code by boards, as well as political subdivisions of the state. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Jenney Rees, Executive Director	<b>Date:</b>	02/06/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Rule Number:</b>	<b>R251-114</b>	<b>Filing ID: 50357</b>
<b>Effective Date:</b>	<b>02/13/2023</b>	

**Agency Information**

<b>1. Department:</b>	Corrections	
<b>Agency:</b>	Administration	
<b>Street address:</b>	14717 S Minuteman Drive	
<b>City, state and zip:</b>	Draper, UT 84020	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Matt Anderson	801-545-5589	mattanderson@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R251-114. Offender Long-Term Health Care - Notice
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized under Sections 63G-3-201, 64-13-10, and 64-13-39.5.
<b>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:</b>
No comments concerning this rule have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
That statute requires this rule to be in place to oversee long-term health care for offenders under the jurisdiction of the Utah Department of Corrections. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Brian Nielson, Executive Director	<b>Date:</b>	02/13/2023
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Rule Number:</b>	<b>R512-100</b>	<b>Filing ID: 54240</b>
<b>Effective Date:</b>	<b>02/14/2023</b>	

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-100. In-Home Services
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 80-2-302 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify the scope of In-Home Services that the Division provides to families in Utah. Therefore, this rule should be continued.
The Department of Health and Human Services is working on a nonsubstantive change to update citations in this rule.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R512-200</b>	<b>Filing ID:</b>	<b>54284</b>
<b>Effective Date:</b>	<b>02/14/2023</b>		

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-200. Child Protective Services, Intake Services
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 80-2-302 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify the scope of Intake Services that the Division provides to families in Utah. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R512-201</b>	<b>Filing ID:</b>	<b>54285</b>
<b>Effective Date:</b>	<b>02/14/2023</b>		

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-201. Child Protective Services, Investigation Services
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 80-2-302 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify the scope of Investigation Services that the Division provides to families in Utah. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R512-202</b>	<b>Filing ID:</b> 54286
<b>Effective Date:</b>	02/14/2023	

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-202. Child Protective Services, General Allegation Categories
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 62A-4a-102 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify Allegation Categories used by the Division. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R512-300</b>	<b>Filing ID:</b> 54243
<b>Effective Date:</b>	02/14/2023	

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-300. Out-of-Home Services
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 80-2-302 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify the scope of Out-of-Home Services provided by the Division. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R512-301</b>	<b>Filing ID:</b> 54244
<b>Effective Date:</b>	02/14/2023	

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-301. Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 80-2-302 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify the responsibilities of a parent or guardian while Out-of-Home Services are being provided by the Division. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R512-302</b>	<b>Filing ID:</b> 54245
<b>Effective Date:</b>	02/14/2023	



**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-302. Out-of-Home Services, Responsibilities Pertaining to an Out-of-Home Caregiver
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 80-2-302 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify the responsibilities the Division provides and of an Out-of-Home Caregiver while Out-of-Home Services are being provided by the Division. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	R512-305	<b>Filing ID:</b>	54246
<b>Effective Date:</b>	02/14/2023		

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-305. Out-of-Home Services, Transition to Adult Living Services
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 80-2-302 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify the Transition to Adult Living Services provided by the Division. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	R512-309	<b>Filing ID:</b>	54249
<b>Effective Date:</b>	02/14/2023		

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-309. Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 80-2-302 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify how foster parents get reimbursed by the Division for motor vehicle insurance coverage for youth in foster care. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	R512-500	<b>Filing ID:</b>	54288
<b>Effective Date:</b>	02/14/2023		

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R512-500. Kinship Services, Placement and Background Screening
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 80-2-302 authorizes the Division of Child and Family Services (Division) to clarify the scope of services the Division provides to families in Utah.
<b>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:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary in order for the Division to clarify the placement and background screening for Kinship Services provided by the Division. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	02/14/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	R602-4	<b>Filing ID:</b>	51484
<b>Effective Date:</b>	02/08/2023		

**Agency Information**

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Adjudication	
<b>Room number:</b>	3rd Floor	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Aurora Holley	801-530-6865	Auroraholley@utah.gov
Chris Hill	801-362-3113	chill@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R602-4. Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment Under Section 34A-2-410
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 34A-1-104(1) and Section 34A-1-3-4 authorize the Labor Commission (Commission) to adopt rules and conduct adjudicative proceedings relating to the administration of the Utah Workers' Compensation Act (Act). Section 34A-2-41.5 of the Act provides a means for an employer or its insurance carrier to request that Commission's permission to reduce or terminate an injured worker's temporary total disability compensation. In order to administer an orderly adjudication system, it is necessary for the Commission to establish rules that govern the adjudication of such a request.
<b>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:</b>
No written comments have been received during and since the last five-year review of this rule from interested persons.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>

This rule remains necessary in order to govern the adjudication of an employer's or insurance carrier's request to reduce or terminate an injured worker's temporary total disability compensation. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Jaceson R Maughan, Commissioner	<b>Date:</b>	02/06/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R602-5</b>	<b>Filing ID:</b>	<b>51490</b>
<b>Effective Date:</b>	<b>02/08/2023</b>		

**Agency Information**

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Adjudication	
<b>Room number:</b>	3rd Floor	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Aurora Holley	801-530-6865	auroraholley@utah.gov
Chris Hill	801-362-3113	chill@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R602-5. Procedures for Resolving Disputes Regarding "Cooperation" and "Diligent Pursuit" Under Subsection 34A-2-413(6)(e)(iii) and Subsection 34A-2-413(9) Consistent with Utah Administrative Code Subsection R612-200-7(D)(4)
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>

Subsection 34A-1-104(1) and Section 34A-a-304 authorize the Labor Commission (Commission) to adopt rules and conduct adjudicative proceedings relating to the administration of the Utah Workers' Compensation Act (Act). Subsection 34A-2-413(6)(c)(iii) of the Act requires an administrative law judge to issue a decision on a claim for permanent total disability benefits based on an employer's failure to pursue a reemployment plan.

Section 34A-2-413(9) of the Act requires an administrative law judge to dismiss a claim for permanent total disability benefits based on an employee's failure to cooperate with an approved reemployment plan. In order to administer an orderly adjudication system, it is necessary for the Commission to establish procedural requirements for hearings related to an employer's failure to pursue a reemployment plan or an employee's failure to cooperate with a reemployment plan.

**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 during and since the last five-year review of this rule from interested persons.

**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 remains necessary in order to govern the hearing process for decision related to an employer's failure to pursue a reemployment plan or an employee's failure to cooperate with a reemployment plan. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Jacson R Maughan, Commissioner	<b>Date:</b>	02/06/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R602-6</b>	<b>Filing ID:</b>	<b>51485</b>
<b>Effective Date:</b>	<b>02/08/2023</b>		

**Agency Information**

<b>1. Department:</b>	Labor Commission
<b>Agency:</b>	Adjudication
<b>Room number:</b>	3rd Floor
<b>Building:</b>	Heber M Wells Building
<b>Street address:</b>	160 E 300 S
<b>City, state and zip:</b>	Salt Lake City, UT 84111

<b>Mailing address:</b>	PO Box 146600	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Aurora Holley	801-530-6865	auroraholley@utah.gov
Chris Hill	801-362-3113	chrill@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

**2. Rule catchline:**

R602-6. Procedures Applicable for Approval of Settlement Agreements in Workers' Compensation

**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 34A-1-104(1) and Section 34A-1-304 authorize the Labor Commission (Commission) to adopt rules and conduct adjudicative proceedings relating to the administration of the Utah Workers' Compensation Act. Section 34A-2-420 of the Act requires the Commission to review all settlement or commutation agreements for workers' compensation claims or occupational disease benefits. It also grants the Commission the discretion to approve such agreements. In order to administer an orderly adjudication system, it is necessary for the Commission to establish the procedural requirements for Commission approval of these agreements.

**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 during and since the last five-year review of this rule from interested persons.

**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 remains necessary in order to govern the procedural requirements for Commission approval of settlement or commutation agreements. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Jacson R Maughan, Commissioner	<b>Date:</b>	02/06/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R653-9</b>	<b>Filing ID: 51715</b>
<b>Effective Date:</b>	<b>02/06/2023</b>	

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Water Resources	
<b>Room number:</b>	310	
<b>Building:</b>	Department of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146201	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6201	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Lanli Pham	801-538-7235	lpham@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R653-9. Electronic Meetings
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 52-4-207 authorizes the Division of Water Resources to convene or conduct electronic meetings provided written procedures are established for such meetings.
<b>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:</b>
No comments have been received since the last five-year review of this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary because it establishes the procedures for conducting Board of Water Resources meetings by electronic means. The statute also requires it. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Candice Hasenyager, Director	<b>Date:</b>	02/06/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-330</b>	<b>Filing ID: 51965</b>
<b>Effective Date:</b>	<b>02/03/2023</b>	

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Hammer	801-530-6729	michaelhammer@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R746-330. Rules for Water and Sewer Utilities Operating in Utah
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
The Public Service Commission (PSC) is statutorily vested with power and jurisdiction to supervise and regulate every public utility in the state, including water and sewer utilities. Sections 54-4-1 and 54-2-1 define "public utilities" to include "water corporations" and "sewerage corporations".
The PSC is charged with fixing just and reasonable standards for quality and terms of water and sewer utility service and to establish "reasonable rules" to ensure accuracy of meters and other appliances for measurement, Id. at Section 54-4-18.
The PSC is also statutorily empowered to "establish a system of accounts to be kept by public utilities" and "to prescribe the manner in which such accounts [and records] shall be kept", Id. at Section 54-4-23.



This rule sets basic standards for water and meter quality, a uniform system of accounts, and recordkeeping consistent with these statutory provisions.

**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 PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule establishes basic and uncontroversial standards and requirements that are necessary to fulfill the PSC's statutorily delegated responsibility with respect to water and sewer utilities as enumerated in Box 3, above. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	02/03/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-332</b>	<b>Filing ID:</b>	<b>51966</b>
<b>Effective Date:</b>	<b>02/03/2023</b>		

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Hammer	801-530-6729	michaelhammer@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R746-332. Depreciation Rates for Water Utilities

**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 54-4-24 provides the Public Service Commission (PSC) "shall have power to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the [PSC] may prescribe."

Further, the PSC may "fix the proper and adequate rates of depreciation of the several classes of property of each public utility" and require utilities to "conform [their] depreciation accounts to the rates" fixed by the PSC.

This rule establishes depreciation rates for various classes of property held by public water utilities as Section 54-4-24 contemplates and authorizes.

**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 PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The rate at which utility plant is depreciated is a significant factor in determining just and reasonable rates. As expressly authorized by Section 54-4-24, this rule prescribes depreciation rates for classes of property used by public water utilities.

Setting these rates in administrative rule is particularly cost-effective and convenient for the numerous small water companies that service customers in more rural areas of the state (i.e. areas that are not served by a municipal water utility).

Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	02/03/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-347</b>	<b>Filing ID:</b>	<b>51963</b>
<b>Effective Date:</b>	<b>02/03/2023</b>		

**Agency Information**

<b>1. Department:</b>	Public Service Commission
<b>Agency:</b>	Administration

<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Hammer	801-530-6729	michaelhammer@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R746-347. Extended Area Service (EAS)
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
The Public Service Commission (PSC) is statutorily charged with "endeavor[ing] to make available high-quality, universal telecommunications services at just and reasonable rates ... throughout this state" and ensuring changes to rates and terms of service do not take effect without due notice, Sections 54-8b-11 and 54-3-3.
This rule facilitates a petitioning process by which residential customers, the PSC, or a telecommunications carrier may seek to expand the area in which customers may make calls without incurring long distance charges.
This rule further prescribes a cost-based methodology to ensure the telecommunications carrier recovers the costs of such an expansion through just and reasonable rates set by the PSC.
<b>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:</b>
The PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule was established in 2003 consistent with the PSC's statutory authority and in service of its statutory responsibility to establish just and reasonable rates as explained in Box 3, above.

The Legislature later amended Title 54 such that telecommunications carriers may be exempted from the PSC's ratemaking jurisdiction, see Section 54-8b-3.

Additionally, use of cellular phones and wireless service plans that do not incur long distance charges has become relatively ubiquitous among residential customers in the ensuing 20 years. Nevertheless, telecommunications carriers are not exempt from the PSC's jurisdiction (including its ratemaking jurisdiction) unless the PSC has found certain statutory requirements are met (including the existence of effective competition). That is, while the circumstances to which this rule applies are less likely to arise than they were in 2003, the PSC continues to have statutory responsibility to set just and reasonable rates for telecommunications carriers that have not been granted an exemption.

This rule imposes no cost or burden on any stakeholder except in circumstances where this rule may be necessary for the PSC to fulfill its statutory responsibility to establish just and reasonable rates.

Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	02/03/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-402</b>	<b>Filing ID:</b>	<b>51986</b>
<b>Effective Date:</b>	<b>02/03/2023</b>		

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Hammer	801-530-6729	michaelhammer@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		



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

R746-402. Rules Governing Reports of Accidents by Electric, Gas, Telephone, and Water Utilities

**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 Public Service Commission (PSC) is "vested with power and jurisdiction to supervise and regulate every public utility in this state" and express statutory authority to adopt "rules or regulations" to require public utilities to operate in "such manner as to promote and safeguard the health and safety of [their] employees ...and the public", see Sections 54-4-1 and 54-4-14.

The PSC may, by rule, prescribe installation or use of appropriate safety equipment and "require the performance of any other acts which the health or safety" of the public may demand. In service of this responsibility, this rule requires basic reporting of accidents that involve loss of life or significant damage to property to the PSC.

**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 PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is necessary for the PSC to exercise its statutory authority to regulate public utilities in a manner consistent with public safety. This rule simply ensures that serious accidents are reported such that the PSC and other stakeholders are apprised and the PSC has an opportunity to consider whether some agency action, consistent with the PSC's statutory authority, is appropriate.

Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	02/03/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-405</b>	<b>Filing ID:</b>	<b>51973</b>
<b>Effective Date:</b>	<b>02/03/2023</b>		

**Agency Information**

<b>1. Department:</b>	Public Service Commission
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<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Hammer	801-530-6729	michaelhammer@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

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

R746-405. Filing of Tariffs for Gas, Electric, Telephone, and Water Utilities

**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 Public Service Commission (PSC) has jurisdiction to regulate every public utility in the state, including establishing just and reasonable rates, see Sections 54-4-1 and 54-4-4. "Under the rules and regulations made by the [PSC]," Utah law requires public utilities to file with the PSC schedules (i.e. tariffs) showing all rates, charges, and terms of service, Id. at Section 54-3-2.

These filed tariffs must be available to the public for inspection and utilities may not modify them without giving 30 days' notice to the PSC, Id. at Section 54-3-3. Utah law also requires the PSC to allow utilities to jointly file tariffs, Id. at Section 54-3-4. A tariff may not include a general rate increase unless the PSC holds a hearing and complies with the process mandated under Section 54-7-12.

This rule specifies the process and format for filing tariff sheets as the PSC is required and authorized to do under Section 54-3-2. This rule ensures the process for utilities to file these essential documents is clear and the contents are comprehensible and complete for ratepayers to understand the rates and terms governing their service.

**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 PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is essential to ensure ratepayers enjoy their statutory right to inspect the tariffs that govern the rates and terms of their utility service and that those rates and terms do not change absent a utility's compliance with statutory requirements, such as giving 30 days' notice and obtaining the PSC's approval after a hearing for general rate increases.

Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	02/03/2023
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R926-12</b>	<b>Filing ID:</b>	<b>52133</b>
<b>Effective Date:</b>	<b>02/14/2023</b>		

**Agency Information**

<b>1. Department:</b>	Transportation	
<b>Agency:</b>	Program Development	
<b>Room no.:</b>	Administrative Suite, 1st Floor	
<b>Building:</b>	Calvin Rampton Bldg	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 148455	
<b>City, state and zip:</b>	Salt Lake City, Utah 84114-8455	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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**

<b>2. Rule catchline:</b>
R926-12. Share the Road Bicycle Support Restricted Account

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Section 72-2-127 authorizes the Department of Transportation (Department) to make rules providing procedures and requirements for an organization to apply to the Department to receive money from the Share the Road Bicycle Support Restricted Account.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Department has not received written comments 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:**

This rule is needed to provide procedures and requirements for an organization to apply to the department to receive a distribution from the Share the Road Bicycle Support Restricted Account. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Carlos M. Bracerias, PE, Executive Director	<b>Date:</b>	02/14/2023
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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Rule Number:	R317-101	Filing ID: 50784
New Deadline Date:	07/18/2023	

### Agency Information

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Water Quality	
<b>Room number:</b>	DEQ Third Floor	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144870	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4870	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Judy Etherington	801-536-4344	jetherington@utah.gov
Harry Campbell	385-501-9583	hcampbell@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

### General Information

2. Rule catchline:
R317-101. Utah Wastewater Project Assistance Program
3. Reason for requesting the extension:
The Division of Water Quality is requesting an extension before filing the five-year review because this rule has just been approved by the Water Quality Board to initiate rulemaking with an amendment to Section R317-101-3.

The modifications are in response to legislative actions and should be included as soon as possible. It would cause less confusion in the rulemaking process if the text of this rule could be modified using the current dates, rather than have the references change before the amendment process can be completed.

### Agency Authorization Information

Agency head or designee and title:	John K. Mackey, PE, Director	Date:	02/15/2023
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NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Rule Number:	R651-407	Filing ID: 51642
New Deadline Date:	07/11/2023	

### Agency Information

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	State Parks	
<b>Street address:</b>	1594 W North Temple, Suite 116	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146001	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6001	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Melanie Shepherd	801-538-7418	melaniemshepherd@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

### General Information

<b>2. Rule catchline:</b>
R651-407. Off-Highway Vehicle Advisory Council
<b>3. Reason for requesting the extension:</b>
This rule is being repealed. It is moving to the Division of Recreation. The Division of State Parks needs additional time to make the repeal effective before this rule expires.

### Agency Authorization Information

<b>Agency head or designee and title:</b>	Jeff Rasmussen, Director	<b>Date:</b>	02/15/2023
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**End of the Notices of Five-Year Review Extensions Section**

## NOTICES OF RULE EFFECTIVE DATES

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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.

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### 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

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

### 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

## NOTICES OF RULE EFFECTIVE DATES

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. 55020 (Repeal) R25-6: Relocation Reimbursement  
Published: 01/01/2023  
Effective: 02/07/2023

No. 55123 (Amendment) R25-7: Travel-Related Reimbursements for State Travelers  
Published: 01/01/2023  
Effective: 02/07/2023

No. 55179 (Amendment) R25-21: Medical Cannabis Payment Provider Standards  
Published: 01/15/2023  
Effective: 02/21/2023

Fleet Operations  
No. 55168 (Amendment) R27-1: Definitions  
Published: 01/15/2023  
Effective: 02/21/2023

No. 55169 (Amendment) R27-3: Vehicle Use Standards  
Published: 01/15/2023  
Effective: 02/21/2023

No. 55170 (Amendment) R27-4: Vehicle Replacement and Expansion of State Fleet  
Published: 01/15/2023  
Effective: 02/21/2023

No. 55171 (Amendment) R27-5: Fleet Tracking  
Published: 01/15/2023  
Effective: 02/21/2023

No. 55172 (Amendment) R27-6: Fuel Dispensing Program  
Published: 01/15/2023  
Effective: 02/21/2023

No. 55173 (Amendment) R27-7: Safety and Loss Prevention of State Vehicles  
Published: 01/15/2023  
Effective: 02/21/2023

No. 55174 (Amendment) R27-8: State Vehicle Maintenance Program  
Published: 01/15/2023  
Effective: 02/21/2023

No. 55175 (Amendment) R27-10: Identification Markings for State Motor Vehicles  
Published: 01/15/2023  
Effective: 02/21/2023

#### Risk Management

No. 55178 (Amendment) R37-1: Risk Management General Rules  
Published: 01/15/2023  
Effective: 02/22/2023

#### Governor

Economic Opportunity  
No. 55107 (Amendment) R357-3: Economic Development Tax Increment Financing Rule  
Published: 12/15/2022  
Effective: 02/03/2023

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

Center for Health Data, Health Care Statistics  
No. 55112 (Amendment) R428-1: Health Data Plan and Incorporated Documents  
Published: 12/15/2022  
Effective: 02/17/2023

#### Insurance

Administration  
No. 55164 (Amendment) R590-164-5: Electronic Data Interchange Transactions  
Published: 01/01/2023  
Effective: 02/08/2023

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. 55029 (New Rule) R623-8: Ballot Chain of Custody  
Published: 12/15/2022  
Effective: 02/21/2023

No. 55029 (Change in Proposed Rule) R623-8: Ballot Chain of Custody  
Published: 01/15/2023  
Effective: 02/21/2023

#### Natural Resources

Oil, Gas and Mining; Non-Coal  
No. 55149 (Amendment) R647-2-115: Reports  
Published: 01/01/2023  
Effective: 02/24/2023

No. 55154 (Amendment) R647-2-117: Mineral Exploration Tax Credit  
Published: 01/01/2023  
Effective: 02/24/2023

#### Wildlife Resources

No. 55125 (Amendment) R657-5: Taking Big Game  
Published: 01/01/2023  
Effective: 02/14/2023

No. 55126 (Amendment) R657-62: Drawing Application Procedures  
Published: 01/01/2023  
Effective: 02/14/2023



NOTICES OF RULE EFFECTIVE DATES

Tax Commission

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

Preconstruction

No. 55103 (Amendment) R930-5: Maintenance  
Published: 01/01/2023  
Effective: 02/07/2023

Workforce Services

Employment Development

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**