UTAH STATE BULLETIN

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Nancy L. Lancaster, Managing Editor

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

EXECUTIVE ORDER 2023-07

Requiring Water Conservation at State Facilities and Increasing Utah's Drought Resiliency

WHEREAS, Utah is one of the driest states in the nation;

WHEREAS, some portion of the state has experienced drought conditions nearly every year since 2000;

WHEREAS, Utah experienced "extreme" and "exceptional" drought conditions in 2021 and 2022, as categorized by the U.S. Drought Monitor;

WHEREAS, the Great Salt Lake broke its record low in 2021 and then again in November 2022;

WHEREAS, water-saving actions during the past two years have kept more water in our reservoirs than we would have had with typical use;

WHEREAS, the valiant efforts of individual Utahns across the state help to maintain water supplies, even as Utah's population grows;

WHEREAS, Utahns have conserved billions of gallons of water in past conservation efforts;

WHEREAS, even in wet years, Utah needs to prepare for drought conditions;

WHEREAS, maintaining and expanding existing water-saving measures will increase Utah's drought resiliency;

NOW, THEREFORE, I, Spencer J. Cox, Governor of the State of Utah, hereby order the following for state facilities:

- 1. As used in this Order:
- a. "State facility" means a building or structure that is owned or controlled by the state or a state governmental entity.
- b. "State facility" does not mean:
- i. a building or structure that is owned or controlled exclusively by:
- A. the legislative branch of the state;
- B. the judicial branch of the state;
- C. the Attorney General's Office;
- D. the State Auditor's Office;
- E. the State Treasurer's Office;
- F. the State Board of Education;
- G. an independent entity as defined in Utah Code § 63E-1-102;
- ii. an unoccupied structure that is a component of the state highway system;

- iii. a privately owned structure that is located on property owned by the state, the state's department, commission, institution, or other state agency; or
- iv. a structure that is located on land administered by the trust lands administration under a lease, permit, or contract with the trust lands administration.
- c. "State governmental entity" means any department, board, commission, institution, agency, or institution of higher education.
 - 2. Each agency shall:
- (a) assess the agency's compliance with the water conservation requirements for state facilities in Utah Code § 63A-5b-1108;
- (b) coordinate with the Division of Facilities Construction and Management and the Division of Water Resources to implement and follow the requirements in Subsection 2(a);
- (c) submit the information on agency water use required in Utah Code § 63A-5b-1108(3)(b) to the Division of Facilities Construction and Management in addition to the Division of Water Resources; and
- (d) as required in Utah Code § 63A-5b-1108(5)(a), follow the Division of Water Resources' weekly watering guide: https://conservewater.utah.gov/weekly-lawn-watering-guide/.

I further make the following recommendations:

- 1. I recommend that water suppliers and irrigation companies:
- a. where possible, delay the start of the irrigation season or end irrigation early;
- b. encourage efficient landscape watering; and
- c. as needed, contact the Division of Water Resources for assistance with developing a drought response plan and water conservation plan.
 - 2. I recommend that cities and counties:
- a. develop and adopt water efficiency standards for new construction in all sectors (residential, commercial, institutional and industrial);
 - b. evaluate opportunities to:
- (i) limit lawn on the grounds of a city government facility and replace lawn with waterwise plants or other waterwise landscapes; and
- (ii) update facility-management technology to include metering for water-consuming processes related to irrigation and mechanical systems;
 - 3. I recommend that residential water users consider the following conservation practices:
 - a. delay outdoor irrigation or end irrigation early;
- b. follow the Division of Water Resources' weekly watering guide provided at https://conservewater.utah.gov/weekly-lawn-watering-guide/:
 - c. fix irrigation inefficiencies:
 - d. purchase and install a smart controller or low-flow toilet (rebates are offered at https://utahwatersavers.com/);
- e. reduce indoor water use by taking shorter showers, turning off water when not in use, and replacing appliances with water-efficient models;
 - f. follow the directions of local water providers;
 - g. convert nonfunctional grass areas to waterwise landscapes; and
 - h. reduce indoor water waste.

THIS ORDER is effective immediately and shall remain in effect until otherwise modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 10th day of May, 2023.

(State Seal)

Spencer J. Cox Governor, State of Utah

ATTEST:

Deidre M. Henderson Lieutenant Governor, State of Utah

PROCLAMATION

WHEREAS, since the adjournment of the 2023 General Session of the Sixty-fifth Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature into Special Session;

WHEREAS, this applies for all "whereas" statements;

NOW, THEREFORE, I, Spencer J. Cox, governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-fifth Legislature of the State of Utah into a First Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 17 day of May 2023, at 4 p.m., for the following purposes:

- 1. to consider extending the state of emergency declared in Executive Order 2023-05;
- 2. to reallocate the fiscal year 2023 and fiscal year 2024 budgets to address costs related to snow removal, flooding, flood response and mitigation, and other costs related to the conditions that gave rise to the state of emergency declared in Executive Order 2023-05; and
 - 3. to consider amendments to House Bill 225, Firearm Possession Amendments, from the 2023 General Session.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 5th day of May 2023.

Spencer J. Cox Governor, State of Utah

ATTEST:

Deidre M. Henderson
Lieutenant Governor, State of Utah

2023-1S

(State Seal)

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a substantive change to an existing rule. With a **Notice of Proposed Rule**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between <u>May 02, 2023, 12:00 a.m.</u>, and <u>May 15, 2023, 11:59 p.m.</u> are included in this, the <u>June 01, 2023</u>, 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 <u>July 03, 2023</u>. 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 <u>September 29, 2023</u>, the agency may notify the Office of Administrative Rules that it wants to make the **Proposed Rule** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **Change in Proposed Rule** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **Proposed Rules**. Comment may be directed to the contact person identified on the **Rule Analysis** for each rule.

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Repeal				
Rule or Section Number:	R68-24	Filing ID: 55393		

Agency Information

igonoy information				
1. Department:	Agriculture and Food			
Agency:	Plant Industry			
Building:	TSOB South Bldg, Floor 2			
Street address:	4315 S 2700 W			
City, state and zip:	Taylorsville, UT 84129			
Mailing address:	PO BOX 146500			
City, state and zip:	Salt Lake City, UT 84114-6500			
Contact nersens				

Contact persons:

Name:	Phone:	Email:
Amber Brown	385- 245- 5222	Ambermbrown@Utah.gov
Kelly Pehrson	801- 982- 2202	Kwpehrson@Utah.gov
Brandon Forsyth	801- 710- 9945	Bforsyth@Utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R68-24. Industrial Hemp License for Growers

3. Purpose of the new rule or reason for the change:

The Department of Agriculture and Food (Department) no longer licenses hemp growers because of H.B. 385 which was passed in the 2021 General Session.

4. Summary of the new rule or change:

This repeal will align with the state code that was passed in 2021. The bill removed the requirement for the Department to license hemp growers throughout the state. Therefore, this rule is repealed in its entirety.

Fiscal Information

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

A) State budget:

There is no impact on the state budget because the Department has not licensed hemp growers since the bill was passed.

B) Local governments:

This rule is not expected to impact local governments' revenues or expenditures because local governments are not involved with licensing hemp growers.

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

This rule does not affect small businesses because the Department has not licensed hemp growers since the bill was passed in 2021.

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

This rule does not affect non-small businesses because the Department has not licensed hemp growers since the bill was passed in 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*):

This rule does not affect a person because the hemp grower license applies to facilities and not a person.

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

There are no compliance costs for affected persons because hemp growers are no longer required to be licensed with the Department.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

provide a citation to that requirement			
Subsection			
4-41a-103(4)			

Public Notice Information

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

A)	Comments	will	be	accepted	07/03/2023
unti	l:				

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

	Craig W Buttars, Commissioner	Date:	05/04/2023
and title:			

R68. Agriculture and Food, Plant Industry. | R68-24. Industrial Hemp License for Growers. R68-24-1. Authority and Purpose.

Pursuant to Subsection 4 41-103(4), this rule establishes the standards, practices, procedures, and requirements for participation in the Utah Industrial Hemp Program for the growing and cultivation of industrial hemp.

R68-24-2. Definitions.

- 1) "Acceptable hemp THC level" means a total composite tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the total composite tetrahydrocannabinol concentration of 0.3%.
- 2) "Community Location" means a public or private elementary or secondary school, a church, a public library, a public playground, or a public park.
- 3) "Department" means the Utah Department of Agriculture and Food.
- 4) "Growing Area" means a contiguous area on which hemp is grown whether inside or outside.
- 5) "Handle" or "handling" means the action of cultivating or storing hemp plants or hemp plant parts before the delivery of the plants or plant parts for processing.
- 6) "Harvesting" means removing industrial hemp plants from final growing condition and physically or mechanically preparing plant material for storage or wholesale.
- 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) "Key Participant" means any person who has a financial interest in the business entity including members of a limited liability company, a sole proprietor, partners in a partnership, and incorporators or directors of a corporation. A key participant also includes persons at executive levels including chief executive officer, chief operating officer, or chief financial officer. Key participants are also operation managers and site managers, or any employee who may present risk of diversion.
- 9) "Licensee" means a person authorized by the department to grow industrial hemp.
- 10) "Measurement of Uncertainty" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.
- 11) "Negligent" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the requirements of this rule.
- 12) "THC" means total composite tetrahydrocannabinol, including delta 9 tetrahydrocannabinol and tetrahydrocannabinolic acid.

R68-24-3. Grower License Application Requirements.

- 1) The applicant shall be a minimum of 18 years old.
- 2) The applicant is not eligible to receive a license if they have been convicted of a felony or its equivalent within the last ten years.
- 3) An applicant seeking an industrial hemp cultivation license shall submit the following to the department:
- a) a completed application form provided by the department;
- b) the legal description of the growing area;
- e) the global positioning coordinates for the center of the outdoor growing area;
- d) maps of the growing area in acres or square feet, and the location of different varieties within the growing area;
- e) a statement of the intended end use or disposal for the parts of the hemp plant grown; and
- f) a plan for the storage of seed or clone and harvested industrial hemp material as specified in Section R68-24-7.

- 4) An applicant shall submit a nationwide criminal history from the Federal Bureau of Investigation (FBI) completed within 60 days of their application.

 5) An applicant shall submit the full name and title of each key participant, along with their email address and a nationwide criminal history from the FBI completed within 60 days of the application.
- 6) The applicant shall submit a fee as approved by the legislature in the fee schedule.
- 7) The department shall deny any applicant who does not submit the required information.

R68-24-4. Growing Area.

- A licensee may not plant or grow industrial hemp on any site not listed on the grower license application and shall take immediate steps to prevent the inadvertent growth of industrial hemp outside of the authorized grow area.
- 2) A licensee may not grow hemp in any structure used for residential purposes.
- 3) A licensee may not handle or store leaf, viable seed, or floral material from hemp in a structure used for residential purposes.

 4) A licensee may not grow industrial hemp outdoors within 1,000 feet of a community location.
- 5) The licensee shall post signage at the plot location's entrance and where the plot is visible to a public roadway in a manner that would reasonably be expected to be seen by a person in the area.
 - 6) The signage shall include the following information:
- a) the statement, "Utah Department of Agriculture Industrial Hemp Program";
- b) the name of the licensee;
- e) the Utah Department of Agriculture and Food licensee number; and
- d) the department's telephone number.

R68-24-5. Reporting Requirements.

- 1) Within ten days of planting the licensee shall submit a Planting Report, on a form provided by the department, that includes:

 a) a list of industrial hemp varieties and other plants in the growing area that were planted;
- b) the actual acres planted or the seeding rate or number of clones planted in the growing area;
- e) adjusted maps and global position coordinates for the area planted; and
 - d) the amount of seed that was not used.
- 2) 30 days before harvest the licensee shall submit a Harvest Report, on a form provided by the department, that includes:
- a) any contracts entered into between the licensee and an industrial hemp processor or a statement of the intended use of industrial hemp cultivated in the growing area;
- b) any intended storage areas for industrial hemp or industrial hemp material; and
- c) the harvest dates and location of each variety cultivated in the growing areas.
- 3) The licensee shall immediately inform the department of any changes in the reported harvest date that exceed five days.
- 4) 30 days after completion of harvest the licensee shall submit a Production Report, on a form provided by the department, which includes:
- a) yield from the growing area;
- b) THC testing reports, if any, conducted at the licensee's request;
 - c) water application rates;

- d) a report of any pest infestations or problems; and
- e) a statement on the final disposition of the industrial hemp product in the growing area.
- 5) Failure to submit the required reports may result in the revocation of the grower license.

R68-24-6. Inspection and Sampling.

- 1) The growing area shall be subject to random sampling by department officials to verify the THC concentration does not exceed the acceptable hemp THC levels.
- 2) The department shall have complete and unrestricted access to industrial hemp plants and seeds whether growing or harvested, and to land, buildings, and other structures used for the cultivation or storage of industrial hemp.
- 3) Department officials shall take a random sample of each variety of industrial hemp from the growing area.
- 4) The department shall conduct the laboratory testing on the sample to determine the THC concentration on a dry weight basis.
 5) The sample taken by the department shall be the official sample.
- 6) The department shall test the growing area within 30 days before harvest.
- 7) The department shall notify the licensee of the test results from the official sample within a reasonable amount of time.
- 8) The test results from the department shall contain a measurement of uncertainty.
- 9) The licensee shall harvest compliant industrial hemp plants within 30 days of the official sample collection date.
- 10) Any laboratory test that exceeds the acceptable hemp THC level may be considered a violation of the terms of the license and may result in license revocation and issuance of a citation.
- 11) Upon receipt of a test result with greater than the acceptable hemp THC level, the department shall notify the licensee.

 12) The department will coordinate with the appropriate law enforcement agency regarding any laboratory test result considered to have resulted from a culpable mental state greater than negligence.
- 13) Corrective action plans shall be implemented for any violations of Title 4, Chapter 41, Hemp and Cannabinoid Act, that are considered to be negligent. Negligent violations shall be tracked for compliance and followed up for two calendar years.

R68-24-7. Storage of Industrial Hemp and Hemp Material.

- 1) A licensee may store hemp and hemp material provided:
- a) the licensee notifies the department, in writing, of the location of the storage facility;
- b) the licensee informs the department of the type and amount of product being stored in the storage facility;
 - c) the storage facility is outside of the public view; and
- d) the storage facility is secured with physical containment and reasonable security measures.
- 2) The storage area is subject to random inspection by department officials.

R68-24-8. Transportation of Industrial Hemp Materials.

- 1) A licensee may not transport any industrial hemp materials, except to a storage facility, until the department has notified the licensee of the test results from the growing area.
- 2) An industrial hemp transportation permit is required for each day and each vehicle used to move industrial hemp or industrial hemp products.

- 3) The licensee shall submit an industrial hemp transportation permit request on a form provided by the department at least five business days before movement.

 4) An industrial hemp transportation permit authorizes the
- 4) An industrial hemp transportation permit authorizes the transportation of industrial hemp materials only within the borders of the state.
- 5) The department may deny any application for a transportation permit that is not completed in accordance with this rule.

R68-24-9. Restrictions on the Sale and Transfer of Industrial Hemp and Hemp Materials.

1) A licensee may not sell or transfer living plants, viable plants, viable seeds, leaf material, or floral material to any person not licensed by the department or to any person outside the state who is not authorized by the laws of that state or the United States Department of Agriculture.

2) A licensee may sell or transfer stripped stalks, fiber, and nonviable seed to the general public provided the hemp material has an acceptable hemp level.

R68-24-10. Renewal.

1) A licensee shall resubmit documents required in Section R68-24-3, with updated information, before December 31st of each year.

- 2) The department may deny a renewal for:
 - a) an incomplete application; or
- b) any licensee who has violated any portion of this rule or state law.

R68-24-11. Extension.

- 1) The department may extend the term of a license for up to 90 days, provided that:
- a) the licensee requests an extension before the end of the original license term; and
- b) the licensee reports to the department:
- i) the amount of industrial hemp they have at the end of the original license term; and
- ii) the planned disposition of the remaining industrial hemp.
- 2) Under an extended license, the licensee may not grow or process industrial hemp, but may store and sell industrial hemp harvested during the previous growing season.
- 3) The licensee shall submit a license extension fee as approved by the legislature in the fee schedule.
- 4) The licensee continues to be subject to inspection by the department.

R68-24-12. Remediation or Destruction of Non-compliant Material.

- 1) Non-compliant material may be remediated by:
- a) removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds; or
 - b) shredding the entire plant to create a "biomass-blend."
- 2) Before remediation, a licensee shall have their remediation plan approved by the department.
- 3) Following remediation, non-compliant material shall be retested for compliance.
- 4) A licensee shall request remediation and provide the department with their remediation plan within five business days of receiving notification that material is not compliant.

- 5) A licensee shall remediate and retest non-compliant material within 30 days of receiving department approval of their remediation plan.
- 6) If a licensee chooses not to remediate or if a remediation attempt is not successful, the licensee shall dispose of any non-compliant material.
- 7) Disposal shall be conducted:
- a) by a DEA registered reverse distributor or law enforcement:
- b) on site at the farm or hemp production facility by plowing under;
 - e) by mulching or composting the non-compliant material;
- d) by disking the non-compliant material;
- e) by shredding the non-compliant with a bush mower or chopper;
- f) by burying the non-compliant material at least two feet deep; or
- g) by burning the non-compliant material.
- 7) The department shall verify the destruction of noncompliant material.

R68-24-13. Violations.

- 1) A licensee or key participant may not:
- a) grow industrial hemp that tests greater than the acceptable hemp THC level on a dry weight basis;
- b) have, sell, transfer, or transport industrial hemp material that tests greater than the acceptable hemp THC level on a dry weight basis;
 - e) allow unsupervised public access to hemp plots;
- d) deny an official of the department access for sampling or inspection purposes; or
 - e) violate any portion of this rule or state law.
- 2) It is a violation of the grower license to grow or store industrial hemp or industrial hemp material on a site not approved by the department as part of the license.
- 3) It is a violation of this rule to:
- a) grow, cultivate, handle, or have industrial hemp or viable industrial hemp materials without a license from the department:
- b) grow industrial hemp material on a site not approved by the department as listed on the license; or
- c) grow industrial hemp outdoors within 1,000 feet of a community location.

KEY: industrial hemp cultivation

Date of Last Change: February 23, 2022

Authorizing, and Implemented or Interpreted Law: 4-41-103(4)

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Amendment				
Rule or Section Number:	R68-26	Filing ID: 55411		

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Building:	TSOB South Bldg, Floor 2	

Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address	PO Box 146500
City, state and	Salt Lake City, UT 84114-6500

Contact persons:

Name:	Phone:	Email:
Amber Brown	385- 245- 5222	ambermbrown@utah.gov
Cody James	385- 515- 1485	codyjames@utah.gov
Kelly Pehrson	385- 977- 2147	kwpehrson@utah.gov

Please address questions regarding information on this notice to the persons listed above.

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:

Changes are needed to clarify this rule and ensure it is consistent with changes passed by the legislature during the 2023 General Session in H.B. 227, Hemp Amendments.

4. Summary of the new rule or change:

In Section R68-26-2, clarification has been added to the definition of "cannabinoid product" to add THC serving and package limits included in H.B. 227 (2023). The definition of "cannabinoid product class" has been added to replace "industrial hemp product class." The definition of "registrant" has replaced "manufacturer."

Additionally, throughout this rule, the word "industrial hemp" has generally been replaced with "cannabinoid product" because this more accurately represents the Department of Agriculture and Food's (Department) regulatory jurisdiction.

In Section R68-26-4, a requirement has been added that the certificate of analysis for each product include cannabinoid testing from the Department laboratory, a clarification that was added to the Department's rulemaking authority in H.B. 227 (2023).

In Section R68-26-5, a requirement is also added that products designed to be inhaled contain a specific warning label regarding potential health effects, also required in H.B. 227 (2023).

Fiscal Information

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

A) State budget:

The changes will not impact the state budget overall. There will be additional testing at the state laboratory, however, they will be paid for by laboratory testing fees.

B) Local governments:

Local governments will not be impacted by the changes because they do not regulate or register cannabinoid products.

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

Small business registrants will now need to pay for cannabinoid testing at the state lab, however, this should not lead to increased cost because the testing fee will be approximately the same as is currently charged by other labs. The requirement of cannabinoid testing itself is not new to this rule.

Small businesses will also need to update their labeling to add a warning for inhaled products. The Department estimates that this will lead to an increased cost in FY 2024 only because following 2024, they will incorporate the warning into existing labeling.

The Department estimates that 1,800 registrations will each have approximately 2,000 products with a \$0.25 additional label cost each for a total of cost of \$900,000 with 75% being borne by small businesses and 25% by non-small businesses or a total impact of \$675,000 on small businesses.

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

Non-small business registrants will now need to pay for cannabinoid testing at the state lab, however, this should not lead to increased cost because the testing fee will be approximately the same as is currently charged by other labs. The requirement of cannabinoid testing itself is not new to this rule.

Non-small businesses will also need to update their labeling to add a warning for inhaled products. The Department estimates that this will lead to an increased cost in FY 2024 only because following 2024, they will incorporate the warning into existing labeling.

The Department estimates that 1,800 registrations will each have approximately 2,000 products with a \$0.25 additional label cost each for a total of cost of \$900,000 with 75% being borne by small businesses and 25% by non-small businesses or a total impact of \$675,000 on 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*):

Other persons will not be impacted because they do not register or regulate cannabinoid products.

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 increase due to the requirement to add a warning regarding inhaled products. The Department estimates that this cost will be an increase of \$0.25 per product on the market in FY 2024 only.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$675,000	\$0
Non-Small Businesses	\$0	\$225,000	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$900,000	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$(900,000)	\$0

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

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

Citation Information

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

i-	=	
Subsection	Subsection	
4-41-103(4)	4-41-403(1)	

Public Notice Information

- **8.** The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)
- A) Comments will be accepted 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head or designee and title:	Craig W Buttars, Commissioner	Date:	05/12/2023
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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 <u>cannabinoid</u> 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
- (e) 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.] the same as the term is defined in Subsection 4-41-102(6).
- (2) "Cannabinoid product class" means group of cannabinoid products:
 - (a) that have all ingredients in common; and
 - (b) are produced by or for the same company.

- ([2]3) "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%.
- $([\frac{3}{2}]4)$ "CBD" or "Cannabidiol" means the cannabinoid identified as CAS# 13956-29-1.
- ([4)]5) "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)]6 "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.
- $([\frac{6}{2})]$ "Department" means the Utah Department of Agriculture and Food.
- ($[\frac{7}{18}]$) "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]a cannabinoid product.
- [(10) "Manufacturer" means a person who makes any industrial hemp products.]
 - (1[1]0) "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.
- (1[2]1) "Person" means an individual, partnership, association, firm, trust, limited liability company, or corporation or any employees of such.
- (12) "Registrant" means a person who manufactures, packages, or distributes cannabinoid product and assumes responsibility for the compliance of the product registration.
- (13) "THC" or "Tetrahydrocannabinol" means delta-9-tetrayhdrocannabinol, 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) cannabidivarol (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]cannabinoid 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 Legislature, shall be paid to the department with the submission of the application.
- (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]may 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]registrant 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]a cannabinoid product registration submitted after [June 30th]the day of expiration and shall be paid before the registration renewal is issued.
- (12) The department [$\frac{\text{shall}}{\text{may}}$ 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) Testing shall be conducted on the product in its final form for:
- (a) the cannabinoid profile by percentage of mass.[5] performed by the Department's analytical laboratory;
 - (b) solvents;
 - (c) pesticides;
 - (d) microbials;
 - (e) heavy metals; and
 - (f) mycotoxins.
- (2) The test results required in Subsection R68-26-4(1) shall be reported in accordance with the requirements for a cannabinoid product in Rule R68-37 including the specified units of measure.
- (3) 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 cannabinoid product shall contain the following information, legibly displayed:
- (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, including serving size if the product is intended for consumption;
- (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) 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."
- (4) Cannabinoid products containing a cannabinoid other than CBD produced for absorption by humans shall contain the following text, prominently displayed: "Warning The safety of this product has not been determined."
- (5) Notwithstanding Subsection R68-26-5(1)[-an industrial hemp product containing a cannabinoid] a cannabinoid product

- 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(5) a cannabinoid product shall have on the label a scannable barcode, QR code, or web address with an easily identifiable link to a document containing the following information:
 - (a) the total quantity produced; and
- (b) a downloadable link for a] <u>located</u> certificate of analysis for the batch identified, <u>containing the information required</u> in Section R68-26-4.
- (7) Cannabinoid products [shall]may 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(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]may 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) A cannabinoid product that is designed to be inhaled shall include a warning on the label regarding the possible health effects of inhaling cannabinoid products.
- [(10)](11) 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)](12) The label of cannabinoid products intended for consumption by animal [shall]may not:
 - (a) contain any feed claims;
 - (b) be labeled as food; or
- $\begin{tabular}{ll} \hline (c) & contain any Food and Drug Administration evaluation statement. \end{tabular}$
- (13) A cannabinoid product is considered misbranded if its label is false or misleading in any way.

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_]cannabinoid_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;
- (g) marketing a cannabinoid product that makes a medical claim; or
- (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]a cannabinoid 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: [April 7, 2023]2023

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

4-41-402(2); 4-41-103(4)

NOTICE OF PROP	OSED RULE	
TYPE OF FILING:	Repeal	
Rule or Section Number:	R68-32	Filing ID: 55394

Agency Information

3,	
1. Department:	Agriculture and Food
Agency:	Plant Industry
Building:	TSOB South Bldg, Floor 2
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO BOX 146500
City, state and zip:	Salt Lake City, UT 84114-6500
Contact persons:	

Contact persons	•	
Name:	Phone:	Email:
Amber Brown	385- 245- 5222	Ambermbrown@Utah.gov
Kelly Pehrson	801- 982- 2202	Kwpehrson@Utah.gov
Brandon Forsyth	801- 710- 9945	Bforsyth@Utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R68-32. Sale and Transfer of Industrial Hemp Waste to Medical Cannabis Cultivators

3. Purpose of the new rule or reason for the change:

S.B. 91 passed during the 2023 General Session, and it removed language related to medical cannabis cultivators using industrial hemp waste.

4. Summary of the new rule or change:

Since S.B. 91 (2023) passed and removed language about medical cannabis cultivators using industrial hemp waste, this rule is no longer compliant with the statute. Therefore, this rule is repealed in its entirety.

Fiscal Information

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

A) State budget:

There is no anticipated impact on the state budget because this rule did not collect or require any fees for using industrial hemp waste.

B) Local governments:

There is no anticipated impact on local governments because this rule does not collect or require any fees for using industrial hemp waste.

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

There is no anticipated impact on small businesses because this rule does not require the collection or distribution of fees.

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

There is no anticipated impact on non-small businesses because this rule did not require the collection or distribution of fees.

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 impact on other persons because this rule does not require the collection or distribution of fees.

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

There is no anticipated impact on compliance costs because this rule did not require the collection or distribution of fees.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small	\$0	\$0	\$0
Businesses			
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Subsection 4-41a-501(5)

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

or designee	Craig W Buttars, Commissioner	Date:	05/04/2023
and title:			

R68. Agriculture and Food, Plant Industry.

[R68-32. Sale and Transfer of Industrial Hemp Waste to Medical Cannabis Cultivators.

R68-32-1. Authority and Purpose.

Pursuant to Subsection 4-41a-501(5), this rule establishes the procedures governing the sale of a cannabinoid concentrate by an industrial hemp processing facility to a cannabis cultivation facility, including procedures for sale approval, transportation, recordkeeping, testing, and inspection and recall.

R68-32-2. Definitions.

- 1) "Batch" means a quantity of:
- a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which the same lots of cannabis are used: or
- b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used.
- 2) "Cannabinoid" means any:
- a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or
- b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.
 - "Cannabis" means any part of the marijuana plant.
- 4) "Cannabinoid concentrate" means the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass.
- 5) "Cannabis cultivation facility" means a person licensed by the department that:
- a) possesses cannabis;
- b)i) grows or intends to grow cannabis; or
- ii) acquires or intends to acquire industrial hemp waste from an industrial hemp processor; and
- e) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.
 - 6) "Cannabis product" means a product that:
 - a) is intended for human use; and
 - b) contains cannabis or tetrahydrocannabinol.
- 7) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for which testing was performed.
- 8) "Department" means the Utah Department of Agriculture and Food.
- 9) "Final product" means a reasonably homogeneous cannabis product in its final packaged form created using the same standard operating procedures and the same formulation.
- 10) "Industrial hemp" means any part of the cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by dry weight.
 - 11) "Industrial hemp waste" means:
- (a) a cannabinoid concentrate; or
- (b) industrial hemp biomass.
- 12) "Inventory Control System" means the system described in Section 4-41a-103.

R68-32-3. Sale of Industrial Hemp Requirements.

- 1) Industrial hemp waste shall only be sold by an industrial hemp processing facility to a cannabis cultivation facility if:
- a) the industrial hemp waste is derived from industrial hemp biomass that has been certified as industrial hemp by a state department of agriculture or the U.S. Department of Agriculture; and
 b) the industrial hemp processing facility has records to substantiate the certification.
- 2) A cannabis cultivation facility may not receive more than 120 kilograms of industrial hemp waste in a single license year.

R68-32-4. Sale of Industrial Hemp - Notification and Approval.

- 1) Within ten days of the sale of industrial hemp waste by an industrial hemp processing facility to a cannabis cultivation facility, the industrial hemp processing facility shall:
 - a) notify the department of the potential sale in writing;
- b) provide the department with a COA showing that the biomass from which the industrial hemp waste was derived was certified industrial hemp by a state department of agriculture or the U.S. Department of Agriculture; and
- c) provide the department with a COA or other documentation of test results showing that a representative sample of the industrial hemp waste has been tested as required by Rule R68-20.
- 2) The department will approve the sale following review of the records of the industrial hemp processing facility to ensure compliance with this rule.
- 3) Upon approval of the sale, the department will issue a certificate to the industrial hemp processing facility allowing the sale to proceed.
- 4) No industrial hemp waste may be sold by an industrial hemp processing facility unless the industrial hemp processing facility has a license in good standing with the department.
- 5) The department may not approve the sale of cannabinoid concentrate with a THC concentration above 0.3%.

R68-32-5. Transportation.

- 1) Industrial hemp waste shall meet the testing requirements of Rule R68-29.
- 2) A printed certificate of sale shall accompany every transport of industrial hemp waste.
- 3) The certificate of sale may not be voided or changed after departing from the original industrial hemp processing facility.
- 4) The receiving cannabis cultivation facility shall ensure they are given a copy of the certificate of sale.
- 5) The receiving cannabis cultivation facility shall ensure that the industrial hemp waste received is as described in the certificate of sale and shall record the amounts received into the inventory control system.
- 6) The receiving cannabis cultivation facility shall document any differences between the quantity specified in the certificate of sale and the quantities received in the inventory control system.
 - 7) During transport, the industrial hemp waste shall be:
 - a) shielded from the public view;
 - b) in a secure container; and
 - c) temperature controlled if perishable.
- 8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting industrial hemp waste is involved in an accident that involves product loss.

R68-32-6. Recordkeeping Requirements.

- 1) Following the purchase of industrial hemp waste from an industrial hemp processing facility, a cannabis cultivation facility shall ensure that each batch of industrial hemp waste has a unique identification number in the inventory control system.
- 2) A cannabis cultivation facility shall maintain a record of each purchase of industrial hemp waste, including:
- a) a copy of the certification that the industrial hemp waste is derived from certified industrial hemp; and
- b) if applicable, a copy of the record documenting that the extraction of the cannabinoid extract that qualifies as industrial hemp waste took place in Utah.
- 3) Each record shall be made available for inspection by the department.

R68-32-7. Testing Requirements.

- 1) Industrial hemp waste purchased by a cannabis cultivation facility shall be tested by a licensed cannabis testing laboratory pursuant to the requirements of Section R68-29-3 before transfer of the industrial hemp waste to a cannabis processing facility. 2) Testing shall be documented on a COA and recorded in
- the inventory control system. 3) Final products derived from industrial hemp waste are subject to the same testing requirements as other cannabis products.

R68-32-8. Inspection and Recall.

- 1) The department has the right to conduct a random inspection of industrial hemp processing facilities and medical cannabis cultivators that are subject to this rule, including an audit of the following to ensure compliance with Utah state law, rules, and this rule:
- a) the records of an industrial hemp processing facility that has sold industrial hemp waste; and
- b) the records of a cannabis cultivation facility that has purchased industrial hemp waste.
- 2) Inspection may take place at any time during normal business hours.
- 3) Industrial hemp waste that is identified as out of compliance may be subject to recall and destruction by the department.

R68-32-9. Violations.

- 1) Violations of this rule include:
- sale or transfer of industrial hemp waste without notifying the department;
- b) sale of cannabinoid concentrate with a THC level greater than 0.3%;
- c) a medical cannabis facility allowing industrial hemp waste into the facility without entering it into the inventory control system;
- d) a medical cannabis facility allowing industrial hemp waste into the facility without testing;
- e) a facility not keeping and maintaining each record required by this rule;
- f) a facility falsifying a record required to be kept under this rule:
- g) a facility denying the department access to the records; and
- transporting industrial hemp waste to a cannabis cultivation facility without a certificate of sale.

- 2) The department shall assess fines of:
- a) \$3,000 \$5,000 for public safety violations;
- b) \$1,000 \$5,000 for regulatory violations; and
 - c) \$500 \$5,000 for licensing violations.
- 3) The department shall calculate fines 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.
- 4) The department may enhance or reduce the penalty based on the seriousness of the violation.

KEY: industrial hemp waste, industrial hemp processing facility, cannabis cultivation facility

Date of Last Change: October 24, 2022

Authorizing, and Implemented or Interpreted Law: 4-41a-501(5)]

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Amendment			
Rule or Section Number:	R68-33	Filing ID: 55413	

Agency Information

1. Department:	Agriculture and Food
Agency:	Plant Industry
Building:	TSOB South Bldg, Floor 2
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 146500
City, state and zip:	Salt Lake City, UT 84114-6500
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•			
Name:	Phone:	Email:	
Amber Brown	385- 245- 5222	ambermbrown@utah.gov	
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Kelly Pehrson	385- 977- 2147	kwpehrson@utah.gov	

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R68-33. Industrial Hemp Retailer Permit

3. Purpose of the new rule or reason for the change:

Clarifications are needed to ensure this rule is consistent with current law following the passage of H.B. 227. Hemp Amendments, during the 2023 General Session.

4. Summary of the new rule or change:

The definition of cannabinoid product is clarified to include per package and per serving limits put in place in H.B. 227 (2023).

The text of this rule is updated throughout to reference cannabinoid products rather than industrial hemp since that is more consistent with current law and the Department of Agriculture and Food's (Department) authority under this rule.

Language has been added to Sections R68-33-5 and R68-33-7 adding a limitation on sales of products with THC to anyone under the age of 21, also included in H.B. 227 (2023).

Clarification has also been added to Section R68-33-7 related to violations for selling products that could be appealing to children.

Fiscal Information

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

A) State budget:

This change clarifies rule requirements and should not impact the state budget. The change related to sales of products with THC will not impact Department revenue because the same number of industrial hemp retailers should be registered each year, with the same amount of fees collected.

B) Local governments:

Local governments do not act as industrial hemp retailers and will not be impacted by this rule change.

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

Small business industrial hemp retailers will not be impacted by this rule change because they clarify existing requirements.

They will not be impacted by the new packaging limits because they do not produce cannabinoid products.

While product sales may decrease due to the new limitation on sales of products with THC, the Department is not able to quantify the small business impact of this change because there is no current tracking of sales to those under 21 years old.

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

Non-small business industrial hemp retailers will not be impacted by this rule change because they clarify existing requirements.

They will not be impacted by the new packaging limits because they do not produce cannabinoid products.

While product sales may decrease due to the new limitation on sales of products with THC, the Department is not able to quantify the non-small business impact of this change because there is no current tracking of sales to those under 21 years old.

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

Other persons will not be impacted by the changes because they do not operate as industrial hemp retailers.

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

Compliance requirements for retailers have not changed.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

1	
Section	
4-41-103.1	

Public Notice Information

- 8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)
- A) Comments will be accepted 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Craig W Buttars,	Date:	05/12/2023
or designee	Commissioner		
and title:			

R68. Agriculture and Food, Plant Industry. R68-33. Industrial Hemp Retailer Permit.

R68-33-1. Authority and Purpose.

[1)—]Pursuant to Section 4-41-103.3 and Subsection 4-2-103(1)(i), this rule establishes the requirements for a person seeking

R68-33-2. Definitions.

an industrial hemp retailer permit.

- (1) ["Department" means the Utah Department of Agriculture and Food.]"Cannabinoid product" means the same as the term is defined in Subsection 4-41-102(6).
- (2) "Cannabinoid product class" means a group of cannabinoid products:
 - (a) that have all ingredients in common; and
 - (b) are produced by or for the same company.
 - (3) "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.
- (4) "Department" means the Utah Department of Agriculture and Food.
- (25) "Industrial hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.
- ([3]6) "Industrial hemp retailer permit" means a permit that the department issues to a retailer who sells or markets any [industrial hemp]cannabinoid product.
- [4) "Industrial hemp product" means product derived from or made by processing industrial hemp plants or plant parts.]
- ([5]7) "Person" means an individual, partnership, association, firm, trust, limited liability company, or corporation or any employees of such.
- ([6]8) "Premises" means a place where an industrial hemp product is sold, offered for sale, exposed for sale, stored, or marketed.
- ([7]2) "Viable seeds" means seed that has a germination rate of greater than 0.0%.

R68-33-3. Industrial Hemp Retailer Permit.

- (1) A person who sells, offers for sale, exposes for sale, or markets a[n] [industrial hemp]cannabinoid product in the state shall secure an industrial hemp retailer permit from the department.
- (2) A permit shall be obtained before a[n] [industrial hemp]cannabinoid product is offered for sale in Utah.
- (3) A person seeking an industrial hemp retailer permit shall provide to the department:
- (a) the name of the person who sells, offers for sale, or markets a [n industrial hemp] cannabinoid product;
- (b) the address of each location where the [industrial hemp]cannabinoid product is sold, offered for sale, or marketed; and
- (c) written consent allowing a representative of the department to enter [all]any premises where the person is selling [industrial hemp]cannabinoid product.
- (4) A retailer shall obtain a permit for each individual store or retail establishment location where [industrial hemp]cannabinoid products are sold.
- (5) A permit fee, as set forth in the fee schedule approved by the [4]Legislature, shall be paid to the department with the submission of the application.
- $\underline{(6)}$ The department may deny a permit for an incomplete application.
- (7) A permit is renewable for up to a one-year period with an annual renewal fee that shall be paid on or before December 31st of each year.
- (8) A late fee shall be assessed for a renewal of an industrial hemp retailer permit submitted after December 31st and shall be paid before the renewal is issued.

R68-33-4. Inspection and Testing.

- (1) The department shall randomly inspect a retailer permittee to ensure [industrial hemp-]cannabinoid product distributed or available for distribution in Utah is in compliance with this rule and Rule R68-26.
- (2) The department shall periodically sample, analyze, and test [industrial hemp]cannabinoid product distributed within the state for compliance with registration and labeling requirements, and the certificate of analysis, if applicable.
- (3) The department may inspect [industrial hemp]cannabinoid product distributed or available for distribution for any other reason the department deems necessary.

- (4) The department may, upon request, inspect a retailer permittee's records of receipt, inventory, and invoices to ensure [industrial hemp]cannabinoid product distributed or available for distribution in Utah is [in compliance with]following this rule and Rule R68-26.
- (5) The sample taken by the department shall be the official sample.
- (6) Pursuant to Section 4-1-105, the department may take samples at no charge to the department.

R68-33-5. Retailer Permittee Responsibilities.

- (1) A retailer shall:
- (a) ensure that an advertisement for [industrial hemp]cannabinoid product sold or marketed in Utah does not contain any medical claim unless the product has been issued a National Drug Code by the FDA; and
- (b) ensure that a[n] [industrial hemp]cannabinoid product sold is properly registered with the department.
- (2) A retailer shall provide the identity of the manufacturer or distributor of [an industrial hemp]a cannabinoid product sold upon request of the department.
- (3) A retailer may register the product in lieu of the manufacturer if the product is not registered.
 - (4) A retailer shall ensure that each location is permitted.
- (5) A retailer shall ensure that products containing THC or THC analogs are only sold to individuals 21 years of age and older.

R68-33-6. Viable Industrial Hemp Seed.

- (1) A person who sells or markets viable industrial hemp seeds in the state shall secure an industrial hemp retailer permit from the department.
- ([a]2) A separate permit is required for each individual business location in the state where viable industrial hemp seeds are sold or distributed.
- [[b]3) Any manufacturer or distributor who does not have a seed retail business within this state, and who sells or distributes viable industrial hemp seeds directly into Utah, shall obtain an industrial hemp retailer permit from the department for their principal out-of-state business location.
- ([2]4) A person who sells or markets viable industrial hemp seeds in the state may only sell viable seed to a licensed industrial hemp producer.
- ([3]5) [Records Maintained.-]Each industrial hemp retailer that sells or distributes viable industrial hemp seed shall keep a record of any viable industrial hemp seed sales. This sales record shall be submitted to the department through the department's website on the day of each sale and shall contain the following information:
 - (a) the company name of the industrial hemp retailer;
- (b) the store or location name of the industrial hemp retailer making the sale;
 - (c) the complete industrial hemp retailer permit number;
- (d) the first and last name of the individual who made the sale;
- (e) the complete date of the sale, including the month, day, and year;
 - $\underline{(f)}$ the brand name of the seeds and the quantity sold;
- (g) the first and last name of the licensed hemp producer who made the purchase;
- (h) the complete license number of the licensed hemp producer who made the purchase; and
- (i) the complete address and contact information of the licensed hemp producer who made the purchase, including street

name and house number, city, state, zip code, phone number, and email address.

- ([4]6) Records shall be kept for a period of two years from the date of the hemp seed sale and shall be made available for inspection by the department.
- ([5]7) The department, upon request and within two business days, shall be furnished a copy of any sales records completed by the industrial hemp retailer.

R68-33-7. Violation.

- (1) [Industrial hemp]A cannabinoid product shall be considered falsely advertised if the permittee makes a claim about a product that is not on the label.
 - (2) It is a violation to:
- (a) market or sell [industrial hemp]cannabinoid product in Utah without an industrial hemp retail permit;
- (b) distribute, market, or sell [industrial hemp]cannabinoid product that is not registered with the department;
- (c) distribute or market a product that contains greater than 0.3% THC;
- (d) distribute or market [an industrial hemp-]a cannabinoid product that is represented as a conventional food item or food additive[containing a cannabinoid that is not in a medicinal dosage form]:
- (e) market or sell industrial hemp products without a valid retailer permit; [-or]
- (f) refuse inspection of a retail establishment, product for sale, or a product storage area[-];
 - (g) sell cannabinoid products that:
- (i) have any likeness bearing resemblance to a cartoon character or fictional character; or
- (ii) appear to imitate a food or other product that is typically marketed toward or appealing to children; or
- (h) knowingly or intentionally sell or give a cannabinoid product that contains THC or a THC analog to an individual who is not at least 21 years old.

KEY: industrial hemp, retailer permit
Date of Last Change: [December 15, 2022]2023
Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(i); 4-41-103.3

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Amendment			
Rule or Section Number:	R70-330	Filing ID: 55403	

Agency Information

1. Department:	Agriculture and Food	
Agency:	Regulatory Services	
Building:	TSOB South Bldg., Floor 2	
Street address:	4315 S 2700 W	
City, state, and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO BOX 146500	
City, state, and zip:	Salt Lake City, UT 84114-6500	

Contact persons:			
Name:	Phone:	Email:	
Travis Waller	801- 982- 2250	twaller@Utah.gov	
Amber Brown	385- 245- 5222	ambermbrown@Utah.gov	
Kelly Pehrson	801- 982- 2200	kwpehrson@Utah.gov	

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R70-330. Raw Milk for Retail

3. Purpose of the new rule or reason for the change:

Changes are needed to clarify the testing requirements for the raw milk program, allow the Department of Agriculture and Food (Department) to manage the growing program effectively, ensure that raw milk sold in Utah is safe for consumers, and provide guidelines for penalties in the event that raw milk is sold without a permit.

Changes are also needed to ensure this rule is consistent with the current statute, given changes passed in H.B. 320, during the 2023 General Session, that allows for the sale of additional raw milk products beyond milk, butter, or cream.

4. Summary of the new rule or change:

First, this rule has been expanded to add the definition of raw milk product in Section R70-330-2, consistent with the current statute and changes from H.B. 320 (2023).

References to raw milk products have been added throughout this rule as well.

Additionally, changes and clarifications are made to the testing requirements of the program, including adding a requirement for retesting for pathogen violations, clarification of permit suspension and reinstatement procedures to ensure that they apply to all raw milk sold in a retail setting, and clarification of retesting requirements in the event of failed testing.

Language is also added to clarify that producers are responsible for the cost of testing, consistent with statutory provisions.

Additional requirements are added regarding third-party labs that test raw milk, including a requirement that labs be listed by the Food and Drug Administration and that lab results be shared with the Department.

A section is added to provide specific penalties the Department may assess if a producer is selling raw milk without a permit.

Language is added to specify that the Department may charge fees for inspections and testing, which is already required in statute.

Additional changes have been made to the text to make it more consistent with the requirements of the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

With the rule changes, the Department will have specific authority to charge fees for inspecting raw milk facilities and testing. The Department will start charging fees in FY 24 when this rule is effective.

The Department currently has laboratory fees in place. It anticipates that 12 small producers with 3 raw milk products will now be charged \$50 per sample for testing at an estimated \$1,800 collected monthly for a total additional revenue of \$21,600 collected through testing fees.

Inspection fees are \$26.50 per hour, with an average of 2 hours per inspection. Inspections are conducted every 6 months for each of the 12 small facilities for \$1,272 collected annually.

The Department anticipates that 20% of raw milk products fail and will require at least \$500 for additional testing. 20% of total products (36) per small producer would equal 7.2 products per year for a total of \$3,600 per producer or a combined producer total of \$43,200. This adds up to total additional revenue to the Department of \$66,072 from small businesses.

With regard to larger producers, the Department anticipates that one business will be impacted and will be charged the same fees, bringing in revenue of \$1,906 per year for product testing and \$3,600 for failed testing.

Combining the additional revenue between small and nonsmall producers totals \$7,1578. The Department anticipates that the program's costs will not increase but that the fee revenue will be used to pay those program costs not previously covered by fee revenue.

B) Local governments:

The Department does not anticipate that this change will impact local governments because they do not sell raw milk or administer the raw milk for retail programs.

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

All current raw milk products for retail producers are for small businesses, and they will be responsible for paying the fees. This means there would be approximately 12 facilities impacted and will pay a cost of \$21,600 in laboratory testing fees and approximately \$1,272 in inspection fees in FY 2024.

The Department predicts that 20% of products will fail the testing requirements and could increase costs by \$43,200. The combined costs that could impact all raw milk product small business producers is \$66,072 or an average of \$5,506 per producer.

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

The Department anticipates this change will impact one non-small business and would be charged the same amount for raw milk product testing, \$50 per product per month, and inspection fees would start at \$26.50 per hour and could increase based on the amount of time spent during the inspection. The anticipated annual cost for a non-small business is at least \$1,906.

If 20% of products fail testing requirements, the non-small business costs could increase by \$3,600. The annual anticipated total cost for one non-small business would be approximately \$5,506. These estimates are based on an anticipated three raw milk products sold.

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

Other persons should not be impacted because they do not operate raw milk for retail facilities.

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

Compliance costs for affected licensees will be increased due to the Department's fees for laboratory testing and inspection of raw milk facilities.

The raw milk product testing is \$50 per product per month. The inspection cost is \$26.50 per hour and increases with overtime hours.

Testing fees for failed products are \$500 per product.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$66,072	\$66,072	\$66,072
Non-Small Businesses	\$5,506	\$5,506	\$5,506
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$71,578	\$71,578	\$71,578
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$71,578	\$71,578	\$71,578
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$71,578	\$71,578	\$71,578
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Section 4-3-201

Incorporations by Reference Information

7. Incorporations by Reference:

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

Official Title of Materials Incorporated (from title page)

Grade "A" Pasteurized Milk

UTAH STATE BULLETIN, June 01, 2023, Vol. 2023, No. 11

Ordinance

Publisher	U.S. Department of Health and Human Services Public Health Service Food and Drug Administration
Issue Date	July 2020
Issue or Version	2019 Version

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Craig W Buttars,	Date:	05/09/2023
or designee	Commissioner		
and title:			

R70. Agriculture and Food, Regulatory Services.

R70-330. Raw Milk for Retail.

R70-330-1. Purpose and Authority.

- (1) Promulgated under the authority of Section 4-3-201.
- (2) <u>Pursuant to Section 4-3-503, this rule establishes the Raw Milk for Retail Program and [This rule establishes]</u> the requirements for the manufacture, production, distribution, holding, delivery, storage, offering for sale, and sale of raw milk for retail.

R70-330-2. Definitions.

- (1) "Department" means the Utah Department of Agriculture and Food.
- (2) "Milk" means the normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy hoofed animals.
- (3) "PMO" means the 2019 revision of the Grade "A" Pasteurized Milk Ordinance published by the U.S. Public Health Service and U.S. Food and Drug Administration, which is incorporated by reference.
- (4) "Properly staffed" means a person on the premise available to sell milk, exchange money, and lock and secure the retail store.
- [4)](5) "Raw milk" means[-milk that has not been pasteurized, or heat treated. The word milk shall be interpreted to include the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hoofed mammals] unpasteurized milk.
- [_____2) "Properly staffed" means a person or persons on premise available to sell milk, exchange money, and lock and secure the retail store.

- 3) "Department" means the Utah Department of Agriculture and Food.
- (6) "Raw milk product" means any product produced from raw milk.

R70-330-3. Permits.

- (1) Any person who [permit shall be required to]manufactures, distributes, sells, delivers, holds, stores, or offers for sale raw milk and raw milk products in Utah shall have a permit issued by the department.
- (2) [Such] The permit shall be suspended [when] if [these rules] this rule or applicable sections of Title 4, Chapter 3, the Utah Dairy Act[, Utah Code Annotated (UCA), Vol. 1, Title 4, Chapter 3,] are violated.

R70-330-4. Building and Premises Requirements.

- (1) [The building and premises requirements at the time of the issuance of a new permit shall be the same as the current Grade A building guidelines Permittees shall follow the building requirements in the PMO.
- (2) [In addition, there shall be separate rooms provided]Permitted facilities shall have separate rooms that meet or exceed the construction standards in the PMO for a milkhouse for:
- (a) the packaging and sealing of raw milk and raw milk products;
 - (b) the washing of returned multi-use containers; and
- (c) [a sales room for]the sale of raw milk in a properly protected area [that is-]not located in any of the milk handling rooms.

 [i) these rooms shall meet or exceed the construction standards of a Grade A milkhouse.]
 - (3) Animals are restricted from the milkhouse
- ([3]4) Animals [which]that are not used for the production of milk shall be restricted from the following:
 - a) milkhouse;
 - ([b]a) milk barn;
- ([e]b) areas immediately surrounding the milkhouse and milk barns;
 - ([d]c) areas where cow or goat normal traffic; and
 - ([e]d) areas where milk customers are located.

R70-330-5. Sanitation and Operating Requirements.

- (1) [Sanitation and operating requirements of all raw milk facilities shall be the same as that required on a Grade A dairy farm producing milk for pasteurization] Permitted facilities shall follow the sanitation and operation requirements of the PMO for a dairy farm producing milk for pasteurization. Milk packaging areas and container washing areas at the raw milk facilities shall meet the requirements in the PMO for [Grade A] a pasteurized milk processing plant[s].
- (2) Milk not handled in a manner required by this rule [shall be deemed] is considered adulterated and [shall] may not be sold.
- (3) [All]Raw milk used to produce a raw milk product shall be:
- (a) cooled to 50 degrees F[-]ahrenheit (F) or less within one hour [of the commencement of milking]after being drawn from the animal;
- (b) [and]further cooled to 41 degrees F[-] or less within two hours [after the completion of milking-]of being drawn from the animal; and

- (c) maintained at 41 degrees Fahrenheit or a lower temperature until the raw milk is delivered to the consumer or used to produce the raw milk product.
- ([a]d) The blend temperature after the first milking and subsequent milkings [shall]may not exceed 50 degrees <u>F</u>.
- (4) [All]Any raw for retail farm bulk milk tanks put into use on or after August 7, 2007, shall be equipped with an approved temperature-recording device, in addition to the indicating thermometer. Daily temperature logs shall be maintained for bulk milk tanks in use [prior to] before August 7, 2007.
 - (5) The recording thermometer shall be:
- (a) in compliance with the current technical specification in the [Pasteurized Milk Ordinance]PMO;
 - (b) operated continuously;
 - (c) maintained in a properly functioning manner;
 - (d) installed near the milk storage tank; and
 - (e) accessible to the department.
 - (5) Recording thermometer charts shall:
- (a) properly identify the [producer]permittee, date, and signature of the person removing the chart;[-and]
- (b) be maintained on the premises for [a minimum of]at least six [(6)-]months and available to the department; and
- [i)](c) [circular recording charts shall]not overlap if the recording thermometer chart is a circular recording chart.
- (6) The temperature of the milk [at the time of]when bottling [shall]may not exceed 41 degrees F.
- (7) The sale and delivery of raw milk <u>and raw milk</u> <u>products</u> shall be made on the premise where the milk is produced and packaged, or at a self-owned, properly staffed, retail store.
- (a) Sanitation and construction requirements of the facilities used as self-owned, retail stores shall be [the same as-]those contained in <u>Title 4</u>, <u>Chapter 5</u>, the Wholesome Food Act[, Title 4, <u>Chapter 5</u>].
- (b) [Transportation shall be done by the producer]The permittee shall transport raw milk or raw milk products with no intervening storage, change of ownership, or loss of physical control.
- (i) The temperature of the milk shall be maintained at 41 degrees F or below.
- (ii) Each display case shall have a properly calibrated thermometer, and a daily temperature log shall be maintained and [made-]accessible to the [D]department.
- (8) Raw milk brick cheese, when held at no less than 35 degrees F[-] for 60 days or longer, may be sold at retail stores or for wholesale distribution, at locations other than the premise where the milk was produced.
- (9) Except as provided [above]in this rule, [all-]products made from raw milk [shall]are not be allowed for sale in Utah.
- (10) Milk that has been heat treated, [shall]may not be labeled as "Raw Milk" for retail sale.
- (11) Pursuant to Title 4, Chapter 5, the Wholesome Food Act, [Inspections of the self-owned retail store shall be performed]each self-owned retail store that sells raw milk or raw milk products shall be inspected by the department no less than four times per year[to insure compliance with the sanitation, construction, and cooling requirements as set forth in the Wholesome Food Act, Title 4, Chapter 5].
- (12) Pursuant to Section 63J-1-504, the department shall establish and collect a fee for the inspections required by this rule. The fees shall be retained as dedicated credits and may be used to administer and enforce the Raw Milk for Retail Program.

R70-330-6. Bacteriological Standards.

- (1) The bacterial standards for raw milk shall be a bacterial count of no more than 20,000 per [$\frac{mL}{ml}$]milliliter ($\frac{mL}{ml}$) and a coliform count of no more than 10 per m[$\frac{1}{l}$]L.
- (2) The department shall suspend a permit issued under Section 4-3-301 if two out of four consecutive samples or two samples in a 30-day period violate the sample limits established in this rule.
- (3) If bacterial test results for a sample show results outside of those allowed in Subsection R70-330-6(1), the sample shall be tested for pathogens based on product type as outlined in Table 1.

TABLE 1 Required Pathogen Testing		
Raw Milk and Raw Cream	Raw Cheese	
<u>Listeria Monocytogenes</u>	<u>Listeria Monocytogenes</u>	
E. Coli 0157:H7	E. Coli 0157:H7	
STEC	STEC	
Salmonella	Salmonella	
Campylobacter jejuni		

R70-330-7. Raw Milk for Retail Testing.

- (1) Unpackaged [R]raw [M]milk
- (a) The [D]department shall:
- (i) collect a representative sample of milk from each R raw for R retail farm bulk tank once each month;
- (ii) deliver [all]each sample[s] to the [S]state [D]dairy [T]testing [L]aboratory; and
- (iii) administer tests including those prescribed for [R]raw [M]milk for [P]pasteurization as found in the [Pasteurized Milk Ordinance]PMO.
- (b) The [S]somatic [C]cell [C]count [(SCC)—]in unpackaged raw milk for retail [shall]may not exceed 400,000 cells per [milliliter (ml)]mL for cows, and not [to-]exceed 1,500,000 cells per m[1]L for goats.
- [c) When three out of five samples fail to meet this standard in a 5-month period, the Department shall suspend the raw for retail permit. The suspension shall remain effective until a sample result meets the standard. A temporary permit shall be issued at that time. The permit shall be fully reinstated when three of five samples meet the standard in a five month period.
 - (2) Packaged $[R]\underline{r}$ aw $[M]\underline{m}$ ilk sold on $[P]\underline{p}$ remise
 - (a) The department shall:
- (i) collect a representative sample of packaged raw milk once each month;
- (ii) deliver samples to the [S]state [D]dairy [T]testing [L]laboratory or a certified independent laboratory that is included in the list of Interstate Milk Shippers (IMS) maintained by the U.S Food and Drug Administration; and
- (iii) [administer tests including]ensure testing includes those tests prescribed for [G]grade "A" [P]pasteurized milk as found in the [Pasteurized Milk Ordinance]PMO.
- (b) A copy of any third-party test results shall be sent to the department.

- (3) Packaged $[R]\underline{r}$ aw $[M]\underline{m}$ ilk sold at $[S]\underline{s}$ elf- $[\Theta]\underline{o}$ wned [R]retail [S]stores
 - (a) The producer shall:
- (i) [have a sampler certified by the]allow a [D]department certified sampler to collect a sample from each batch of milk;
- (ii) submit the sample to the [S]state [D]dairy testing [L]laboratory or a certified independent laboratory that is included in the IMS to be tested for [A]antibiotic [D]drug [R]residue, [S]standard [P]plate [C]count [(SPC)] and [C]coliform [C]count; and
- (iii) withhold [all]any milk from the sampled batch from sale until the results of the tests are known.
- (b) A copy of any third-party test results shall be sent to the department.
- [b)](c) [When]If a sample result exceeds the standard in any of the prescribed categories the [producer]permittee shall:
 - (i) not allow the milk to enter[-into] commerce;
- (ii) recall [all]any milk from the failed batch already in commerce; and
- (iii) dispose of the milk in a manner agreeable to the $[D]\underline{d}$ epartment.
- [e](d) The producer shall keep and make available to both the department and the Utah Department of Health and Human Services a database of [all]any customers, which shall include:
 - (i) names $[\frac{1}{2}]$;
 - (ii) addresses[-];
 - (iii) telephone numbers of customers[-];
 - (iv) dates of purchases[7]; and
 - (v) amounts of milk purchased.
- [d)](e) If another agency's epidemiological investigation finds probable cause to implicate a raw for retail dairy in a milk borne illness outbreak, the [R]raw for [R]retail [P]permit may be suspended by the [D]department until [such]a time as milk samples are pathogen free when analyzed by the [D]department or other [D]department approved testing laboratories, and until an inspection can be performed at the facility by a [C]compliance [O]officer from the [D]department.
- (4) If three out of five samples fail to meet the standard established in this rule in a 5-month period, the department shall suspend the raw for retail permit.
- (a) The suspension shall remain effective until a sample result meets the standard.
- (b) A temporary permit shall be issued when the sample result meets the standard.
- (c) The permit shall be fully reinstated when three of five samples meet the standard in a five-month period.
- (d) Full reinstatement will require an inspection by the department, which cost will be the permittee's responsibility.
- (5) If the sample tests are positive for any pathogen, the raw for retail permit shall be immediately suspended. The permit may be reinstated following negative testing for any pathogens associated with the product type, as set forth in Table 1.
- (6) The producer is responsible for the cost of any testing and retesting, including applicable shipping fees.
- (7) Pursuant to Section 63J-1-504, the department shall establish and collect a fee for the tests this rule requires. The fees shall be retained as dedicated credits and may be used to administer and enforce the Raw Milk for Retail Program.

R70-330-8. Animal Health.

[1) No testing for disease shall be required when the USDA/APHIS has determined Utah is "Certified Free" of a zoonotic

- disease relative to an animal species which is milked for human or animal consumption.
- ([2]1) Testing shall be [required]needed [when]in the event that the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA/APHIS) has determined that Utah is not "Certified Free" of [a-]zoonotic disease.
 - (a) Tests shall be conducted in the following manner:
- (i) each animal shall be examined by a veterinarian [prior to]before inclusion in a raw milk supply[7];
- <u>(ii)</u> examination by veterinarians shall be conducted [every] every six months;
- (iii) each animal in the herd must be positively identified as an individual;
- (iv) the examination shall include an examination of the milk by a method recommended by the [Pasteurized Milk Ordinance] $PMO[_{7}]_{i}$ and
- (v[i]) the test shall include a statement of the udder health of each animal, and a general systemic health evaluation.
- (b) Tuberculosis tests shall be conducted in the following manner:
- (i) each animal shall have been tested for tuberculosis within 60 days [prior to]before the beginning of milk production;
- (ii) each animal shall be retested for tuberculosis once each year; and
- (iii) [all]each positive reacting animal[s] shall be sent to slaughter in accordance with [R58-10 and]Rule R58-11.
- (c) Each bovine animal from which raw milk for retail is produced shall be positively identified as a properly vaccinated animal or shall be negative to the official blood test for brucellosis within 30 days [prior to]before the beginning of each lactation.
- (i) [AH]Each positively reacting animal[s] shall be sent to slaughter in accordance with [R58-10 and]Rule R58-11.
- (ii) Goats and sheep shall be tested once each year for brucellosis with the official blood test and [all]each positively reacting animal[s] shall be sent to slaughter in accordance with [R58-10 and-]Rule R58-11.
- (32) [All]Each bulk tank shall be tested at least four times yearly with the brucella milk ring test.
- (a) If [such]the brucella ring test is positive for brucellosis, each animal in the herd shall be tested with the official blood test and any reactors found shall be immediately sent to slaughter in accordance with [R58 10 and]Rule R58-11.
- ([4]3) This section shall not apply [whenever]if the [Utah S]state [V]veterinarian has determined that an animal species in Utah which is milked for human or animal consumption is not at risk for a specific zoonotic disease.

R70-330-9. Personnel Health.

- (1) Each employee of [the]a dairy involved in [the]a milk handling operation shall [obtain]get a valid medical examination health card signed by a physician and approved by the department once each year and shall hold a valid food handler's permit.
- (2) No person shall work in a milk handling operation if infected from any contagious illness or if they have on their hands or arms any exposed infected cut or lesion.
- (3) The department may ask for an additional certification from a physician that a person is free from disease [which]that may be transmitted by milk.

R70-330-10. Packaging and Labeling.

(1) [The]Each raw milk for retail product label shall meet the requirements outlined in Title 4, Chapter 3, the Utah Dairy Act.

(2) [In addition:

a) Containers for raw milk for retail <u>products</u> shall be furnished by the permittee and shall be labeled with the following:

[i)](a) marked as "Raw Milk" without grade designation;

[ii)](b) if [it]the product is other than cow's milk, the word "milk" shall be preceded with the name of the animal, [i.e.,]"Raw Goat Milk" for example;

[iii)](c) the name, address, and zip code of the place of production and packaging;

[iv)](d) volume of the product;

 $[\frac{v}](e)$ [F]the phrase: "Raw milk, no matter how carefully produced, may be unsafe", the height of the smallest letter shall be no less than one-[-]eighth inch;[-and]

[vi)](f) [F]the phrase: "Keep Refrigerated", the height of the smallest letter no less than one-[-leighth inch; and

 $[\underline{\text{vii}})](\underline{g})$ the words "raw" and "milk" shall be the same size lettering.

(3) Products not labeled as required [shall be deemed]are considered misbranded.

R70-330-[9]11. Limitations on Raw Milk Distribution.

- (1) Raw milk distribution to the public for human consumption is limited to the following circumstances:
- (a) raw milk sold by [A]a [producer]permittee [may sell raw milk]on the ir [producer's] farm [after the producer obtains a raw for retail permit from the department,]; and
- (b) raw milk products sold by [A]a [producer]permittee [may sell raw milk-]at [the producer's]a self-owned off-premise retail store[-after the producer obtains a raw for retail permit from the department].
- (2) [Other methods or circumstances whereby raw milk is distributed to the public for human consumption, including the giving away of samples, are prohibited] The giving away of raw milk or raw milk product samples to the public is prohibited.

R70-330-12. Penalty-Sale of Raw Milk Without a Permit.

If a permittee is selling raw milk products without a permit issued by the department, the department may impose the following administrative penalties, pursuant to Subsections 4-2-304(1)(a) and 4-3-401(2):

- (1) for the first violation, a penalty of at most \$300;
 - (2) for the second violation, a penalty of at most \$750;
 - (3) for the third violation, a penalty of at most \$1,500; and
- (4) for the fourth or subsequent violation, a penalty of, at most, \$5,000.

KEY: dairy inspections, raw milk

Date of Last Change: [November 23, 2015]2023

Notice of Continuation: March 13, 2021

Authorizing, and Implemented or Interpreted Law: 4-3-201

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Amendment				
Rule or Section Number:	R277-320	Filing ID: 55416		

Agency Information

goo,o			
1. Department:	Education		
Agency:	Administration		

Building:	Board of Education				
Street address:	250 E 50	00 S			
City, state and zip:	Salt Lake City, UT 84111				
Mailing address:	PO Box 144200				
City, state and zip:	Salt Lake City, UT 84114-4200				
Contact persons:					
Name:	Phone:	Email:			
Angie Stallings	801- 538- 7830	angie.stallings@schools.utah. gov			

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

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

3. Purpose of the new rule or reason for the change:

This rule is being amended due to the passage of H.B. 190, in the 2023 General Session, which expanded the scope of the Grow Your Own scholarship program for Local Education Agencies (LEAs) to include additional license areas.

4. Summary of the new rule or change:

These amendments add a definition for "Grant program candidate" or "candidate", removes the definition for "statewide assessment", and clarifies the definition of "Mentor".

There is also an amendment to remove the specific date when the Superintendent must prepare an application for participation in the grant program and post the application on the Utah State Board of Education (USBE) website.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The rule change does not increase or change allocations to the USBE or LEAs.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. LEAs now have flexibility to use the program for social workers and psychologists. There is no change to the fiscal impact for LEAs.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. These changes only affect the Grow Your Own program in 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 change 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 additional costs for USBE or LEAs to the rule change. The fiscal note on legislation captured any costs associated with adding social workers and psychologists to the program.

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

9				
Fiscal Cost	FY2024	FY2025	FY2026	
State Government	\$0	\$0	\$0	
Local Governments	\$0	\$0	\$0	
Small Businesses	\$0	\$0	\$0	
Non-Small Businesses	\$0	\$0	\$0	

Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Article X,	Subsection	Section 53F5-218
Section 3	53E-3-401(4)	

Public Notice Information

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

A)	Comments	will	be	accepted	07/03/2023
unt	til:				

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration.

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

R277-320-1. Authority and Purpose.

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

R277-320-2. Definitions.

- (1) "Grant program" means the Grow Your Own [Teacher and School Counselor Pipeline]<u>Educator</u> Program established in Section 53F-5-218.
 - (2) "Grant program candidate" or "candidate" means:
 - (a) for a school counselor, a student who is:
- (i) enrolled in an accredited school counseling master's degree program; or
- (ii) completing the candidate's hours of a supervised practicum or internship by applying appropriate school counseling practices under the supervision of a licensed school counselor;
 - (b) for a school psychologist, a student who is:
- (i) enrolled in an accredited school psychology degree program; or
- (ii) completing the candidate's hours of a supervised practicum or internship by applying appropriate school psychology practices under the supervision of a licensed school psychologist;
 - (c) for a school social worker, a student who is:
- (i) enrolled in an accredited social work master's degree program; or
- (ii) completing the candidate's hours of a supervised practicum or internship by applying appropriate school social work practices under the supervision of a licensed social worker; or
- (d) for a teacher, meets the requirements of Section 53F-5-218.
- ([2]3) "High leverage" means critical instructional practices that research has demonstrated can impact student achievement and be used across different content areas and grade levels, including:
 - (a) collective efficacy;
 - (b) student engagement;
 - (c) systematically designed instruction;
 - (d) feedback; and
 - (e) learning environment.
- ([3]4) "Mentor" means [a teacher or school counselor]an educator selected in consultation with a candidate's principal who:
- (a) has a professional educator license and license area in the field for which the educator is mentoring;
- (b) has no less than three years full-time experience in the appropriate license area;
- (c) has effective or highly effective evaluations in accordance with Rule R277-533;
- (d) has proven successful in positively improving student outcomes[, which may include:

- (i) for a mentor teacher, better than the statewide average student growth or performance on statewide assessments, where applicable; or
- (ii) for a mentor counselor, students who meet or exceed performance goals, outlined in school counseling program action research plans or data projects];
- (e) follows all applicable supervision and mentoring requirements from a candidate's educator preparation program and Rule R277-308; and
 - (f) for a mentor teacher:
- (i) models the use of high leverage teaching practices that meets the needs of diverse learners;
 - (ii) demonstrates content and grade level expertise; and
- (iii) effectively collaborates with colleagues, families, and the broader community.
- ([4]5) "Regional Education Service Agency or "RESA" has the same meaning as the term is defined in Section 53G-4-410.
- $([5]\underline{6})$ "School counselor assistant" has the same meaning as defined in Section 53F-5-218.
- [_____(6) "Statewide assessment" means an assessment described in Subsection 53G-6-803(9)(a).

R277-320-3. Program Administration.

- (1) The Superintendent shall prepare an application for participation in the grant program and post the application on the Board website[by April 20, 2021 for the first cohort of applicants].
- (2)(a) An LEA shall submit an application, based upon the recommendation of a principal, to the Superintendent by the third Monday in May annually.
- (b) A RESA may submit an application, based upon the recommendation of a principal, on behalf of one or more of its member LEAs.
- (3) The Superintendent shall determine awards under the grant program taking into consideration the number of applicants <u>and the needs of LEAs</u> for grant program funds in each cohort and subject to the following:
- (a) The Superintendent may allocate funds to an LEA or RESA annually as follows, subject to Subsection 53F-5-218(6)(a):
- (i) up to \$12,000 for a candidate in an undergraduate program; and
 - (ii) up to \$14,000 for a candidate in a graduate program;
- (b) The Superintendent may annually allocate FTE costs up to \$9,000 per candidate per eligible semester subject to the internship limits established in Subsection 53F-5-218(6)(c);
- (c) The Superintendent may award mentor stipends as follows:
 - (i) \$500 for mentors serving 1-2 candidates;
 - (ii) \$750 for mentors serving 3-4 candidates; and
 - (iii) \$1,000 for mentors serving 5 candidates;
- (d) The Superintendent may award stipends for school counselor assistants up to \$7,000 annually.
- (e) The Superintendent may annually allocate up to \$150,000 for RESA administrative costs.
- (5) An LEA applicant shall provide documentation of efforts by each candidate to maximize financial aid opportunities and programs, including the Free Application for Federal Student Aid.
- (6) The Superintendent shall disburse approved funds to an LEA by July 1 annually.
- (7) The Superintendent shall monitor LEA expenditures of program funds consistent with Rule R277-113:

- (a) to ensure compliance with Section 53F-5-218 and this rule; and
- (b) to collect data required for performance measures and required legislative reporting.
- (8) An LEA shall maintain documentation of information required in Subsection (7) consistent with Rule R277-113.
- (9) The Superintendent may reallocate any funds not expended by an LEA by the end of the fiscal year in which the funds were disbursed.

R277-320-4. Candidate Learning Pathways.

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

KEY: school counselor program, grant program Date of Last Change: <u>2023</u>[October 11, 2022] Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4), 53F-5-218

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Amendment				
Rule or Section Number:	R277-400	Filing ID: 55417		

Agency Information

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

General Information

2. Rule or section catchline:

R277-400. School Facility Emergency and Safety

3. Purpose of the new rule or reason for the change:

This rule is being amended due to the passage of H.B. 61, 140, and 409 passed in the 2023 General Session.

4. Summary of the new rule or change:

These amendments update definitions, clarify training requirements, and adopt rules for a school's threat assessment protocols.

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 does not add any costs for the Utah State Board of Education (USBE) or other state agencies.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The rule change clarifies changes due to H.B. 140 (2023), but does not add any measurable costs for Local Education Agencies (LEAs) outside the fiscal note for H.B. 140 (2023).

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

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

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

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

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation,

association, governmental entity, or public or private organization of any character other than an *agency*):

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

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

There are no compliance costs for affected persons. LEAs are required to create threat assessments from H.B. 140 (2023); the rule does not add any costs for LEAs or other entities or 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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Article X,	Subsection	Subsection
Section 3	53E-3-401(4)	53G-4-402(1)(b)

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration.

R277-400. School Facility Emergency and Safety.

R277-400-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; and
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
 - (2) The purpose of this rule is to:
- (a) establish general criteria for emergency preparedness and emergency response plans; and
 - (b) direct an LEA to:
- (i) develop prevention, intervention, and response measures; and
- (ii) prepare staff and students to respond promptly and appropriately to school emergencies; and
 - (c) protect the health and safety of all students.

R277-400-2. Definitions.

- (1) "Active threat" means any incident which creates an immediate threat or imminent danger to the school campus community, facilities and transportation systems.
- ([4]2) "Crisis" means an event that leads to physical or emotional distress;
- ([2]3) "Crisis Response" means a protocol for the actions to take and individuals to involve following a crisis event.
- (4) "Developmentally appropriate" means adapted to what a student is able to do chronologically, cognitively, physically, or emotionally.
 - $([\frac{3}{2}]\underline{5})$ "Elementary School" means a school with grades K-
- ([4]6) "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance that could reasonably endanger the safety of school children or disrupt the operation of the school.
- ([5]2) "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect school property, or regulate the operation of schools during an emergency occurring within an LEA or a school.
- ([6]8) "Emergency Response Plan" means a plan developed by an LEA or a school to prepare and protect students and staff in the event of school violence emergencies.
- (9) "Evidence-based" has the same meaning as defined in Subsection 53G-11-303(1)(a).
- (10) "Evidence-informed" has the same meaning as defined in Subsection 53G-11-303(1)(b).
- ([7]11) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- ([8]12) "Plan[(s)]" means an LEA's or a school's emergency preparedness and emergency response plan.
- ([9]13) "Safe Messaging" means strategies and styles for communicating about the topic of suicide.
- ([$\frac{10}{14}$) "SafeUT" means the crisis line established in Section 53B-17-1202[$\frac{1}{7}$].
- (15) "School safety specialist" means a school employee who is responsible for supporting school safety initiatives, including the threat assessment described in Subsection 53G-8-802(2)(g)(i).
- $(\underline{[1\!\!1]}\underline{16})$ "Secondary School" means a school with any of the grades 7-12.
- (17) "Threat assessment" means a prevention strategy that involves:
 - (a) identifying threats;
 - (b) determining the seriousness of the threat; and
 - (c) developing intervention plans that address the threat.

R277-400-3. Establishing LEA Emergency Preparedness and Emergency Response Plans.

- (1) By July 1 of each year, an LEA shall certify to the Superintendent that the LEA's emergency preparedness and emergency response plan has been:
 - (a) practiced at the school level; and
- (b) presented to and reviewed by its teachers, administrators, students and [guardians]parents, local law enforcement, and public safety representatives consistent with Subsection 53G-4-402(18).
- (2)(a) An LEA's plans shall be designed to meet individual school needs and features.
- (b) An LEA may direct schools within the LEA to develop and implement individual plans.

- (3)(a) An LEA shall appoint a committee to prepare or modify plans to satisfy this Rule R277-400 and Section 53G-4-402(18).
- (b) The committee shall consist of appropriate school and community representatives, which may include:
 - (i) school and LEA administrators;
 - (ii) teachers;
 - (iii) parents;
 - (iv) community and municipal governmental officers; and
 - (v) fire and law enforcement personnel.
- (c) The committee shall include governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels.
- (4) An LEA shall review plans at least once every three years.
- (5) The Superintendent shall develop Emergency Response Plan models under Subsection 53G-4-402(18)(c).

R277-400-4. Notice and Preparation.

- (1) Each school shall file a copy of plans required by this Rule R277-400 with the LEA superintendent or charter school director.
- (2) At the beginning of each school year, an LEA or school shall provide a written notice to parents and staff of sections of an LEA's and school's plans that are applicable to that school.
- (3) A school shall designate an Emergency Preparedness/Emergency Response week each year before April 30 which shall have activities that may include:
 - (a) community, student and teacher awareness;
- (b) emergency preparedness or <u>active threat</u> response training; or
- (c) other activities as outlined in Sections R277-400-7 and $\underline{R277-400-8}$.
- (4) A school's emergency response plan shall include procedures to notify students, to the extent practicable, who are off campus at the time of a school violence emergency consistent with Subsection 53G-4-402(18)(b)(v).

R277-400-5. Plan Content--Educational Services and Student Supervision and Building Access.

- (1) An LEA's or a school's plan shall include:
- (a) procedures to ensure reasonably adequate educational services and supervision are provided for during an emergency including an extended emergency situation;
- (b) evacuation procedures that provide reasonable care and supervision of a student until the student is released to a responsible party.
- (i) An LEA or school shall not release a student grade 8 or below unless a parent or other responsible person has been notified and assumed responsibility for the student.
- (ii) A school official may release a student grade 9 and above without such notification if authorized by the LEA or school and the school official determines:
 - (A) the student is reasonably responsible; and
 - (B) notification is not practicable.
- (c)(i) as determined by a local board or governing authority, procedures regarding access to public school buildings by:
 - (A) students;
 - (B) community members;
 - (C) lessees;
 - (D) invitees; and
 - (E) others.

- (ii) procedures regarding access:
- (A) may include restricted access for some individuals;
- (B) shall address building access during identified time periods; and
- (C) shall address possession and use of school keys by designated administrators and employees.
- (d) resources and materials available for emergency training for an LEA's employees.

R277-400-6. Emergency Preparedness Training for School Occupants.

- (1) An LEA's or a school's plan shall <u>include standard</u> response protocols and shall provide procedures for [a student] students and adults to receive developmentally appropriate and ageappropriate emergency preparedness training including:
 - (a) rescue techniques;
 - (b) first aid;

and

- (c) safety measures appropriate for specific emergencies;
- (d) other emergency skills.
- [(2) During each school year, an elementary school shall conduct emergency drills at least once each month during school time.]
- ([3]2) An LEA shall [alternate one of the following practices or]conduct emergency and fire drills [with required fire drills]in accordance with Section 15A-5-202.5.[-
 - (a) shelter in place;
 - (b) earthquake;
- (c) lock down or lock out for violence;
 - (d) bomb threat;
- (e) civil disturbance;
 - (f) flood;
- (g) hazardous materials spill;
 - (h) utility failure;
- (i) wind or other types of severe weather;
 - (j) parent and student reunification;
- (k) shelter and mass care for natural and technological hazards; or
- (l) an emergency drill appropriate for the particular school location.
- ————(4)(a) Fire drills shall include the complete evacuation of all persons from the school building or the portion of the building used for educational purposes.
- (b) An LEA or a school may make an exception for the staff member responsible for notifying the local fire emergency contact and handling emergency communications.
- (5) Each school shall have one fire drill in the first 10 days of the regular school year and one fire drill every other month during the school year.
- (6) A secondary school shall conduct all drills in accordance with Section 15A-5-202.5
- (7) An LEA shall notify the local fire department prior to each fire drill if notice is required by the local fire chief.
- (8) When a fire alarm system is provided, an LEA shall initiate by activation of the fire alarm system.
- (9) Schools that include both elementary and secondary grades in the school shall comply with the elementary emergency drill requirements.
- (10) In cooperation with the LEA's local law enforcement agency, an LEA shall:
- (a) establish a parent and student reunification plan for each school within the LEA;

- (b) as part of the LEA's registration and enrollment process, annually provide parents a summary of parental expectations and notification procedures related to the LEA's parent and student reunification plan; and
- (c) require each school within the LEA to publish the information described in Subsection (10)(b) on the school's website.]

R277-400-7. Emergency Response Review and Coordination.

- (1) For purposes of emergency response review and coordination an LEA shall:
- (a) provide an annual training for LEA and school building staff regarding an employee's roles, responsibilities, and priorities in the emergency response plan.
- [(b) require a school to conduct at least one annual drill for school emergencies in addition to the drills required under Section 15A-5-202.5 and R277-400-6 by October 1.]
- $([e]\underline{b})$ require a school to review existing security measures and procedures within the school and make necessary adjustments as funding permits.
- ([4]c) develop standards and protections for participants and attendees at school-related activities, especially school-related activities off school property.
- (2) An LEA or school shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

R277-400-8. Prevention and Intervention.

- (1)(a) Each k-12 public school shall implement an evidence-based threat assessment that provides a process for multi-disciplinary teams to determine the severity of a threat and what course of action to take.
- (b) Each k-12 public school shall utilize a multidisciplinary team that may:
 - (i) review school safety related data;
- (ii) consult on case-specific interventions and disciplinary actions;
- (iii) use threat assessment outcomes to inform the disciplinary process;
 - (iv) involve parents in the intervention process; and
- (v) suggest referrals to evidence-informed resources as appropriate.
- (2) An LEA's multi-disciplinary team shall include a school administrator and other individuals as determined by the LEA to meet the school's needs, which may include:
- (a) a school resource officer or local law enforcement officer;
 - (b) a mental health professional; and
 - (c) a classroom teacher.
- (3) In developing student assistance programs, an LEA may coordinate with other agencies and the Superintendent.
- (4) Each k-12 public school shall designate a school safety specialist who:
 - (a) is employed at the school;
- (b) attends relevant school safety specialist training provided by the Superintendent; and
- (c) supports the school administration with implementing school safety policy, initiatives, training, and programs.
- ([4]5) An LEA shall provide a school comprehensive violence prevention and intervention strategies as part of a school's regular curriculum including:
 - (a) resource lessons and materials on anger management;
 - (b) conflict resolution; and

- (c) respect for diversity and other cultures.
- ([2]6) As part of a violence prevention and intervention strategy in [s]Subsection ([1]5), a school may provide ageappropriate instruction on firearm safety including appropriate steps to take if a student sees a firearm or facsimile in school.
- ([3]7) An LEA shall also develop or incorporate tiered student assistance programs to the extent resources permit[;].
 - (a) care teams;
 - (b) tiered student assistance programs;
 - (c) social-emotional learning:
- (d) support though multi-disciplinary teams, such as care teams, that may:
- (i) review school safety related data;
 - (ii) conduct threat assessments;
- (iii) consult on case-specific interventions and disciplinary
- actions;
 - (iv) involve parents in the intervention process; and
 - (v) suggest referrals to resources as appropriate;
- (4) An LEA's multi-disciplinary school team as described in Subsection R277-400-8(3) may include:
 - (a) administration personnel;
 - (b) local law enforcement or a school resource officer;
- (c) a mental health professional; and
 - (d) a general education or special education teacher.
- (5) In developing student assistance programs, an LEA may coordinate with other state agencies and the Superintendent.

R277-400-9. School and Individual Crisis Response Protocol.

- (1) An LEA shall be able to respond to a school or community crisis by:
- (a) developing a staff notification process to inform staff of a crisis in a timely manner;
 - (b) identifying and keeping record of:
- (i) crisis response professionals who may assist in crisis
- (ii) resources and community partnerships for follow-up or intensive care after a crisis.
- (c) adopting a student and parent notification policy that utilizes safe messaging; and
- (d) establishing a multi-disciplinary team as described in Subsection R277-400-8(3) to identify interventions for students who may be highly impacted by a crisis.
- (2) If an LEA has implemented SafeUT, the LEA shall identify one or more SafeUT liaisons who:
- provide information from SafeUT to relevant (a) stakeholders;
- (b) communicate with SafeUT concerning updates and feedback; and
- (c) attend an annual SafeUT training provided by the Superintendent.

R277-400-10. Cooperation With Governmental Entities.

- (1) As appropriate, an LEA may enter into cooperative agreements with other governmental entities to establish proper coordination and support during emergencies.
- (2)(a) An LEA shall cooperate with other governmental entities to provide emergency relief services.
- (b) An LEA's or a school's plans shall contain procedures for assessing and providing the following for public emergency needs:
 - (a) school facilities:
 - (b) equipment; and

- (c) personnel.
- (3) A plan shall delineate communication channels and lines of authority within the LEA, city, county, and state.
- (a) The Superintendent, is the chief officer for emergencies involving more than one LEA, or for state or federal assistance; and
- (b) A local governing board, through its superintendent or director, is the chief officer for an LEA emergencies.

R277-400-11. Fiscal Accountability.

- (1) An LEA or a school plan shall address procedures for recording an LEA's funds expected for:
 - (a) emergencies;
 - (b) assessing and repairing damage; and
 - (c) seeking reimbursement for emergency expenditures.

R277-400-12. School Carbon Monoxide Detection.

- (1) A new educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 9, Sections 915 through 915.4.5
- (2) An existing educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 11, Section 1103.9.
- (3) Where required, an LEA shall provide a carbon monoxide detection system where a fuel-burning appliance, a fuelburning fireplace, or a fuel-burning forced air furnace is present consistent with IFC 915.1.
- (4) An LEA shall install each carbon monoxide detection consistent with NFPA 720 and the manufacturer's instructions, and listed systems as complying with UL 2034 and UL 2075.
- (5) An LEA shall install each carbon monoxide detection system in the locations specified in NFPA 720.
- (6) A combination carbon monoxide smoke detector is an acceptable alternative to a carbon monoxide detection system if the combination carbon monoxide[/] and smoke detector is listed consistent with UL 2075 and UL 268.
- (7)(a) Each carbon monoxide detection system shall receive primary power from the building wiring if the wiring is served from a commercial source.
- (b) If primary power is interrupted, a battery shall provide each carbon monoxide detection system with power.
- (c) The wiring for a carbon monoxide detection system shall be permanent and without a disconnecting switch other than that required for over-current protection.
- (8) An LEA shall maintain all carbon monoxide detection systems consistent with IFC 915 and NFPA 720.
- Performance-based alternative design of carbon monoxide detection systems is acceptable consistent with NFPA 720, Section 6.5.5.6.
- (10) An LEA shall monitor carbon monoxide detection systems remotely consistent with NFPA 720.
- (11) An LEA shall replace a carbon monoxide detection system that becomes inoperable or begins to produce end-of-life signals.

KEY: carbon monoxide detectors, emergency preparedness, disasters, safety education

Date of Last Change: 2023 January 22, 2020 Notice of Continuation: February 8, 2019

Authorizing, and Implemented or Interpreted Law: Art X Sec 3;

53E-3-401(4); 53G-4-402(1)(b)

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Repeal			
Rule or Section R277-403 Filing ID: 55418			

Agency Information

.goo,o			
1. Department:	Education		
Agency:	Administration		
Building:	Board of Education		
Street address:	250 E 500 S		
City, state and zip:	Salt Lake City, UT 84111		
Mailing address:	PO Box 144200		
City, state and zip:	Salt Lake City, UT 84114-4200		
Contact nersons			

Contact persons:

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

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R277-403. School Safety Pilot Program

3. Purpose of the new rule or reason for the change:

This rule is being repealed due to the passage of H.B. 140, passed in the 2023 General Session, which discontinued the School Safety Pilot Program.

4. Summary of the new rule or change:

This rule is repealed in its entirety.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The repeal does not affect the Utah State Board of Education (USBE) budget.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The pilot program has ended and the repeal does not impact 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 impacts 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. The repeal 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 repealing the rule 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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

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

Public Notice Information

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

A)	Comments	will	be	accepted	07/03/2023
unti	l:				

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration.

[R277-403. School Safety Pilot Program.

R277-403-1. 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) Section 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
 - (2) The purpose of this rule is to:
- (a) create the school safety pilot program;
- (b) establish grant eligibility requirements for the schools safety pilot program;
 - (c) create an application process; and
- (d) establish reporting requirements.

R277-403-2. Definitions.

- (1) "CSTAG" means the Comprehensive School Threat Assessment Guidelines adopted by the board as the evidence based school threat assessment tool.
- (2) "SafeUT" means the same as the term is used in Subsection 53B-17-1202.

R277-403-3. Safe School Program--Eligibility and Application.

- (1) Subject to legislative appropriation, an LEA may apply for a three-year school safety pilot program grant.
 - (2) An LEA's application shall contain the following:
- (a) a budget proposal for the use of funds including how the LEA will increase school safety measures;
- (b) a narrative as to why the LEA should be selected for the school safety pilot program including:
 - (i) number of disciplinary actions;
 - (ii) number of threatening behaviors; and
 - (iii) other evidence demonstrating need.
- (c) which school within the LEA will participate in the school safety pilot program;
- (e) if the participating school within the LEA has a multidisciplinary team; and
 - (f) evidence of the LEA's participating school's:
 - (i) relationship with local law enforcement;
 - (ii) relationship with the local mental health authority; and
 - (iii) implementation of SafeUT;
- (3) An LEA's application shall be scored and ranked based upon the following:
- (a) the quality of the LEA's overall budget proposal and application as described in Subsection (2); and
- (b) an LEA's participating school's geographic and student diversity including:
 - (i) urban student settings;
 - (ii) suburban student settings; and
 - (iii) rural student settings.
- (4) The Superintendent may choose which school shall be the participating school if more than one school is prioritized by the LEA to participate.

R277-403-4. Performance Measures and Reporting.

(1) An LEA that receives a school safety pilot program grant shall:

- (a) complete a conditions and resources assessment to create a school safety measurement baseline;
- (b) hold a semi-annual meeting with the Superintendent to discuss implementation and progress of the school safety pilot program within the LEA;
- (e) attend professional development opportunities provided by the Superintendent; and
- (d) share relevant aggregated school safety measure as requested by the Superintendent.
- (2) An LEA shall submit to the Superintendent an annual progress report by the date and in a manner prescribed by the Superintendent.
- (3) The annual progress report shall report on all performance measures and data requested by the Superintendent.
- (4) If an LEA that receives a school safety pilot program is found to be non-compliant with state law, the LEA shall be removed from the remainder of the three-year pilot program.

R277-403-5. Distribution and Use of Funds.

- (1) An LEA may receive up to the LEA's requested amount not to exceed \$37,500 annually for up to three years on a reimbursement basis for one participating school.
- (2) An LEA shall use funds only for the purposes specified in the LEA's budget provided in the LEA's application.
- (3) An LEA may submit a request to amend the LEA's budget proposal to the Superintendent.
 - (4) An LEA may not use funds for:
 - (a) purchase of property;
- (b) new equipment;
 - (c) supplanting existing funding from any source;
- (d) salaries and benefits of any employee;
 - (e) maintenance of current equipment; or
- (f) travel expenses unless for approved out of state professional development.

KEY: school safety, grant program, pilot Date of Last Change: November 10, 2020 Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4)

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Amendment			
Rule or Section Number:	R277-407	Filing ID: 55419	

Agency Information

-g,			
1. Department:	Education		
Agency:	Administration		
Building:	Board of Education		
Street address:	250 E 500 S		
City, state and zip:	Salt Lake City, UT 84111		
Mailing address:	PO Box 144200		
City, state and zip:	Salt Lake City, UT 84114-4200		

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

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R277-407. School Fees

3. Purpose of the new rule or reason for the change:

This rule is being amended due to passage of H.B. 477 in the 2023 General Session and recommendations from the Reports and Requirements Task Force.

4. Summary of the new rule or change:

These amendments add definitions for "Maintenance of School equipment", "Something of monetary value", and "Supplemental Nutrition Assistance Program (SNAP)"; remove two references to a "permanent injunction"; and delete the definition for "Supplemental Kindergarten".

There is also an amendment in this rule to remove the authoritative requirement to comply with an order arising from the Permanent Injunction issued in Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).

These amendments also clarify guidance for a Local Education Agencies (LEAs) for the following: charging fees related to supplemental kindergarten; establishing a fee schedule notice to parents; and fee waiver reporting requirements.

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 does not add any expenses for the Utah State Board of Education (USBE).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. Supplemental kindergarten tuition is removed due to full day kindergarten being funded by the Legislature. Impacts were already captured in the fiscal note. Other technical changes do not add costs to 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 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 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. There are no additional costs to 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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Article X,	Section	Subsection
Section 2	53G-7-503	53E-3-401(4)

Public Notice Information

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

A) Comments will be accepted 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration.

R277-407. School Fees.

R277-407-1. Authority and Purpose.

- (1) This rule is authorized under:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Article X, Section 2 of the Utah Constitution, which provides that:
 - (i) public elementary schools shall be free; and
- (ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;
- (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;
- (d) Subsection 53G-7-503(2), which requires the Board to adopt rules regarding student fees; and
- (e) S[ubs]ection 53G-7-504 which authorizes waiver of fees for eligible students with appropriate documentation.
- [(2) This rule also serves to comply with the order arising from the Permanent Injunction issued in Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).]
 - ([3]2) The purpose of this rule is to:
- (a) permit the orderly establishment of a system of reasonable fees;
- (b) provide adequate notice to students and families of fees and fee waiver requirements; and
 - (c) prohibit practices that would:
- (i) exclude those unable to pay from participation in school-sponsored activities; or
- (ii) create a burden on a student or family as to have a detrimental impact on participation.

R277-407-2. Definitions.

- (1) "Co-curricular activity" means the same as that term is defined in Section 53G-7-501.
- (2) "Curricular activity" means the same as that term is defined in Section 53G-7-501.
- (3) "Extracurricular activity" means the same as that term is defined in Section 53G-7-501.
- (4)(a) "Fee" means something of monetary value requested or required by an LEA as a condition to a student's participation in an activity, class, or program provided, sponsored, or supported by a school
- (b) "Fee" includes money or something of monetary value raised by a student or the student's family through fundraising.
- (5)(a) "Fundraiser," "fundraising," or "fundraising activity" means an activity or event provided, sponsored, or supported by a school that uses students to generate funds to raise money to:
- (i) provide financial support to a school or any of the school's classes, groups, teams, or programs; or
- $\mbox{(ii)} \quad \mbox{benefit a particular charity or for other charitable} \\ \mbox{purposes}.$
- (b) "Fundraiser," "fundraising," or "fundraising activity" may include:
 - (i) the sale of goods or services;
- (ii) the solicitation of monetary contributions from individuals or businesses; or
- $\mbox{(iii)}$ other lawful means or methods that use students to generate funds.

- (c) "Fundraiser," "fundraising," or "fundraising activity" does not include an alternative method of raising revenue without students.
- (6) "Group fundraiser" or "group fundraising" means a fundraising activity where the money raised is used for the benefit of the group, team, or organization.
- (7) "Individual fundraiser" or "individual fundraising" means a fundraising activity where money is raised by each individual student to pay the individual student's fees.
- (8)(a) "Instructional equipment" means an activity, course, or program-related tool or instrument that:
- (i) is required for a student to use as part of an activity, course, or program in a secondary school;
- (ii) typically becomes the property of the student upon exiting the activity, course, or program; and
 - (iii) is subject to fee waiver.
 - (b) "Instructional equipment" includes:
 - (i) shears or styling tools;
 - (ii) a band instrument;
 - (iii) a camera;
 - (iv) a stethoscope; and
- (v) sports equipment, including a bat, mitt, or tennis [racquet]racket.
- (c) "Instructional equipment" does not include school equipment.
- (9)(a) "Instructional supply" means a consumable or nonreusable supply that is necessary for a student to use as part of an activity, course, or program in a secondary school.
 - (b) "Instructional supply" includes:
 - (i) prescriptive footwear;
- (ii) brushes or other art supplies, including clay, paint, or art canvas;
 - (iii) wood for wood shop;
 - (iv) Legos for Lego robotics;
 - (v) film; and
 - (vi) filament used for 3D printing.
- (10) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- (11)(a) "Maintenance of school equipment" means a cost, payment, or expenditure related to storing, repairing or keeping school equipment in good working condition.
- (b) "Maintenance of school equipment" does not include the cost related to end-of-life replacement.
- ([4+]12) "Noncurricular club" has the same meaning as that term is defined in Section 53G-7-701.
- $(\underline{[12]13})$ "Non-waivable charge" means a cost, payment, or expenditure that:
- (a) is a personal discretionary charge or purchase, including:
- (i) a charge for insurance, unless the insurance is required for a student to participate in an activity, class, or program;
- (ii) a charge for college credit related to the successful completion of:
 - (A) a concurrent enrollment class; or
 - (B) an advanced placement examination; or
- (iii) except when requested or required by an LEA, a charge for a personal consumable item such as a yearbook, class ring, letterman jacket or sweater, or other similar item;
- (b) is subject to sales tax as described in Utah State Tax Commission Publication 35, Sales Tax Information for Public and Private Elementary and Secondary Schools; or

- (c) by Utah Code, federal law, or Board rule is designated not to be a fee, including:
 - (i) a school uniform as provided in Section 53G-7-801;
 - (ii) a school lunch; or
- (iii) a charge for a replacement for damaged or lost school equipment or supplies.
- ([13]14)(a) "Provided, sponsored, or supported by a school" means an activity, class, program, fundraiser, club, camp, clinic, or other event that:
- (i) is authorized by an LEA or school, according to local education board policy; or
 - (ii) satisfies at least one of the following conditions:
- (A) the activity, class, program, fundraiser, club, camp, clinic, or other event is managed or supervised by an LEA or school, or an LEA or school employee in the employee's school employment capacity;
- (B) the activity, class, program, fundraiser, club, camp, clinic, or other event uses, more than inconsequentially, the LEA or school's facilities, equipment, or other school resources; or
- (C) the activity, class, program, fundraising event, club, camp, clinic, or other event is supported or subsidized, more than inconsequentially, by public funds, including the school's activity funds or minimum school program dollars.
- (b) "Provided, sponsored, or supported by a school" does not include an activity, class, or program that meets the criteria of a noncurricular club as described in Title 53G, Chapter 7, Part 7, Student Clubs.
- ([14]15)(a) "Provision in lieu of fee waiver" means an alternative to fee payment or waiver of fee payment.
- (b) "Provision in lieu of fee waiver" does not include a plan under which fees are paid in installments or under some other delayed payment arrangement.
- ([45]16) "Regular school day" has the same meaning as the term "school day" described in Section R277-419-2.
- ([46]17) "Requested or required by an LEA as a condition to a student's participation" means something of monetary value that is impliedly or explicitly mandated or necessary for a student, parent, or family to provide so that a student may:
- (a) fully participate in school or in a school activity, class, or program;
- (b) successfully complete a school class for the highest grade; or
- (c) avoid a direct or indirect limitation on full participation in a school activity, class, or program, including limitations created by:
- $\hbox{ (i) peer pressure, shaming, stigmatizing, bullying, or the like; or }$
- (ii) withholding or curtailing any privilege that is otherwise provided to any other student.
- ([47]18) "School day" has the same meaning as defined in Section R277-419-2.
- ([18]19)(a) "School equipment" means a durable schoolowned machine, equipment, or tool used by a student as part of an activity, course, or program in a secondary school.
 - (b) "School equipment" includes a saw or 3D printer.
- ([19]20)(a) "Something of monetary value" means a charge, expense, deposit, rental, fine, or payment, regardless of how the payment is termed, described, requested or required directly or indirectly, in the form of money, goods or services.
 - (b) "Something of monetary value" includes:

- (i) charges or expenditures for a school field trip or activity trip, including related transportation, food, lodging, and admission charges;
- (ii) payments made to a third party that provide a part of a school activity, class, or program;
 - (iii) classroom supplies or materials; and
- (iv) a fine, except for a student fine specifically approved by an LEA for:
 - (A) failing to return school property;
- (B) losing, wasting, or damaging private or school property through intentional, careless, or irresponsible behavior; or
- (C) improper use of school property, including a parking violation.
- (c) "Something of monetary value" does not include a payment or charge for damages, which may reasonably be attributed to normal wear and tear.
- ([20]21)(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.
 - (b) "Student supplies" include:
 - (i) pencils;
 - (ii) paper;
 - (iii) notebooks;
 - (iv) crayons;
 - (v) scissors;
 - (vi) basic clothing for healthy lifestyle classes; and
- (vii) similar personal or consumable items over which a student retains ownership.
- (c) "Student supplies" does not include items listed in Subsection (20)(b) if the requirement from the school for the student supply includes specific requirements such as brand, color, or a special imprint [in order]to create a uniform appearance not related to basic function.
- [(21) "Supplemental kindergarten" means an LEA program for students in kindergarten who voluntarily elect to receive additional hours of instruction beyond the LEA's regular school day for kindergarten students for an additional fee.]
- (22) "Supplemental Nutrition Assistance Program" or "SNAP" means a program, formerly known as food stamps, which provides nutrition benefits to supplement the food budget of low income families through the Utah Department of Workforce Services.
- ([22]23) "Supplemental Security Income for children with disabilities" or "SSI" means a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.
- ([23]24) "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low[-]_income families with children under age 18 through the Utah Department of Workforce Services.
- ([24]25)(a) "Textbook" means instructional material necessary for participation in an activity, course or program, regardless of the format of the material.
 - (b) "Textbook" includes:
- (i) hard_copy book or printed pages of instructional material, including a consumable workbook;
 - (ii) computer hardware, software, or digital content; and
 - (iii) the maintenance costs of school equipment.

- (c) "Textbook" does not include:
- (i) instructional equipment; or
- (ii) instructional supplies.
- ([25]26) "Waiver" means a full release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-3. Classes and Activities During the Regular School Day.

- (1) No fee may be charged in kindergarten through grade six for:
 - (a) materials;
 - (b) textbooks;
- (c) supplies, except for student supplies described in Subsection (6); or
- (d) any class or regular school day activity, including assemblies and field trips.
- (2)(a) An LEA may charge a fee in connection with an activity, class, or program provided, sponsored, or supported by a school for a student in a secondary school that takes place during the regular school day if the fee is approved as provided in this [R277-407]rule.
- (b) All fees are subject to the fee waiver [provisions] requirements of Section R277-407-8.
- (3)(a) Notwithstanding, Subsection (1) and except as provided in Subsection (3)(b), a school may charge a fee to a student in grade six if the student attends a school that includes any of grades seven through twelve.
- (b) A school that provides instruction to students in grades other than grades six through twelve may not charge fees for grade six unless the school follows a secondary model of delivering instruction to the school's grade six students.
- (c) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from grade six students and that the fees are subject to waiver.
- (4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver [provisions]requirements of [Rule]Section R277-407-8.
- (5)(a) In project related courses, projects required for course completion shall be included in the course fee.
- (b) A school may require a student at any grade level to provide materials or pay for an additional discretionary project if the student chooses a project in lieu of, or in addition to a required classroom project.
- (c) A school shall avoid allowing high cost additional projects, particularly if authorization of an additional discretionary project results in pressure on a student by teachers or peers to also complete a similar high cost project.
- (d) A school may not require a student to select an additional project as a condition to enrolling, completing, or receiving the highest possible grade for a course.
- (6) An elementary school or elementary school teacher may provide to a student's parent or guardian, a suggested list of student supplies for use during the regular school day so that a parent or guardian may furnish, on a voluntary basis, student supplies for student use, provided that, in accordance with Section 53G-7-503, the following notice is provided with the list:

"NOTICE: THE ITEMS ON THIS LIST WILL BE USED DURING THE REGULAR SCHOOL DAY. THEY MAY BE BROUGHT FROM HOME ON A VOLUNTARY BASIS, OTHERWISE, THEY WILL BE FURNISHED BY THE SCHOOL."

- (7) A school may require a secondary student to provide student supplies, subject to the [provisions]requirements of Section R277-407-8.
- (8) Except as provided in Subsection (9), if a school requires special shoes or items of clothing that meet specific requirements, including requesting a specific brand, fabric, or imprints, the cost of the special shoes or items of clothing are:
 - (a) considered a fee; and
 - (b) subject to fee waiver.
- (9) As provided in Subsection 53G-7-802(4), an LEA's school uniform policy, including a requirement for a student to wear a school uniform, is not considered a fee for either an elementary or a secondary school if the LEA's school uniform policy is consistent with the requirements of Title 53G, Chapter 7, Part 8, School Uniforms.

R277-407-4. School Activities Outside of the Regular School Day.

- (1) A school may charge a fee, subject to the [provisions]requirements of Section R277-407-8, in connection with any school-sponsored activity, that does not take place during the regular school day, regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.
- (2) A fee related to a co-curricular or extracurricular activity may not exceed the maximum fee amounts for the co-curricular or extracurricular activity adopted by the LEA governing board as described in Subsection R277-407-6($\lceil 3 \rceil 2$).
- (3) A school may only collect a fee for an activity, class, or program provided, sponsored, or supported by a school consistent with LEA policies and state law.
- (4) An LEA that provides, sponsors, or supports an activity, class, or program outside of the regular school day or school calendar is subject to the [provisions]requirements of this rule regardless of the time or season of the activity, class, or program.
- [(5)(a) An LEA may charge a fee related to a student's enrollment in supplemental kindergarten.
- (b) An LEA's fee for supplemental kindergarten described in Subsection (5)(a) is subject to fee waiver.

R277-407-5. Fee-Waivable Activities, Classes, or Programs Provided, Sponsored, or Supported by a School.

Fees for the following are waivable:

- (1) an activity, class, or program that is:
- (a) primarily intended to serve school-age children; and
- (b) taught or administered, more than inconsequentially, by a school employee as part of the employee's assignment;
- (2) an activity, class, or program that is explicitly or implicitly required:
- (a) as a condition to receive a higher grade, or for successful completion of a school class or to receive credit, including a requirement for a student to attend a concert or museum as part of a music or art class for extra credit; or
- (b) as a condition to participate in a school activity, class, program, or team, including, a requirement for a student to participate in a summer camp or clinic for students who seek to participate on a school team, such as cheerleading, football, soccer, dance, or another team;

- (3) an activity or program that is promoted by a school employee, such as a coach, advisor, teacher, school-recognized volunteer, or similar person, during school hours where it could be reasonably understood that the school employee is acting in the employee's official capacity;
- (4) an activity or program where full participation in the activity or program includes:
- (a) travel for state or national educational experiences or competitions;
 - (b) debate camps or competitions; or
 - (c) music camps or competitions;
 - (5) a concurrent enrollment, CTE, or AP course; and
- (6) the cost to access software, digital content, or other instructional materials required as part of an activity, course or program.

R277-407-6. LEA Requirements to Establish a Fee Schedule -- Maximum Fee Amounts -- Notice to Parents.

- (1) An LEA, school, school official, or employee may not charge or assess a fee or request or require something of monetary value in connection with an activity, class, or program provided, sponsored, or supported by, and including for a co-curricular or extracurricular activity, unless the fee:
- (a) has been set and approved by the LEA's governing board;
- (b) is equal to or less than the maximum fee amount established by the LEA governing board as described in Subsection (4); and
- (c) is included in an approved fee schedule[-or notice in accordance with this rule].
- (2)(a) If an LEA charges a fee, on or before April 1 and in consultation with stakeholders, the LEA governing board shall annually adopt a fee schedule and fee policies for the LEA in a regularly scheduled public meeting.
- (b) Before approving the LEA's fee schedule described in this [\$\sigma\) section, an LEA shall provide an opportunity for the public to comment on the proposed fee schedule during a minimum of two public LEA governing board meetings.
 - (c) An LEA shall:
- (i) provide public notice of the meetings described in Subsections (2)(a) and (b) in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and
- (ii) encourage public participation in the development of fee schedules and waiver policies.
- (d) In addition to the notice requirements of Subsection (2)(c), an LEA shall provide notice to parents and students of the meetings described in Subsections (2)(a) and (b) using the same form of communication regularly used by the LEA to communicate with parents, including notice by e[-]mail, text, flyer, or phone call.
- (e) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, in accordance with Section 52-4-203.
- (3) After the fee schedule described in Subsection (2)(a) is adopted, an LEA may amend the LEA's fee schedule if the LEA follows the process described in Subsection (2) before approving the amended fee schedule.
- (4)(a) As part of an LEA's fee setting process, [the]an LEA shall establish:[-a per student annual maximum fee amount that the LEA's schools may charge a student for the student's participation in all courses, programs, and activities provided, sponsored, or supported by a school for the year.
 - (b) An LEA shall establish:

- (i) a maximum fee amount per student for each activity; and
- (ii) a maximum total aggregate fee amount per student per school year.
- ([e]b) The amount of revenue raised by a student through an individual fundraiser shall be included as part of the maximum fee amount per student for the activity and maximum total aggregate fee amount per student.
- ([$\underline{\mathbf{d}}$] $\underline{\mathbf{c}}$) An LEA shall include the total per student amount expected to be received through required group fundraising as part of the maximum fee amount for an activity described in Subsection (4)(b)(i).
- ([e]d) An LEA may establish a reasonable number of activities, courses, or programs that will be covered by the annual maximum fee amount described in Subsection (4)(a).
- (5) As part of an LEA's fee setting process described in this [§]section, the LEA may review and consider the following per school:
- (a) the school's cost to provide the activity, class, or program;
 - (b) the school's student enrollment;
 - (c) the median income of families:
 - (i) within the school's boundary; or
 - (ii) enrolled in the school;
- (d) the number and monetary amount of fee waivers, designated by individual fee, annually granted within the prior three years;
- (e) the historical participation and school interest in certain activities;
 - (f) the prior year fee schedule;
- (g) the amount of revenue collected from each fee in the prior year;
 - (h) fund[-]raising capacity;
 - (i) prior year community donors; and
- (j) other resources available, including through donations and fundraising.
- [(6)(a) An LEA shall annually provide written notice to a parent or guardian of each student who attends a school within the LEA of all current and applicable fee schedules and fee waiver policies.]
 - ([7]6)(a) If an LEA charges a fee, the LEA shall:
- (i) annually publish the [LEA's fee waiver policies and fee schedule, including the fee maximums described in Subsection(4), on each of the LEA's schools' publicly available websites; following on each of the LEA's schools' publicly available websites:
- (A) the LEA's fee waiver policies and fee schedule, including the fee maximums described in Subsection (4);
 - (B) the LEA's fee waiver application;
 - (C) the LEA's fee waiver decision and appeals form; and
 - (D) the LEA's school fee notice for families;
- (ii) annually include a copy of the LEA's fee schedule and fee waiver policies with the LEA's registration materials; and
- (iii) provide a copy of the LEA's fee schedule and fee waiver policies to a student's parent who enrolls a student after the initial enrollment period.
- (b) If an LEA's student or parent population in a single written language other than English exceeds 20%, the LEA shall also publish the LEA's fee schedule and fee waiver policies in the language of those families.
- (c) An LEA representative shall meet personally with each student's parent or family and make available an interpreter for the parent to understand the LEA's fee waiver schedules and policies if:

- (i) the student or parent's first language is a language other than English; and
- (ii) the LEA [hasn't-]has not published the LEA's fee schedule and fee waiver policies in the parent's first language.
 - (8) A notice described in Subsection (6)(a) shall:
- (a) be in a form approved by the Board; and
- (b) include the following:
 - (i) for a school serving elementary students:
- (A) School Fees Notice for Families of Students in an Elementary School:
- (B) Fee Waiver application (Elementary School);
 - (C) Fee Waiver Decision and Appeals Form; and
- (D) the Board's elementary school poster; and
 - (ii) for a school serving secondary students:
- (A) School Fees Notice For Families of Students in a Secondary School;
- (B) Fee Waiver Application (Secondary School);
 - (C) Fee Waiver Decision and Appeals Form; and
 - (D) the Board's secondary school poster.
- ([9]7)(a) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing an LEA's denial of a fee waiver, as soon as possible before the fee becomes due.
- (b) If an LEA denies a student or parent request for a fee waiver, the LEA shall provide the student or parent:
 - (i) the LEA's decision to deny a waiver; and
- (ii) the procedure for the appeal in the form approved by the Board.
- ([10]8)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees.
- (b) A school may impose a reasonable charge to cover the cost of duplicating, mailing, or transmitting transcripts and other school records.
- (c) A school may not charge for duplicating, mailing, or transmitting copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll.
- ([41]9) To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

R277-407-7. Donations in Lieu of Fees.

- (1)(a) A school may not request or accept a donation in lieu of a fee from a student or parent unless the activity, class, or program for which the donation is solicited will otherwise be fully funded by the LEA and receipt of the donation will not affect participation by an individual student.
- (b) A donation is a fee if a student or parent is required to make the donation as a condition to the student's participation in an activity, class, or program.
- (c) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but all such requests must clearly state that donations and contributions by a student or parent are voluntary.
 - (2) If an LEA solicits donations, the LEA:
- (a) shall solicit and handle donations in accordance with policies established by the LEA; and

- (b) may not place any undue burden on a student or family in relation to a donation.
- (3) An LEA may raise money to offset the cost to the LEA attributed to fee waivers granted to students through the LEA's foundation.
- (4) An LEA shall direct donations provided to the LEA through the LEA's foundation in accordance with the LEA's policies governing the foundation.
- (5) If an LEA accepts a donation, the LEA shall prevent potential inequities in schools within the LEA when distributing the donation.

R277-407-8. Fee Waivers.

- (1)(a) All fees are subject to waiver.
- (b) Fees charged for an activity, class, or program held outside of the regular school day, during the summer, or outside of an LEA's regular school year are subject to waiver.
 - (c) Non-waivable charges are not subject to waiver.
- (2)(a) Except as provided in Subsection (2)(b), [beginning with the 2020-21 school year,]an LEA may not use revenue collected through fees to offset the cost of fee waivers by requiring students and families who do not qualify for fee waivers to pay an increased fee amount to cover the costs of students and families who qualify for fee waivers.
- (b) An LEA may notify students and families that the students and families may voluntarily pay an increased fee amount or provide a donation to cover the costs of other students and families.
- (c) For an LEA with multiple schools, the LEA shall distribute the impact of fee waivers across the LEA so that no school carries a disproportionate share of the LEA's total fee waiver burden.
- (3) An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.
- (4) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.
- (5) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.
- (6) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.
- (7) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.
- (8)(a) An LEA shall ensure that a fee waiver or other provision in lieu of fee waiver is available to any student whose parent [is unable to]cannot pay a fee.
- (b) A school or LEA administrator shall verify fee waivers consistent with this rule.
- [(9) An LEA shall submit school fee compliance forms to the Superintendent for each school that affirm compliance with the permanent injunction, consistent with Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).]
- ([10]2) An LEA shall adopt a fee waiver policy for review and appeal of fee waiver requests which:
- (a) provides parents the opportunity to review proposed alternatives to fee waivers;
- (b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and

- (c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.
- $([\hat{+}]\underline{10})$ An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:
- (a) exclude a student from a school, an activity, class, or program that is provided, sponsored, or supported by a school during the regular school day;
 - (b) refuse to issue a course grade; or
- (c) withhold official student records, including written or electronic grade reports, <u>class schedules</u>, diplomas or transcripts.
- ([12]11)(a) A school may withhold student records in accordance with Subsection 53G-8-212(2)(a).
- (b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.
- ([13]12) A school is not required to waive a non-waivable charge.

R277-407-9. Service In Lieu of Fees -- Voluntary Requests for Installment Plans.

- (1) Subject to the [provisions]requirements of Subsection (2), an LEA may allow a student to perform service in lieu of a fee, but service in lieu of a fee may not be required.
- (2) An LEA may allow a student to perform service in lieu of a fee if:
- (a) the LEA establishes a service policy that ensures that a service assignment is appropriate to the:
 - (i) age of the student;
 - (ii) physical condition of the student; and
 - (iii) maturity of the student;
- (b) the LEA's service policy is consistent with state and federal laws, including:
 - (i) Section 53G-7-504; and
 - (ii) the Federal Fair Labor Standards Act, 29 U.S.C. 201;
- (c) the service can be performed within a reasonable period[-of time]; and
- (d) the service is at least equal to the minimum wage for each hour of service.
- (3)(a) A student who performs service may not be treated differently than other students who pay a fee.
- (b) The service may not create an unreasonable burden for a student or parent and may not be of such a nature as to demean or stigmatize the student.
 - (4) An LEA shall transfer a student's service credit to:
 - (a) another school within the LEA; or
 - (b) another LEA upon request of the student.
- (5)(a) An LEA may make an installment payment plan available to a parent or student to pay for a fee.
- (b) An installment payment plan described in Subsection (5)(a) may not be required in lieu of a fee waiver.
- (6) An LEA that charges fees shall adopt policies that include at least the following:
- (a) a process for obtaining waivers or pursuing alternatives that is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and families;
- (b) a process with no visible indicators that could lead to identification of fee waiver applicants;
- (c) a process that complies with the privacy requirements of The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA);

- (d) a student may not collect fees or assist in the fee waiver approval process;
- (e) a standard written decision and appeal form is provided to every applicant; and
- (f) during an appeal the requirement that the fee be paid is suspended.

R277-407-10. Individual and Group Fundraising Requirements.

- (1) An LEA governing board shall establish a fundraising policy that includes a fundraising activity approval process.
- (2) An LEA's fundraising policy described in Subsection (1):
- (a) may not authorize, establish, or allow for required individual fundraising;
- (b) may provide optional individual fundraising opportunities for students to raise money to offset the cost of the student's fees;
 - (c) may allow for required group fundraisers;
- (d) may not deny a student membership on a team or group, based on the student's non-participation in a fundraiser;
- (e) shall require compliance with the requirements of Rule R277-113 when using alternative methods of raising revenue that do not include students; and
- (f) shall include a requirement that a school notify parents of required group fundraising, letting parents and students know how and when specific details, as described in Subsection (3), will be provided.
- (3) The specific details described in Subsection (2)(f) shall include a description of the nature of the required group fundraiser and the estimated participation time required of the student or parent for the required group fundraiser.

R277-407-11. Fee Waiver Eligibility.

- (1) A student is eligible for fee waiver if an LEA receives verification that:
- (a) in accordance with Subsection 53G-7-504(4), based on the family income levels established by the Superintendent as described in Subsection (2);
 - (b) the student to whom the fee applies receives SSI;
 - (c) the family receives TANF or SNAP funding;
- (d) the student is in foster care through the Division of Child and Family Services; or
 - (e) the student is in state custody.
- (2) The Superintendent shall annually establish income levels for fee waiver eligibility and publish the income levels on the Board's website.
- (3) In lieu of income verification, an LEA may require alternative verification under the following circumstances:
- (a) If a student's family receives TANF or SNAP, an LEA may require the student's family to provide to the LEA an electronic copy or screen[-]shot of the student's family's eligibility determination or eligibility status covering the period for which a fee waiver is sought from the Utah Department of Workforce Services;
- (b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;
- (c) If a student is in state custody or foster care, an LEA may rely on the youth in care required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.
- (d) An LEA may not subject a family to unreasonable demands for re-qualification.

- (4) A school may grant a fee waiver to a student, on a case by case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.
- (5) An LEA may charge a proportional share of a fee or reduced fee if circumstances change for a student or family so that fee waiver eligibility no longer exists.
- (6) An LEA may retroactively waive fees if eligibility can be determined to exist before the date of the fee waiver application.

R277-407-12. Fees for Textbooks[-and Remediation].

- (1) [Beginning with the 2022 23 school year, a]An LEA may not charge a fee for a textbook as provided in Section 53G-7-603, except for a textbook used for a concurrent enrollment or advanced placement course as described in Subsection (2).
- (2)(a) An LEA may charge a fee for a textbook used for a concurrent enrollment or advanced placement.
- (b) A fee for a textbook used for a concurrent enrollment or advanced placement course is fee waivable as described in Section R277-407-8.

R277-407-13. Budgeting and Spending Revenue Collected Through Fees -- Fee Revenue Sharing Requirements.

- (1) An LEA shall follow the general accounting standards described in Rule R277-113 for treatment of fee revenue.
 - (2) An LEA shall[:
- (a) establish a spend plan for the revenue collected from each fee charged [; and
- (b) if the LEA has two or more schools within the LEA, share revenue lost due to fee waivers across the LEA.
- (3)(a) A spend plan described in Subsection (2)(a) provides students, parents, and employees transparency by identifying a fee's funding uses.
- (b) An LEA or school's spend plan shall identify the needs of the activity, course, or program for the fee being charged and shall include a list or description of anticipated types of expenditures, for the current fiscal year or as carryover for use in a future fiscal year, funded by the fee charged.

(4)(a) [Financial inequities or disproportional impact of fee waivers may not fall inequitably on any one school within an LEA.

- (b)]An LEA that has multiple schools shall establish a procedure to identify and address potential inequities due to the impact of the number of students who receive fee waivers within each of the LEA's schools.
- (b) For an LEA with multiple schools, the LEA shall distribute the impact of fee waivers across the LEA so that no school carries a disproportionate share of the LEA's total fee waiver burden.

R277-407-14. Fee Waiver Reporting Requirements.

- -An LEA shall collect the following information, which may be requested by the Superintendent as part of the Superintendent's monitoring of the LEA's school fees practices:[attach the following to the LEA's annual year end report for inclusion in the Superintendent's annual report:]
 - (1) a summary of:
 - (a) the number of students in the LEA given fee waivers;
 - (b) the number of students who worked in lieu of a waiver;
 - (c) the number of students denied fee waivers; and
- (d) the total dollar value of student fees waived by the LEA; $\underline{\text{and}}$
- (2) a copy of the LEA's fee and fee waiver policies;
 - (3) a copy of the LEA's fee schedule for students;

- (4) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian;
- (5) a fee waiver compliance form approved by the Superintendent for each school and LEA;
- (6) the total count of fees approved on the LEA schedule; and
- ([7]2) the total dollar amount of all fees charged to students within all schools within the LEA.

R277-407-15. Superintendent and LEA Policy and Training Requirements.

- (1) The Superintendent shall provide ongoing training, informational materials, and model policies, as available, for use by LEAs.
- (2) The Superintendent shall provide online training and resources for LEAs regarding:
 - (a) an LEA's fee approval process;
 - (b) LEA notification requirements;
 - (c) LEA requirements to establish maximum fees;
 - (d) fundraising practices;
- (e) fee waiver eligibility requirements, including requirements to maintain student and family confidentiality; and
- (f) community service or fundraising alternatives for students and families who qualify for fee waivers.
- (3) An LEA governing board shall annually review the LEA's policies on school fees, fee waivers, fundraising, and donations.
- (4) An LEA shall develop a plan for, at a minimum, annual training of LEA and school employees on fee related policies enacted by the LEA specific to each employee's job function.

R277-407-16. Enforcement.

- (1) The Superintendent shall monitor LEA compliance with this rule.[÷
- (a) through the compliance reports provided in Section R277-407-14; and
- (b) by such other means as the Superintendent may reasonably request at any time.]
- (2) If an LEA fails to comply with the terms of this rule or request of the Superintendent, the Superintendent shall send the LEA a first written notice of non-compliance, which shall include a proposed corrective action plan.
- (3) Within 45 days of the LEA's receipt of a notice of non-compliance, the LEA shall:
- (a) respond to the allegations of noncompliance described in Subsection (2); and
- (b) work with the Superintendent on the Superintendent's proposed corrective action plan to remedy the LEA's noncompliance.
- (4)(a) Within [fifteen]15 days after receipt of a proposed corrective action plan described in Subsection (3)(b), an LEA may request an informal hearing with the Superintendent to respond to allegations of noncompliance or to address the appropriateness of the proposed corrective action plan.
- (b) The form of an informal hearing described in Subsection (4)(a) shall be as directed by the Superintendent.
- (5) The Superintendent shall send an LEA a second written notice of non-compliance and request for the LEA to appear before a Board standing committee if:
- (a) the LEA fails to respond to the first notice of non-compliance within 60 days; or

- (b) the LEA fails to comply with a corrective action plan described in Subsection (3)(b) within the time period established in the LEA's corrective action plan.
- (6) If an LEA[-that failed to respond to a first notice of non-compliance] receives a second written notice of non-compliance, the LEA may:
- (a)(i) respond to the notice of non-compliance described in Subsection (5); and
- (ii) work with the Superintendent on a corrective action plan within 30 days of receiving the second written notice of noncompliance; or
- (b) within 15 days after receipt of the second notice seek an appeal [as described in Subsection (8)(b).] before a Board standing committee.
- (7) If an LEA that [failed-]fails to respond to a first notice of non-compliance, and fails to [comply with either of the options described in Subsection (6)]respond to a second notice of non-compliance, nor seeks an appeal as described in Subsection (6)(b), the Superintendent shall impose one of the financial consequences described in Subsection (10).
- (8)(a) [Prior to]Before imposing a financial consequence described in Subsection (10), the Superintendent shall provide an LEA [thirty]30 days' notice of any proposed action.
- (b) The LEA may, within [fifteen]15 days after receipt of a notice described in Subsection (8)(a), request an appeal before [the]a Board standing committee.
- (9) If the LEA does not request an appeal described in Subsection (8)(b), or if after the appeal the Board finds that the allegations of noncompliance are substantially true, the Superintendent may continue with the suggested corrective action, formulate a new form of corrective action or additional terms and conditions which must be met and may proceed with the appropriate remedy which may include an order to return funds improperly collected.
 - (10) A financial consequence may include:
- (a) requiring an LEA to repay an improperly charged fee, commensurate with the level of non-compliance;
- (b) withholding all or part of an LEA's monthly Minimum School Program funds until the LEA comes into full compliance with the corrective action plan; and
- (c) suspending the LEA's authority to charge fees for an amount of time specified by the Superintendent or Board in the determination
- (11) The Board's decision described in Subsection (9) is final and no further appeals are provided.

[R277-407-17. Enforceable Date.

(1) This rule will be enforceable beginning January 1, 2020.

KEY: education, school fees

Date of Last Change: 2023 [November 10, 2020]

Notice of Continuation: August 19, 2021

Authorizing, and Implemented or Interpreted Law: Art X Sec 2; Art X Sec 3; 53E-3-401(4); 53G-7-503[; Doe v. Utah State Board of Education, Civil No. 920903376]

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Amendment				
Rule or Section Number:	R277-479	Filing ID: 55420		

Agency Information

1. Department:	Education		
Agency:	Administration		
Building:	Board of Education		
Street address:	250 E 50	00 S	
City, state and zip:	Salt Lake City, UT 84111		
Mailing address:	PO Box 144200		
City, state and zip:	Salt Lake City, UT 84114-4200		
Contact persons			
Name:	Phone: Email:		
Angie Stallings	801- angie.stallings@schools.utah		

Please address questions regarding information on this notice to the persons listed above.

gov

General Information

2. Rule or section catchline:

R277-479. Funding for Charter School Students With Disabilities on an IEP

3. Purpose of the new rule or reason for the change:

This rule is being amended to clarify funding calculations for charter school expansions.

4. Summary of the new rule or change:

538-

7830

These amendments update code references for the definition of "Charter school", removes the definition of "Previous four years", and makes several updates to the calculations related to Charter School Special Education Add-On Funding.

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 impacts on state government revenues or expenditures. The changes do not affect the Utah State Board of Education (USBE) budgets but rather clarify allocations to Local Education Agencies (LEAs).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. This rule change does not have major impacts for most LEAs. It largely affects new and expanding charters by adjusting Weighted Pupil Units (WPUs) for actual headcounts.

The amendment also clarifies that the foundation for existing schools will be the Average Daily Membership (ADM) for the current year and the previous four. These impacts allow funds to be distributed according to actual headcounts as opposed to projections and are more accurate.

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 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. There are no costs associated with clarifying the formulas 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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Article X, Section 3	Subsection 53E-3-501(1)(c) (vi)(A)	Section 53E-7-206
Subsection 53E-3-401(4)		

Public Notice Information

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

A) Comments will be accepted 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration.

R277-479. Funding for Charter School Students With Disabilities on an IEP.

R277-479-1. 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 Constitution and state law;
- (c) Subsection 53E-3-501(1)(c)(vi)(A), which directs the Board to adopt rules regarding services for persons with disabilities; and
- (d) Section 53E-7-206, which directs the Board to administer state and federal special education funds.
- (2) The purpose of this rule is to specify standards and procedures for funding of charter school students with disabilities on an IEP.

R277-479-2. Definitions.

- (1) "Base" means prior year special education add-on WPU.
- (2) "Charter school" means a school authorized by a charter school authorizer under <u>Sections 53G-5-304 through 53G-5-306</u>[÷
 - (a) Section 53G-5-305;
 - (b) Section 53G-5-306; or
 - (c) Section 53G-5-304].
- (3) "Charter school authorizer" or "authorizer" has the same meaning as that term is defined in Subsection 53G-5-102(3).
- (4) "Common Data Committee" or "CDC" means a group comprised of representatives of Board staff, the Legislative Fiscal Analyst's Office, the Governor's Office of Management and Budget, and the Utah State Tax Commission, that reports to the [4]Legislature with:
- (a) estimates of the growth of students in Utah schools and how much it will cost to fund those students; and
- (b) estimates of the tax dollars the state will receive for education.
- (5) "Estimated enrollment" means the enrollment projections done by the CDC as approved by the Superintendent and used for legislative projections.
- (6) "Foundation" means the average of self-contained and resource special education students average daily membership over the previous five years.

- (7) "Negative growth adjustment" means prior year special education add-on WPU minus weighted negative growth.
- (8) "New charter school" means a charter school with less than five years of operation.
- (9) "Positive growth adjustment" means prior year special education add-on WPU plus weighted growth.
- (10) "Prevalence rate" means the percentage of students with disabilities within the total student enrollment.

[(11) "Previous four years" means the four year span between the sixth and second prior fiscal year.]

- ([12]11) "Significant expansion" means a substantial increase in the number of students attending a charter school due to a significant event, such as the addition of new grade levels or additions of sites, that is unlikely to occur on a regular basis.
- ([13]12) "Special education" means specially designed instruction and related services to meet the unique needs of a student with a disability in accordance with Rule R277-750.
- ([44]13) "Student with a disability" means a student, evaluated in accordance with Utah State Board of Education Special Education Rules, and determined to be eligible for special education and related services.
- $([15]\underline{14})$ "Total enrollment" means the total number of students enrolled in all campuses of a school as of the October 1 UTREx update.
- ([16]15) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:
- (a) individual detailed student records to be exchanged electronically among public education LEAs and the Superintendent; and
- (b) electronic transcripts to be sent to any post-secondary institution that participates in the e-transcript service.

R277-479-3. Charter School Special Education Add-On Funding.

- (1) For existing charter schools, the Superintendent shall calculate the foundation based on the average ADM of students with disabilities for the current year and the previous [five] four years.
- (2)(a) For new charter schools, the Superintendent shall calculate the foundation based on the average special education ADM for the number of years the new charter school has been in operation beyond the first year, until the charter school completes its fourth year of operation.
- (b) In its first operational year, a new charter school shall receive special education funding based on estimated enrollment projections made by the CDC and approved by the Superintendent for legislative projections.
- (c)(i) For a new charter school, the estimate of students with disabilities shall be 10% of the estimated enrollment.
- (ii) The Superintendent shall adjust the special education add-on WPUs for the number of students with disabilities as reported on the October 1 count for the current school year.
- (3) The foundation is the minimum amount a charter school may receive for special education add-on funding.
- (4)(a) The Superintendent shall apply a positive growth adjustment to a charter school's foundation for weighted growth.
- (b) The Superintendent shall determine weighted growth as set forth in Subsection 53F-2-307(7)(e)(i).
- [_____(c) The rate of growth in special education ADM may not exceed the rate of growth in total ADM.]
- $([\underline{4}]\underline{c})$ The Superintendent shall determine growth WPUs as set forth in Subsection 53F-2-307(7)(e).

- $([e]\underline{d})$ The Superintendent may not impose a funding cap based on the charter prevalence rate because a charter school is designed and authorized specifically to serve students with disabilities.
- $([f]\underline{e})$ When there is no growth, either because a charter school is new or because the same number of students are enrolled, the Superintendent may not apply a positive growth adjustment.
- (5)(a) The Superintendent shall apply a negative growth adjustment to a charter school's base for decline in special education ADM.
- (b) The negative growth adjustment is the base multiplied by the percentage of enrollment decline.
- (c) The Superintendent shall subtract the result calculated under Subsection (5)(b) from the base to determine WPU.
- (d) When there is no decline in a charter school's enrollment of students with disabilities, either because the charter school is new or because the same number of students are enrolled, the Superintendent may not apply a negative growth adjustment to the charter school's allotment.
- (e) If a negative growth adjustment brings the WPU below the foundation, the charter school shall receive the foundation WPU.
- (6)(a) If an authorizer approves a significant expansion for a charter school, during the first and second years of expansion, the Superintendent shall multiply the projected increase in enrollment by [the most recent prevalence rate]10% to arrive at the WPU supplement for the charter school.
- (b) The Superintendent shall adjust the special education add-on WPUs for the number of students with disabilities as reported on the October 1 count for the current school year.
- ([b]c) After the first and second years of a charter school's expansion, the special education formula provided in this Section R277-479-3 shall account for the expansion.
- [(c) If an authorizer approves a significant expansion for a charter school during the third year of operation and beyond, the Superintendent shall calculate a significant expansion adjustment by estimating the number of students with disabilities to be 10% of the projected enrollment, and provide funding for these anticipated students.
- (d)(i) The Superintendent shall base the estimate under Subsection (6)(c) on a projected expansion adjustment calculated by the Superintendent accounting for expansion information provided by a charter school's authorizer.
- (ii) The Superintendent shall multiply the projection by the prevalence rate of students with disabilities for the charter school for the most recent year calculated in the add-on formula.
- (iii) The Superintendent shall allocate the resulting significant expansion adjustment WPU as an expansion supplement to the charter school's add-on WPU.]
- (7) Notwithstanding this Section R277-479-3, if a new charter school or significant expansion identifies a purpose and target population in its application focusing on students with disabilities, the Superintendent shall estimate the number of students with disabilities expected to enroll in consultation with the authorizer and the school.

KEY: charter schools, students with disabilities Date of Last Change: <u>2023[January 11, 2023]</u> Notice of Continuation: March 12, 2022

Authorizing, and Implemented or Interpreted Law: Art X, Sec

3; 53E-3-501(1)(c)(vi)(A); 53E-7-206; 53E-3-401(4)

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Amendment				
Rule or Section Number:	R277-484	Filing ID: 55422		

Agency Information

1. Department:	Education		
Agency:	Administration		
Building:	Board of Education		
Street address:	250 E 50	00 S	
City, state and zip:	Salt Lake City, UT 84111		
Mailing address:	PO Box 144200		
City, state and zip:	Salt Lake City, UT 84114-4200		
Contact persons:			
Name:	Phone: Email:		
Angie Stallings	801- angie.stallings@schools.utah		

Please address questions regarding information on this notice to the persons listed above.

gov

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General Information

2. Rule or section catchline:

R277-484. Data Standards

3. Purpose of the new rule or reason for the change:

This rule is being amended due to recommendations from the Reports and Requirements Task Force and amendments to companion Rule R277-407.

(EDITOR'S NOTE: The proposed amendment to Rule R277-407 is under ID 55419 in this issue, June 1, 2023, of the Bulletin.)

4. Summary of the new rule or change:

These amendments remove a definition for "Fee waiver status" and update a new version of the incorporated by reference document titled "Board Reporting Deadline Table". These amendments were required due to amendments to Rule R277-407, School Fees.

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. There are no costs to the Utah State Board Education (USBE) budgets.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The fee waiver status element is removed and the board reporting deadline table is updated with current dates, but no additional actions are required of Local Education Agencies (LEAs) so there are no added costs.

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

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. This only 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 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 to 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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Net Fiscal Benefits	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
State Government	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
Total Fiscal Cost	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

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

Citation Information

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

Article X, Section 3	Subsections 53E-3-301(d) and (e)	Section 53E-3-401
Subsection 53E-3-401(8)(a)	Subsection 53E-3-511(8)	

Incorporations by Reference Information

7. Incorporations by Reference:

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

Official Title of Materials Incorporated (from title page)	Board Reporting Deadline Table
Publisher	Utah State Board of Education
Issue Date	December 1, 2022

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration.

R277-484. Data Standards.

R277-484-1. 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-3-401(8)(a), which allows the Board to take corrective action against an education entity that fails to comply with Board rules; and
- (d) Subsection 53E-3-511(8), which requires the Board to ensure LEA inclusion of data in an LEA's Student Information System.
- (2) The Superintendent is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.
 - (3) The purpose of this rule is to:
- (a) support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs;
 - (b) support the provision of equal opportunity for students;
 - (c) support accuracy, efficiency, and consistency of data;
- (d) ensure maintenance of basic contact and demographic information for each LEA and school.

R277-484-2. Definitions.

As used in this rule and the Board Reporting Deadline Table incorporated by reference in this rule:

- (1) "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Subsections 53E-3-301(3)(d) and (e)
- (2) "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet

- the reporting requirements specified in Subsections 53E-3-301(3)(d) and (e).
- (3) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the online licensing database maintained by the Superintendent, which will be phased out and replaced by EdUcate.
- (4) "Contact information" means the name, title, email address, and phone number for a designated individual.
- (5) "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.
 - (6) "Designated individual" means:
 - (a) an LEA governing board chair;
 - (b) a local administrator;
 - (c) a business administrator; or
 - (d) a school principal.
- (7) "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated to submit data to the U.S. Department of Education.
- (8) "EdUcate" has the same meaning as described in Subsection R277-312-2(1).

[(9) "Fee waiver status" means the designation, maintained in the Data Warehouse, that a student has been approved or denied for a fee waiver in accordance with Rule R277-407.]

[(10)](9) "Governing board chair" means the chair or president of an LEA governing board.

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

[(12)](11) "LEA demographic information" means:

- (a) the LEA name;
- (b) the LEA number;
- (c) the physical address;
- (d) the website;
- (e) a phone number; and
- (f) the LEA's grade range.

[(13)](12) "Local administrator" means a district superintendent or charter school director.

[(14)](13) "MSP" means Minimum School Program, the set of state supported K-12 public school funding programs.

[(15)](14) "School demographic information" means:

- (a) the school name;
- (b) the school number;
- (c) the physical and mailing address;
- (d) the website;
- (e) a phone number;
- (f) the school type; and
- (g) the school grade range.

[(16)](15) "Schools interoperability framework" or "SIF" means an open global standard for seamless, real time data transfer and usage for Utah public schools.

[(17)](16) "Student achievement backpack" has the same meaning as that term is defined in Subsection 53E-3-511(1)(d).

[(18)](17) "Student information system" or "SIS" means a student data collection system used for Utah public schools.

[(19)](18) "[UDOH]UDHHS" means Utah Department of Health and Human Services (UDHHS).

[(20)](19) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the Board, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

and

[(21)](20) "Utah Student Record Store" has the same meaning as that term is defined in Subsection 53E-3-511(e).

[(22)](21) "Year" means both the school year and the fiscal year for a Utah LEA, which runs from July 1 through June 30.

R277-484-3. Incorporation by Reference of Board Reporting Deadline Table.

- (1) This rule incorporates by reference the Board Reporting Deadline Table dated [December 2, 2021]December 1, 2022
- (2) A copy of the Board Reporting Deadline Table is located at:
 - (a

http://schools.utah.gov/administrative rules/documents incorporated; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah - 84111.

R277-484-4. Deadlines for Data Submission.

- (1) An LEA shall submit student level data to the Board through UTREx.
- (2) An LEA shall, by 5 p.m. Mountain Standard Time on the date specified in the Board Reporting Deadline Table, submit reports in the format specified by the Superintendent.
- (3) If a deadline in the Board Reporting Deadline Table falls on a weekend or state holiday in a given year, an LEA shall submit the report on the next business day following the date specified in the Board Reporting Deadline Table.
- (4) An LEA shall assign an individual to oversee compliance with this rule.

R277-484-5. Adjustments to Deadlines.

- (1) An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate information to allocation formulas by submitting a written request to the Superintendent no later than 24 hours before the specified deadline in Table 1.
 - (2) An extension request shall include:
 - (a) The reasons for the extension request;
- (b) The signatures of the LEA business administrator and superintendent or director; and
- (c) The date by which the LEA proposes to submit the report.
- (3) If an LEA requests an extension under Subsection (1), the Superintendent may do any of the following after taking into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the need for the data to be submitted:
- (a) Approve the request and allow the MSP fund transfer process to continue; or
- (b) Deny the request and stop the MSP fund transfer process; or $\ \ \,$
- (c) Recommend corrective action to the Board in accordance with Rule R277-114.
- (4) If, after receiving an extension, an LEA fails to submit the report by the designated date, the MSP fund transfer process shall be stopped and the procedures described in Section R277-484-7 shall apply.
- (5) An extension shall apply only to the specific reports and dates for which an extension was requested.
- (6) The Superintendent may not extend deadlines for the following reports:
 - (a) AFR;

- (b) APR;
- (c) Mid-year or Final CACTUS updates;
- (d) a Financial Audit Report; or
- (e) any UTREx updates.
- (7) Notwithstanding Subsection (6)(e), if an LEA identifies significant errors in a UTREx update, the Superintendent may grant the LEA an extension of no more than eight calendar days to file a new update.

R277-484-6. Official Data Source and Required LEA Compatibility.

- The Superintendent shall load operational data collections into the Data Warehouse as of the submission deadlines specified.
- (2) The Data Warehouse shall be the sole official source of data for annual:
- (a) school performance reports required under Section 53E-5-204;
- (b) determination of state and federal accountability reports; and
- (c) submission of data files to the U.S. Department of Education via EDEN.
- (3) The Superintendent shall maintain a database of LEA and school:
 - (a) demographic information;
 - (b) openings;
 - (c) closures; and
 - (d) contact information for designated individuals.
- (4)(a) An LEA shall use an SIS approved by the Superintendent to ensure compatibility with Board data collection systems.
- (b) The Superintendent shall maintain a list of approved student information systems.
- (5) [Prior to]Before the Superintendent granting approval for an LEA to initiate or replace a student information system that was not previously approved, the LEA shall:
- (a) send written request for approval to the Superintendent no later than November 15 of the year [prior to]before the year the LEA proposes to use the SIS for production software;
- (b) submit documentation to the Superintendent that the new or modified student information system is SIF certified;
- (c) submit documentation to the Superintendent that an SIF agent can meet the UTREx specifications profile for Vertical Reporting Framework (VRF) and eTranscripts;
- (d) ensure that a new student information system can generate valid data collection by submitting an actual file to the Superintendent for review;
- (e) ensure that the new student information system can generate the Statewide Student Identifier (SSID) request file by submitting an actual file to the Superintendent for review.
- (6)(a) The Superintendent shall review documentation and grant or deny an LEA submission under Subsection (4) within 30 calendar days.
- (b) An approved replacement system shall run in parallel to a state-approved system for a period of at least three months and be able to generate duplicate reports to previously generated information.
- (7) An LEA shall submit daily updates to the Board Clearinghouse using School Interoperability Framework (SIF) objects defined in the UTREx Clearinghouse specification.

- (8) An LEA shall electronically submit all public high school transcripts requested by a public education post-secondary school if the post-secondary school is capable of receiving transcripts through the electronic transcript service designated by the Superintendent.
- (9) No later than June 30, 2017, an LEA shall ensure that data collected in the Utah Student Record Store for a Student Achievement Backpack is integrated into the LEA's SIS and is made available to a student's parent or guardian and an authorized LEA user in an easily accessible viewing format.
- (10) Failure to comply with any of the requirements of this Section R277-484-5 may result in a recommendation for corrective action in accordance with Rule R277-114.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

- (1) To allocate MSP funds and projecting enrollment, the Superintendent may modify LEA level aggregate membership and fall enrollment counts on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team agrees that an adjustment is warranted by the evidence of an audit.
- (2) An audit report review team shall make a determination under Subsection (1) within 60 working days of the authorized audit report deadline.
- (3) The Superintendent may only adjust values downward if an audit report is received after an authorized deadline.

R277-484-8. Financial Consequences of Failure to Submit Reports on Time.

- (1) If an LEA fails to submit a report by its deadline as specified in Table 1, consistent with procedures outlined in <u>Rule</u> R277-114, the Superintendent may recommend corrective action, including stopping the LEA's MSP funds transfer process, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section R277-484-4.
- (2) The Superintendent may recommend loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Section 53G-9-302 as of June 15.

KEY: data standards, reports, deadlines Date of Last Change: <u>2023[March 15, 2022]</u> Notice of Continuation: November 5, 2021

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-301(d) and (e); 53E-3-401; 53E-3-401(8)(a); 53E-3-511(8)2

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Amendment			
Rule or Section Number:	R277-489	Filing ID: 55423	

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education

Name			Phone: Email:		
Conta	ct pers	sons	<u> </u>		
City, zip:	state	and	Salt Lake City, UT 84114-4200		
Mailin	ıg addı	ess:	PO Box	144200	
City, state and zip:		Salt Lake City, UT 84111			
Street address:		250 E 500 S			

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

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R277-489. Kindergarten Programs and Assessment

3. Purpose of the new rule or reason for the change:

This rule is being updated due to the passage of H.B. 477 in the 2023 General Session.

4. Summary of the new rule or change:

These amendments remove references related to the enhanced and full-day kindergarten programs including program application requirements and restrictions on allowable uses of funding. This rule also includes new student membership reporting requirements.

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. H.B. 477 (2023) removed the enhanced and full day kindergarten grant programs and full day kindergarten will be funded through the Weighted Pupil Unit (WPU).

Fiscal impacts were already captured in the fiscal note to H.B. 477 (2023).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. H.B. 477 (2023) removed the enhanced and full day kindergarten grant programs and full day kindergarten will be funded through the WPU.

Fiscal impacts were already captured in the fiscal note to H.B. 477 (2023). There are no added costs for LEAs due to the rule change.

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

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

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

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

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This only affects 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 added 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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Article X,	Subsection	Section 53F2-507
Section 3	53E-3-401(4)	

Public Notice Information

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

A) Comments will be accepted 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration.

R277-489. Kindergarten Programs and Assessment.

R277-489-1. 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 permits the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law; and
- [(c) Section 53F-2-507, which directs the Board to distribute funds appropriated for OEK and FDK to LEAs that apply for the funds.]
- (c) Section 53G-7-203, which requires the Board to establish rules regarding the administration of and reporting regarding the kindergarten assessment.
 - (2) The purpose of this rule is to[:
- (a) require LEAs to administer a kindergarten entry and exit assessment; and
- (b) establish criteria and procedures to administer the optional enhanced kindergarten program and full day kindergarten.] designate the kindergarten assessment and establish timelines and requirements for administration and reporting assessment results and enrollment.

R277-489-2. Definitions.

- [(1) "Efforts to expand FDK statewide" means an LEA's readiness to expand to additional FDK classrooms. (2) "FDK" or "full day kindergarten" means a kindergarten day where the schedule is equivalent in length to grades 1 through 3.
- (3) "Geography" means the classification of the county in which the LEA is located, with priority to counties in this order:
 - (a) sixth class county;
 - (b) fifth class county;
 - (c) fourth class county;
 - (d) third class county;
 - (e) second class county; and
 - (f) first class county.
- (1) "LEA's receipt of ongoing federal funding" means the amount of ongoing Title I funding used by an LEA to fund FDK.
- (5) "Optional enhanced kindergarten program" or "OEK" means a program that provides additional instruction to kindergarten age students.
- (6) "Socioeconomic need" means an LEA's percentage of students eligible for free and reduced lunch, with priority to an LEA with a greater percentage of eligible students.
- [(7)—]"Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the Board, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

R277-489-3. Administration of Kindergarten Entry and Exit Assessments.

- (1) [Except as provided in Subsection (2), an LEA shall administer:]For purposes of Subsection 53G-7-203(4), the Board selected kindergarten assessment is the kindergarten entry and exit profile or KEEP, which includes the kindergarten entry and exit assessments, required to be administered by LEAs as described in Section 53G-7-203.
 - (2) An LEA shall administer:

- (a) [a]the kindergarten entry assessment[, approved by the Superintendent,] to each kindergarten student sometime during the three weeks before through the three weeks after the first day of kindergarten; and
- (b) [a]the kindergarten exit assessment[, approved by the Superintendent,] to each kindergarten student sometime during the four weeks before the last day of school.
- [(2) An LEA is not required to administer the kindergarten entry and exit assessments if the LEA does not participate in:
 - (a) the optional enhanced kindergarten program;
- (b) full-day kindergarten; or

and

- (e) the Early Interactive Reading Software Program described in Rule R277-496.]
- (3) The days used for the assessment shall be consistent with Subsection R277-419-[5]4(6)(d).
 - (4) An LEA shall submit to the Data Gateway:
 - (a) kindergarten entry assessment data by September 30;
 - (b) kindergarten exit assessment data by June 15.
- (5) In accordance with [Section]Rule R277-114, the Superintendent may recommend action to the Board, including withholding of funds, if an LEA fails to provide complete, accurate, and timely reporting under Subsection (4).

R277-489-4. Use of Kindergarten Entry and Exit Assessment Data.

- (1) The Superintendent or an LEA may use entry and exit assessment data obtained in accordance with Section R277-489-3 to:
- (a) provide insights into current levels of academic performance upon entry and exit of kindergarten;
- (b) identify students in need of early intervention instruction and promote differentiated instruction for all students;
- (c) understand the effectiveness of programs, such as [extended]full-day kindergarten and preschool;
- (d) provide opportunities for data-informed decision making and cost-benefit analysis of early learning initiatives;
- (e) identify effective instructional practices or strategies for improving student achievement outcomes in a targeted manner;
- (f) understand the influence and impact of full-day kindergarten on at-risk students in both the short- and long-term.
- (2) An LEA may not use entry and exit assessment data obtained in accordance with Section R277-489-3 to:
- (a) justify early enrollment of a student who is not currently eligible to enroll in kindergarten, such as a student with a birthday falling after September 1;
 - (b) evaluate an educator's teaching performance; or
- (c) determine whether a student should be retained or promoted between grades.

R277-489-5. Kindergarten Enrollment Reporting.

- (1) An LEA shall submit student membership information daily to the Superintendent using the appropriate kindergarten code through UTREx.
- (2) The Superintendent shall review October 1 and June 15 kindergarten membership information annually to inform LEA funding allocations and to inform potential Board action.

[R277-489-5. Optional Enhanced Kindergarten Program.

(1) The Superintendent shall accept applications from LEAs for OEK programs that satisfy the requirements of Section 53F-2-507, and this rule.

- (2) The Superintendent shall establish timelines for submission of applications.
- (3) An LEA application for the optional enhanced kindergarten program funds shall include:
- (a) the names of schools for which program funds shall be used:
- (b) a description of the delivery methods that may be used to serve eligible students, such as:
- (i) full-day kindergarten;
 - (ii) additional hours: or
- (iii) other means.
- (c) a description of the evidence-based early intervention model used by the LEA;
- (d) a description of how the program focuses on ageappropriate literacy and numeracy skills;
- (e) a description of how the program targets at risk students; and
 - (f) other information as requested by the Superintendent.
- (4) An LEA shall submit the appropriate kindergarten UTREx code to the Superintendent through UTREx by June 15 annually.
- (5) The Superintendent shall distribute funds to eligible charter schools based on a formula identifying the percentage of students in public schools and the percentage of students with the greatest need for an enhanced kindergarten program consistent with Subsection 53F 2-507(4)(a).
- (6) The Superintendent shall distribute funds to eligible school districts by determining the number of students eligible to receive free lunch in the prior school year for each school district and prorating the remaining funds based on the number of students eligible to receive free lunch in each school district.
- (7) The Superintendent shall establish timelines for distribution of the optional enhanced kindergarten program funds.
- (8) An LEA governing board shall use OEK program money for optional enhanced kindergarten programs and supports that have proven to significantly increase the percentage of students who are proficient in literacy and mathematics, including:
- (a) salary and benefits for individuals teaching and supporting enhanced kindergarten programs; and
- (b) evidence-based intervention curriculum.

R277-489-6. Full-Day Kindergarten.

- (1) The Superintendent shall establish deadlines for an LEA to submit an application for FDK funds.
 - (2) An LEA application shall include:
- (a) the amount of Title I funds currently dedicated to fund FDK;
- (b) the number of new FDK classrooms the LEA proposes to fund; and
- (c) other information requested by the Superintendent.
- (3) An LEA shall submit the appropriate kindergarten UTREx code to the Superintendent through UTREx by June 15 annually.
- (4) The Superintendent shall distribute funds appropriated for FDK consistent with Subsection 53G-7-203(5), giving priority to LEAs with greatest need in the following order:
 - (a) socioeconomic need;
 - (b) geography;
 - (c) efforts to expand full-day kindergarten; and
 - (d) receipt of on-going federal funding.
- (5) If an LEA's current annual combined allocation for kindergarten students exceeds an amount equal to what the LEA

would receive if the LEA were funded from the kindergarten basic school program at a full WPU based on the LEA's number of kindergarten students, the LEA may not receive additional FDK funds.

(6) The Superintendent shall establish timelines for distribution of FDK funds;

(7) An LEA governing board shall use FDK money to fund salary and benefits of full day kindergarten teachers.

KEY: enhanced kindergarten

Date of Last Change: <u>2023[June 13, 2022]</u> Notice of Continuation: January 13, 2022

Authorizing, and Implemented or Interpreted Law: Art X Sec 3;

53E-3-401(4); 53F-2-507

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Amendment			
Rule or Section R277-622 Filing ID: 55424			

Agency Information

Name:	Phone: Email:		
Contact persons:	:		
City, state and zip:	Salt Lake City, UT 84114-4200		
Mailing address:	PO Box 144200		
City, state and zip:	Salt Lake City, UT 84111		
Street address:	250 E 500 S		
Building:	Board of Education		
Agency:	Administration		
1. Department:	Education		

| 7830 | Please address questions regarding information on this notice to the persons listed above.

angie.stallings@schools.utah.

General Information

Angie Stallings

2. Rule or section catchline:

R277-622. School-based Mental Health Qualifying Grant Program

3. Purpose of the new rule or reason for the change:

This rule is being amended due to the passage of H.B. 411, in the 2023 General Session.

4. Summary of the new rule or change:

801-

538-

These amendments add definitions and funding provisions in support of new requirements for Local Education Agency (LEA) behavioral health support personnel.

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 Utah State Board of Education (USBE) does not have any added costs.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. LEAs now have flexibility to pay salary and benefits, coinciding with the changes from H.B. 411 (2023). Otherwise there are no added costs 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.

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

There are no compliance costs for affected persons. LEAs have additional flexibility to use existing funds.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Article X, Section 3	Section 53E-3-401	Subsection 53E-4-302(1)(a)
Section 53F-2-415		

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	07/03/2023
unti	l:			

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration.

R277-622. School-based Mental Health Qualifying Grant Program.

R277-622-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
- (c) Section 53F-2-415 which requires the Board to makes rules that establish:
- (i) procedures for submitting a plan for the School-based Mental Health Qualifying Grant Program;
- (ii) a distribution formula the Board will use to distribute funds to an LEA; and
- (iii) annual reporting requirements for an LEA that receives funds pursuant to the School-based Mental Health Qualifying Grant Program.
- (2) The purpose of this rule is to establish the procedures for an LEA to receive a School-based Mental Health Qualifying Grant including:
 - (i) plan submission process, format, and requirements;
 - (ii) funding distribution methods; and
- (iii) additional requirements including reporting and accountability.

R277-622-2. Definitions.

- (1) "Behavioral health support personnel" means an individual, who works under the direct supervision of qualifying personnel consistent with Subsection 53F-2-415(1)(a), and is trained by an LEA on a three-year cycle in:
 - (a) trauma-informed practices;
- (b) crisis de-escalation, consistent with the Least Restrictive Behavioral Interventional manual, incorporated by reference in Section R277-609-3;
 - (c) fundamentals of behavior;
 - (d) data collection;
 - (e) fundamentals of multi-tiered systems of support;
 - (f) conflict management;
 - (g) multi-disciplinary collaboration;
 - (h) mental health literacy;
 - (i) confidentiality; and
- (j) limitations of the role of behavioral health support personnel.
- ($[\pm]2$) "Licensed" means an individual who may lawfully practice in an area described in Section 53F-2-415:
 - (a) under an interstate compact; or
 - (b) as authorized by:

- (i) the Division of Occupational Professional Licensing;
- (ii) the Department of Health and Human Services; or
- (iii) the Board through an associate or professional license as described in <u>Rule R277-306</u>.
- ([2]3) "Plan" means a School-based Mental Health Qualifying Grant plan described in Section R277-622-3.
- ([3]4) "Qualifying personnel" means the same as the term is defined in Subsection 53F-2-415(1) including being licensed.
- ([4] $\underline{5}$) "Regional Education Service Agency" or "RESA" means the same as the term is defined in Subsection 53G-4-410(1)(b).
 - ([5]6) "Related services" means:
- (a) mental[-]_health or school nursing services provided by:
 - (i) qualifying personnel within the scope of their practice;
 - (ii) the local mental health authority; or
 - (iii) or a private provider through a contract; or
- (b) training funded only through carry forward funds that is provided by qualifying personnel for school personnel.
- (7) "Work under the direct supervision of qualifying personnel" means that:
- (a) all assignments and responsibilities of an employee are given by qualifying personnel who reviews the work for completeness and accuracy; and
- (b) the supervisor is responsible for actions taken and is available if needed.

R277-622-3. School-based Mental Health Plan.

- (1) To qualify for a School-based Mental Health Qualifying Grant, an LEA shall submit a plan to the Superintendent.
 - (2) The plan shall include:
- (a) a three-year projection for the LEA's goals, metrics, and outcomes;
 - (b) requirements outlined in Subsection 53F-2-415(3);
- (c) a plan for how qualifying personnel will increase access to mental health service for students in need, including students who are underserved or at risk;
- (d) a process for utilization of qualifying personnel in participating with an LEA's multi-disciplinary team as outlined in Rule R277-400;
- (e) a timeline and process for school personnel training in trauma-informed practices including documentation of compliance.
- (3) Except as provided in Subsection (4), an LEA shall submit the LEA's plan no later than May 31 for a funding distribution to be made for the upcoming school year.
- (4) An LEA's approved plan is valid for three years and may be required to be reapproved after three years of implementation.
- (5) An LEA may submit a revised plan for approval by the board, in a manner described by the Superintendent, if the LEA identifies deficiencies with the LEA's ability to implement the LEA's plan including a change in available funding.

R277-622-4. Board Approval or Denial of LEA Plan.

- (1) The Board shall approve or deny each LEA plan submitted by the Superintendent.
- (2) If the Board denies an LEA's plan, the LEA may amend and resubmit the LEA's plan to the Superintendent until the Board approves the LEA plan.

R277-622-5. School-Based Mental Health Grant Distribution.

(1) An LEA with an approved plan pursuant to [subs]Section R277-622-4 shall receive a School-based Mental Health Grant distribution.

- (2) The funding amount distributed to an approved LEA shall be the sum of:
 - (a) \$25,000; and

be:

- (b) a per student allocation based on the number of students in an LEA divided by the total available grant appropriation less the aggregate amount of appropriation allocated as described in Subsection (2)(a);
- $\ \,$ (3) A RESA shall receive \$50,000 per member school district.
 - (4) The number of students used in Subsection (2)(b) shall
 - (i) based on the October 1 headcount in the prior year; or
- (ii) for a new LEA, based on the new LEA's projected October 1 headcount.
- (5) An LEA or RESA shall receive its allocation on a reimbursement basis upon demonstration to the Superintendent of:
 - (a) contracting of services for qualifying personnel; or
 - (b) hiring qualifying personnel.
- (6) After the distribution described in [s]Subsections (2)(a) and (b), and by October 1 of each year, the Superintendent shall distribute any undistributed funds as an additional allocation to an LEA on a reimbursement basis.
- (7) An LEA may qualify for the additional allocation described in Subsection (6) if the LEA demonstrates an intent to collaborate with the Local Mental Health Authority of the county the LEA is located.
- (8) The additional allocation described in [s]Subsection (6) shall be:
 - (a) the aggregate total of undistributed funds;
- (b) distributed to an eligible LEA in an amount equal to the LEA's portion of the student headcount of all eligible and participating LEAs; and
- (c) used for collaboration with the Local Mental Health Authority of the County the LEA is located.

R277-622-6. Allowable Uses of Funds.

- (1) An LEA that receives a distribution pursuant to Section R277-622-6 may use the funds only for the following:
- (a) salary and benefits for the hiring of qualifying personnel; $[-\mathbf{or}]$
- (b) salary and benefits for the hiring of behavioral health support personnel; or
 - ([b]c) procuring a contract for related services;
- (2) An LEA may only use carryforward funds for contracts of related services associated with training as described in Subsection R277-622-2(5)(b).
- (3) An LEA shall use the LEA's matching funds and allocation within the fiscal year the funds are distributed.
- (4) An LEA that has remaining balances at year end shall report the remaining balances in the LEA's annual program report described in Rule R277-484.

R277-622-7. Annual Reporting and Accountability.

- (1) An LEA with an approved plan and funding amount shall provide the Superintendent with an annual report no later than October 1 of each year.
 - (2) The annual report shall include:
- (a) a total baseline count of qualifying personnel in an LEA before receiving the initial funding allocation;
- (b) the number of qualifying personnel hired above the baseline count using the funding allocation;

- (c) the progress made toward achieving goals and outcomes outlined in the LEA's plan; and
 - (d) other information requested by the Superintendent.

R277-622-8. Qualifying Personnel Scholarship Program.

- (1) Subject to funding availability as described in Subsection 53F-2-415(9), an LEA employee may apply to receive a scholarship in a manner prescribed by the Superintendent.
- (2) The Superintendent shall establish an application for the scholarship program which shall include:
 - (a) required intake information;
 - (b) required supplemental materials or documentation;
 - (c) application cycle and deadlines; and
 - (d) reporting requirements for a successful applicant.
- (3) The Superintendent may not award a scholarship to an LEA employee that exceeds \$14,000 per year;
- (4) To be eligible for a scholarship award, an LEA employee shall:
- (a) be accepted into a graduate program in a field to become a qualifying personnel;
- (b) take courses outside of the LEA employee's LEA work hours;
- (c) ensure a majority of the clinical experiences required by the LEA employee's graduate program be at a school site;
- (d) demonstrate an effort to maximize financial aid opportunities and programs, including the Free Application for Federal Student Aid; and
 - (e) upon graduation:
- (i) become a qualifying personnel in accordance with Subsection 53F-2-415(1); and
- (ii) maintain employment with the LEA of origin for an equal amount of years that a scholarship was provided.
- (5) An LEA with an LEA employee receiving a scholarship shall:
 - (a) serve as the fiscal agent to the scholarship funds;
- (b) provide necessary flexibility to the LEA employee's job duties and responsibilities to allow the LEA employee to fulfill the graduate program requirements; and
- (c) upon graduation, and barring any general employment issues or concerns by the LEA, guarantee employment in the field in which the LEA employee graduated for an equal amount of years that a scholarship provided.

KEY: mental health, programs, reporting Date of Last Change: 2023 [July 22, 2022] Notice of Continuation: January 13, 2022

Authorizing, and Implemented or Interpreted Law: Art X Sec 3;

53E-3-401; 53E-4-302(1)(a); 53F-2-415

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Amendment			
Rule or Section Number:	R277-625	Filing ID: 55425	

Agency Information

1. Department:	Education
Agency:	Administration
Building:	Board of Education

Street address:	250 E 500 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 144200
City, state and zip:	Salt Lake City, UT 84114-4200
Contact porsons	

Contact persons:

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

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R277-625. Mental Health Screeners

3. Purpose of the new rule or reason for the change:

This rule is being amended due to the passage of H.B. 403, in the 2023 General Session.

4. Summary of the new rule or change:

These amendments update the requirements for the mental health screeners program, as well as make updates to the terminology; and clarify how a Local Education Agency (LEA) will notify the Superintendent of their participation in the program.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. There are no impacts to the Utah State Board of Education (USBE) outside the changes captured in the fiscal note for H.B. 403 (2023).

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. Any fiscal impacts have been captured in the fiscal note for H.B. 403 (2023) and USBE does not estimate any additional impacts for LEAs.

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

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

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

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

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

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

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

There are no compliance costs for affected persons. USBE does not anticipate any added costs due to the reporting changes required from H.B. 403 (2023).

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Article X,	Subsection	Section 53F2-522
Section 3	53E-3-401(4)	

Public Notice Information

- 8. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)
- A) Comments will be accepted 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration. R277-625. Mental Health Screeners.

R277-625-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

- (c) Section 53F-2-522 which directs the board to make rules regarding the selection of a mental health screener and financial aid for qualifying parents.
 - (2) The purpose of this rule is to:
- (a) provide the approval process for a mental health screener chosen by an LEA; and
- (b) establish the approval and distribution of funds for a qualifying parent to receive financial assistance for related mental health services.

R277-625-2. Definitions.

- (1) "Division" [of Substance Abuse and Mental Health" or "DSAMH" | means the same as the term is defined in Section [62A-15-103]53F-2-522.
- (2) "Mental health" means a person's emotional, psychological, and social well-being, which can affect how a person thinks, feels, and acts, including how a person handles stress, relates to others, and makes healthy choices.
- (3) "Mental health screener" or "screener" means [the use of]a systematic tool [or process]that:
- (a) [to identify]identifies if a student is experiencing, or is at risk of experiencing, issues related to the student's mental health;
- (b) is used for [an-]early identification of [strategy to detect] the onset of mental health conditions, enabling the mental health conditions to be potentially addressed; and
 - (c) [that]is not:
 - (i) a diagnostic tool[or process]; or
- (ii) a system or process used by a student's teacher to observe behavior for targeted learning interventions.
- (4) "Mental health services" means the same as the term is defined in Subsection R523-1-3(3).
- (5) "Qualifies for financial assistance" means a qualifying parent that has a student receiving educational services through an LEA who:
 - (a) receives free or reduced lunch; or
- (b) as recommended by the local mental health authority, demonstrates need including being:
 - (i) uninsured;
 - (ii) underinsured;
- (iii) ineligible for Medicaid to cover part or all of any recommended mental health treatments; or
- (iv) demonstrates a high need for interventions based upon results of the LEA's mental health screener.
- (6) "Qualifying parent" means the same as the term is defined in Subsection 53F-2-522(1)(d).
- (7) "Relevant services" means mental health services provided to a student that are directly related to mental health needs identified by a student's mental health screening.

R277-625-3. Approval of Mental Health Screeners.

- (1)(a) The Superintendent, in consultation with [DSAMH]the Division, shall publish annually a list of pre-approved mental health screeners to the Board's website.
 - (b) the published pre-approved list shall include:
- (i) the name or brand of the mental health screener including a link to the screener's website;
 - (ii) the recommended ages for the mental health screener;
- (iii) any limitations of the mental health screener including the typical level of false positives;
- (iv) the mental health conditions the mental health screener can detect; and

- ([i]v) the scientific data or research used to verify a screener is evidence based.
 - (2) The Board shall approve:
 - (a) the pre-approved mental health screener list; and
- (b) the mental health conditions for which a screener can be used.
- (3) All pre-approved mental health screeners shall comply with the requirements as described in Title 53E, Chapter 9, Student Privacy and Data Protection, and the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.
- [(4) An LEA that plans to administer a mental health screener shall notify the Superintendent by a deadline established by the Superintendent:
 - (a) if the LEA plans to:
- (i) use a mental health screener from the Board's preapproved list; or
- (ii) apply to the Superintendent for approval of a mental health screener that is not on the pre approved list as described in Subsection (5); and
- (b) whether an LEA elects to participate in providing a qualifying parent with financial assistance.]
- (4) An LEA governing board shall notify the Superintendent whether the LEA will be a participating LEA or non-participating LEA, on a form provided by the Superintendent, in compliance with the requirements in Section 53F-2-522.
- (5) If the LEA chooses to apply for use of a mental health screener that is not on the pre-approved list, the LEA shall submit an application in a form prescribed by the Superintendent specifying:
- (a) the mental health screener proposed for use by the LEA;
- (b) the reason for choosing the mental health screener over a screener from the pre-approved list;
- (c) the approved mental health conditions the mental health screener measures;
- (d) how the mental health screener complies with all state and federal data privacy laws; and
- (e) the scientific data or research demonstrating the mental health screener is evidence based and meets industry standards;
- (f) why the mental health screener is age appropriate for each grade the screener is administered; and
- (g) why the mental health screener is an effective tool for identifying whether a student has a mental health condition that requires intervention.
- (6) The Superintendent shall review the application in consultation with [DSAMH]the Division and approve or deny the application within 30 days of receipt.
- (7) If the application is approved, the Superintendent shall submit the approved application to the Board for final approval.
- (8) Subject to legislative appropriation, the Superintendent shall [provide—]annually determine a maximum reimbursement amount an LEA may receive for use of a mental health screener.
- (9) An LEA may request [in writing] a reimbursement from the Superintendent in writing in an amount not to exceed the amount described in Subsection (8).
- (10)(a) An LEA shall require relevant staff, who will be administering a mental health screener, to attend an annual mental health screener training provided by the Superintendent in collaboration with [DSAMH]the Division;
- (b) the training described in Subsection (10)(a) shall provide an LEA with information needed for appropriate parental consent including:

- (i) consent shall be obtained:
- (A) within eight weeks before administration of the mental health screener; and
 - (B) in accordance with Subsection 53E-9-203(4);
- (ii) the consent form shall be provided separately from other consent forms given to a parent pursuant to other state or federal laws;
- (iii) additional variables that might influence a screener's results; and
 - (iv) a statement that:
 - (A) the mental health screener is optional;
 - (B) a screener is not a diagnostic tool;
- (C) a parent has the right to seek outside resources or opinions; and
- (D) specifies which board approved mental health conditions the mental health screener measures.
- (11) An LEA may not administer a mental health screener if the LEA has not attended the annual mental health screener training described in Subsection (10).
- (12) An LEA shall report annually to the Superintendent aggregate data regarding the types of LEA provided mental health interventions, referrals, or other actions taken based on screener results.

R277-625-4. Data Privacy.

- (1)(a) An LEA shall ensure all data collected or stored by a mental health screener complies with all state and federal data privacy laws and requirements, including those described in Subsection R277-625-3(3).
- (b) notwithstanding Subsection (1)(a), an LEA shall provide a parent with a list of all parties that may receive any data related to a student's mental health screener before the parent providing consent.
- (2) An LEA shall provide a parent with a list of all data potentially collected by the mental health screener before consenting to a student's mental health screening.
- $\mbox{(3) An LEA shall provide the parent of a screened student} \label{eq:condition}$ with:
 - (a) results as described in Subsection 53F-2-522(4)(d);
 - (b) applicable available resources; and
 - (c) who has access to the screener data.
- (4) If an LEA has received parental consent, an LEA may share data collected from the mental health screener with a school's multi-disciplinary team.
- (5) An LEA shall retain and dispose of all data related to a student's mental health screener in accordance with an approved retention schedule not to exceed three years.

R277-625-5. Financial Assistance for a Qualifying Parent.

- (1) An LEA that has elected to participate as described in Subsection R277-625-3(4)(b), may receive reimbursement for relevant services obtained by a qualifying parent who receives financial assistance.
- (2) An LEA may not receive reimbursement for a qualifying parent if:
- (a) the qualifying parent's student has begun to receive relevant services outside of the school setting before seeking reimbursement:
- (b) the LEA can provide the relevant services, including relevant services provided by a third party through a contract with the LEA;

- (c) except for as provided in Subsection (d), the qualifying parent has received reimbursement for the same relevant services within one year from the date the relevant services began for the student; or
- (d) an LEA may provide reimbursement to a qualifying parent for the same relevant services within one year from the date relevant services began for the student if:
- (i) the LEA has no other qualifying parents seeking reimbursement by April 1 and;
 - (ii) has reimbursement funds remaining.
- (3) An LEA may not receive reimbursements that exceed the LEA's award amount as described in Subsection (4).
- (4) An LEA that has elected to participate as described in Subsection R277-625-3(4)(b), shall receive a total award amount based on need as determined by the Superintendent.
- (5) The Superintendent shall determine a participating LEA's need by considering the LEA's ability to support and provide mental health services for a student including:
- (a) the availability of mental health services within the LEA;
- (b) the availability of mental health services within the LEA's surrounding community;
- (c) the overall accessibility of mental health services for students within the LEA;
- (d) the current student demand for mental health services within an LEA; and
- (e) capacity of the LEA to meet existing and future student demands for mental health services.

KEY: mental health screener, mental health, prevention Date of Last Change: 2023[November 7, 2022] Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53F-2-522

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Amendment				
Rule or Section Number:	R277-733	Filing ID: 55426		

Agency Information

Agency information				
1. Department:	Education			
Agency:	Administration			
Building:	Board o	f Education		
Street address:	250 E 50	00 S		
City, state and zip:	Salt Lake City, UT 84111			
Mailing address:	PO Box 144200			
City, state and zip:	Salt Lake City, UT 84114-4200			
Contact persons:				
Name:	Phone:	Email:		
Angie Stallings	801- 538- 7830	gov		
Please address questions regarding information on this notice to the persons listed above.				

General Information

2. Rule or section catchline:

R277-733. Adult Education Programs

3. Purpose of the new rule or reason for the change:

This rule is being amended in response to a corrective action from Adult Ed's monitoring visit from the U.S. Department of Education's Office of Career, Technical, and Adult Education (OCTAE) that requires the Utah State Board of Education (USBE) to make changes to the Utah Adult Education Policies and Procedures Guide.

4. Summary of the new rule or change:

These amendments update the Utah Adult Education Policies and Procedures Guide that is incorporated by reference, to the May 2023 version.

Another rule change removes reporting requirements for fees and tuition for programs that are not federally funded.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The USBE does not anticipate any impact to its budget.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. Local Education Agencies (LEAs) may need to update their internal policies and procedures; however, USBE does not estimate any measurable impacts to LEA budgets associated with the technical changes.

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. LEAs may need to update their internal policies and procedures; however, USBE does not estimate any measurable impacts to LEA budgets associated with the technical 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 FY2024 FY2025 FY2026 State \$0 \$0 \$0 Government Local \$0 \$0 \$0 Governments Small \$0 \$0 \$0 Businesses Non-Small \$0 \$0 \$0 Businesses Other \$0 \$0 \$0 Persons Total Fiscal \$0 \$0 \$0 Cost **Fiscal** FY2024 FY2025 FY2026 **Benefits** State ያ \$0 \$0 Government \$0 \$0 Local \$0 Governments Small \$0 \$0 \$0 Businesses

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

	•	
Article X,	Section	Subsection
Section 3	53E-10-202	53E-3-501(1)
Subsection	Section 53F-2-401	Section
53E-3-401(4)		53E-10-205

Incorporations by Reference Information

7. Incorporations by Reference:		
A) This rule adds, updates, or removes	the	followin

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

Official Title of Materials	Utah Adult Education Policies and Procedures Guide
Incorporated (from title page)	
Publisher	Utah State Board of Education
Issue Date	May 2023

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	07/03/2023
unti	l:				

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

\$0

\$0

\$0

\$0

Non-Small

Businesses Other

Persons

\$0

\$0

R277. Education, Administration.

R277-733. Adult Education Programs.

R277-733-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;
- (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law:
- (c) Section 53E-10-202 which vests general control and supervision over adult education in the Board;
- (d) Subsection 53E-3-501(1), which allows the Board to adopt minimum standards for programs; and
- (e) Section 53F-2-401, which vests the Board with responsibility to provide education to persons in the custody of the Utah Department of Corrections.
- (2) The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program for adult education students both in and out of state custody.

R277-733-2. Incorporation of Utah Adult Education Policies and Procedures Guide by Reference.

- (1) The rule incorporates by reference the Utah Adult Education Policies and Procedures Guide, [January 2022]May 2023 Revision, which provides day-to-day operating standards and technical assistance to eligible providers for operation of adult education programs.
 - (2) A copy of the guide is located at:
- [https://www.schools.utah.gov/adulteducation?mid=2654&tid=2v]https://www.schools.utah.gov/administrativerules/documentsincorporated; and
- (b) the Utah State Board of Education 250 East 500 South, Salt Lake City, Utah 84111.

R277-733-3. Definitions.

- (1) "Adult" means an individual 18 years of age or over.
- (2) "Adult education" means organized educational programs below the post-secondary level, other than regular full-time K-12 secondary education programs:
 - (a) provided by an LEA or an eligible provider;
- (b) provided for out-of-school youth, 16 years of age and older, or adults who have or have not graduated from high school; and
- (c) provided to improve literacy levels and to further high school level education.
- (3) "Adult Basic Education" or "ABE" means a program of instruction at or below the 8.9 academic grade level, which prepares adults for advanced education and training.
- (4) "Adult Education and Family Literacy Act" or "AEFLA" means Title II of the Workforce Innovation Opportunity Act of 2014, which provides the principle source of federal support for:
- (a) academic instruction and education services below the post-secondary level to receive a high school diploma or its recognized equivalent; and
- (b) transition to post-secondary education, training, and employment.
- (5) "Adult Secondary Education" or "ASE" means a program of academic instruction at the 9.0 grade level or above in

Board approved subjects for an eligible adult education student who is seeking an Adult Education Secondary Diploma or its equivalent.

- (6) "College and Career Readiness Plan" or "CCRP" means a plan developed by a student in consultation with an adult education program counselor, teacher, and administrator that:
- (a) is initiated at the time of entrance into an adult education program;
 - (b) identifies a student's skills and objectives;
- (c) identifies a career pathway strategy to guide a student's course selection; and
- (d) links a student to post-secondary education, training, or employment using a program-defined adult education transition process.
- (7) "Custody," for purposes of this rule, means the status of being legally in the control of another adult person or public agency.
- (8)(a) "Eligible adult education student" means an individual who provides documentation that the individual:
 - (i) is a primary and permanent resident of Utah;
 - (ii) is one of the following:
- (A) 17 years of age or older, and whose high school class has graduated;
 - (B) under 18 years of age and is married;
 - (C) has been emancipated or adjudicated as an adult; or
- (D) an out-of-school youth 16 years of age or older who has not graduated from high school; and
 - (iii) meets any of the following:
 - (A) is basic skills deficient;
- (B) does not have a secondary school diploma, its recognized equivalent, or an equivalent level of education; or
 - (C) is an ELL; or
- (b) A non-resident eligible adult education student in accordance with an individual agreement between an eligible provider and another state.
 - (9) "Eligible Provider" may include:
 - (a) an LEA;
 - (b) a community-based or faith-based organization;
 - (c) a voluntary literacy organization;
 - (d) an institution of higher education;
 - (e) a public or private non-profit agency;
 - (f) a library;
 - (g) a public housing authority;
- (h) a non-profit institution not described in Subsections (a) through (g) that can provide adult education and literacy activities to eligible adult education students;
- (i) a consortium or coalition of providers identified in Subsections (a) through (h); or
- (j) a partnership between an employer and a provider identified in Subsections (a) through (i).
- (10) "English Language Learner" or "ELL" means an individual:
- (a) who has limited ability in reading, writing, speaking, or comprehending the English language and whose native language is a language other than English; or
- (b) who lives in a family or community where a language other than English is the dominant language.
- (11) "FERPA" means the Family Educational Rights and Privacy Act, 20 USC 1232g, and its implementing regulations.
- (12) "Inmate" means an offender who is incarcerated in state or county correctional facilities located throughout the state.
- (13) "High School Equivalency Exam" or "HSE" means a Board approved examination whose modules are aligned with current

high school core standards and adult education College and Career Readiness standards.

- (14) "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.
- (15) "Utah High School Completion Diploma" means a diploma issued by the Board and distributed by a Board approved contractor to an individual who has passed all subject modules of an HSE exam at an HSE testing center.
- (16) "Utah Online Performance Indicators for Adult Education" or "UTopia" means a statewide database for tracking adult education student progress and outcomes.
- (17) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-733-4. Federal Adult Education Funds.

The Superintendent shall follow the standards and procedures contained in AEFLA and the WIOA state plan adopted by the Board pursuant to AEFLA to administer federal funding of adult education programs.

R277-733-5. Compliance with State and Federal Laws.

Adult education programs shall comply with state and federal law and administrative regulations and follow the procedures contained in the Utah Adult Education Policies and Procedures Guide described in Section R277-733-2.

R277-733-6. State Fund Distribution, Carryover, and Recapture.

- (1) The Superintendent shall allocate state funds for adult education in accordance with Section 53F-2-401.
- (2) An LEA may carryover 10% of the state adult education funds allocated to the LEA's adult education programs with written approval from the Superintendent.
- (3) An LEA shall submit a request to carryover funds for approval.
- (4) The Superintendent shall consider excess funds in determining an LEA's allocation for the next fiscal year.
- (5) The Superintendent shall recapture an LEA's fund balances in excess of 10% annually.
- (6) The Superintendent shall allocate recaptured funds to an LEA's adult education program through the supplemental award process described in Section R277-733-10.

R277-733-7. Adult Education Pupil Accounting.

[(1)-]An LEA administered adult education program shall receive WPU funding for a student consistent with the criteria and rate outlined in the Utah Adult Education Policies and Procedures Guide described in Section R277-733-2.

R277-733-8. Program, Curriculum, Outcomes, and Student Mastery.

- (1) The Utah Adult Education Program shall offer courses consistent with the Elementary and Secondary General Core under Rule R277-700.
- (2) An LEA shall ensure adult secondary education includes the following prerequisite courses:
 - (a) ELL competency AEFLA levels one through six; or
 - (b) ABE competency AEFLA levels one through four.
- (3) An LEA shall establish policies allowing or disallowing adult education student participation in graduation activities or ceremonies.

- (4) An LEA may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from other eligible providers.
- (5) An LEA adult education program is the final decisionmaking authority for the awarding of credit and grades from nonaccredited sources.
- (6) An eligible provider shall offer an adult education student seeking a Utah High School Completion Diploma a course of academic instruction designed to prepare the student to take an HSE exam.
- (7) Following completion of requirements for a Utah Adult Education Secondary Diploma or a Utah High School Completion Diploma, an eligible provider shall only allow a student to continue in an adult education program if:
- (a) the student's academic skills are less than 9.0 grade level in an academic area of reading, math or English; and
- (b) the student lacks sufficient mastery of basic educational skills to enable the student to function effectively in society.

R277-733-9. Adult Education Programs--Tuition and Fees.

- (1) An eligible provider may charge a tuition or fee consistent with Section 53E-10-205 and the Utah Adult Education Policies and Procedures Guide described in Section R277-733-2.
- [(2) An eligible provider shall report annually to the Superintendent the amount of tuition and fees collected.]
 - ([3]2) An eligible provider may not:
- (a) commingle or report fees and tuition collected from adult education students with community education funds or any other public education fund;
- (b) count collected fees and tuition toward meeting federal matching, cost sharing, or maintenance of effort requirements related to the adult education program's award; and
- (c) calculate carryover balance amounts using funds collected from fees and tuition.
- ([4]3) An eligible provider receiving state or federal adult education funds shall [provide annual written assurances to the Superintendent]ensure that fees and tuition collected are:
- (i) returned or delegated, except for indirect costs, to the local adult education program;
- (ii) used solely and specifically for adult education programming; and
- (iii) not withheld and maintained in a general maintenance and operation fund.

R277-733-10. Providing Corrections Education.

- - (a) local school boards;
 - (b) state post-secondary educational institutions;
 - (c) other state agencies; or
- (d) private providers recommended by a local school board.
- (2) A contract made in accordance with Subsection (1) shall be in writing and shall provide for:
- (a) services to students in an appropriate environment for student behavior and educational performance;
 - (b) compliance with relevant Board standards;
- (c) program monitoring by the Superintendent in accordance with $\underline{Rule}\,R277\text{-}733\text{:}$ and
- (d) coordination of services with non-custodial programs to enable an inmate in custody to continue the inmate's public-school education with minimal disruption following discharge.

- (3) A school district may sub-contract with local educational service providers for the provision of educational services to students in custody.
- (4) Custodial status does not qualify an individual for services under the IDEA.
- (5) When a student inmate is transferred to a new program, the sending program shall update and finalize all school records in UTopia releasing the student's records as soon as possible after receiving notice of the transfer.
- (6) An educational service provider shall only disclose educational records of a student inmate, before or after release from custody, consistent with FERPA.
- (7) A transcript or diploma prepared for an inmate in custody shall:
- (a) include the name of the contracted educational agency which also provides service to non-custodial offenders; and
 - (b) not reference the inmate's custodial status.
- (8) A corrections education provider shall keep an inmate's education records which refer to custodial status, inmate court records, and related matters separate from permanent school records.

R277-733-11. Supplemental Awards.

- An LEA may receive a supplemental award if the LEA:
- (1) has an adult education program with no carryover funds;
- (2) demonstrates that the award funds will only be used for special program needs or professional development; and
 - (3) provides in writing the level of need for the award.

R277-733-12. State Workforce Development Board.

- (1) The Superintendent shall represent adult education programs on the State Workforce Development Board as a voting member, in accordance with WIOA.
- (2) The Superintendent may assign Board staff to State Workforce Development Board WIOA committees to implement the State's WIOA Unified Plan.

R277-733-13. Oversight, Monitoring, Evaluation, and Reports.

- (1) The Board may designate up to 2% of the total legislative appropriation for oversight, monitoring, and evaluation of adult education programs.
- (2) The Superintendent may recommend that the Board withhold state or federal funds in accordance with <u>Rule R277-114</u> for noncompliance with:
 - (a) Board rule;
 - (b) adult education state policy and procedures;
 - (c) associated reporting timelines; and
- (d) program monitoring outcomes, as defined by the Board, including:
 - (i) lack of program improvement; and
 - (ii) unsuccessful student outcomes.

KEY: adult education

Date of Last Change: <u>2023[June 2, 2022]</u> Notice of Continuation: January 13, 2022

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-10-202; 53E-3-501(1); 53E-3-401(4); 53F-2-401; 53E-10-205

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Repeal				
Rule or Section R277-930 Filing ID: 55427				

Agency Information

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

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R277-930. English Language Learner Software

7830

3. Purpose of the new rule or reason for the change:

This rule is being repealed due to the passage of H.B. 154, in the 2023 General Session, whereby this rule is no longer necessary.

4. Summary of the new rule or change:

This rule is repealed in its entirety.

Fiscal Information

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

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. The Utah State Board of Education (USBE) has no budget impact due to the repealed rule.

B) Local governments:

This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. Local Education Agencies (LEAs) have no impact from the rule repeal.

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. The rule and program have been repealed.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

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

Citation Information

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

Article X,	Section 53E-3-401	Section 53F-4-219
Section 3		

Public Notice Information

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

A) Comments will be accepted 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Angie Stallings,	Date:	05/15/2023
or designee	Deputy		
and title:	Superintendent of		
	Policy		

R277. Education, Administration.

[R277-930. English Language Learner Software.

R277-930-1. 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-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law: and

(c) Section 53F-2-419, which directs the Board to allocate funds to LEAs to fund English language learner software.

(2) The purpose of this rule is to establish procedures for allocating and reimbursing funds to an LEA for English language learner software in accordance with Section 53F-2-419.

R277-930-2. Definitions.

(1) "Eligible student" means an English language learner student.

(2) "English language learner software" means the software identified in Section 53F-4-219.

R277-930-3. Allocation Procedures.

(1) The Superintendent shall determine the amount available to each LEA for English language learner software under Section 53F 2-419 by adding:

(a) the base amount available to the LEA in accordance with the LEA Base Allocation Table using the LEA's October 1 student count from the prior school year; and

(b) a per student amount for each LEA calculated using the number of eligible students from the LEA's October 1 student count from the prior school year and the funds remaining from the legislative allocation after setting aside the amounts identified in Subsection (1)(a).

(2) The Superintendent shall notify each LEA of the LEA's projected funding amount by July 1 annually.

(3) An LEA shall submit an application to the Superintendent to notify the Superintendent of the LEA's intent to participate and receive funds under the English language learner software program.

(4) An LEA shall use funds allocated under this program in accordance with Subsection 53F 2-419 (2).

(5) The Superintendent shall reimburse an LEA for expenses incurred consistent with this rule and Section 53F-2-419.

TABLE LEA Base Allocation

Eligible Students	Base Amount
1-10	\$1,000
11-20	\$2,000
21-30	\$3,000
31-40	\$4,000
41-50	\$5,000
51-100	\$10,000
101-200	\$20,000
201-300	\$30,000
301-1,000	\$50,000
1,001-5,000	\$60,000
5,001-10,000	\$65,000
10,001 or more	\$70,000

KEY: software, allocating, reimbursing Date of Last Change: August 25, 2021

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53E-3-401; 53F-4-219

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Amendment			
Rule or Section Number:	R307-110-13	Filing ID: 55323	

Agency Information

1. Department:	Environmental Quality		
Agency:	Air Qual	ity	
Building:	MASOB		
Street address:	195 N 1	950 W	
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144820		
City, state and zip:	Salt Lake City, UT 84114-4820		
Contact persons:			
Name:	Phone: Email:		
Erica Pryor	385- epryor1@utah.gov 499-		

Please address questions regarding information on this notice to the persons listed above.

rbares@utah.gov

3416

801-

536-

General Information

Ryan Bares

2. Rule or section catchline:

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone

3. Purpose of the new rule or reason for the change:

The Utah Air Quality Board has proposed for public comment amendments to Utah State Implementation Plan (SIP), adding Subsection IX.D.11 to comply with the Clean Air Act Section 182(b) requirements for moderate ozone nonattainment areas.

Section R307-110-13 incorporates Subsection IX.D.11 into this rule and shall be amended to change the Board adoption date to the anticipated adoption date of the amended plan.

Additionally, the Utah Air Quality Board is requesting public comment on the following specific items: 1) the appropriateness of cost thresholds for Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT); 2) whether NOX controls should be required in the absence of the demonstration of meeting the 15% Volatile Organic Compounds (VOC) reduction required by Reasonable Further Progress (RFP); 3) appropriateness of timelines requiring controls in the State Implementation Plan (SIP); and 4) whether optional components should be included in the State Implementation Plan (SIP) submission.

4. Summary of the new rule or change:

This rule amendment incorporates new Subsection IX.D.11: 2015 Ozone NAAQS Northern Wasatch Front Moderate Nonattainment Area into the Utah State Implementation Plan.

Public Hearing Information:

A public hearing will be held on 07/12/2023 at 1:00 PM at MASOB-ADMIN-1 1020C.

Or use Google Meet joining information:

Video call link: https://meet.google.com/isu-cugd-awn

Or dial: (US) +1 929-445-3603 PIN: 197 163 690#

More phone numbers: https://meet.google.com/tel/isucugd-awn?pin=8184512241746&hs=1

Fiscal Information

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

A) State budget:

This amendment to Section R307-110-13 is not expected to create additional costs or savings for the state budget since the proposed amendments demonstrate how existing state administrative rules and actions fulfill the Clean Air Act requirements.

Any potential fiscal impacts associated with these actions are addressed in a separate and parallel proposed rulemaking amendments for Section R307-110-17. (EDITOR'S NOTE: The proposed amendment to Section R307-110-17 is under ID 55324 in this issue, June 1, 2023, of the Bulletin.)

B) Local governments:

This rule amendment is not expected to impact local governments; therefore, no cost or savings are anticipated.

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

This rule amendment is not expected to impact small businesses; therefore, no cost or savings are anticipated.

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

This rule amendment is not expected to impact non-small businesses; therefore, no cost or savings are 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*):

This rule amendment is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities; therefore, no cost or savings are anticipated.

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

This rule amendment does not impact any entities, and therefore there are no compliance costs.

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

Regulatory Impact Table

	-		
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Environmental Quality, 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:

I.	•	
Section 19-2-104	U.S.C. Title 42,	
	Chapter 85,	
	Subchapter I, Part	
	A Section 7410	
	(a)(1) 2 (A)	

Incorporations by Reference Information

7. Incorporations by Reference:			
 A) This rule adds, updates, or removes the following title of materials incorporated by references: 			
Official Title of Materials Incorporated (from title page)	Materials Section IX.D.11: 2015 Ozone NAAQS Incorporated Northern Wasatch Front Moderate		
Publisher	Division of Air Quality, Utah Department of Environment Quality		
Issue Date	September 6, 2023		

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 07/17/2023 until:

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

Date:	Place (physical address or URL):	
07/12/2023	 See information in Box 4 above.	

9. This rule change MAY 09/07/2023 become effective on:

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

Agency Authorization Information

· · · · · · · · · · · · · · · · · · ·	Bryce C. Bird, Division Director	Date:	05/09/2023
and title:			

R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan. R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on [January 3, 2007]September 6, 2023, pursuant to Section 19-2-104, is [hereby

]incorporated by reference and made a part of [these rules]Rule R307-110.

KEY: air pollution, PM10, PM2.5, ozone Date of Last Change: [July 7, 2022]2023 Notice of Continuation: December 1, 2021

Authorizing, and Implemented or Interpreted Law: 19-2-104

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R307-110-17	Filing ID: 55324

Agency Information

. ,			
1. Department:	Environmental Quality		
Agency:	Air Qual	ity	
Building:	MASOB		
Street address:	195 N 1	950 W	
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO BOX 144820		
City, state and zip:	Salt Lake City, UT 84114-4820		
Contact persons:	ontact persons:		
Name:	Phone:	Email:	
Erica Pryor	385- 499- 3416	epryor1@utah.gov	
Ryan Bares	801- 536- 4216	rbares@utah.gov	

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits

3. Purpose of the new rule or reason for the change:

The Utah Air Quality Board has proposed for public comment amendments to Utah State Implementation Plan (SIP), adding Subsections IX.H.31 and IX.H.32 Emission Limits and Operating Practices to comply with the Clean Air Act Section 182(b)(2) requirements for moderate ozone nonattainment areas.

Section R307-110-17 incorporates Subsection IX.H.31 and IX.H.32 into the rule and shall be amended to change the Board adoption date to the anticipated adoption date of the amended plan.

4. Summary of the new rule or change:

This rule amendment incorporates new subsections into the Utah State Implementation Plan, including Subsection IX.H.31 and IX.H.32: Emission Limits and Operating Practices into the Utah State Implementation Plan.

Public Hearing Information:

A public hearing will be held on 07/12/2023 at 1:00 PM at MASOB-ADMIN-1 1020C.

Or use Google Meet joining information:

Video call link: https://meet.google.com/isu-cugd-awn

Or dial: (US) +1 929-445-3603 PIN: 197 163 690#

More phone numbers: https://meet.google.com/tel/isucugd-awn?pin=8184512241746&hs=1

Fiscal Information

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

A) State budget:

This rule amendment is not expected to create additional costs or savings for the state government because these facilities are already permitted and inspected under existing rules. Inspectors will be able to confirm compliance as part of normal inspection processes.

B) Local governments:

This rule amendment is not expected to impact local governments; therefore no costs or savings are anticipated.

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

This rule amendment is not expected to impact small businesses; therefore no costs or savings are anticipated.

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

The Utah Division of Air Quality anticipates that these changes to the proposed rule will impact three non-small businesses. The impacts are described below. All estimated fiscal impacts were provided by the impacted entities to the Utah Division of Air Quality as part of their Reasonably Available Control Technology analyses.

(1) NOx reduction for Chevron Products Company Salt Lake Refinery (Cost Information from 7/1/18 PM2.5 SIP Evaluation Report and Resubmitted 02/23/2023 and 02/24/2023). Installation of ultra-low NOx burners on Crude Heaters F21001 and F21002 that meet an emission rate of 0.025 lb/MMBtu (as required in Section IX Part H.32.b.b of the SIP).

F21001:

Installed Capital Costs: \$720,614

Annual Costs: \$117,277

Implementation timeline: 05/01/2026

F21002:

Installed Capital Costs: \$690,583

Annual Costs: \$112,389

Implementation timeline: 05/01/2026

(2) NOx limits for Tesoro Refining & Marketing Company LLC Marathon Refinery (Cost Information from 01/31/2023 RACT Analysis). Installation of Selective Catalytic Reduction on two cogeneration turbines with heat recovery steam generation that meet an emission concentration limitation of 2ppmv@ 15%O2 (as required in Section IX Part H.32.j.b of the SIP).

Installed Capital Costs: \$18,263,558

Annual Costs: \$2,069,462

Implementation timeline: 05/01/2026

(3) Volatile Organic Compound limits for US Magnesium LLC (Cost Information from 01/31/2023 RACT Analysis). Installation of a steam stripper in series with regenerative thermal oxidizer on boron plant process wastewater ponds (as required in Section IX Part H.32.k.a of the SIP).

Installed Capital Costs: \$3,749,632

Annual Costs: \$5,077,156

Implementation timeline: 10/01/2024

These numbers were provided by the sources when they submitted their Reasonable Available Control Technologies analyses. Those reports are publicly available for review: https://deq.utah.gov/air-quality/northern-wasatch-front-moderate-ozone-sip-technical-support-documentation#supporting-tsd

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 amendment does not apply to persons other than small business, non-small businesses, state, or local government entities, thus no additional costs are expected as a result of these changes to the proposed rule.

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

No additional compliance costs are expected as a result of these changes to the proposed rule.

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

Regulatory In	npact Table		
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$3,749,632	\$24,749,911	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$3,749,632	\$24,749,911	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	(\$3,749,632)	(\$24,749,911	\$0

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 19-2-104	U.S.C. Title 42, Chapter 85, Subchapter I, Part	
	A Section 7410	
	(a)(1) 2 (A)	

Incorporations by Reference Information

7. Incorporations by Reference :		
A) This rule adds, updates, or removes the following title of materials incorporated by references :		
Official Title of Materials Incorporated (from title page) Utah State Implementation Plan, Subsection IX.H.31 and IX.H.32: Emission Limits and Operating Practices		
Publisher	Division of Air Quality, Utah Department of Environment Quality	
Issue Date	September 6, 2023	

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	07/17/2023
unt	il:				

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

Date:		Place (physical address or URL):
07/12/2023	1:00 PM	See information in Box 4 above.

9. This rule change MAY 09/07/2023 become effective on:

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

Agency Authorization Information

Agency hea	ad Bryce C. Bird,	Date:	05/09/2023
or designed	e Division Director		
and title:			

R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan. R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on [July 6, 2022]September 6, 2023, pursuant to Section 19-2-104, is incorporated by reference and made a part of [these rules]Rule R307-110.

KEY: air pollution, PM10, PM2.5, ozone Date of Last Change: [July 7, 2022]2023 Notice of Continuation: December 1, 2021

Authorizing, and Implemented or Interpreted Law: 19-2-104

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R357-22	Filing ID: 55412

Agency Information

1. Department:	Governor	
Agency:	Economic Opportunity	
Building:	World Trade Center	
Street address:	60 E South Temple, Suite 300	
City, state and Salt Lake City, UT 84111 zip:		
Contact persons:		

Name:	Phone:	Email:
Dane Ishihara	801- 792- 8764	dishihara@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R357-22. Rural Employment Expansion Program

3. Purpose of the new rule or reason for the change:

The purpose of this change is to clarify language in the existing rule, add clarity by consistently using the phrase "written agreement," and add definitions to this rule.

4. Summary of the new rule or change:

Rule R357-22 is amended to clarify language in the existing rule, consistently use the phrase "written agreement," and add definitions to the rule for the eligible hiring period, eligible employment period, and contract termination date.

Fiscal Information

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

A) State budget:

There is no new aggregate anticipated costs or savings to the state budget. The amendment is merely clarifying language and terms.

B) Local governments:

There is no new aggregate anticipated cost of savings to local governments because local governments are not required to comply with or enforce this rule.

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

There is no new aggregate anticipated cost or savings to small businesses because this proposed amendment does not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation.

Participation in the program is optional.

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

There is no new aggregate anticipated cost or savings to non-small businesses because this proposed amendment does not create new obligations for non-small businesses, nor does it increase the costs associated with any existing obligation.

Participation in the program is optional.

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 new aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.

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

There are no new compliance costs for affected persons because participation in the program is optional.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0

Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Governor's Office of Economic Opportunity, Ryan Starks, 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	
63N-4-403(3)(c)	

Public Notice Information

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

A)	Comments	will	be	accepted	07/03/2023
unti	l:				

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head or designee	Ryan Starks, Executive Director	Date:	05/12/2023
and title:			

R357. Governor, Economic Opportunity. R357-22. Rural Employment Expansion Program. R357-22-101. Title.

This rule is known as the "Rural Employment Expansion Program Rule."

R357-22-102. Definitions.

In addition to the terms defined in Section 63N-4-402, the following terms are defined:

- (1) "Contract termination date" means 90 days after the expiration of the eligible employment period.
- (2) "Eligible employment period" means the eligible hiring period and the following 12 months of continual employment for new full-time employee positions.
- (3) "Eligible hiring period" means the six months following the date the REDI application was submitted.
- (4) "Employee report" means a list of employees in a format approved by the office that includes:
 - (a) time-period of report; and
 - (b) employee:
 - (i) names or ID numbers;
 - (ii) position titles;
 - (iii) hire dates;
 - (iv) termination dates;
 - (v) hours paid;
 - (vi) wages paid.; and
 - (vii) benefits paid, if applicable.
- $([2]5)(\underline{a})$ "New full-time employee position" means a position that:
- ([a]i) [has been]is newly created in addition to the number of baseline jobs as defined in Subsection 63N-1a-102(1);
- ([b]ii) [is a newly created full time employee position where] the annual gross wage or annualized wage of the employment position, not including health care or other paid or unpaid benefits, is at least 110% of the average wage of the county in which the employment position exists; [-and]
 - ([e]iii) is filled[;]:
- ($[i]\Delta$) by a full-time employee as defined in $\underline{S}[s]$ ubsection 63N-1a-102(6)[—who is not a spouse, child, parent, sibling, grandparent, or grandchild of an owner or officer of the business entity]; and
 - (B) within the eligible hiring period; and
 - ([i]iv) is located within a:
 - (A) county of the third, fourth, fifth, or sixth class; or
- (B) municipality that has a population of 10,000 or less and the municipality is located within a county of the second class.
- (b) "New full-time employee position" does not include an independent contractor position.
- ([3]6) "REDI," Rural [Economic]Employment Development Incentives, means the same as the Rural Employment Expansion Program.

R357-22-103. Authority.

This rule is adopted by the office under the authority of Subsection 63N-4-403([2]3)(c).

R357-22-104. Form and Content of Application for Rural Employment Expansion Program Participation.

- (1) The content of the application for a rural employment expansion grant shall, at minimum, include the business entity's:
 - (a) name;
 - (b) physical operating address;
 - (c) telephone number;
 - (d) email address;
 - (e) Federal EIN number;
 - (f) primary NAICS code;
- (g) vendor number, if the applicant is a registered vendor with the state;

- (h) requested rural employment expansion grant amount; and
 - (i) forecasted:
 - (i) number of new full-time positions; and
 - (ii) wage of new full-time employee positions.
- (2) The following documents shall, at minimum, be included in each application for participation in the program:
 - (a) copy of current W-9 form;
- (b)(i) two most recent Form 33H Utah Employer Quarterly Wage List and Contribution Reports; or
- (ii) a copy of an executed professional employee agreement, as defined in Subsection 31A-40-102(15); and
- (c) employee report covering the 12 months before application.

R357-22-105. Documentation Required to Demonstrate the Creation of New Full-Time Positions.

- (1) The following documents shall, at minimum, be included when a business entity demonstrates the creation of new full-time employee positions after the position has been filled for 12 months:
 - (a) number of new full-time employee positions created;
- (b) address of work location if different from the address provided in the business entity's application for REDI Participation;
- (c) employee report for the 12 months before grant funds disbursement request; and
- (d)(i) two most recent Form 33H Utah Employer Quarterly Wage List and Contribution Reports; or
- (ii) a copy of an executed professional employee agreement, as defined in Subsection 31A-40-102(15).
- (2) A business entity may apply for grant funds after the new employee position has been filled for a minimum of six months and the annualized wage is at least 110% of the county's [annual] average wage by submitting:
 - (a) number of new full-time employee positions created;
- (b) address of work if different from the address provided in the business entity's application for REDI Participation;
- (c) employee report covering the 12 months before grant disbursement request;
- (d)(i) two most recent Form 33H Utah Employer Quarterly Wage List and Contribution Reports; or
- (ii) a copy of an executed professional employee agreement, as defined in Subsection 31A-40-102(15); and
- (e) new full-time employee positions pay stubs at the second, fourth, and sixth months.
- (3) The office may request additional information to verify the creation and wage of new full-time employee positions.

R357-22-106. Documentation Required to Demonstrate the Creation of New Full-Time Positions -- Appeal Process.

- (1) If, after a review of the documentation required to demonstrate the creation of [a-]new full-time employee positions is inadequate, the office shall:
- (a) deny the request for a rural employment expansion grant; or
- (b) inform the business entity that the documentation is inadequate and ask the business entity to submit additional documentation.
- (2) If the office denies the request for a rural employment expansion grant, the business entity may appeal the denial to the office, in writing, within 20 business days of the denial notice date.

(3) The office shall review any appeal within 20 business days and make a final determination of the business entity's request for a rural employment expansion grant.

R357-22-107. Administration of the Rural Employment Expansion Grant.

- (1) From the date of entering a written agreement, as described in Subsection 63N-4-404(3), the business entity shall have six months to hire an employee to fill any new full-time employee positions.
- (2) The business entity shall provide the documentation required to demonstrate the creation of new full-time employee positions within 90[-]_days of the completion of all eligible employment periods for the new full-time positions.
- (3) The business entity shall verify that newly hired employees are legal US Citizens or meet eligible non-citizen requirements. A business entity must use the E-Verify system and maintain a record of citizenship documentation.
- (4) [If the office finds a material change in the baseline number of jobs after established in the contract, t]The administrator may cause the [contract]written agreement to be amended if:[to reflect the correct number before issuance or denial of an incentive.]
 - (a) the baseline number of jobs has materially changed; or
- (b) the number of new positions is less than the number projected in the original written agreement.
- _____(5) The written agreement, as described in Subsection 63N-4-404(3), will establish the average county wage terms and requirements.
- (6) New full-time employee positions that qualify for a Rural Employment Expansion Grant are not eligible to be considered as new full-time employee positions for other grant or incentive programs administered by the office.
- (7) Business entities that would like to apply for or receive another grant or incentive administered by the office must submit a separate application for each grant or incentive program.

KEY: rural employment expansion, economic development Date of Last Change: 2023[April 8, 2022] Authorizing, and Implemented or Interpreted Law: 63N-4-403([2]3)(c)

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Amendment				
Rule or Section R392-102 Filing ID: 55428				

Agency Information

1. Department:	Health and Human Services		
Agency:	Population Health, Environmental Health		
Room number:	Second Floor		
Building:	Cannon Health Building		
Street address:	288 N 1460 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 142102		

	state	and	Salt Lake City, UT 84114-2102
zip:			

Contact persons:

Name:	Phone:	Email:
Karl Hartman	801- 538- 6191	khartman@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R392-102. Food Truck Sanitation

3. Purpose of the new rule or reason for the change:

This rule is being amended to ensure that the rule language is consistent with statutory language in Title 11, Chapter 56, Mobile Business Licensing and Regulation Act, as amended after the passage of H.B. 408 in the 2023 General Session.

4. Summary of the new rule or change:

The changes include:

 amends the catchline from "Food Truck Sanitation" to "Mobile Food Business Sanitation" in order to include food carts as defined.

In Section R392-102-2:

- 1) adds definitions for "Drinking water," "Mobile food business," "Mobile food business operator," "Mobile food business employee," "Potentially hazardous food," and "Small producer:"
- 2) amends definitions for "Catering operation," "Commissary," "FDA Food Code," "Food cart," "Food truck, "Ice cream truck," "Primary permit," "Person in charge," and "Shaved ice establishment; and
- 3) removes definitions for "Primary permit," and "Secondary permit."

In Section R392-102-3:

- 1) exempts certain tier-one food truck operators from the requirement to have a commissary (substantive); and
- require that commissary 3-compartments sinks are provided with hot and cold water under pressure (not previously included in the rule, but it is an industry standard and an expectation of food truck operators who are renting a commissary).

In Section R392-102-4:

- 1) removes all references to primary and secondary permits, and restructure the permit issuance process as required by Subsection 11-56-104(1);
- 2) establishes procedures for permit suspension; and
- 3) establishes new procedures to ensure food truck and food cart permit visibility.

In Section R392-102-6:

This section change provides for the allowance of a specific food cart exemption.

In Section R392-102-7:

This section change establishes water and wastewater holding tank capacity requirements for food carts.

In Section R392-102-11:

This section change coincides with statutory language in Section 4-4-107 as amended following the passage of H.B. 523 (2023).

In Section R392-102-14:

This section change requires toilet water discharged from a food truck to discharge to a dedicated wastewater holding tank. (Industry standard, and historically required by the local health officer as part of the plan review.)

In Section R392-102-16:

This section change includes inspection fee language from Section 11-56-104.

Section R392-102-17 is a new section, consistent with all other rules promulgated 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 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):

Amendments to this rule will result in a fiscal benefit to certain tier-one food truck operators because they will be exempt from the requirement to have a commissary, see Subsection R392-102-3(3).

The monthly rental rate for a food truck commissary is between \$500 and \$1,000. However, commissary businesses are also small businesses, and they will experience a fiscal cost that is equal to the fiscal benefit granted to the food truck operators who qualify for a commissary exemption.

These costs offset, so the net regulatory impact to small businesses is zero.

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

No anticipated cost or savings because the substantive changes reflect current industry practice.

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*):

No anticipated cost or savings because the substantive changes reflect current industry practice.

F) Compliance costs for affected persons (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.

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	FY2024	FY2025	FY2026	
State Government	\$0	\$0	\$0	
Local Governments	\$0	\$0	\$0	
Small Businesses	\$0	\$0	\$0	
Non-Small Businesses	\$0	\$0	\$0	
Other Persons	\$0	\$0	\$0	
Total Fiscal Cost	\$0	\$0	\$0	
Fiscal Benefits	FY2024	FY2025	FY2026	
State Government	\$0	\$0	\$0	
Local Governments	\$0	\$0	\$0	
Small Businesses	\$0	\$0	\$0	
Non-Small Businesses	\$0	\$0	\$0	
Other Persons	\$0	\$0	\$0	
Total Fiscal Benefits	\$0	\$0	\$0	
Net Fiscal Benefits	\$0	\$0	\$0	

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

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 26B-1-202	Section 26B-7-113	Section 26B-7-402
	Subsection 26B-1-202(26)	

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency hea or designee	d Tracy S. Gruber, Executive Director	05/15/2023
and title:		

R392. Health and Human Services, [Disease Control and Prevention, Environmental Services] Population Health, Environmental Health.

R392-102. [Food Truck] Mobile Food Business Sanitation. R392-102-1. Authority and Purpose.

- (1) This rule is authorized under Sections [26-1-5]26B-1-202, [26-7-1]26B-7-113, and [26-1-2)26B-7-402, and Subsections [26-1-30(9)]26B-1-202(25) and [26-1-30(23)]26B-1-202(26).
- (2) This rule requires a [food truck]mobile food business operator to adhere to uniform statewide standards for constructing, operating, and maintaining a [food truck]mobile food business in a manner that safeguards public health including risk factors contributing to injury, sickness, death, and disability and ensures that food is safe, unadulterated, and honestly presented when offered to the consumer.
- (3) This rule establishes uniform standards for the regulation of a[food trucks] mobile food business, including the permitting process, plan reviews, inspections, construction, sanitary operations, and equipment requirements, which provide for the prevention and control of health hazards associated with [food trucks]mobile food businesses that are likely to affect public health.

R392-102-2. Definitions.

- (1) "Catering operation"[, as defined in this rule,] means a [food truck]mobile food business that contracts with a client for food service to be provided to the client or the client's guests or customers at a private event on private property. A catering operation does not include services routinely provided at the same location, or meals that are purchased individually by guests or customers.
- (2) "Commissary" means a food service establishment permitted by a local health department according to Rule R392-100 to which a [food truck]mobile food business operator may return regularly to perform functions necessary for sanitary operations including:
- (a) food preparation and boarding onto the [food truck]mobile food business;
 - (b) hot and cold holding of TCS foods;
 - (c) storing and stocking of food, utensils, and equipment;
 - (d) disposal of solid and liquid wastes;
 - (e) equipment and utensil cleaning and sanitizing;
 - (f) vehicle cleaning;
 - (g) refilling of water tanks with potable water; and
 - (h) utilizing electrical power sources.
- (3) "Drinking Water" means water that is fit for human consumption and meets the primary drinking water standards of Rule R309-200. Common usage of terms such as culinary water, potable water or finished water are synonymous with drinking water.
- ([3]4) "FDA Food Code" or "Food Code" means the FDA Model Food Code as incorporated by reference in Section R392-100-4. When FDA Food Code is referenced in this rule, the term 'establishment' or 'food establishment' used in the FDA Food Code shall be synonymous with 'food truck' or 'food cart' as defined in this rule.
- ([4]5) "Food cart" <u>has the same meaning as provided in Section 11-56-102.[means:</u>
 - (a) a cart 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; or
- (c) a motor vehicle that a vendor, standing outside of the frame of the vehicle, uses to sell or serve prepackaged food or beverages for human consumption.]
- ([5]6) "Food processing plant" means a commercial operation inspected by a regulatory authority, such as the United States Department of Agriculture (USDA), U.S. Food and Drug Administration (FDA), or the Utah Department of Agriculture and Food, that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments. A food processing plant does not include a food establishment.
- $([\underline{6}]\underline{7})$ "Food service establishment" means an operation that:
- (a) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; and
- (b) relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.
- ([7]8)[(a)] "Food truck" has the same meaning as provided in Section 11-56-102.[means a fully eneased 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, a shaved ice establishment, or an ice cream truck.
- (8) "Food truck operator" or "operator" means a person who owns, manages, or controls, or who has the duty to manage or control, the operation of a food truck.
- ([10]2) "HACCP Plan" means a written document that delineates the formal procedures for following the Hazard Analysis and Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
- ([44]10) "Ice cream truck" has the same meaning as provided in Section 11-56-102.[means a fully eneased 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.]
- ([42]11) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries and the nature, severity, and duration of the anticipated injury.
- $([\frac{13}]{12})$ "Local health department" has the same meaning as provided in Subsection 26A-1-102(5).
- ([14]13) "Local health officer" means the director of the jurisdictional local health department or a designated representative.
- (14)(a) "Mobile food business" means a food truck or food cart as defined in this rule.
- (b) A mobile food business does not include an ice cream truck or a shaved ice establishment.
- (15) "Mobile food business operator" or "operator" means a person who owns, manages, or controls, or who has the duty to manage or control, the operation of a mobile food business.
- (16) "Mobile food business employee" means a person working with unpackaged food, food equipment or utensils, or food-contact surfaces in a mobile food business.
- (17) "[Primary p]Permit" means a document that a local health department issues to authorize a person to operate a food truck or food cart within the jurisdiction of the local health department.[means a health permit issued by a local health department to operate a food truck within the jurisdiction of the local health department wherein the majority of the food truck's operations take place.]
- ([15]18) "Person in charge" means the individual present at a [food truck]mobile food business who is responsible for its operation at the time of the inspection.

- ([46]19) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.
- (20) "Potentially hazardous food" has the same meaning as "Time/temperature control for safety food (TCS)."
- ([48]21) "Sanitized" means the application of cumulative heat or chemicals on cleaned food, ice, or potable water contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.
- ([49]22) "Shaved ice establishment" means a facility that would normally be classified as a [food truek]mobile food business as defined in this rule that serves only shaved ice with flavored syrups and other toppings approved by the local health officer, and is operating from a fixed, single location without moving offsite throughout the entire operating season.
- ([20]23) ["Secondary permit" means a health permit issued by a local health department to operate a food truck within the jurisdiction of the local health department to a food truck operator who has a current primary permit from another local health department within the state.
- (21) -]"Small producer" has the same meaning as provided in Subsection 4-4-103(10).
- (24) "Time/temperature control for safety food" or [{]"TCS[}]" has the same meaning as "Time or temperature control food" provided in Section 26B-7-401, which also has the same meaning as "potentially hazardous food".[described in the FDA Food Code.]

R392-102-3. Commissary Requirements.

- (1) No food or equipment may be stored at a home residence, storage unit, garage, or other unapproved structure.
- (2) Except for Subsection R392-102-3(3), a [A food truck]mobile food business operator shall use a commissary unless exempted by the local health officer [issuing a primary permit as described in Section R392-102-4]having jurisdiction where the mobile food business operates.
- (3) A local health officer may not require a mobile food business operator to use a commissary if the mobile food business:
- (a) is designated as a tier one mobile food business by the permitting local health department;
 - (b) does not use temperature controlled products;
- (c) does not store prepared food products from one operating day to the next;
- (d) conducts all food service operations on the food truck or food cart, including cleaning and sanitizing;
- (e) can refill its potable water tanks at a location and in a manner approved by the local health officer; and
- (f) can dispose of all wastewater, used cooking oil, and other refuse at a location and in a manner approved by the local health officer.
- ([3]4) If a [food truck]mobile food business commissary is required by the local health officer having jurisdiction:
- (a) the [food truck]mobile food business operator shall use a commissary located within a local health jurisdiction approved by the local health [department issuing the primary permit]officer;
- (b) the [food truck]mobile food business operator shall obtain a written, signed commissary agreement from the commissary operator, which shall be renewed annually, and any changes to the agreement shall be submitted to the local health [department]officer[issuing the primary permit prior to] before the changes being implemented;

- (c) the [food truck]mobile food business operator shall return the [food truck]mobile food business to the commissary at a regular frequency, as determined and approved by the local health officer[department issuing the primary permit];
- (d) the [food truck]mobile food business operator shall park the [food truck]mobile food business at a location approved by the local health officer[department issuing the primary permit] at the end of daily operations;
- (e) the [food truck]mobile food business operator shall document presence at the commissary on a log [provided by the commissary operator]according to the frequency determined and approved by the local health officer, and as follows:
- (i) the [food truck]mobile food business operator shall record the date, time in, time out, and initials; and
- (ii) the <u>mobile food business</u> operator shall retain commissary records for one year, and shall make the records available for inspection by a local health officer upon request;
- (f) the [food truck]mobile food business operator shall have access to, and the ability to utilize:
- (i) a 3-compartment sink <u>provided with hot and cold water</u> <u>under pressure, [and]or</u> other [approved_]warewashing equipment approved by the local health officer;
- (ii) adequate hot and cold holding equipment as necessary for proper food storage;
 - (iii) a service sink with hot and cold water under pressure;
- (iv) at least one handsink with pressurized hot and cold water that is conveniently located and used exclusively for hand washing;
 - (v) a conveniently located toilet room; and
- (vi) approved methods and equipment to clean and sanitize food and non[-]food_contact surfaces within the [food_truek]mobile food business;
- (g) the [food truck]mobile food business operator shall use a commissary that provides adequate space for the sanitary storage of food, equipment, utensils, linens, and single-service, or single-use articles:
- (h) the [food truck]mobile food business operator shall use a commissary that has an electrical outlet available for [food truck]mobile food business use, if needed, when parked at the commissary;
- (i) an electrical installation intended for [food truck]mobile food business use at a commissary shall comply with applicable codes and ordinances including the state electrical code; and
- (j) not more than one [food truck]mobile food business shall be served by one electrical outlet at a time.
- ([4]5) If a local health officer revokes or suspends a commissary's operating permit as authorized in Subsection R392-102-4([46]10), [any associated primary and secondary]each associated [food truck]mobile food business permit shall be invalidated until a local health officer reinstates the operating permit or the [food truck]mobile food business operator obtains a new commissary agreement at an approved location, at which point the [primary and secondary food truck]mobile food business permit[s] shall be reinstated with the original expiration date.

R392-102-4. [Food Truck] Mobile Food Business Permit Requirements.

- (1) A person shall not operate a [food truck]mobile food business without a valid permit to operate issued by a local health department.
- (2) A [food truck]mobile food business operator shall only operate a [food truck]mobile food business after:

- (a) obtaining a temporary food establishment permit from a local health department when only operating at a fixed location for no more than 14 consecutive days; or
- (b) obtaining an annual[-primary] permit from the local health department wherein the majority of the [food truek's]mobile food business's operations will take place.
- (3) To obtain a [primary] permit, a [food truck] mobile food business operator shall:
- (a) provide the following information to the local health department issuing the [primary] permit:
 - (i) name, title, contact information, and signature;
- (ii) evidence of food safety manager certification as required in Subsection R392-102-4([49]13);
- (iii) ownership status of the [food truek]mobile food business such as individual, partnership, or corporation;
- (iv) name of the [food truck]mobile food business or "dba":
 - (v) food truck license plate number;
- (vi) a complete list of menu items if there has been a menu change or if it was not previously submitted with plans as required in Section R392-102-5;
- (vii) a means whereby the local health department can determine the [food truck's]mobile food business's vending location or route as well as days and hours of [food truck]mobile food business operation;
- (viii) a copy of the written commissary agreement as described in Subsection R392-102-3([3]4)(b), unless exempted by the local health officer; and
- (ix) documentation of an approved servicing area if the commissary is not properly equipped to provide potable water or electricity to, or to receive wastewater from a [food truek]mobile food business; and shall
 - (b) pay a [primary] permit fee;
- (c) submit plans for review as described in Section R392-102-5;
- (d) complete necessary changes resulting from the review of plans, as required; and
- (e) complete a pre-operational inspection, as described in Subsection R392-102-[46(8)]18(9).
- (4) An issued [primary] permit shall include the following information:
 - (a) name of the issuing local health department;
- (b) name of the permitted [food truck]<u>mobile food business</u>, as provided on the application;
 - (c) license plate of the associated food truck;
 - (d) expiration date; and
- (e) permit tier designation as described in Subsection R392-102-4(5)(b).[; and
 - (f) the written words, "Primary Permit".]
- (5)(a) [Primary and secondary permit] Permit fees shall be uniform statewide and may only be in an amount that reimburses the local health department for the cost of administering the [food truck] mobile food business sanitation program.
- (b) The local health department shall use a two-tier risk—based assessment to determine an appropriate [primary-]permit fee as follows:
- (i) a [primary-]permit shall be designated as "tier[-]_one" when the [food truck]mobile food business operator's menu includes fewer than three TCS foods, and when raw animal products are not included as a menu ingredient;
- (ii) a [primary-]permit shall be designated as "tier[-]_two" when the [food truck]mobile food business operator's menu includes

- three or more TCS foods, or when raw animal products are included as a menu ingredient; and
- (iii) the amount of a tier[-]_one [primary_]permit fee shall be reduced, as compared to a tier[-]_two [primary_]permit fee, to account for the lower regulatory burden.
- (6) If an application for a [primary-]permit is denied, the [food truck]mobile food business operator may request information from a local health officer that includes:
- (a) the specific reasons and rule citations for permit denial; and
- (b) any actions the applicant must take to qualify for a [primary] permit.
- [(7) A food truck operator shall obtain a secondary permit before operating a food truck in any local health department jurisdiction other than the jurisdiction of the local health department that issued the primary permit as described in Subsection R392-102-4(2)(b).
- (8) To obtain a secondary permit, a food truck operator shall:
- (a) provide the following information to the local health department issuing the secondary permit:
 - (i) a copy of the primary permit; and
- (ii) a means whereby the local health department can determine the food truck's vending location or route as well as days and hours of food truck operation within the jurisdiction of the local health department issuing the secondary permit; and
 - (b) pay a secondary permit fee.
- - (a) name of the issuing local health department;
- (b) name of the permitted food truck, as provided on the application;
 - (c) license plate of the associated food truck;
- (d) expiration date, which shall be the same as the expiration date printed on the primary permit provided by the food truck operator as required in Subsection R392-102-4(8)(a)(i); and
 - (e) the written words, "Secondary Permit".
- (10)(a) A secondary permit fee shall only be in an amount that reimburses the local health department for the cost of permitting and inspecting the food truck.
- (b) A secondary permit fee shall be no more than one half of a tier one primary permit fee, and shall be the same regardless of expiration date of the primary permit.
- (11) A local health department issuing a secondary permit may not:
- (a) impose any additional permit conditions or qualifications on a food truck operator; or
- (b) require a plan review or a pre-operational inspection before issuing or renewing the permit.
- (12) When acting as a catering operation, a food truck operator may operate in a health department jurisdiction other than the jurisdiction of the health department that issued the primary permit without obtaining either a secondary food truck permit or a temporary food service permit, and without additional inspections from the local health department.]
- (7) A local health department shall recognize as valid a mobile food business permit that has been issued by another local health department within the state.
- ([13]8)(a) A [food truck]mobile food business operator shall comply with permitting requirements as stated in Subsection R392-102-4(3) when renewing a [primary-]permit[, and Subsection R392-102-4(8) when renewing a secondary permit].

- (b) If a [food truck]mobile food business operator elects to renew a [primary-]permit[and any secondary permits], it shall be the duty of the operator to renew within 30 calendar days before the expiration date of the current permit.
- ([14]9)(a) A permit applied for or issued pursuant to this rule may be denied, suspended, or revoked by the local health officer for any of the following reasons:
- (i) failure of the application or plans to show that the mobile food business will be operated or maintained in accordance with the requirements of this rule;
- (ii) submission of incorrect or false information in the application or plans;
- (iii) failure to operate or maintain the mobile food business in accordance with the application, plans, and specifications approved by the local health department;
- (iv) failure of the mobile food business operator to allow the local health officer to conduct inspections as necessary to determine compliance with this rule;
- (v) failure of the mobile food business operator to make the mobile food business available for inspection or to obtain an inspection according the frequency requirements detailed in Subsection R392-102-18(10);
- (vi) operation of the mobile food business in a way that causes or creates an imminent health hazard;
- (vii) violation of any condition upon which the permit was issued; or
- (viii) failure to pay a permit fee or inspection fee.
- (b) If a local health officer suspends a [primary food truck] permit, the local health officer shall notify other applicable local health departments regarding the enforcement actions taken.[—Any secondary permits issued by other local health departments shall be rendered invalid until the suspended primary permit is reinstated.
- (b) If a] (c) In the event of an imminent health hazard, a local health officer may suspend[s] a [secondary food truck-]permit[, no other permits, whether primary or secondary, from] issued by another local health jurisdiction[s shall be affected]. Except as coordinated and approved by the impacted local health officers, the local health jurisdiction that suspends a permit shall be the same organization that reinstates a suspended permit when the issues of noncompliance have been adequately addressed.
- ([45]10) To reinstate a suspended permit, a [food truck]mobile food business operator shall:
- (a) complete a pre-operational inspection with the local health department that suspended the permit, as described in Subsection R392-102-[16(8)]18(9), which shows that the [food truck]mobile food business is back in compliance with this rule; and
 - (b) pay an inspection fee.
- [(16) A food truck permit applied for or issued pursuant to this rule may be denied, suspended, or revoked by the local health officer for any of the following reasons:
- (a) failure of the application or plans to show that the food truck will be operated or maintained in accordance with the requirements of this rule:
- (b) submission of incorrect or false information in the application or plans;
- (c) failure to operate or maintain the food truck in accordance with the application, plans, and specifications approved by the local health department;
- (d) failure of the food truck operator to allow the local health officer to conduct inspections as necessary to determine compliance with this rule;

- (e) failure of the food truck operator to make the food truck available for inspection or to obtain an inspection according the frequency requirements detailed in Subsection R392-102-16(9);
- (f) operation of the food truck in a way that causes or creates an imminent health hazard;
- (g) violation of any condition upon which the permit was issued; or
 - (h) failure to pay a permit fee or inspection fee.]
 - ([17]11)(a) A food truck operator shall post:
- (i) [any]the issued [health_]permit in a conspicuous location inside the food truck[-]; and
- (ii) the included permit decal (sticker) on the outside rear of the food truck.
- (b) A food cart operator shall post the issued permit and the included permit decal (sticker)in a conspicuous location on the food cart.
- ([18]12) A [food truck]mobile food business permit may not be transferred from one [food truck]mobile food business operator to another, from one [food truck]mobile food business to another, or from one type of operation to another if the change affects the tier designation as specified in Subsection R392-102-4(5)(b) and the local health department that issued the [primary]permit has not approved the change.
- ([19]13) At least one [food truck]mobile food business employee shall:
- (a) be certified in food safety management according to the requirements of Rule R392-101, unless exempted by a local health officer according to the criteria listed in S[ubs]ection R392-101-8[(2)] and Section [26-15a-105]26B-7-411; and
- (b) maintain proof of certification available for review by the local health officer upon request.
- ([20]14)(a) Each [food truck]mobile food business employee shall be trained in food safety as required by Rule R392-103, and shall hold a valid food handler's permit issued by a local health department.
- (b) The [food truck]mobile food business operator shall maintain proof of food handler permit certification of employees and shall provide it to the local health officer upon request.

R392-102-5. Plan Review Requirements.

- (1) A [food truck]mobile food business operator shall submit to the local health department properly prepared plans and specifications for review and approval before:
 - (a) the construction of a [food truck] mobile food business;
- (b) the conversion of an existing vehicle or trailer to a [food truck]mobile food business; or
- (c) the remodeling of a [food truck]mobile food business or a change of [food truck]mobile food business type or change in foods served or food service operations that would [necessitate]require a change in risk assessment as described in Subsection R392-102-4(5)(b).
- (2) When applying for a [primary] permit for the first time, the operator of a newly constructed [food truek]mobile food business, or [food truek]mobile food business in pre-construction shall submit plans to the local health department, which include at least the following:
 - (a) a complete list of intended menu items;
- (b) anticipated volume of food to be stored, prepared, and sold or served;
 - (c) equipment cut sheets;
 - (d) plumbing schedule;

- (e) mechanical schedule;
- (f) dimensional floor plan;
- (g) finish schedule for floors, walls, and ceilings, if applicable;
 - (h) an equipment layout; and
- (i) any additional information required by the local health officer.
- (3) When applying for a [primary] permit for the first time, the operator of a retrofitted or existing [food truck] mobile food business shall submit plans to the local health department, which may include the following:
 - (a) dimensional floor plan;
- (b) an equipment layout, including the location of hand wash and food preparation sinks; and
- $\mbox{\ \ (c)}\ \mbox{\ any additional information required by the local health}$ officer.
- (4)(a) Except when the [food truek]mobile food business has undergone renovation or a change in ownership since the time of permit issuance, an additional plan review is not required before renewing a [primary]permit.
- (b) When the [food truck]mobile food business has undergone renovation or a change in ownership since the time of permit issuance, the [food truck]mobile food business operator shall comply with Subsection R392-102-5(3).

R392-102-6. Construction and Maintenance Requirements.

- (1) Materials for indoor floor, wall, and ceiling surfaces of a food truck shall be:
- (a) smooth, durable, and easily cleanable for areas where food is stored, prepared, held under temperature control, or served; and
- (b) nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, servicing areas, and areas subject to flushing or spray cleaning methods.
- (2) Nonfood-contact surfaces of a mobile food business shall be free of unnecessary ledges, projections, and crevices, and be designed and constructed to allow easy cleaning and to facilitate maintenance.
- (3) Exterior walls and roofs of a food truck shall be constructed of weather-resistant materials, and shall effectively protect the food truck interior from the entry of dust, debris, stormwater, insects, rodents, and other animals.
- (4)(a) A food truck operator shall permanently display the business name on the exterior of the food truck in printed letters of at least four inches in height.
- (b) The business name printed on the exterior of the food truck shall be the same as the business name or "dba" provided on the application required by Subsection R392-102-4(3)(a)(iv).
- (5) Mats and duckboards <u>used inside a food truck</u> shall be designed to be removable and easily cleanable.
 - (6) Physical facilities shall be maintained in good repair.
- (7)(a) Physical facilities shall be cleaned as often as necessary to keep them clean.
- (b) Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.
- (8) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Section R392-102-8.

- (9) Except as specified in Subsection R392-102-6(10), a food truck operator shall protect outer openings of a food truck against the entry of insects and rodents by:
 - (a) tight-fitting windows; and
 - (b) closed, solid, tight-fitting doors.
- (10) If the windows or doors of a food truck are kept open for ventilation or food service, the openings shall be protected against the entry of insects and rodents by:
 - (a) 16 mesh to one inch screens; or
- (b) other effective means approved by the local health officer.
- (11)(a) Light intensity within the interior of the food truck shall be:
- (i) at least 540 lux (50 foot candles) at any surface where a food truck employee works with food or utensils;
 - (ii) at least 215 lux (20 foot candles):
 - (A) in a toilet room; and
- (B) inside equipment such as reach-in and under-counter refrigerators; and
- (iii) at least 108 lux (10 foot candles) at a distance of 30 inches (75 cm) above the floor in walk-in refrigeration units and dry food storage areas.
- (b) Light bulbs located in the food truck shall be shielded, coated, or otherwise shatter-resistant.
- (12) Living quarters and shower or bathing facilities are prohibited on a [food truck]mobile food business.
- (13)(a) A [food truck]mobile food business shall have at least one handwashing sink provided with hot and cold running water.
- (b) A local health department issuing a [primary-]permit may require the installation of one or more handwashing sinks as necessary for their convenient use by employees in the following areas:
- (i) food preparation, food dispensing, and warewashing areas; and
 - (ii) in a toilet room, if applicable.
- (14)(a) A food truck shall have a 3-compartment sink installed with hot and cold water under pressure for manually washing, rinsing, and sanitizing equipment and utensils unless exempted by the local health department issuing a [primary]permit.
- (b) Unless exempted, a 3-compartment sink shall meet the following requirements:
- (i) the food truck shall have sufficient onboard water storage capacity to fill all sink compartments without depleting water storage needed for food truck operations such as handwashing; and
- (ii) sink compartments shall be large enough to accommodate immersion of in-use utensils.
- (c) A food cart operator is exempted from the requirements of Subsection R392-102-6(14)(a) unless specifically required by the local health officer.

R392-102-7. Water and Wastewater Requirements.

- (1)(a) A food truck operator shall ensure that potable water is available to a food truck during all hours of operation through:
- $([a]\underline{i})$ an onboard potable water storage tank that shall hold a minimum of 30 gallons as measured down from the inlet; or
- ([b]ii) piping, tubing, or hoses connected to an adjacent potable water source under pressure as approved by the local health officer. The water supply type described in Subsection (1)([b]a)(ii) is allowed only when the food truck is concurrently connected to a public sanitary sewer system in a manner approved by the local health officer.

- (b) A food cart operator shall ensure that potable water is available to a food cart during all hours of operation through:
- (i) an onboard potable water storage tank that shall hold a minimum of 10 gallons as measured down from the inlet; or
- (ii) piping, tubing, or hoses connected to an adjacent potable water source under pressure as approved by the local health officer. The water supply type described in Subsection (1)(b)(i) is allowed only when the food cart is concurrently connected to a public sanitary sewer system in a manner approved by the local health officer.
- (2)(a) The water source and system shall be of sufficient capacity to meet the peak water demands of the [food truck]mobile food business.
- (b) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the [food truck]mobile food business.
- (3) Materials that are used in the construction of a mobile water tank, [food truck] mobile food business onboard water tank, and appurtenances shall be:
 - (a) safe;
 - (b) durable, corrosion-resistant, and nonabsorbent;
 - (c) finished to have a smooth, easily cleanable surface; and
 - (d) designed and intended only for use with potable water.
 - (4) An onboard water tank shall be:
 - (a) enclosed from the filling inlet to the discharge outlet;
- (b) sloped to an outlet that allows complete drainage of the tank; and
- (c) used for conveying potable water and for no other purpose.
- (5) If an onboard water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and be:
 - (a) flanged upward at least one-half inch; and
 - (b) equipped with a port cover assembly that is:
- (i) provided with a gasket and a device for securing the cover in place[5]; and
 - (ii) flanged to overlap the opening and sloped to drain.
- (6) A fitting with "V" type threads on an onboard water tank inlet or outlet shall be allowed only when a hose is permanently attached.
- (7) If provided, an onboard water tank vent shall terminate in a downward direction and shall be covered with:
- (a) 16 mesh to 25.4 mm (16 mesh to one inch) screen or equivalent when the vent is in a protected area; or
- (b) a protective filter when the vent is in an area that is not protected from windblown dirt and debris.
- (8)(a) A water tank and its inlet and outlet shall be sloped to drain.
- (b) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.
- (9)(a) A hose, pipe, or tube used for conveying potable water from a water tank shall be:
 - (i) safe;
 - (ii) durable, corrosion-resistant, and nonabsorbent;
- (iii) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
 - (iv) finished with a smooth interior surface;
- $\left(v\right)$ clearly and durably identified as to its use if not permanently attached; and
- (vi) prohibited from use in any other service such as conveying wastewater or toxic chemicals.

- (b) A [food truck]mobile food business operator shall only use a hose designed and intended to convey potable water when filling an onboard water tank as described in Subsection (1).
- (10) A [food truck]mobile food business operator shall install and maintain a filter that does not pass oil or oil vapors in the air supply line between the compressor and potable water supply system when compressed air is used to pressurize the water tank system.
- (11)(a) A cap and keeper chain, closed cabinet, closed storage tube, or other protective cover or device approved by the local health officer shall be provided for a water inlet, outlet, and hose.
- (b) The protective cover or device shall be used when [ever] the water tank or hose inlet and outlet fitting is not in use.
- (12) A [$\frac{\text{food truck's}}{\text{mobile food business's}}$ onboard water tank inlet shall be:
 - (a) three-fourths inch in inner diameter or less; and
- (b) provided with a hose connection of a size or type that will prevent its use for any other service.
- (13) The [food truek]mobile food business operator shall flush and sanitize any water tank, pump, and hoses before placing into service after initial purchase, construction, repair, modification, and periods of nonuse of 30 days or more, and as often as necessary to maintain the equipment in clean and sanitary condition.
- (14) A [food truck]mobile food business operator shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.
- (15)(a) A wastewater holding tank in a [food truck]mobile food business shall be:
- (i) sized 15% larger in capacity than the water supply tank;
- (ii) sloped to a drain that is 1 inch in inner diameter or greater, equipped with a shut-off valve.
- (b) Subsection (15)(a)(i) does not apply to a potable water tank that is used only for beverage service on a [food truek]mobile food business and is not connected to a wastewater holding tank.
- (16) Wastewater shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of wastewater transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to:
 - (a) Plumbing Code;
- (b) the Utah Department of Environmental Quality under Title R317, Water Quality;
 - (c) local health department and municipal regulations; and
 - (d) the local sewer district having jurisdiction.
- (17)(a) Wastewater and other liquid wastes shall be removed from a [food truck]mobile food business at an approved commissary or a waste servicing area approved by the local health officer or by a wastewater transport vehicle in such a way that a public health hazard or nuisance is not created.
- (b) A [food truck]mobile food business operator shall thoroughly flush and drain a tank for liquid waste retention in a sanitary manner during the servicing operation.
- (18) Wastewater or liquid waste conveyance lines that are not shielded to intercept drips shall be installed or located under food and food-contact surfaces.
- (19) The [food truck]mobile food business operator shall store potable water pipes, hoses, and tubes separately from wastewater pipes, hoses, and tubes in a manner that prevents cross contamination.

R392-102-8. Equipment Requirements.

- (1) Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be:
 - (a) safe;
 - (b) durable, corrosion-resistant, and nonabsorbent;
- (c) sufficient in weight and thickness to withstand repeated washing;
 - (d) finished to have a smooth, easily cleanable surface; and
- (e) resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.
- (2)(a) Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.
- (b) Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.
- (3) Copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.
- (4) Hot oil filtering equipment shall be readily accessible for filter replacement and cleaning of the filter and meet the requirements of Subsection R392-102-8(1).
- (5) Galvanized metal may not be used for utensils and food -contact surfaces of equipment that are used in contact with acidic food.
- (6) Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.
- (7)(a) Except as specified in <u>Subsections</u> (b), (c), and (d) of this section, wood and wood wicker may not be used as a food-contact surface.
- (b) Hard maple or an equivalently hard, close-grained wood may be used for:
- (i) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and
- (ii) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110 degrees C (230 degrees F) or above.
- (c) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.
- (d) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:
 - (i) untreated wood containers; or
- (ii) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.
 - (8) Multiuse food-contact surfaces shall be:
 - (a) smooth;
- (b) free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;
 - (c) free of sharp internal angles, corners, and crevices;
 - (d) finished to have smooth welds and joints; and
 - (e) accessible for cleaning and inspection.
- (9)(a) Equipment that is fixed in place because it is not easily movable shall be installed so that it is:

- (i) spaced to allow access for cleaning along the sides, behind, and above the equipment;
- (ii) spaced from adjoining equipment, walls, and ceilings a distance of not more than one millimeter or one thirty-second inch; or
- (iii) sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.
- (b) Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:
 - (i) sealed; or
- (ii) elevated on legs to provide not less than four inches of clearance.
- (10) Floor-mounted equipment that is not easily movable, if used in a food truck, shall be sealed to the floor or elevated on legs that provide at least a six inch (15 centimeter) clearance between the floor and the equipment.
- (11) Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.
- (12) Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.
- (13)(a) Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided in a food truck for necessary utensil holding before cleaning and after sanitizing.
- (b) Sufficient space shall be provided for storage of soiled and cleaned items that may accumulate during hours of operation, such as on drainboards, utensil racks, or tables.
- (c) Soiled and clean items shall be stored separately and in a manner that protects clean items from contamination.
- (14) A plumbing fixture such as a handwashing sink or toilet shall be easily cleanable.
- (15)(a) Equipment for cooling and heating food, and holding cold and hot food, shall be:
 - (i) sufficient in number and capacity; and
- (ii) capable of consistently maintaining food temperatures as specified under Section R392-102-12.
- (b) The [food truck]mobile food business operator shall maintain an <u>accurate and</u> operational food temperature measuring device in each mechanically refrigerated unit.
- (c) In a mechanically refrigerated or hot food storage unit, the sensor or thermometer shall be located to measure the ambient temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.
- (16) A [food truck]mobile food business operator with a menu offering any TCS foods shall equip the [food truck]mobile food business with at least one readily accessible and properly calibrated food temperature measuring device that is easily readable and may not have a sensor or stem constructed of glass unless the thermometer with a glass sensor or stem is encased in a shatterproof coating such a candy thermometer.
- (17)(a) When manual warewashing of utensils or food-contact equipment is done on a food truck or food cart, the [food truck]mobile food business operator shall provide a test kit or other device that accurately measures the concentration in mg/L of chemical sanitizing solutions.

- (b) If hot water is used for sanitization in manual warewashing operations in a [food truck]mobile food business, the sanitizing compartment of the sink shall be:
- (i) designed with an integral heating device that is capable of maintaining water at a temperature not less than 171 degrees F; and
- (ii) provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.
- (18)(a) Receptacles and waste handling units for refuse and recyclables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.
- (b) Receptacles and waste handling units for refuse and recyclables used with materials containing food residue and used outside the [food truck]mobile food business shall be:
- (i) designed and constructed to have tight-fitting lids, doors, or covers; and
 - (ii) maintained in good repair.
- (c) Refuse and recyclables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents
- (d) Receptacles and waste handling units for refuse and recyclables shall be kept covered inside [the]a food truck:
- (i) if the receptacles and units contain food residue and are not in continuous use[7]; or
 - (ii) after they are filled.
- (19) Refuse and recyclables shall be removed from the [food truek]mobile food business premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.
- (20) Except when exempted by a local health officer, [A food truck] a mobile food business operator shall furnish or equip a [food truck] mobile food business with adequate electrical power to ensure uninterrupted service.

R392-102-9. Requirements for Cleaning Equipment and Utensils.

- (1) Equipment food-contact surfaces and utensils shall be clean to sight and touch.
- (2) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.
- (3) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.
- (4)(a) Equipment food-contact surfaces and utensils shall be cleaned and sanitized:
- (i) before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry;
- (ii) each time there is a change from working with raw foods to working with ready-to-eat foods;
- (iii) between uses with raw fruits and vegetables and with TCS food;
- (iv) before using or storing a food temperature measuring device; and
- (v) at any time during the operation when contamination may have occurred.
- (b) Equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours if used with TCS food.
- (c) Utensils and equipment contacting food that is not TCS shall be cleaned:

- (i) at any time when contamination may have occurred;
- (ii) at least every 24 hours;
- (iii) before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and
- (iv) in equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
 - (A) at a frequency specified by the manufacturer; or
- (B) at a frequency necessary to preclude accumulation of soil or mold.
- (5) Except for hot oil cooking and filtering equipment, the food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours.
- (6) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.
- (7) Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.
- (8) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.
- (9) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.
- (10) Washed utensils and equipment shall be rinsed, after cleaning and [prior to]before sanitizing, so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using a distinct, separate water rinse after washing and before sanitizing if using:
 - (a) a 3-compartment sink[;]; or
- (b) alternative manual warewashing equipment equivalent to a 3-compartment sink as approved by the local health department issuing the [primary] permit.
- (11) Equipment food-contact surfaces and utensils shall be sanitized before use after cleaning. Sanitizers and sanitizing operations shall meet the requirements in Section R392-102-10.
- (12) After cleaning and sanitizing, equipment and utensils shall be air-dried or used after adequate draining.
- (13) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.
- (14)(a) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:
 - (i) maintained dry; and
 - (ii) used for no other purpose.
- (b) Cloths in-use for wiping counters and other equipment surfaces shall be:
- (i) held between uses in a container of chemical sanitizer solution at a concentration specified under Subpart 4-501.114 of the FDA Food Code; and
 - (ii) laundered daily.
- (c) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.

- (d) Dry wiping cloths and the chemical sanitizing solutions specified in Subsection (14) in which wet wiping cloths are held between uses shall be free of food debris and visible soil.
- (e) Containers of chemical sanitizing solutions specified in Subsection (14)(b)(i) in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.
- (f) Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.
- (15) Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.
- (16) Cleaned and sanitized equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:
 - (a) in a clean, dry location;
- (b) where they are not exposed to splash, dust, or other contamination; and
 - (c) at least six inches above the floor.
- (17) Clean and sanitized equipment and utensils shall be stored as specified under Subsection R392-102-8(13) and shall be stored:
 - (a) in a self-draining position that allows air drying; and
 - (b) covered or inverted.
- (18) The wash, rinse, and sanitize solutions shall be maintained clean.
- (19) Single-service and single-use articles may not be reused.
- (20) Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.

R392-102-10. Requirements for Sanitizing Equipment and Utensils.

- (1) Chemical sanitizers, including chemical sanitizing solutions generated onsite, and other chemical antimicrobials applied to food-contact surfaces shall:
- (a) meet requirements specified in 40 CFR 180.940 and 40 CFR 180.2020; and
- (b) be used in accordance with the EPA-registered label use instructions.
- (2) Chlorine sanitizer solutions shall have a minimum concentration and temperature of:
- (a) 25 to 49 mg/L at 120 degrees F, with an associated contact time of 10 seconds;
- (b) 50 to 99 mg/L at 100 degrees F, pH of 10 or less, or 75 degrees F, pH or 8 or less, with an associated contact time of 7 seconds; or
- (c) 100 mg/L at 55 degrees F, with an associated contact time of 10 seconds.
 - (3) Iodine sanitizing solutions shall have a:
 - (a) minimum temperature of 68 degrees F;
- (b) pH of 5.0 or less of a pH no higher than the level for which the manufacturer specifies the solution is effective;
 - (c) concentration between 12.5 mg/L and 25 mg/L; and
 - (d) contact time of at least 30 seconds.
 - (4) Quaternary ammonium compound solutions shall:
 - (a) have a minimum temperature of 75 degrees F;

- (b) have a concentration as [indicated]stated by the manufacturer's use directions included in the labeling;
- (c) be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions; and
 - (d) have a contact time of at least 30 seconds.
- (5) Hot water sanitization, without the use of chemicals, shall be accomplished by:
- (a) manual immersion for at least 30 seconds in water held at a minimum temperature of 171 degrees F or higher; or
 - (b) being cycled through equipment which:
- (i) the temperature of the sanitizing rinse as it enters the manifold may not be more than 194 degrees F or less than 165 degrees F for stationary racks or 180 degrees F for all other machines; and
- (ii) achieves a utensil surface temperature of 160 degrees F as measured by an irreversible registering temperature indicator.

R392-102-11. Food Safety Requirements.

- (1)(a) Food shall be safe, unadulterated, and honestly presented.
- (b) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
- (c) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.
- (2) Food shall be obtained from sources that comply with Rule R392-100.
- (3) Food prepared in a private home or any structure or dwelling designed, constructed, or intended for human occupancy shall not be used in a [food truck]mobile food business or offered from a [food truck]mobile food business for human consumption.
- (4) Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.
- (5) Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.
- (6)(a) Shell [E]eggs that have not been specifically treated to destroy all viable Salmonellae shall be labeled to include safe handling instructions as specified in 21 CFR 101.17(h).
- ([a]b)(i) Shell [E]eggs shall be received in a clean and sound condition.
- (ii) Except for shell eggs that are purchased from a small producer, shell eggs[-and shall] may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified Rule R70-410, Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes.
- (iii) Shell eggs may not be addled or moldy, and may not contain:
 - (A) black spot;
 - (B) black rot;
 - (C) white rot;
 - (D) blood ring;
 - (E) adherent yolk; or
 - (F) a bloody or green albumen.
 - ([b]c) Egg products shall be obtained pasteurized.
- ([e]d) Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not cooked.

- (i) Raw, unpasteurized <u>shell</u> eggs may be used in recipes that will not be cooked if the [<u>food truek</u>]<u>mobile food business</u> has obtained a variance from the [<u>primary</u>]permit issuer, which variance is based on a commissary HACCP plan; and
- (ii) The local health officer may revoke or suspend a permit and variance if the commissary HACCP plan is not being followed.
- (7) Fluid milk and milk products shall be obtained from sources that comply with grade A standards as specified in Rule R70-310.
- (8)(a) Fish and molluscan shellfish that are received for sale or service shall be commercially and legally caught or harvested.
- (b) Molluscan shellfish that are recreationally caught may not be received for sale or service.
- (c) Molluscan shellfish, shucked shellfish and shellstock shall comply with Subparts 3-202.17, 3-202.18, 3-203.11, and 3-203.12 of the FDA Food Code.
- (d) When received by a [food truck]mobile food business, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock, or those with badly broken shells, shall be discarded.
- (9) Mushroom species picked in the wild shall not be offered for sale or service by a [food truck]mobile food business.
- (10) If game animals are received for sale or service they shall meet the requirements of Subpart 3-201.17 of the FDA Food Code.
- (11) Ice for use as a food or a cooling medium shall be made from drinking water.
- (12) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.
- (13) Ice may not be used as food after use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment.
- (14)(a) Food shall only contact surfaces of equipment and utensils that are cleaned and sanitized as specified in Sections R392-102-9 and R392-102-10 or single-service and single-use articles.
- (b) Linens, such as cloth napkins, shall not be used in contact with food.
- (15)(a) Except as specified in <u>Subsections</u> (b) and (c) of this subsection, food shall be protected from contamination by storing the food:
 - (i) in a clean, dry location;
- (ii) where it is not exposed to splash, dust, or other contamination; and
 - (iii) at least six inches (15 cm) above the floor.
- (b) Pressurized beverage containers and cased food in waterproof containers such as bottles or cans may be stored on a floor that is clean and not exposed to floor moisture.
- (c) Food in packages and working containers may be stored less than six inches above the floor on case lot handling equipment, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods.
 - (16) Food may not be stored:
 - (a) in toilet rooms;
 - (b) under sewer lines;
 - (c) under open stairwell;
- (d) under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed; or
 - (e) under other sources of contamination.
 - (17) Food shall be protected from cross contamination by:

- (a) separating raw animal foods during storage, preparation, holding, and display from:
 - (i) raw ready-to-eat food[,]; and
 - (ii) cooked ready-to-eat food;
- (b) except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:
 - (i) using separate equipment for each type; or
- (ii) arranging each type of food in equipment so that cross contamination of one type with another is prevented; and
- (iii) preparing each type of food at different times or in separate areas;
- (c) cleaning hermetically sealed containers of food of visible soil before opening;
- (d) protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
- (e) storing and segregating damaged, spoiled, or recalled food in designated areas within the [food truck]mobile food business that are separated from food, equipment, utensils, linens, and single-service and single-use articles; and
- (f) separating fruits and vegetables before they are washed from ready-to-eat food.
- (18) Food shall be protected from contamination that may result from a factor or source not specified in this section.
- (19) Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the [food truck]mobile food business, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.
- (20) Food shall be protected from contamination that may result from the addition of:
 - (a) unsafe or unapproved food or color additives; and
- (b) unsafe or unapproved levels of approved food and color additives.
 - (21) A [food truck] mobile food business operator shall not:
- (a) apply sulfating agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1; or
- (b) except for grapes, serve or sell food specified under Subsection (21)(a) that is treated with sulfating agents before receipt by the [food truck]mobile food business.
- (22)(a) A [food truck]mobile food business operator [shall]may not prepare food on a [food truck]mobile food business using "specialized processing methods" as described in the FDA Food Code. A [food truck]mobile food business operator may not obtain a variance from the Department of Health and Human Services or an exemption from a local health officer to use specialized processing methods on a [food truck]mobile food business.
- (b) A [food truck]mobile food business operator shall remove TCS food from reduced oxygen packaging before holding or storing the food in a temperature controlled environment on a [food truck]mobile food business.
- (23) Food shall be protected from contamination that may result from a factor or source not specified elsewhere in this rule.

R392-102-12. Food Temperature Requirements.

(1)(a) Refrigerated, TCS food shall be at a temperature of 5 degrees C (41 degrees F) or below when received at the [food truck]mobile food business from a commissary or other approved source.

- (b) Raw eggs shall be received at the [food truck]mobile food business from a commissary or other approved source in refrigerated equipment that maintains an ambient air temperature of 7 degrees C (45 degrees F) or less.
- (c) [P]TCS food that is cooked to a temperature and for a time specified under Subparts 3-401.11 to 3-401.13 of the FDA Food Code and received hot at the [food truck]mobile food business from a commissary or other approved source shall be at a temperature of 57 degrees C (135 degrees F) or above.
- (d) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen at the [food truek]mobile food business from a commissary or other approved source.
- (e) Upon receipt at the [food truek]mobile food business from a commissary or other approved source, TCS food shall be free of evidence of previous temperature abuse.
- (2) Any food requiring cooking, freezing, or reheating before service shall be cooked, frozen, or reheated as required in Part 3-4 of the FDA Food Code.
 - (3)(a) Stored frozen foods shall be maintained frozen.
- (b) Commercially processed foods that are labeled to be kept frozen shall be kept frozen until cooked or served.
- (c) Commercially processed foods labeled to be kept frozen may be thawed under refrigeration at 41 degrees F or below in accordance with Subsection (4) if:
- (i) records are kept or date marking used indicating when the food entered refrigeration; and
 - (ii) discarded seven days after entering the refrigerator.
- (4) Any food requiring thawing shall be thawed as required in Subpart 3-501.13 of the FDA Food Code.
- (5) Any food requiring cooling shall be cooled in the commissary as required in Subparts 3-501.14 and 3-501.15 of the FDA Food Code. The [food truck]mobile food business operator shall not cool cooked TCS food on the food truck or food cart unless exempted by the local health officer issuing the [primary]permit.
- (6) Except during preparation, cooking, or cooling, TCS foods shall be maintained:
 - (a) at 57 degrees C (135 degrees F) or above [-]; or
 - (b) at 5 degrees C (41 degrees F) or less.
- (7)(a) Ready-to-eat, TCS food prepared and held for more than 24 hours at a temperature of 5 degrees C (41 degrees F) or less in a [food truck]mobile food business shall be clearly marked to [indicate]show the date or day by which the food shall be consumed, sold, or discarded, which date shall be a maximum of seven days from the date of preparation, with the day of preparation being counted as day 1.
- (b) Ready-to-eat, TCS food prepared and packaged by a food processing plant and opened and held for more than 24 hours at a temperature of 5 degrees C (41 degrees F) or less in a [food truck]mobile food business, shall be clearly marked [at the time]when the original container is opened in a [food truck]mobile food business to [indicate]show the date or day by which the food shall be consumed, sold, or discarded, with the day the original container is opened being counted as day 1, and the day or date marked by the [food truck]mobile food business operator may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.
- (8) A refrigerated, ready-to-eat TCS food ingredient or a portion of a refrigerated, ready-to-eat, TCS food that is subsequently combined with additional ingredients or portions of food shall [retain]keep the date marking of the earliest-prepared or first-prepared ingredient.

- (9) A food specified in Subsection (7) shall be discarded if
- (a) exceeds the temperature and time combination specified in Subsection (7), except time that the product is frozen;
- (b) is in a container or package that does not bear a date or day; or
- (c) is appropriately marked with a date or day that exceeds a temperature and time combination as specified in Subsection (7).

R392-102-13. Poisonous or Toxic Materials.

it:

- (1) Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.
- (2) Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.
- (3) Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:
- (a) separating the poisonous or toxic materials by spacing or partitioning; and
- (b) locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.
- (4) Only those poisonous or toxic materials that are required for the operation and maintenance of a [food truek]mobile food business, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a [food truek]mobile food business.
 - (5) Poisonous or toxic materials shall be:
 - (a) used according to:
 - (i) Rule R392-100 and local health department regulations;
- (ii) manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment;
- (iii) the conditions of certification for use of the pest control materials; and
- (iv) additional conditions that may be established by the local health officer; and
 - (b) applied so that:
- (i) a hazard to employees or other persons is not constituted; and
- (ii) contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented by:
 - (A) removing the items;
 - (B) covering the items with impermeable covers; or
 - (C) taking other appropriate preventive actions; and
- (D) cleaning and sanitizing equipment and utensils after the application.
- (6) [The food truck] A mobile food business shall be maintained free of [insects,] rodents, and other pests. The presence of insects, rodents, and other pests shall be controlled to eliminate their presence [on the] inside a food truck by:
- (a) routinely inspecting incoming shipments of food and supplies;
- (b) routinely inspecting the food truck for evidence of pests; and
- (c) using pest management methods, if pests are found, such as trapping devices, eliminating harborage, or other means of pest control.

- (7) Restricted use pesticides shall not be used in a [food truck]mobile food business.
- (8) A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.
- (9) Rodent bait shall be contained in a covered, tamper-resistant bait station.
- (10) Tracking powder may not be used inside [ef-]a food truck unless the powder is non-toxic, such as flour or talcum powder, and is used in such a manner that it cannot contaminate food, equipment, utensils, linens, and single-service or single-use articles.

R392-102-14. Personal Cleanliness and Protection from Contamination.

- (1) [Food truek] Mobile food business employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.
- (2) [Food truck] Mobile food business employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.
- (3) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.
- (4) [Food truck] Mobile food business employees shall keep their hands and exposed portions of their arms clean using the cleaning procedure specified in Subpart 2-301.12 of the FDA Food Code immediately before engaging in handling of food or clean equipment and utensils and:
- (a) after touching bare human body parts other than clean hands and clean, exposed portions of arms;
 - (b) after using the toilet room;
- (c) after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
 - (d) after handling soiled equipment or utensils;
- (e) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
- (f) when switching between working with raw food and working with ready-to-eat food;
- (g) before donning gloves to initiate a task that involves working with food; and
- (h) after engaging in other activities that contaminate the hands.
- (5) The [food truck]mobile food business operator shall supply each handwashing sink with:
- (a) a supply of hand cleaning liquid, powder, or bar soap; and
- (b) individual, disposable towels and an associated waste receptacle;
- (c) a continuous towel system that supplies the user with a clean towel;
 - (d) a heated air hand drying device; or
- (e) a hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperature.
- (6) Near each handwashing sink in a conspicuous location, the [food truck]mobile food business operator shall place a sign or poster that notifies [food truck]mobile food business employees to wash their hands.
- (7) [Food truck] Mobile food business employees shall clean their hands in a handwashing sink and may not clean their hands in a sink used for food preparation or warewashing.

- (8)(a) A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:
- (i) be applied only to hands that are cleaned as specified in Subsection (4); and
- (ii) comply with the requirements of Subpart 2-301.16 of the FDA Food Code.
- (b) Except as temporarily allowed by the local health officer, the use of a hand antiseptic shall not replace the requirement for hand washing in Subsection (4).
- (9) [Food truck] Mobile food business employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.
- (10) Unless wearing intact gloves in good repair, a [food truck]mobile food business employee may not wear fingernail polish or artificial fingernails when working with exposed food.
- (11) Except for a plain ring such as a wedding band, [food truck]mobile food business employees may not wear jewelry including medical information jewelry on their arms and hands.
- (12) [Food truck] Mobile food business employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.
- (13) [Food truck] Mobile food business employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.
- (14) [Food truck] Mobile food business employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.
- (15) A [food truck]mobile food business employee may not use a utensil more than once to taste food that is to be sold or served.
- (16)(a) A toilet[Toilet] room[s] that is installed on a food truck, shall:
- ([a]i) include a toilet that is discharged to a dedicated wastewater holding tank that is separate from the holding tank described in Subsection R392-102-7(15)(a), with a capacity as specified by the local health officer before permit issuance;
 - (ii) have a supply of toilet tissue available at each toilet;
- ([b]iii) be conveniently located and accessible to <u>food</u> <u>truck</u> employees during all hours of operation;
 - ([e]iv) be provided with a covered waste receptacle; and
- $([\underline{\textbf{4}}]\underline{\underline{\textbf{y}}})$ be completely enclosed and provided with a tight-fitting door.
- ([47]b) Except during cleaning and maintenance operations, toilet room doors shall be kept closed.

R392-102-15. Supervision, Employee Health, and Contamination Events.

- (1) The [food truck]mobile food business operator shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the [food truck]mobile food business during all hours of operation.
- (2) Based on the risks inherent to the [food truek]mobile food business operation, during inspections and upon request, the person in charge shall demonstrate to the local health officer knowledge of foodborne disease prevention and the requirements of this rule. The person in charge shall demonstrate this knowledge by:
 - (a) complying with the requirements of this rule;

- (b) being certified in food safety management according to the requirements of Rule R392-101; or
- (c) responding correctly to the inspector's questions as they relate to the specific [food truck]mobile food business operations.
 - (3) The person in charge shall ensure that:
- (a) [food truek]mobile food business operations are not conducted in a private home or in a room used as living or sleeping quarters;
- (b) persons unnecessary to [the]a food truck operation are not allowed in the food truck;
- (c) employees and other persons entering [the]a food truck comply with this rule;
 - (d) employees are effectively cleaning their hands;
- (e) employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the proper temperatures, protected from contamination, unadulterated, and accurately presented, and are placing foods into appropriate storage locations;
 - (f) employees are properly cooking TCS food;
- (g) employees are using proper methods to rapidly cool TCS food;
- (h) consumers who order raw or partially cooked TCS food of animal origin are informed that the food is not cooked sufficiently to ensure its safety;
- (i) employees are properly sanitizing cleaned equipment and utensils:
- (j) employees are preventing cross contamination of readyto-eat food with bare hands by properly using suitable utensils;
- (k) employees are properly trained in food safety, including food allergy awareness;
- (I) employees are informed in a verifiable manner of their responsibility to report, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under Subsection (4); and
- (m) written procedures and plans, where required in this rule or by the local health officer, are maintained and implemented as required.
- (4) The [food truck]mobile food business operator, person in charge, and employees shall abide by Subpart 2-201 of the FDA Food Code in reporting of diseases, symptoms, and the exclusion or restriction of those working in the [food truck]mobile food business.
- (5) A [food truck]mobile food business shall have procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the food truck or on the food cart. The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

R392-102-16. Inspections, Corrective Actions, and Prevention of Foodborne Disease.

- (1) Each [food truck]mobile food business shall meet the requirements of this rule. Food trucks and food carts are exempt from the requirements of Rule R392-100, Food Service Sanitation, unless otherwise stated in this rule.
- (2) Upon presenting proper identification and providing notice of the intent to conduct an inspection, the [food truek]mobile food business operator shall allow the local health officer to determine if the [food truek]mobile food business is in compliance with this rule by allowing access to the [food truek]mobile food business, allowing inspection, and providing information and records

- specified in this rule during the [food truck's]mobile food business's hours of operation and other reasonable times.
- (3) If a [food truck]mobile food business operator denies access to the local health officer, the local health officer shall:
- (a) inform the $[food\ truck]$ mobile food business operator that:
- (i) the operator [is required to-]shall allow access to the local health officer as specified under Subsection (2);
- (ii) access is a condition of the acceptance and retention of a permit to operate as specified under Section R392-102-4; and
- (iii) if access is denied, an order issued by an appropriate authority allowing access may be obtained;
 - (b) make a final request for access; and
- (c) if access continues to be refused, the local health officer shall provide details of the denial of access on an inspection report form.
- (4) The local health officer shall document on an inspection report form:
- (a) administrative information about the [food truck's]mobile food business's legal identity, street and mailing addresses, permit tier designation as specified under Section R392-102-4, inspection date, and other information including the type of water supply, sewage disposal, status of the permit, and personnel certificates of food safety management and training; and
- (b) specific factual observations of noncompliant conditions or other deviations from this rule that require correction by the [food truck]mobile food business operator including:
- (i) failure of the operator to demonstrate the knowledge of foodborne illness prevention[7]; and
- (ii) failure of employees and the operator to report a disease or medical condition; and
 - (c) time frame for correction of violations.
- (5) At the conclusion of the inspection the local health officer shall:
- (a) provide a copy of the completed inspection report and the notice to correct violations to the [food truck]mobile food business operator or to the person in charge;
- (b) request a signed [acknowledgement]acknowledgment of receipt; and
- (c) inform a person who declines to sign an [acknowledgement]acknowledgment of receipt of inspectional findings that:
- (i) an [acknowledgment]acknowledgment of receipt is not an agreement with findings;
- (ii) refusal to sign an [acknowledgement]acknowledgement of receipt will not affect the [food truck]mobile food business operator's obligation to correct the violations noted in the inspection report within the time frames listed; and
- (iii) a refusal to sign an [acknowledgement]acknowledgement of receipt is noted in the inspection report and conveyed to the historical record for the [food truck]mobile food business; and
- (d) make a final request that the person in charge sign an [acknowledgement]acknowledgment of receipt of inspectional findings.
- (6) The local health officer shall treat the inspection report as a public document and shall make it available for disclosure.
- (7)(a) A [food truck]mobile food business operator shall immediately discontinue operations and notify the local health department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic

materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstances that may endanger public health.

- (b) If operations are discontinued as required by the local health officer or in response to an imminent health hazard as specified in Subsection (7)(a), the [food truck]mobile food business operator shall obtain approval from the local health officer before resuming operations.
- (8) For each mobile food business that fails a health inspection, a local health department may charge and collect a fee from the associated mobile food business for that health inspection.
- ([8]2) A local health department issuing the [primary]permit, or reinstating a suspended [primary or secondary]permit, may conduct one or more pre-operational inspections to verify that the [food truck]mobile food business is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and is in compliance with this rule.
- ([9]10)(a) A local health officer may periodically conduct operational onsite inspections of a [food truek]mobile food business to determine continued compliance with this rule.
- (b) For each year that a [primary-]permit is issued to a [food truck]mobile food business operator, the local health department that issued the permit shall conduct a minimum of one inspection of a [food truck]mobile food business with a [primary]permit, regardless of tier designation as described in Subsection R392-102-4(5)(b).
- (c)[—Any local health department that issues a secondary permit to a food truck operator may conduct a minimum of one onsite inspection prior to permit expiration.
- (d)] The local health department shall periodically inspect throughout its permit period a [food truck]mobile food business operating only with a temporary food establishment permit that prepares, sells, or serves unpackaged TCS food and that has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, potable water supply, waste retention and disposal, and insect and rodent control.
- $([\underline{10}]\underline{11})$ A local health officer may conduct follow-up inspections, as needed, to ensure the timely resolution of inspection findings.
- ([44]12) The local health officer shall make the [food truck]mobile food business operator aware of inspectional findings both during, and at the conclusion of, the inspection as well as strategies for achieving compliance. Repeat violations may prompt further compliance and enforcement actions.

R392-102-17. Severability.

If a provision of this rule, or its application to any person or circumstance is declared invalid, the application 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: food trucks, mobile foods, sanitation, [public health] food carts

Date of Last Change: 2023[January 3, 2022]

Authorizing, and Implemented or Interpreted Law: [26-1-5; 26-1-30(9); 26-1-30(23); 26-7-1; 26-15-2]26B-1-202; 26B-7-113; 26B-7-402; 26B-1-202(25); 26B-1-202(26)

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Repeal and Reenact			
Rule or Section Number:	R392-302	Filing ID: 55392	

Agency Information

1. Department:	Health and Human Services		
i. Department.	Tealth and Human Services		
Agency:	Disease Control and Prevention, Environmental Services		
Room number:	Second Floor		
Building:	Cannon Health Building		
Street address:	288 N 1460 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 142102		
City, state and zip:	Salt Lake City, UT 84114-2102		
Contact persons:			
Name:	Phone:	Email:	
Karl Hartman	801- 538- 6191	khartman@utah.gov	

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R392-302. Design, Construction and Operation of Public Pools

3. Purpose of the new rule or reason for the change:

This proposed repeal and reenactment to Rule R392-302 simplifies this rule, removes outdated language and redundancies, and provides technical and conforming changes in accordance with the Utah Rulewriting Manual.

4. Summary of the new rule or change:

The amendments to Rule R392-302 provide technical and conforming changes throughout this rule and remove unnecessary and repetitive language. Other sections have been amended to improve clarity and easy of use, and to reflect current public pool sanitation, construction, and operation practices.

Section R392-302-1 is added to specify the statute under which this rule is authorized and to explain the purpose of this rule.

Section R392-302-2 is added to describe individuals and groups to whom this rule applies, and to specify exclusions to such.

In Section R392-302-3:

- 1) adds definitions for: Bather, Breakpoint chlorination, Building code, Circulation system, Collection tank, Combined chlorine Cryptosporidium outbreak warning, Diving area, Flume, Free available chlorine, Hyperchlorination, Imminent health hazard, Infinity edge, Lazy river, Local health department, Manager, Mg/l, Overflow gutter system, Oxidation, Oxidation Reduction Potential (ORP), Parts Per Million (PPM), Peak occupancy, Plumbing code, Plumbing fixture, Pool operator, Recessed steps, Runout, Skimmer, Surf pool, Temporary pool, Vacation rental, Wading area, and Wave pool;
- 2) amends the definitions for: Cleansing shower, Float tank, Interactive water feature, Living unit, Special purpose pool, Surge tank was amended to Surge system, Hydrotherapy pool was amended to Therapy pool, Unblockable drain, and Wading pool; and
- 3) removes unnecessary definitions for: AED, Executive Director, High bather load, Illuminance uniformity, and Lamp lumens.

The Department of Health and Human Services (Department) makes 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 creates new sections and moves existing provisions from other sections in this rule to improve readability and flow.

The Department makes substantive amendments that are described below within each section description.

In Section R392-302-4, adds that the requirement of this rule supersedes the requirement of building code pertaining to standards for specialized buildings as described in Section 15A-1-208.

In Section R392-302-5, adds a requirement that if any substantive changes are made to the originally approved design plans, the manager shall submit the amended design plan drawings, stamped, and signed by the designing engineer or architect to the local health department for approval.

Section R392-302-8 is a new section. It is added to clarify what needs to be done to solid waste generated at a public pool facility.

In Section R392-302-9, adds that the manager of a noncementitious pool shall submit documentation to the local health department that the surface materials meet standards listed in this section.

In Section R392-302-13, changes the catchline and adds sloped entry, a section for guardrails, and clarified language between steps and stairs.

Section R392-302-16 is a new section combining previous provisions from decks and walkways and overflow gutters and skimming devices. The maximum thickness of the handhold was updated from 3 1/2 inches to 4 inches to accommodate both tile and pour-in-place coping thicknesses.

In Section R392-302-17, adds a provision for the surface below the barrier; it needs to be a solid material such as paving stones, concrete or another surface approved by the local health officer to deter unauthorized entry by digging under the barrier to get to the pool. Also, changes provision from all gates and doors need to open outward from the pool area to only one needs to open outward from the pool area. This allows building egress to open toward the pool enclosure if there is still one gate or door opening outward from the pool area.

In Section R392-302-18:

- 1) clarifies language to include lumens lux, and footcandles of indoor and outdoor pool surfaces to align with the Model Aquatic Health Code (MAHC) and the International Swimming Pool and Spa Code (ISPSC);
- 2) adds a deck lumination requirement to be consistent with the ISPSC Section 321;
- 3) defines nighttime hours from 30 minutes before sunset to 30 minutes after sunrise;
- simplifies electrical wiring requirements to meet building code instead of outlining specific requirements; and
- 5) updates American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) Standard 62.1 to the current 2019 standard.

In Section R392-302-19:

- 1) adds that equipment must be maintained and continuously operational, not just provided. This provision stated that only multiport valves needed to comply with NSF/ANSI 50 standard, added that all circulation equipment needs to comply with NSF/ANSI 50 standard;
- 2) separates pool boilers and pressure vessels from pool heat exchangers;
- 3) adds a provision for pool water heat exchangers;
- 4) limits the scope of the exemption from a local health officer to skimmer water level instead of leaving the exemption open to the entire circulation system;
- updates the surge system requirements to fit the definition of surge system;
- 6) adds that the circulation equipment needs to be protected from environmental conditions including UV radiation and secured from unauthorized personnel (Subsection (1)(i)(iii), and Subsection (1)(i)(iv)); and
- 7) in Table 1 removes high bather load turnover rate. The minimum turnover rate is now six hours instead of eight hours to come more in line with industry practices.
- In Section R392-302-20, makes language consistent between wall inlet or wall orifice and floor inlet and floor orifice based on recommendations from industry.

In Section R392-302-22:

- 1) adds language that the local health officer may allow an exemption to the size requirement for overflow gutter systems and allow a skimmer system in a pool that has a surface area greater than 3,500 square feet if sufficient skimming is provided through the skimmer system;
- 2) adds language to clarify surge system requirements, including water level sensors and controls built-in to maintain the pool water level;
- adds an exemption for the gutter to extend completely around the pool unless approved by the local health officer; and
- adds language that the skimmer basket needs to be maintained in good working condition and emptied frequently.

In Section R392-302-23:

- 1) removes the requirement for the effluent gauge in Subsection (13)(b)(i) to be consistent with other filtration sections of this rule; and
- 2) removes the requirement that the local health officer needs to determine if there is a backflow issue before requiring a hose bib vacuum breaker and added that each hose bib is required to be equipped with a hose bib vacuum breaker.

In Section R392-302-24:

- adds that if Oxidation Reduction Potential (ORP) feeders are used, pool side testing needs to be done at least weekly; and
- 2) removes the provision for use of Chlorine gas as a disinfectant unless the local health officer approves use of Chlorine gas. Currently, there are not any public pools in Utah that use Chlorine gas as a disinfectant.

In Section R392-302-25, reformats Table 2 and Table 3.

Section R392-302-26:

- moves this section for ease of reading and flow of the rule;
- 2) includes a bather load for each type of pool that is defined instead of basing the bather load calculations on indoor vs outdoor pool location; and
- 3) adds that a sign indicating the calculated bather load shall be posted. The local health officers are already requiring this in practice.

In Section R392-302-27, changes the maximum height of dressing room partitions to 12 inches instead of 10 inches and adds that the partitions extend not less than 60 inches above the finished floor surface. This is to come more in line with industry standards.

In Section R392-302-28; adds Table 5 in accordance with the ISPSC for Shower Fixture Requirements.

In Section R392-302-29:

- updates the requirements for a lifeguarding training program;
- 2) clarifies requirements for lifeguards, including acceptable alteration of tasks; and

3) changes the active voice from manager to bather shall comply with the personal hygiene and behavior rules.

In Section R392-302-34, adds that records may be written or digital.

In Section R392-302-37, clarifies that the required sign needs to be a two-inch safety sign. There was not a size requirement.

In Section R392-302-39, adds that the direct supervision needs to be a person that is licensed by the Utah Division of Professional Licensing (DOPL) to perform the assigned task.

In Section R392-302-40, adds that waterslide vehicles are designed and constructed of smooth, easily cleanable, durable materials.

In Section R392-302-41:

- 1) the local health officer can no longer exempt interactive water features from Section R392-302-29 or Section R392-302-26. These sections have redefined supervision of bathers and how to calculate the bather load for interactive water features and no longer need this exemption;
- 2) clarifies that the required sign needs to be a two-inch safety sign. There was not a size requirement.

In Section R392-302-42, the deadline for the study currently in the pool rule has expired. The findings of this study concluded that instructional pools need to meet the entire pool rule as written except for use of teaching implements such as underwater ledges.

Section R392-302-43 is added to this rule to match other rules 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 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):

No anticipated cost or savings because the substantive changes reflect current industry practice.

In addition, Section R392-302-4 contains a grandfather clause which states that, except in the case of an imminent health hazard, this rule does not require a construction change in any portion of a public pool if the facility was constructed in compliance with the law in effect when the facility was constructed.

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

No anticipated costs or savings because the substantive changes reflect current industry practice.

In addition, Section R392-302-4 contains a grandfather clause that states that, except in the case of an imminent health hazard, the rule does not require a construction change in any portion of a public pool if the facility was constructed in compliance with the law in effect when the facility was constructed.

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*):

No anticipated costs or savings because the substantive changes reflect current industry practice.

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

No anticipated costs or savings because the substantive changes reflect current industry practice.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0

Net Fiscal Benefits	\$0	\$0	\$0	
Total Fiscal Benefits	\$0	\$0	\$0	
Other Persons	\$0	\$0	\$0	
Non-Small Businesses	\$0	\$0	\$0	
Small Businesses	\$0	\$0	\$0	
Local Governments	\$0	\$0	\$0	

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

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 26B-1-202 Section 26B-7-402 Section 26B-7-113

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Tracy S. Gruber,	Date:	05/03/2023
or designee	Executive Director		
and title:			

R392. Health and Human Services, Population Health Disease Control and Prevention], Environmental Health Services]. [R392-302. Design, Construction and Operation of Public Pools. R392-302-1. Authority and Purpose of Rule.

This rule is authorized under Sections 26-1-5, 26-1-30(9) and (23), 26-7-1, and 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public pools and provides for the prevention and control of health hazards associated with public pools which are likely to affect public health including risk factors contributing to injury, sickness, death, and disability.

R392-302-2. Definitions.

- The following definitions apply in this rule.
- (1) "AED" means automated external defibrillator.
- (2) "Backwash" means the process of cleaning a swimming pool filter by reversing the flow of water through the filter.
- (3) "Bather Load" means the number of persons using a pool at any one time or specified period of time.
- (4) "Cleansing shower" means the cleaning of the entire body surfaces with soap and water to remove any matter, including fecal matter, that may wash off into the pool while swimming.
- (5) "Collection Zone" means the area of an interactive water feature where water from the feature will be collected and drained for treatment.
 - (6) "CPR" means Cardiopulmonary Resuscitation.
- (7) "Department" means the Utah Department of Health.
- (8) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.
- (9) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.
- (10) "Float Tank" means a tank containing a skin-temperature solution of water and Epsom salts at a specific gravity high enough to allow the user to float supine while motionless and require a deliberate effort by the user to turn over and that is designed to provide for solitary use and sensory deprivation of the user.
- (11) "Gravity Drain System" means a pool drain system wherein the drains are connected to a surge or collector tank and rather than drawing directly from the drain, the circulation pump draws from the surge or collector tank and the surface of the water contained in the tank is maintained at atmospheric pressure.
- (12) "High Bather Load" means 90% or greater of the designed maximum bather load."
- (13) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.
- (14) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.
- (15) "Instructional Pool" means a pool used solely for purposes of providing water safety and survival instruction taught by a certified instructor. Instructional pools do not include private residential pools. Private residential pools used for swim instruction shall not be considered instructional pools as defined in this rule.
- (16) "Interactive Water Feature" means a recirculating water feature designed, installed or used for recreational use, in which there is direct water contact from the feature with the public, and when not in operation, all water drains freely so there is no ponding.
- (17) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.
- (18) "Lifeguard" means an attendant who supervises the safety of bathers.
- (19) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.
- (20) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

- (21) "Onsite Septic System" means an approved onsite waste water system designed, constructed, and operated in accordance with Rule 317-4.
- (22) "Pool" means a man made basin, chamber, receptacle, tank, or tub, above ground or in-ground, which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and the
- (23) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.
- (24) "Pool Shell" means the rigid encasing structure of a pool that confines the pool water by resisting the hydrostatic pressure of the pool water, resisting the pressure of any exterior soil, and transferring the weight of the pool water (sometimes through other supporting structures) to the soil or the building that surrounds it.
- (25) "Private Residential Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.
- (26) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool and may be above ground or in-ground.
- (27) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.
- (28) "Spa Pool" means a pool which uses therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.
- (29) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.
- (30) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.
- (31) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.
- (32) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.
- (33) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.
- (34) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.
- (35) "Unblockable Drain" means a drain of any size or shape such that a representation of the torso of a 99 percentile adult male cannot sufficiently block it to the extent that it creates a body suction entrapment hazard.
- (36) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.
- (37) "Waste Water" means discharges of pool water resulting from pool drainage or backwash.
- (38) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

R392-302-3. General Requirements.

- (1) This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.
- (2) This rule does not regulate any private residential pool. A private residential pool that is used for swimming instruction purposes shall not be regulated as a public pool.
- (3) This rule does not regulate any body of water larger than 30,000 square feet, 2,787.1 square meters, and for which the design purpose is not swimming, wading, bathing, diving, a water slide splash pool, or children's water play activities.
- (4) This rule does not regulate float tanks.
- (5) All public pools shall meet the requirements of this rule unless otherwise specified in R392-302.

R392-302-4. Water Supply.

- (1) The water supply serving a public pool and all plumbing fixtures, including drinking fountains, lavatories and showers, must meet the requirements for drinking water established by the Department of Environmental Quality.
- (2) All portions of water supply, re-circulation, and distribution systems serving the facility must be protected against backflow. Water introduced into the pool, either directly or through the circulation system, must be supplied through an air gap or a backflow preventer in accordance with the International Plumbing Code as incorporated and amended in Title 15a, State Construction and Fire Codes Act.
- (a) The backflow preventer must protect against contamination, backsiphonage and backpressure.
- (b) Water supply lines protected by a backflow prevention device shall not connect to the pool recirculation system on the discharge side of the pool recirculation pump.

R392-302-5. Waste Water.

- (1) Each public pool must connect to a public sanitary sewer or an onsite septic system.
- (a) Each public pool must connect to a sanitary sewer or onsite septic system through an air break to preclude the possibility of sewage or waste backup into the piping system. Pools constructed and approved after December 31, 2010 shall be connected through an air gap.
 - (2) Each public pool shall discharge waste water:
- (a) to a public sanitary sewer system when available within 300 feet of the property line with authorization by the local sanitary sewer authority; or
- (b) to an onsite septic system when public sanitary sewer system is not within 300 feet of the property line or authorization is not available; or
- (c) in accordance with Subsection R392-302-5(4) and Subsection R392-302-5(5) except for any public pool utilizing salt in the pool water.
- (i) Public pools utilizing salt in the pool water shall only discharge waste water to a public sanitary sewer system or an onsite septic system which has been designed for such.
- (3) A public pool shall not discharge waste water directly to storm sewers or surface waters.

- (4) Except for pools utilizing salt in the pool water, a public pool may discharge waste water that is not backwash according to Subsection R392-302-5(5) if:
- (a) a public sanitary sewer is not available within 300 feet of a property line or authorization to discharge to a sanitary sewer is not available; and
- (b) an onsite septic system is not available or designed for the discharge amount.
- (5) If a public pool meets the criteria of Subsection R392-302-5(4), the public pool shall reduce the disinfectant level to less than one part per million and:
- (a) may discharge as irrigation in an area where the water will not flow into a storm drain or surface water; or
- (b) may discharge on the facility's property as long as it does not flow off the property.
- (6) Public pools shall not discharge waste water in a manner that will create a nuisance condition.

R392-302-6. Construction Materials.

- (1) Each public pool and the appurtenances necessary for its proper function and operation must be constructed of materials that are inert, non-toxic to humans, impervious, enduring over time, and resist the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions.
- (2) All public pools shall be constructed with a pool shell that meets the requirements of this section R392-302-6. Vinyl liners that are not bonded to a pool shell are prohibited. A vinyl liner that is bonded to a pool shell have at least a 60 mil thickness. Sand, clay or earth walls or bottoms are prohibited.
- (3) The pool shell of a public pool must withstand the stresses associated with the normal uses of the pool and regular maintenance. The pool shell shall by itself withstand, without any damage to the structure, the stresses of complete emptying of the pool without shoring or additional support.
- (4) In addition to the requirements of R392 302 6(3), the interior surface of each pool must be designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip resistant surface. The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints. The owner of a non-cementitious pool shall submit documentation with the plans required in R392 302 8 that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:
- (a) for a fiberglass reinforced plastic spa pool, the International Association of Plumbing and Mechanical Officials (IAPMO) standard IAPMO/ANSI Z 124.7-2013, which is incorporated by reference;
- (b) for a fiberglass reinforced plastic swimming pool, the IAPMO IGC 158-2000 standard, which is incorporated by reference;
- (e) for pools built with prefabricated pool sections or pool members, ISO 19712-1:2008 Plastics Decorative solid surfacing materials Part 1: Classification and specifications, which is incorporated by reference; or
- (d) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of this section R392-302-6.
- (5) The pool shell surface must be of a white or light pastel color.

R392-302-7. Bather Load.

- (1) The bather load capacity of a public pool is determined as follows:
- (a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a spa pool during maximum load.
- (b) Twenty four square feet, 2.23 square meters, of pool water surface area must be provided for each bather in an indoor swimming pool during maximum load.
- (c) Twenty square feet, 1.86 square meters, of pool water surface area must be provided for each bather in an outdoor swimming pool during maximum load.
- (d) Fifty square feet, 4.65 square meters, of pool water surface must be provided for each bather in a slide plunge pool during maximum load.
- (2) The Department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to overloading of the pool.

R392-302-8. Design Detail and Structural Stability.

- (1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.
- (2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans.
- (3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.
- (4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.
- (5) No new pool construction or modification project of an existing pool shall begin until the requirements of Subsection R392-302-8(6) have been met.
- (6) The pool owner or designee shall submit a set of plans for a new pool or modification project of an existing pool to the local health department. This includes the replacement of equipment which is different from that originally approved by the local health department.
- (a) The set of plans shall have sufficient details to address all applicable requirements of R392-302 and shall bear a stamp from an engineer licensed in the State of Utah.
- (b) The local health department may exempt the pool owner from Subsection R392-302-8(6) for a modification of an existing pool if health and safety are not compromised.
- (c) The set of plans shall be initially reviewed by the local health department and a letter of review sent by the local health department to the submitter, pool owner, or designee within 30 days of submittal.
- (d) The pool owner shall make required changes to the plans to meet the local health department's review criteria.
- (7) All manufactured components of the pool shall be installed as per manufacturer's recommendations.

R392-302-9. Depths and Floor Slopes.

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the

- second number shall indicate the horizontal change in value or run of the slope.
- (a) The horizontal slope of the floor of any portion of a pool having a water depth of less than 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10 except for a pool used exclusively for scuba diving training.
- (b) The horizontal slope of the floor of any portion of a pool having a water depth greater than 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3 except for a pool used exclusively for scuba diving training. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392 302-11 for diving areas.

R392-302-10. Walls.

- (1) Pool walls must be vertical or within plus three degrees of vertical to a depth of at least two feet and nine inches.
- (2) Walls shall transition from wall to floor using a radius or an angle.
- (3) When a radius is used as the transition from wall to floor, the radius shall meet the following requirements:
- (a) At water depths of 3 ft. or less, a transitional radius from wall to floor shall not exceed 6 in. and shall be tangent to the wall and may be tangent to or intersect the floor.
- (b) At water depth between 3 ft. to 5 ft. the maximum transitional radius from wall to floor shall be determined by calculating the radius as it varies progressively from a maximum 6 inch radius at a 3 foot depth to a maximum of 2 feet radius at 5 feet of depth.
- (c) At water depth greater than 5 feet the maximum transitional radius from wall to floor shall be equivalent to the water depth of the pool less 3 feet.
- (4) When an angle is used as the transition from wall to floor, the angle shall meet the following requirements:
- (a) At water depths of 3 ft. or less, a transitional angle from wall to floor shall start maximum 3 inches above the floor and shall intersect the floor at an angle equal to or steeper than 45 degrees from horizontal.
- (b) At water depth between 3 ft. to 5 ft. the transitional angle from wall to floor shall vary progressively starting at a maximum of 3 inches above the floor at a 3 foot depth to a maximum of 18 inches above the floor at the 5 foot depth and shall intersect the floor at an angle equal to or steeper than 45 degrees from horizontal.
- (c) At water depths greater than 5 feet the transitional angle from wall to floor shall be equivalent to the water depth of the pool less 3 feet 6 inches and shall intersect the floor at an angle:
 - (i) equal to or steeper than 45 degrees from horizontal; or
- (ii) equal to or a shallower angle than the 1:3 floor slope required in R39 302 9(1)(b) for these areas.
- (5) All outside corners created by adjoining walls or floor shall be rounded or chamfered to eliminate sharp corners to be easily eleanable.
- (6) Underwater ledges are prohibited except when approved by the local health officer for a special purpose pool. Underwater ledges are prohibited in areas of a pool designed for diving. Where underwater ledges are allowed, a line must mark the extent of the ledge within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.
- (7) Underwater seats and benches are allowed in pools so long as they conform to the following:

- (a) Seats and benches shall be located completely inside of the shape of the pool. Where seats and benches are not located on the perimeter walls of the pool, seats and benches shall have a wall on the back of the seats and benches that extend above the operating level of the pool and is clearly visible to users.
- (b) The horizontal surface shall be a maximum of 20 inches, 51 centimeter, below the water line;
- (c) An unobstructed surface shall be provided that is a minimum of 10 inches, 25 centimeters, and a maximum of 20 inches front to back, and a minimum of 24 inches, 61 centimeters, wide:
- (d) Seats and benches shall not transverse a depth change of more than 24 inches, 61 centimeters;
- (e) The minimum horizontal separation between sections of seats and benches shall be five feet, 1.52 meters.
- (f) The pool wall under the seat or bench shall be flush with the leading edge of the seat or bench and meet the requirements of R392-302-10(1) and (2);
- (g) Seats and benches may not replace the stairs or ladders required in R392-302-12, but are allowed in conjunction with pool stairs;
- (h) Underwater seats may be located in the deep area of the pool where diving equipment (manufactured or constructed) is installed, provided they are located outside of the minimum water envelope for diving equipment; and
- (i) A line must mark the extent of the seat or bench within 2 inches, 5.08 centimeters, of its leading edge. The line must be at least 2 inches, 5.08 centimeters, in width and in a contrasting dark color for maximum visual distinction.
- (8) Recessed footholds are allowed so long as they are at least four feet, 1.21 meters, under water and meet the requirements of R392-302-12(5)(b) and (c).

R392-302-11. Diving Areas.

- (1) Where diving is permitted, the diving area design, equipment placement, and clearances must meet the minimum standards of:
- (a) The 2015-2017 USA Diving Official Technical Rules, Appendix B—FINA Dimensions for Diving Facilities, which are incorporated by reference.; or
- (b) Rule 1, Section 1, Article 4 and Rule 1, Section 2, Article 4 of the NCAA Men's and Women's Swimming and Diving 2014 2015 Rules and Interpretations, which is incorporated by reference; or
- (c) Table 4.8.2.2 and Figure 4.8.2.2.1 and Figure 4.8.2.2.2 of the 2018 Model Aquatic Health Code, which are incorporated by reference: or
- (d) Section 402.12, Table 402.12, and Figure 402.12 of the 2018 International Swimming Pool and Spa Code, which is incorporated by reference.
- (2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the diving bowl shall meet the minimum depths outlined in Section 6, Figure 1 and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.
- (3) The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.
- (a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.

- (b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.
- (4) Areas of a pool where diving is not permitted must have "NO DIVING" or the international no diving icon, or both provided in block letters at least four inches, 10.16 centimeters, in height, as required in R392-302-39(3)(a), in a contrasting color on the deck, located on the horizontal surface of the deck or coping as close to the water's edge as practical.
- (a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet, 7.62 centimeters.

 (b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches, 10.16 centimeters, in height with a stroke width of at least one half inch.

R392-302-12. Ladders, Recessed Steps, and Stairs.

- (1) Location.
- (a) In areas of a pool where the water depth is greater than 2 feet, 60.96 centimeters, and less than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.
- (b) In areas of the pool where the water depth is greater than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, ladders or recessed steps must be provided.
- (c) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.
- (d) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.
- (e) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.
- (f) No pool shall be equipped with fewer that two means of entry or exit as outlined above.
 - (2) Handrails.
- (a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.
- (b) Handrails must be constructed of corrosion resistant materials.
- (c) The outside diameter of handrails may not exceed 2 inches, 5.08 centimeters.
 - (3) Steps.
- (a) Steps must have at least one handrail. The handrail shall be mounted on the deck and extend to the bottom step either attached at or cantilever to the bottom step. Handrails may also be mounted in the pool bottom of a wading area at the top of submerged stairs that lead into a swimming pool; such handrails must also extend to the bottom step either attached at or cantilever to the bottom step.
- (b) Steps must be constructed of corrosion-resistant material, be easily cleanable, and be of a safe design.
- (e) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 centimeters, and a maximum rise of 12 inches, 30.48 centimeters.
- (d) Steps must have a minimum width of 18 inches, 45.72 centimeters, as measured at the leading edge of the step.

- (e) Steps must have a line at least 1 inch, 2.54 centimeters, in width and be of a contrasting dark color for a maximum visual distinction within 2 inches, 5.08 centimeters, of the leading edge of each step.
- (4) Ladders.
- (a) Pool ladders must be corrosion resistant and must be equipped with non-slip rungs.
- (b) Pool ladders must be designed to provide a handhold, must be rigidly installed, and must be maintained in safe working condition.
- (e) Pool ladders shall have a clearance of not more than 5 inches, 12.7 centimeters, nor less than 3 inches, 7.62 centimeters, between any ladder rung and the pool wall.
- (d) Pool ladders shall have rungs with a maximum rise of 12 inches, 30.5 centimeters, and a minimum width of 14 inches, 35.6 centimeters.
- (5) Recessed Steps.
- (a) Recessed steps shall have a set of grab rails located at the top of the course with a rail on each side which extend over the coping or edge of the deck.
- (b) Recessed steps shall be readily cleanable and provide drainage into the pool to prevent the accumulation of dirt on the step.
- (c) Full or partial recessed steps must have a minimum run of 5 inches, 12.7 centimeters, and a minimum width of 14 inches, 35.56 centimeters.

R392-302-13. Decks and Walkways.

- (1) A continuous, unobstructed deck at least 5 feet, 1.52 meters, wide must extend completely around the pool. The deck is measured from the pool side edge of the coping if the coping is flush with the pool deck, or from the back of the pool curb if the coping is elevated from the pool deck. Pool curbs shall be a minimum of 12 inches wide. The pool deck may include the pool coping if the coping is installed flush with the surrounding pool deck. If the coping is elevated from the pool deck, the maximum allowed elevation difference between the top of the coping surface and the surrounding deck is 19 inches, 38.1 centimeters. The minimum allowed elevation is 4 inches.
- (2) Deck obstructions are allowed to accommodate diving boards, platforms, slides, steps, or ladders so long as at least 5 feet, 1.52 meters, of deck area is provided behind the deck end of any diving board, platform, slide, step, or ladder. Other types of deck obstructions may also be allowed by the local health officer so long as the obstructions meet all of the following criteria:
- (a) the total pool perimeter that is obstructed equals less than 10 percent of the total pool perimeter; likewise, no more than 15 feet, 4.56 meters, of pool perimeter can be obstructed in any one location;
- (b) multiple obstructions must be separated by at least five feet, 1.52 meters;
- (c) an unobstructed area of deck not less than five feet, 1.52 meters, is provided around or through the obstruction and located not more than fifteen feet, 4.55 meters, from the edge of the pool.
- (d) the design of the obstruction does not endanger the health or safety of persons using the pool; and
- (e) written approval for the obstruction is obtained from the local health official prior to, or as part of, the plan review process.
- (3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 millimeters, to 3/8 inch, 9.53 millimeters, per linear foot.
- (a) The Local Health Officer may allow decks to slope towards the pool for deck level gutter pools if it can be demonstrated that it will not adversely affect the pool's water quality and:

- (i) the deck must slope back towards the pool for a maximum distance of five feet, 1.52 meters, from the water's edge; and
- (ii) the portion of the deck that slopes back towards the pool must slope towards the pool at grade of 1/4 inch, six millimeters, to 3/8 inch, ten millimeters, per linear foot; and
- (iii) a minimum of three feet, 91.4 centimeters, of deck that meets R392-302-13(3) must be provided beyond the high point of said deck.
- (4) Decks and walkways must be constructed to drain away any standing water and must have non-slip surfaces.
 - (5) Wooden decks, walks or steps are prohibited.
- (6) Deck drains may not return water to the pool or the circulation system.
- (7) The operator shall maintain decks in a sanitary condition and free from litter.
- (8) Carpeting may not be installed within 5 feet, 1.52 meters, of the water side edge of the coping. The operator shall wet vacuum any carpeting as often as necessary to keep it clean and free of accumulated water.
- (9) Steps serving decks must meet the following requirements:
- (a) Risers of steps for the deck must be uniform and have a minimum height of 4 inches, 10.2 centimeters, and a maximum height of 7 inches, 17.8 centimeters.
- (b) The minimum run of steps shall be 10 inches, 25.4 centimeters.
- (c) Steps must have a minimum width of 18 inches, 45.72 centimeters.

R392-302-14. Fencing and Barriers.

- (1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access when the access is open, may not permit a sphere greater than 4 inches, 10.16 centimeters, to pass through it at any location. Horizontal members shall be equal to or more than 45 inches, 114.3 centimeters, apart.
- (a) If the local health department determines that the safety of children is not compromised, it may exempt indoor pools from the fencing requirements.
- (b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.
- (2) A fence or barrier that has an entrance to the facility must be equipped with a self closing and self latching gate or door. Except for self locking mechanisms, self latching mechanisms must be installed 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use. A lock that is separate from the latch and a self locking latch shall be installed with the lock's operable mechanism (key hole, electronic sensor, or combination dial) between 34 inches, 86.4 centimeters, and 48 inches, 1.219 meters, above the ground.
- (a) All gates for the pool enclosure shall open outward from the pool except where emergency egress rules or ordinances require them to swing into the pool area.
- (b) Emergency egress gates or doors shall be designed in such a way that they do not prevent egress in the event of an emergency.
- (c) Gates or doors shall be constructed so as to prevent unauthorized entry from the outside of the enclosure around pool area.
- (3) Entrances to the facility may be exempted by the local health officer from the requirements in R392 302-14(2) if:

- (a) The gate or door to a facility or pool area is part of a staffed, controlled entrance and is locked when the facility or pool area is not open to the public; or
- (b) The pool or facility has certified lifeguards conducting patron surveillance when the pool or facility is open and the gate or door is locked when the facility or pool is not open to the public.
- (4) The gate or door shall have no opening greater than 0.5 inches, 1.27 centimeters, within 18 inches, 45.7 centimeters, of the latch release mechanism.
- (5) Any pool enclosure which is accessible to the public when one or more of the pools are not being maintained for use, shall protect those closed pools from access by a sign meeting R392-392-39(3)(a) indicating the pool is closed and by using:
- (a) a safety cover which restricts access and meets the minimum ASTM standard F1346-91; or
- (b) a secondary barrier that is approved by the Department;
 - (c) any method approved by the Department.

R392-302-15. Depth Markings and Safety Ropes.

- (1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate 1 foot, 30.48 centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within 2 inches, 5.8 centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least 4 inches, 10.16 centimeters, high as required in R392-302-39(3).
- (2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.
- (a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.
- (b) The safety rope must be marked with visible floats spaced at intervals of 7 feet, 2.13 meters or less.
- (c) The rope must be at least 0.5 inches, 1.27 centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.
- (3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.
- (a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392 302 15(2)(a),(b),(c).
- (b) A line of demarcation on the pool floor must be marked with a contrasting dark color.
- (c) The line must be at least 2 inches, 5.08 centimeters, in width.
- (d) The line must be located 12 inches, 30.48 centimeters, toward the shallow end from the point of change in slope.
- (4) The Department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the Department that bather safety is not compromised by the elimination of the markings.

R392-302-16. Circulation Systems.

- (1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. The operator shall maintain the normal water line of the pool at the overflow rim of the gutter, if an overflow gutter is used, or at the midpoint of the skimmer opening if skimmers are used whenever the pool is open for bathing. An exemption to this requirement may be granted by the Department if the pool operator can demonstrate that the safety of the bathers is not compromised.
- (a) The circulation system shall meet the minimum turnover time listed in Table 1.
- (b) If a single pool incorporates more than one the pool types listed in Table 1, either:
- (i) the entire pool shall be designed with the shortest turnover time required in Table 1 of all the turnover times for the pool types incorporated into the pool or
- (ii) the pool shall be designed with pool-type zones where each zone is provided with the recirculation flow rate that meets the requirements of Table 1.
- (c) The Health Officer may require the pool operator to demonstrate that a pool is performing in accordance with the approved design.
- (d) The operator shall run circulation equipment continuously except for periods of routine or other necessary maintenance. Pumps with the ability to decrease flow when the pool has little or no use are allowed as long as the original approved and designed number of turnovers are achieved in 24 hours that would be required using the turnover time listed in Table 1 and the water quality standards of R392-302-27 can be maintained. The circulation system must be designed to permit complete drainage of the system.
- (e) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.
 - (f) Plumbing must be identified by a color code or labels.
- (2) The water velocity in discharge piping may not exceed 10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.
- (3) Suction velocity for all piping may not exceed 6 feet, 1.83 meters, per second.
- (4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.
- (a) Strainers must be corrosion resistant with openings not more than 1/8 inch, 3.18 millimeters, in size.
- (b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.
- (c) Strainers must be readily accessible for frequent cleaning.
- (d) Strainers must be maintained in a clean and sanitary condition.
- (e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.
 - (5) A vacuum-cleaning system must be provided.
- (a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool, at least 8 inches, 20.32 centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.
- (b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.
- (6) A rate of flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392 302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum precoat media filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure precoat media filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, R616-2, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

 (a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with NSF/ANSI 50-2015, which is incorporated by reference.

— (11) Written operational instructions must be immediately available at the facility at all times.

(12) Notwithstanding Subsection R392 302 3(1), all pools must comply with Subsection 16(12) by January 31, 2023. All chemical feed systems must include two layers of interlocking protection for a low or no flow condition so that the operation of the chemical feeders is dependent upon the operational flow of the main circulation system. The functionality of the interlocking shall be verified by the operator and documented to the local health department. This interlocking shall be accomplished through an electrical interlock consisting of both:

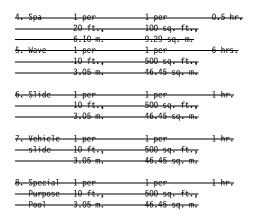
(a) A flow meter or flow switch at the chemical controller;

(b) Chemical feeders wired electrically to the circulation system. This may include the use of a differential pressure switch, a pump power monitor, or other suitable means.

TABLE 1

Circulation

Pool Type	Min. Number of Wall	Min. Number of Skimmers	Min. Turnover Time
	Inlets	per 3,500 square ft. or less	
1. Swim	•	1 per 500 sq. ft., 46.45 sq. m.	8 hrs.
	1 per 10 ft., 3.05 m.		6 hrs.
3. Wading		1 per 500 sq. ft. 46.45 sq. m.	l hr.



— (13) Each air induction system installed must comply with the following requirements:

 (a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

— (14) The circulation lines of jet systems and other forms of water agitation must be independent and separate from the circulationfiltration and heating systems.

R392-302-17. Inlets.

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as provided in Subsection R392-302-31(13) and Subsection R392-302-32(6), wall inlets must be placed every 10 feet, 3.05 meters, around the pool perimeter.

(a) The Department or the local health officer may require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are installed in addition to wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from a pool wall with wall inlets.

(b) Each inlet must be designed as a directionally adjustable and lockable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(i) Inlets must be locked in place once adjusted for uniform circulation.

(ii) The head loss requirement for orifices may be reduced so long as it can be shown by demonstration that at least a 6:1 pressure ratio from orifice to the return loop is maintained.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow

- through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.
- (a) Inlets must be locked in place once adjusted for uniform circulation.
- (b) The head loss requirement for orifices may be reduced so long as it can be shown by demonstration that at least a 6:1 pressure ratio from orifice to the return loop is maintained.
- (4) The Department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

R392-302-18. Outlets.

- (1) No feature or circulation pump shall be connected to less than two outlets unless the pump is connected to a gravity drain system or the pump is connected to an unblockable drain. All pool outlets shall meet the following design criteria:
- (a) The grates or covers of all submerged outlets in pools shall conform to the standards of ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011).
- (b) The outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlets and related piping will be capable of handling 100 percent of the maximum design circulation flow.
- (c) All pool outlets that are connected to a pump through a single common suction line must connect to the common suction line through pipes of equal diameter. The tee feeding to the common suction line from the outlets must be located approximately midway between outlets.
- (d) An outlet system with more than one outlet connected to a pump suction line must not have any valve or other means to cut any individual outlet out of the system.
- (e) At least one of the circulation outlets shall be located at the deepest point of the pool and must be piped to permit the pool to be completely and easily emptied.
- (f) The center of the outlet covers or grates of multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 3 feet, 0.914 meters, apart.
- (g) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392 302 18(2) and (3).
- (h) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. The centers of the outlet covers or grates of any outermost main drain outlets must be located within 15 feet, 4.57 meters, of a side wall.
- (i) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.
- (j) No operator shall allow the use of a pool with outlet grates or covers that are broken, damaged, missing, or not securely fastened.
- (2) Notwithstanding Section R392-302-3, all public pools must comply with Subsections R392-302-18(2) and (3). The pool operator shall not install, allow the installation of, or operate a pool with a drain, drain cover, or drain grate in a position or an application that conflicts with any of the following mandatory markings on the drain cover or grate under the standard required in R392-302-18(1)(a):
 - (a) whether the drain is for single or multiple drain use;
- (b) the maximum flow through the drain cover; and
 - (c) whether the drain may be installed on a wall or a floor.

- (3) The pool operator shall not install, allow the installation of, or operate a pool with a drain cover or drain grate unless it is over or in front of:
- (a) the sump that is recommended by the drain cover or grate manufacturer;
- (b) a sump specifically designed for that drain by a Registered Design Professional as defined in ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011); or
- (c) a sump that meets the ANSI/APSP-16 2011 standard, as incorporated in 16 CFR 1450.3 (July 5, 2011).
- (4) Notwithstanding Section R392 302 3, all public pools must comply with this subsection R392 302 18(4). The pool owner or certified pool operator shall retrofit by December 19, 2009 each pool circulation system on existing pools that do not meet the requirements of subsections R392 302 18(1) through R392 302 18(1)(g) and R392 302 18(2) through (3)(c). The owner or operator shall meet the retrofit requirements of this subsection by any of the following means:
- (a) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(e) and install a safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when it detects a blockage; that has been tested by an independent third party; and that conforms to ASME standard A112.19.17-2010 or ASTM standard F2387-04(2012), as required in the Federal Swimming Pool and Spa Drain Cover Standard, 15 U.S.C. 8003;
- (i) To ensure proper operation, the certified pool operator shall inspect and test the vacuum release system at least once a week but no less often than established by the manufacturer. The certified pool operator shall test the vacuum release system in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.
- (ii) The vacuum release system shall include a notification system that alerts patrons and the pool operator when the system has inactivated the circulation system. The pool operator shall submit to the local health department for approval the design of the notification systems prior to installation. The system shall activate a continuous clearly audible alarm that can be heard in all areas of the pool or a continuous visible alarm that can be seen in all areas of the pool. A sign that meets the requirements of a "2 Inch Safety Sign" in R392-302-39(1),(2) and (3)(b) shall be posted next to the sound or visible alarm source. The sign shall state, "DO NOT USE THE POOL IF THIS ALARM IS ACTIVATED." and provide the phone number of the pool operator.
- (iii) No operator shall allow the use of a pool that has a single drain with a safety vacuum release system if the safety vacuum release system is not functioning properly.
- (b) Install an outlet system that includes no fewer than two suction outlets separated by no less than 3 feet, 0.914 meters, on the horizontal plane as measured from the centers of the drain covers or grates or located on two different planes and connected to pipes of equal diameter. The outlet system shall meet the requirements of R392-302-18(1)(a) through R392-302-18(1)(g) and 18(2) through (3)(c);
- (c) Meet the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c) and installing (or having an existing) gravity drain system;
- (d) Install an unblockable drain that meets the requirements of R392-302-18(1)(a) and R392-302-18(2) through (3)(c); or
- (e) Any other system determined by the federal Consumer Products Safety Commission to be equally effective as, or better than, the systems described in 15 USC 8003 (e)(1)(A)(ii)(I), (III), or (IV) at

preventing or eliminating the risk of injury or death associated with pool drainage systems.

R392-302-19. Overflow Gutters and Skimming Devices.

- (1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area equal to or less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.
- (2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at 100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.
- (3) Overflow gutters must be designed and constructed in compliance with the following requirements:
- (a) The opening into the gutter beneath the coping or grating must be at least 3 inches, 7.62 centimeters, in height with a depth of at least 3 inches, 7.62 centimeters.
- (b) Gutters must be designed to prevent entrapment of any part of a bather's body.
- (c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 centimeters, for the top 2 inches, 5.08 centimeters.
- (d) Gutter outlet pipes must be at least 2 inches, 5.08 centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one half times the cross sectional area of the outlet pipe.
- (4) Skimmers complying with NSF/ANSI 50 2015 standards, which is incorporated by reference, or equivalent are permitted on any pool with a surface area equal to or less than 3,500 square feet, 325.15 square meters. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are required, they must be spaced to provide an effective skimming action over the entire surface of the pool.
- (5) Skimming devices must be built into the pool wall and must meet the following general specifications:
- (a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.
- (b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. The local health department may allow a higher maximum flow through a skimmer up to the skimmer's NSF rating if the piping system is designed to accommodate the higher flow rates. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 centimeters, of weir.
- (6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least 4 inches, 10.16 centimeters. The weir must operate at all flow variations. Skimmers shall be installed with the normal operating level of the pool water at the midpoint of the skimmer opening or in accordance with the manufacturer's instructions.
- (7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.
- (8) The skimmer must be provided with a system to prevent air lock in the suction line. The anti-air lock may be accomplished through the use of an equalizer pipe or a surge tank or through any other arrangement approved by the Department that will assure a sufficient amount of water for pump suction in the event the pool water drops

- below the weir level. If an equalizer pipe is used, the following requirements must be met:
- (a) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump;
- (b) An equalizer pipe may not be less than 2 inches, 5.08 centimeters, in diameter and must be designed to control velocity through the pipe in accordance with section R392 302 16(3);
- (c) This pipe must be located at least 1 foot, 30.48 centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate dedicated outlet with an anti-entrapment outlet cover in the floor of the pool that meets the requirements of ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011); and
- (d) The equalizer pipe must be protected with a cover or grate that meets the requirements of ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011), and is sized to accommodate the design flow requirement of R392-302-19(5).
- (9) The operator shall maintain proper operation of all skimmer weirs, float valves, check valves, and baskets. Skimmer baskets shall be maintained in a clean and sanitary condition.
- (10) Where skimmers are used, a continuous handhold is required around the entire perimeter of the pool except in areas of the pool that are zero depth and shall be installed not more than 9 inches, 2.86 centimeters, above the normal operating level of the pool. The decking, coping, or other material may be used as the handhold so long as it has rounded edges, is slip resistant, and does not exceed 3.5 inches, 8.89 centimeters, in thickness. The overhang of the coping, decking, or other material must not exceed 2 inches, 5.08 centimeters, nor be less than 1 inch, 2.54 centimeters beyond the pool wall. An overhang may be up to a maximum of 3 inches to accommodate an automatic pool cover track system.

R392-302-20. Filtration.

- (1) The filter system must provide for isolation of individual filters for backwashing or other service.
- (2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.
- (3) A public pool must use either a rapid sand filter, hi rate sand filter, precoat media filter, a cartridge filter or other filter types deemed equivalent by the Department. All filters must comply with the standard NSF/ANSI 50 2015, which is incorporated by reference.
 - (4) Gravity and pressure rapid sand filter requirements.
- (a) Rapid sand filters must be designed for a filter rate of 3 gallons, 11.36 liters, or less, per minute per square foot, 929 square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design rate of flow required by Section R392 302 16, Table 1, for required turnover.
- (b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air relief valves must be provided at or near the high point of the filter or piping system.
- (c) The filter system must be designed with necessary valves and piping to permit:
 - (i) filtering of all pool water;
- (ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 square centimeters, of filter area;
 - (iii) isolation of individual filters;
 - (iv) complete drainage of all parts of the system;

- (v) necessary maintenance, operation and inspection in a convenient manner.
- (d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 centimeters, by 15 inch, 38.10 centimeters, manhole with a cover.
 - (5) Hi-rate sand filter requirements.
- (a) Hi rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 square centimeters, of bed area. The minimum flow rate requirement may be reduced to a rate of no less than 10 gallons per minute per square foot of bed area where a multiple filter system is provided, and where the system includes a valve or other means after the filters which is designed to regulate the backwash flow rate and to assure that adequate backwash flow can be achieved through each filter per the filter manufacturer's requirements.
- (b) The filter tank and all components must be installed in compliance with the manufacturer's recommendations.
- (c) An air-relief valve must be provided at or near the high point of the filter.
- (d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.
- (6) Vacuum or pressure type precoat media filter requirements.
- (a) The filtering area must be compatible with the design pump capacity as required by R392 302 16(7). The design rate of filtration may not exceed 2.0 gallons per minute per square foot, 7.57 liters per 929 square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 gallons per minute per square foot, 9.46 liters per 929 square centimeters, with continuous body feed.
- (b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six parts per million. The device must feed at the design capacity of the circulation pump.
- (c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.
- (d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.
- (e) If a precoat media filter is supplied with a potable water supply, then the water must be delivered through an air gap.
- (f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air relief valves must be provided at or near the high point of the filter system.
- (g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump assist backwashing, automatic or manual water spray, or agitation.
- (h) The filter system must provide for complete and rapid draining of the filter.
- (i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a sign that meets the requirements of a "2 Inch Safety Sign" in R392 302 39(1), (2) and (3)(b) warning the user not to start up the filter pump without first opening the air relief valve.

- (j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth or other filter aids must be provided.
- (7) The Department may waive NSF/ANSI 50 2015, which is incorporated by reference, standards for precoat media filters and approve site built or custom built vacuum precoat media filters, if the precoat media filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site built or custom built vacuum precoat media filters must comply with all design requirements as specified in Subsection R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the Department may be acceptable. Where the Department or the local health department determines that a potential cross-connection exits, a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.
 - (8) Vacuum or pressure type cartridge filter requirements.
- (a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.
- (b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 square centimeters, of effective filter area.
- (c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.
- (d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut off must be provided to prevent damage to the pump. Air relief valves must be provided at or near the high point of the filter system.
- (e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

R392-302-21. Disinfectant and Chemical Feeders.

- (1) A pool must be equipped with disinfectant dosing or generating equipment which conform to the NSF/ANSI 50-2015, which is incorporated by reference, standards relating to mechanical chemical feeding equipment, or be deemed equivalent by the Department.
- (2) All chlorine dosing and generating equipment, including erosion feeders, or in line electrolytic and brine/bath generators, shall be designed with a capacity to provide the following, depending on the intended use:
- (a) Outdoor pools: 4.0 pounds of free available chlorine per day per 10,000 gallons of pool water; or
- (b) Indoor pools: 2.5 pounds of free available chlorine per day per 10,000 gallons of pool water.
- (3) Where oxidation reduction potential controllers are used, the operator shall perform supervisory water testing, calibration checks, inspection and cleaning of sensor probes and chemical injectors in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the operator shall perform inspections, calibration checks, and cleaning of sensor probes at least weekly.
- (4) Where compressed chlorine gas is used, the following additional features must be provided:

- (a) Chlorine and chlorinating equipment must be located in a secure, well ventilated enclosure separate from other equipment systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out of doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.
- (b) The operator shall not keep substances which are incompatible with chlorine in the chlorine enclosure.
- (c) The operator shall secure chlorine cylinders to prevent them from falling over. The operator shall maintain an approved valve stem wrench on the chlorine cylinder so the supply can be shut off quickly in case of emergency. The operator shall keep valve protection hoods and cap nuts in place except when the cylinder is connected.
- (d) A sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-39(1), (2) and (3)(a) shall be attached to the entrance door to chlorine gas and equipment rooms that reads, "DANGER CHLORINE GAS" and display the United States Department of Transportation placard and I.D. number for chlorine gas.
- (e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out of doors.
- (f) The chlorinator must be a solution feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and with a flow switch on the return line.
- (g) Chlorine feed lines may not carry pressurized chlorine gas.
- (h) The operator shall keep an unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, readily available for chlorine leak detection.
- (i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.
- (j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.
- (k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.
- (1) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas:
- (5) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the Department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.
- (6) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.
- (7) Notwithstanding Subsection R392 302 3(1), all pools must comply with Subsection 21(7) by January 31, 2023. All chemical

feed systems must include two layers of interlocking protection for a low or no flow condition so that the operation of the chemical feeders is dependent upon the operational flow of the main circulation system. The functionality of the interlocking shall be verified by the operator and documented to the local health department. This interlocking shall be accomplished through an electrical interlock consisting of both:

(a) A flow meter or flow switch at the chemical controller; and

(b) Chemical feeders wired electrically to the circulation system. This may include the use of a differential pressure switch, a pump power monitor, or other suitable means.

R392-302-22. Safety Requirements and Lifesaving Equipment.

- (1) Areas of a public pool with water depth greater than six feet or a width greater than forty feet and a depth greater than four feet where a lifeguard is required under Subsection R392-302-30(2) shall provide for a minimum number of elevated lifeguard stations in accordance with Table 2. Elevated lifeguard stations shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty.
- (2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet and a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet, 3.66 meters. The facility operator may substitute a rescue tube for a ring buoy, a shepherd crook, and a life pole where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.
- (3) A public pool must be equipped with a first aid kit which includes a minimum of the following items:
 - 2 Units eye dressing packet;
 - 2 Units triangular bandages;
- 1 CPR shield;
- 1 scissors;
- 1 tweezers:
 - 6 pairs disposable medical exam gloves; and
- Assorted types and sizes of the following: self-adhesive bandages, compresses, roller type bandages and bandage tape.
- (a) The operator shall keep the first aid kit filled, available, and ready for use.
- (4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. The operator shall maintain it in good repair and operable condition. The operator and lifeguards shall prevent the removal of lifesaving equipment or use of it for any reason other than its intended purpose.
- (5) Where no lifeguard service is provided in accordance with Subsection R392-30(2), a warning sign that meets the requirements of a "4 Inch Safety Sign" in R392-302-39(1), (2) and (3)(a) shall be posted. The sign shall state: WARNING—NO LIFEGUARD ON DUTY. In addition, the sign shall state in text that meets the requirements of "2 Inch Safety Sign" in R392-302-39(1), (2) and (3)(b) "BATHERS SHOULD NOT SWIM ALONE", and CHILDREN-14 AND UNDER SHALL NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.
- (6) Where lifeguard service is required, the facility must have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2

Safety Equipment

	POOLS WITH	POOLS WITH	
	LIFEGUARD	NO LIFEGUARD	
Elevated Station	1 per 2,000	None	
	sq. ft., 185		
	sq. meters,		
	of pool area		
	or fraction		
Backboard	1 per facility	None	
Room for Emergency Care	1 per facility	None	
Ring Buoy with	None	1 per 2,000	
an attached rope		sq. ft., 185	
equal in length		sq. meters,	
to the maximum		of pool area	
- width of the pool		or fraction	
plus 10 feet.			
3.05 meters			
Rescue Tube	1 per 2,000	None	
(used as a substitute			
for ring buoys, sheph	erd crook.		
- lifepole when	•		
— lifeguards are			
— present)			
Life Pole or	None	1 per 2,000	
Shepherds Crook		sq. ft. 185,	
		sq. meters,	
-		of pool area	
		or fraction	
First Aid Kit	1 per facility	1 nor facility	

R392-302-23. Lighting, Ventilation and Electrical Requirements.

- (1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health officer may grant an exemption to this if the pool operator demonstrates that a 6 inch, 15.24 centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.
- (2) Where night swimming is permitted and underwater lighting is used, artificial lighting shall be provided so that all areas of the pool, including the deepest portion of the pool shall be visible. Underwater lights shall provide illumination equivalent to 0.5 watt of incandescent lamp light per square foot, 0.093 square meter, of pool water surface area. The Local Health Officer may waive underwater lighting requirements if overhead lighting provides a minimum of 15 foot candles, 161 lux, illumination over the entire pool surface.
- (3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 square centimeters, of deck area, but less than the luminance level for the pool shell.
- (4) Electrical wiring must conform with Article 680 of the National Electrical Code as incorporated under Title 15a, State Construction and Fire Codes Act.
- (a) Wiring may not be routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code as incorporated under Title 15a, State Construction and Fire Codes Act,

- without the written approval of the Department. The Department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool, except in the following circumstances;
 - (i) For underwater lighting,
 - (ii) electrically powered automatic pool shell covers, and
 - (iii) competitive judging, timing, and recording apparatus.
- (5) Buildings containing indoor pools, pool equipment rooms, access spaces, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air Conditioning Engineers Standard 62.1-2016, which is incorporated and adopted by reference.

R392-302-24. Dressing Rooms.

- (1) The operator shall maintain all areas and fixtures within dressing rooms in an operable, clean and sanitary condition.
- (2) Where dressing rooms are provided, the entrances and exits must be designed to break the line of sight into the dressing areas from other locations.
- (3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.
- - (5) Carpeting may not be installed on dressing room floors.
 - (6) Junctions between walls and floors must be coved.
- (7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 centimeters, above the floor or must be placed on continuous raised masonry or concrete bases at least 4 inches, 10.16 centimeters, high.
- (8) Lockers must be set either on solid masonry bases 4 inches, 10.16 centimeters, high or on legs elevating the bottom locker at least 10 inches, 25.4 centimeters, above the floor.
 - (a) Lockers must have louvers for ventilation.
- (9) At least one covered waste receptacle must be provided in each dressing room.

R392-302-25. Restroom and Shower Facilities.

- (1) The facility shall provide patrons access to a restroom with shower facilities in accordance with Table 4. These must be:
 - (a) located with convenient access for bathers; and
- (b) located no further than 150 feet, 45.7 meters, from the pool deck; and
- (c) designed to break the line of sight into the restroom and shower facilities.
- (2) The minimum number of toilets and showers must be based upon the designed maximum bather load. A minimum of two unisex facilities, or one for each gender, must be provided with access to the pool deck.
- (a) Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used exclusively by one gender.
- (b) The minimum number of sanitary fixtures must be in accordance with Table 4 except as stated in R392-302-25(2)(b)(i).
- (i) The local health department may reduce the minimum number of fixtures required by considering the number of fixtures available within 150 feet, 45.7 meters, of the pool deck. The minimum number of toilets with showers may not be reduced to less than two for unisex, or one for each gender, except where the bather load is 25 or less, in which case the minimum may be one unisex restroom with shower facility.

TABLE 4

Sanitary Fixture Minimum Requirements

Water Closets

 Male	Female	
 1:1 to 25	1:1 to 25	
 2:26 to 75	2:26 to 75	
 3:76 to 125	3:76 to 125	
 4:126 to 200	4:126 to 200	
 5:201 to 300	5:201 to 300	
 6:301 to 400	6:301 to 400	

Over 400, add one fixture for each additional 200 males or 150 females.

Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

- (3) Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.
- (4) The facility shall provide showers for each gender and shall enclose these showers for privacy. A minimum of one shower head for each gender must be provided for each 50 bathers or fraction thereof.
- (a) Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 gallons per minute, 7.57 liters per minute, of 90 degree F. water to each shower head for each bather.
- (5) If unisex facilities are provided they may count toward the total number of required fixtures in this section as long as the unisex facilities are provided in multiples of two, unless as specified in R392-302-25(2)(b)(i).
 - (6) Soap must be dispensed at all lavatories and showers.
 - (a) Soap dispensers must be constructed of metal or plastic.
 - (b) Use of bar soap or any communal soap item is prohibited.
- (e) Disposable towels or air dryers must be provided for all lavatories.
- (7) Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.
- (8) The operator shall maintain all areas and fixtures within restroom facilities in an operable, clean and sanitary condition.
- (9) Restroom and shower facilities must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.
- (10) Floor must slope to a drain and be constructed to prevent accumulation of water.
- - (12) Junctions between walls and floors must be coved.
- (13) At least one covered waste receptacle must be provided in each restroom.

R392-302-26. Visitor and Spectator Areas.

- (1) Visitors, spectators, or animals may not be allowed within 10 feet, 3.05 meters, of the pool. Service animals are exempt from this requirement.
- (2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.
- (3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

R392-302-27. Disinfection and Quality of Water.

- (1) Disinfection Process.
- (a) A pool must be continuously disinfected by a product which:
- (i) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water:
- (ii) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use:
- (iii) Is compatible for use with other chemicals normally used in pool water treatment;
- (iv) Does not create harmful or deleterious effects on bathers if used according to manufacturer's specifications; and
- (v) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.
- (b) The concentration levels of the active disinfectant within the pool water shall be consistent with the label instructions of the disinfectant and with the minimum levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.
- (i) At no time shall the concentration level of free available ehlorine reach a level above ten parts per million while the facility is open to bathers.
- (2) Products used to treat or condition pool water shall be used according to the product label.
 - (3) Testing Kits.
- (a) An easy to operate pool side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.5 milligrams per liter, must be provided at each pool.
- (b) If chlorine is the disinfectant used, it must be tested by the diethyl p phenylene diamine method, the leuco crystal violet method, or another test method approved by the Department.
- (c) If cyanuric acid or stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 milligrams per liter must be provided.
 - (d) Expired test kit reagents may not be used.
- (4) Chemical Quality of Water.
- (a) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten milligrams per liter, but may not exceed 100 milligrams per liter.
- (b) The difference between the total chlorine and the free chlorine in a pool shall not be greater than 0.5 milligrams per liter. If the concentration of combined residual chlorine is greater than 0.5 milligrams per liter the operator shall breakpoint chlorinate the pool water to reduce the concentration of combined chlorine.
- (c) Total dissolved solids shall not exceed 1,500 milligrams per liter over the startup total dissolved solids of the pool water.
- (d) Total alkalinity must be within the range from 100 to 125 milligrams per liter for a plaster lined pool, 80 to 150 milligrams per liter for a spa pool lined with plaster, and 125 to 150 milligrams per liter for a pool lined with other approved construction materials.
- (e) A calcium hardness of at least 200 milligrams per liter must be maintained.
- (f) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.
 - (5) Water Clarity and Temperature.
- (a) The water must have sufficient clarity at all times that the drain grates or covers in the deepest part of the pool are readily visible. As an alternative test for clarity, a black disk, six inches in diameter,

must be readily visible if placed on a white field in the deepest part of the pool.

(b) Pool water temperatures for general use should be within the range of 82 degrees Fahrenheit, 28 degrees Celsius, to 86 degrees Fahrenheit, 30 degrees Celsius.

(e) The minimum water temperature for a pool is 78 degrees Fahrenheit, 26 degrees Celsius.

(d) The local health department may grant exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

TARLE 5

CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

The formula for calculating the saturation index is:

SI = pH + TF + CF + AF TDSF

SI means saturation index

IF means temperature factor

GF means calcium factor

mg/l means milligrams per liter

deg F means degrees Fahrenheit

AF means alkalinity factor

TDSF means total dissolved solids factor.

Tempera	ature	Calcium	n Hardness	Total A	lkalinity
deg. F	TF	mg/1	CF	mg/1	——AF
32	0.0	25	1.0	25	1.4
37	0.1	50	1.3	50	1.7
46	0.2	75	1.5	75	1.9
53	0.3	100	1.6	100	2.0
60	0.4	125	1.7	125	2.1
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	250	2.0	250	2.4
94	0.8	300	2.1	300	2.5
105	0.9	400	2.2	400	2.6

Total Dissolved Solids

mg/1	TDSF
0 to 999	12.1
1000 to 1999	12.2
2000 to 2999	12.3
3000 to 3999	12.4
4000 to 4999	12.5
5000 to 5999	12.55
6000 to 6999 7000 to 7999	12.6 12.65
each additional 1000, add	12.00
cach addressinas 1000, add	.00

If the SATURATION INDEX is 0, the water is chemically in balance.

If the INDEX is a minus value, corrosive tendencies are

indicated.

If the INDEX is a positive value, scale forming tendencies

are indicated.

EXAMPLE: Assume the following factors:

pH 7.5; temperature 80 degrees F, 19 degrees C;

calcium hardness 235; total alkalinity 100; and total dissolved solids 999. pH = 7.5

TF - 0.7

CF - 1.9

AF - 2.0

TOTAL: 7.5 + 0.7 + 1.9 + 2.0 - 12.1 - 0.0

This water is balanced.

TABLE 6

DISINEECTANT LEVELS AND CHEMICAL PARAMETERS

	POOLS	SPAS	SPECIAL PURPOSE
Stabilized Chlorine(2)			
(milligrams per liter)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)
Non-Stabilized Chlorine(2)			
(milligrams per liter)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0		3.0(1)	
Bromine	4.0(1)	4.0(1)	-1.0(1)
— (milligrams per liter)	()	` '	. ,
Iodine	1.0(1)	1.0(1)	1.0(1)
— (milligrams per liter)			
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved	1,500	1,500	1,500
- Solids (TDS)			
- over start-up			
— TDS			
— (milligrams per liter)			
Cyanuric Acid	10 to 100	10 to 100	10 to 100
(milligrams per liter)			
Maximum Temperature	104	104	104
(degrees Fahrenheit)			
Calcium Hardness	200(1)	200(1)	200 (1)
— (milligrams per liter a			200(1)
Total Alkalinity			
(milligrams per liter a	c calcium ca	Atronda.	
Plaster Pools			100 to 125
— Painted or Fiberglass			
— Pools	120 00 100	00 10 100	120 00 100
Saturation Index	Dluc on	Plus or	Dluc on
(see Table 5)			
Chloramines	0.5	0.5	0.5
- (combined chlorine	₩.9	∨. 3	- v. 3
residual, milligrams			
-per liter)			

lote (1): Minimum Value

Note (2): Maximum value of free chlorine is ten milligrams per liter as stated in Subsection 27(1)(b)(i).

- (6) Pool Water Sampling and Testing.
- (a) At the direction of the Local Health Officer, the pool operator or a representative of the local health department shall collect a pool water sample from each public pool at least once per month or at a more frequent interval as determined by the Local health Officer. A seasonal public pool during the off season and any public pool while it is temporarily closed, if the pool is closed for an interval exceeding half of that particular month, are exempt from the requirement for monthly sampling. The operator or local health department representative shall submit the pool water sample to a laboratory approved under R444-14 to perform total coliform and heterotrophic plate count testing.
- (b) The operator or local health department shall have the laboratory analyze the sample for total coliform and heterotrophic plate count using methods allowed under R444-14-4.
- (c) If the operator submits the sample as required by local health department, the operator shall require the laboratory to report sample results within five working days to the local health department and operator.
- $\frac{\hbox{$(d)$ Λ pool water sample fails bacteriological quality}}{\hbox{$standards if it:}}$
- (i) Contains more than 200 bacteria per milliliter, as determined by the heterotrophic plate count or
- (ii) Shows a positive test for presence of coliform or contains more than 1.0 coliform organisms per 100 milliliters.

(e) Not more than 1 of 5 samples may fail bacteriological quality standards. Failure of any bacteriological water quality sample shall require submission of a second sample within one lab receiving day after the sample report has been received.

R392-302-28. Cleaning Pools.

- (1) The operator shall clean the bottom of the pool as often as needed to keep the pool free of visible dirt.
- (2) The operator shall clean the surface of the pool as often as needed to keep the pool free of visible seum or floating matter.
- (3) The operator shall keep all pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair.
- (4) The operator shall respond to all discovered releases of fecal matter into a public pool in accordance with the following protocol: Centers for Disease Control and Prevention. Fecal Accident Response Recommendations for Pool Staff and Notice to Readers-Revised Guidance for Responding to Fecal Accidents in Disinfected Swimming Venues. Morbidity Mortality Weekly Report February 15, 2008 Volume 57, pages 151-152 and May 25, 2001 Volume 50, pages 416-417, which are incorporated by reference. The operator shall include in the records required in R392-302-29(2) information about all fecal matter releases into a public pool. The records shall include date, time, and where the fecal matter was discovered; whether the fecal matter was loose or solid; and the responses taken. The Local Health Officer may approve the alteration of the required Centers for Disease Control protocol for the hyperchlorination step for a loose fecal release if an operator is able to achieve a 99.9 percent kill or removal of eryptosporidium oocysts in the entire pool system by another method such as ultraviolet light, ozone, or enhanced filtration prior to allowing bathers to reenter the pool.

R392-302-29. Supervision of Pools.

- (1) Public pools must be supervised by an operator that is certified or recertified by a program of training and testing that is approved by the Utah Department of Health. The local health department may determine the appropriate numbers of pools any one certified operator may supervise using criteria based on pool compliance history, local considerations of time and distance, and the individual operator's abilities.
- (2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the Department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, occurrences of fecal release into the pool water or onto the pool deck, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.
- (3) The public pool owner, in consultation with the qualified operator designated in accordance with R392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

- (4) If the public pool water samples required in Section R392-302-27(5) fail bacteriological quality standards as defined in Section R392-302-27(5), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:
- (a) the pool operator measure and record the level of disinfectant residuals, pH, and pool water temperature four times a day (if oxidation reduction potential technology is used in accordance with this rule, the local health department may reduce the water testing frequency requirement) or
- (b) the pool operator read flow rate gauges and record the pool circulation rate four times a day.
- (5) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.
- (6) A sign that meets the requirements of a "2 Inch Safety Sign" in R392-39(1), (2) and (3)(b) must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include 911 or other local emergency numbers.

R392-302-30. Supervision of Bathers.

- (1) Access to the pool must be prohibited when the facility is not open for use.
- (2) Lifeguard service must be provided at a public pool if direct fees are charged or public funds support the operation of the pool. If a public pool is normally exempt from the requirement to provide lifeguard services, but is used for some purpose that would require lifeguard services, then lifeguard services are required during the period of that use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.
- (3) The Department shall approve programs which provide training and certifications to lifeguards. These programs shall meet the standards set in Subsection R392-302-30(4)(a).
- (4) A lifeguard must:
 - (a) Obtain training and certification in:
- (i) lifeguarding by the American Red Cross or an equivalent program; and
- (ii) professional level skills in CPR, AED use, and other resuscitation skills consistent with the 2010 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care; and
- (iii) first aid consistent with the 2010 American Heart Association Guidelines for First Aid.
- (b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392 30(2); and
- (c) Have full authority to enforce all rules of safety and sanitation.
- (5) A lifeguard shall not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.
- (6) Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.
- (7) Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 30 minutes with a work break of at least 10 minutes every hour.
- (8) The facility operator and staff are responsible for the enforcement of the following personal hygiene and behavior rules:

- (a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.
- (b) The operator and lifeguards shall exclude any person having a communicable disease transmissible by water from using the pool. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool. A person who has or has had diarrhea within the last two weeks caused by an unknown source or from any communicable or fecal borne disease may not enter any public pool.
- (c) Any child under three years old, any child not toilet trained, and anyone who lacks control of defecation shall wear a water resistant swim diaper and waterproof swimwear. Swim diapers and waterproof swimwear shall have waist and leg openings fitted such that they are in contact with the waist or leg around the entire circumference.

 (d) Running, boisterous play, or rough play, except supervised water sports, are prohibited.
- (e) Where no lifeguard service is provided, children 14 and under shall not use a pool without responsible adult supervision. Children under the age of five shall not use a spa or hot tub.
- (f) The lifeguards and operator shall ensure that diapers shall be changed only in restrooms not at poolside. The person or persons who change the diaper must wash their hands thoroughly with soap before returning to the pool. The diapered person using a swim diaper and waterproof swimwear discussed in subsection R392 302 30(7)(e) above must undergo a cleansing shower before returning to the pool.
- (f) Placards that meet the requirements of "Rule Sign" in R392-302-39(1), (2) and (3)(e) and embody the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and lifeguard rooms (where applicable).

R392-302-31. Special Purpose Pools: Spa Pools.

- (1) Spa pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of spa pools.
- (a) Spa pool projects require consultation with the local health department having jurisdiction.
- (2) This subsection supercedes R392-302-6(5). A spa pool shell may be a color other than white or light pastel.
- (3) Spa pools shall meet the bather load requirement of R392-302-7(1)(a).
- (4) A spa pool may not exceed a maximum water depth of 4 feet, 1.22 meters. The Department may grant exceptions to the maximum depth requirement for a spa pool designed for special purposes, such as instruction, treatment, or therapy.
- (5) This subsection supercedes R392 302 12(1)(f). A spa pool may be equipped with a single entry/exit. A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.
- (6) This subsection supercedes R392-302-12(3)(c). In a spa pool where the bottom step serves as a bench or seat, the bottom riser may be a maximum of 14 inches, 35.56 centimeters.
- (7) This subsection supercedes R392 302 13(1). A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 centimeters, wide around 25 percent or more of the spa.

- (9) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of 5 feet, 1.52 meters. An exception is allowed to the deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The top surface of the common pool side wall may not exceed 18 inches, 45.7 centimeters, in width and shall have markings indicating "No Walking" or an icon that represents the same, provided in block letters at least four inches, 10.16 centimeters, in height, as required by R392 302 39(3)(a), in a contrasting color on the horizontal surface of the common wall. Additionally the deck space around the remainder of the spa shall be a minimum of five feet, 1.52 meters.
- (10) This subsection supersedes R392-302-15. The local health officer may exempt a spa pool from depth marking requirements if the spa pool owner can successfully demonstrate to the local health officer that bather safety is not compromised by the elimination of the markings.
- (11) A spa pool must have a minimum of one turnover every 30 minutes.
- (12) Spa pool air induction systems shall meet the requirements of R392 302 16(12)(a) through (b). Jet or water agitation systems shall meet the requirements of R392 302 16(13).
- (13) Spa pool filtration system inlets shall be wall type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.
- (14) Spa pool outlets shall meet all of the requirements of subsections R392-302-18(1) through R392-302-18(4)(e); however, the following exceptions apply:
- (a) Multiple spa outlets shall be spaced at least three feet apart from each other as measured from the centers of the drain covers or grates or a third drain shall be provided and the separation distance between individual outlets shall be at the maximum possible spacing.
- (b) The Department may exempt an acrylic or fiberglass spa from the requirement to locate outlets at the deepest point in the pool if the outlets are located on side walls within three inches of the pool floor and a wet vacuum is available on site to remove any water left in the pool after draining.
- (15) A spa pool must have a minimum number of surface skimmers based on one skimmer for each 100 square feet, 9.29 square meters of surface area.
- (16) A spa pool must be equipped with an oxidation reduction potential controller which monitors chemical demands, including pH and disinfectant demands, and regulates the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27 (6)(e).
- (17) A spa pool is exempt from the Section R392-302-22, except for Section R392-302-22(3).
- (18) The maximum water temperature for a spa pool is 104 degrees Fahrenheit, 40 degrees Celsius.
- (19) A spa pool shall meet the total alkalinity requirements of R392 302 27 (3)(d).
- (20) A spa pool must have a sign that meets the requirements of a "Rule Sign" in R392-302-39(1),(2) and (3)(c) which contains the following information:
 - (a) The word "caution" centered at the top of the sign.
- (b) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.

- (c) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.
- (d) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.
- (e) Bathers should not use the spa pool alone.
- (f) Pregnant women should not use the spa pool without consulting their physicians.
- (g) Persons should not spend more than 15 minutes in the spa in any one session.
- (h) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.
- (i) Children under the age of five years are prohibited from bathing in a spa or hot tub.
- (j) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.
- (21) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.
- (a) A clearly labeled emergency shutoff or control switch for the purpose of stopping the motor(s) which provide power to the recirculation system, jet system, and water feature systems shall be installed at a point readily accessible to the users and not less than five feet (1.5 meters) away, adjacent to, and within sight of the spa. Non-lifeguarded pools shall have an audible alarm sound when this emergency shutoff is used.

R392-302-32. Special Purpose Pools: Wading Pools.

- (1) Wading pools must meet all applicable requirements of all Sections of R392 302 in addition to those of this Section as they apply to special design features and uses of wading pools.
- (a) Wading pool projects require consultation with the local health department having jurisdiction.
- (2) Wading pools shall be separated from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.
- (3) A wading pool may not exceed a maximum water depth of 2 feet, 60.96 centimeters.
- (1) The deck of a wading pool may be included as part of adjacent pool decks.
- (5) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.
- (6) A wading pool that utilizes wall inlets shall have a minimum of two equally spaced inlets around its perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.
- (7) A wading pool shall have drainage to waste through a quick opening valve to facilitate emptying the wading pool should accidental bowel discharge or other contamination occur.

R392-302-33. Special Purpose Pools: Hydrotherapy Pools.

- (1) Hydrotherapy pools must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of hydrotherapy pools.
- (a) Hydrotherapy pool projects require consultation with the local health department having jurisdiction.
- (2) A hydrotherapy pool shall at all times comply with R392-302-27 Disinfection and Quality of Water, R392-302-28 Cleaning of

- Pools and R392 302 29 Supervision of Pools unless it is drained cleaned, and sanitized after each individual use.
- (3) A hydrotherapy pool is exempt from all other requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.
- (4) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.
- (5) A local health officer may grant an exception to section R392 302 31(4)(a) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

R392-302-34. Special Purpose Pools: Water Slides.

- (1) Water slides must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of water slides.
- (a) Water slide projects require consultation with the local health department having jurisdiction.
 - (2) Slide Flumes.
- (a) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.
- (b) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.
- (c) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.
- (d) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.
- (e) Multiple flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.
- (f) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the Department.
- (3) Flume Clearance Distances.
- (a) A distance of at least 4 feet, 1.22 meters, must be provided between the side of a slide flume exit and a splash pool side wall.
- (b) The distance between nearest sides of adjacent slide flume exits must be at least 6 feet, 1.83 meters.
- (c) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

 (d) The distance between the side of the vehicle flume exit
- and the pool side wall must be at least 6 feet, 1.83 meters.
- (e) The distance between nearest sides of adjacent vehicle slide flume exits must be at least 8 feet, 2.44 meters.

- (f) The distance between a vehicle slide flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

 (4) Splash Pool Dimensions.

 (a) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least 3 feet, 9.14 centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as
- determined by the Department.

 (b) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.
- (c) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches, 1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.
- (d) The Department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the Department that safe exit from the flume into the splash pool can be assured.
- (e) A travel path with a minimum width of 4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.
 - (5) General Water Slide Requirements.
- (a) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.
- (b) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.
- (c) Water slides shall meet the bather load requirements of R392 302 7(1)(d).
- (6) Water Slide Circulation Systems.
- (a) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.
- (b) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.
- (c) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.
- (d) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all NSF/ANSI 50-2015, which is incorporated by reference, Section 6. Centrifugal Pumps, standards for pool pumps.
- (e) Flume supply service pumps must have check valves on all suction lines.
- (f) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.
- (g) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.
- (h) Pump reservoir areas must be accessible for cleaning and maintenance.

- (7) Slide Signs.

 (a) Signs that meet the requirements in R392-302-39(1), (2) and (3)(c) and reflecting the slide manufacturer's recommendations must be mounted adjacent to the entrance to a water slide and at other appropriate areas in accordance with R392-302-39(1). The heading of the signs shall be, "SLIDE INSTRUCTIONS, WARNINGS, AND REQUIREMENTS". The body of the signs shall state at least the following:
 - (i) Instructions including:
 - (A) proper riding position,
 - (B) expected rider conduct,
 - (C) dispatch procedures,
 - (D) exiting procedures, and
 (E) obeying slide attendants or lifeguards.
 - (ii) Warnings to include:
 - (A) slide characteristics such as speed, and
 - (B) depth of water in splash zone.
- (iii) Requirements which include that riders being free of medical conditions identified by the manufacturer such as pregnancy, heart conditions, back conditions, or musculoskeletal conditions.

R392-302-35. Special Purpose Pools: Interactive Water Features.

- (1) Interactive water features must meet all applicable requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of interactive water features.
- (a) Interactive water feature projects require consultation with the local health department having jurisdiction.
- (2) All parts of the interactive water feature shall be designed, constructed, maintained, and operated so there are no slip, fall, or other safety hazards, and shall meet the standards of the State Construction Code Title 15a, State Construction and Fire Codes Act.
- (3) Interactive water feature nozzles that spray from the ground level shall be flush with the ground, with openings no greater than one half inch in diameter. Spray devices that extend above ground level shall be clearly visible.
- (4) Areas adjacent to the water feature collection zones shall be sloped away at a minimum of two percent from the interactive water feature to deck drains or other approved surface water disposal systems. A continuous deck at least 3 feet, 0.91 meters, wide as measured from the edge of the collection zones must extend completely around the interactive water feature.
- (5) Water discharged from all interactive water feature fountain or spray features shall freely drain by gravity flow through a main drain fitting to a below grade sump or collection system which discharges to a collector tank.
- (6) All interactive water feature foggers and misters that produce finely atomized mists shall be supplied directly from a potable water source and not from the underground reservoir.
- (7) The interactive water feature shall have an automated oxidation reduction potential (ORP) and pH controller installed and in operation whenever the feature is open for use. The controller shall be capable of maintaining disinfection and pH levels within the requirements for special purpose pools listed in Table 6. In addition, an approved secondary disinfection system the meets the requirements of in R392 302 38(4)(e) through (4)(f)(iii) shall be installed and in operation whenever the feature is open for use.
- (8) A sign that meets the requirement R392-302-39(1), (2) and (3)(e) stating:
 - (a) The word "CAUTION" centered at the top of the sign.
- (b) No running on or around the interactive water feature.
 - (c) Children under the age of 12 must have adult supervision.

- (e) For the health of all users restrooms shall be used for the changing of diapers.
- (9) If the interactive water feature is operated at night, five foot candles of light shall be provided in the all areas of the water feature. Lighting shall be installed in accordance with manufacturer's specifications and approved for such use by UL or NSF.
- (10) Hydraulies.
- (a) The interactive water feature filter system shall be capable of filtering and treating the entire water volume of the water feature within 30 minutes.
- (b) The interactive water feature filter system shall draft from the collector tank and return filtered and treated water to the tank via a minimum of 4 equally spaced inlet fittings. Inlet spacing shall also meet the requirements of section R392-302-17.
- (c) The interactive water feature circulation system shall be on a separate loop and not directly interconnected with the interactive water feature pump.
- (d) The suction intake of the interactive water feature pump in the underground reservoir shall be located adjacent to the circulation return line and shall be located to maximize uniform circulation of the tank.
- (e) An automated water level controller shall be provided for the interactive water feature, and the drinking water line that supplies the feature shall meet the requirements of R392 302 4.
- (f) The water velocity through the feature nozzles of the interactive water features shall meet manufacturer's specifications and shall not exceed 20 feet per second.
- (g) The minimum size of the interactive water feature sump or collector tank shall be equal to the volume of 3 minutes of the combined flow of all feature pumps and the filter pump. Access lids or doors shall be provided to the sump and collector tank. The lids or doors shall be sized to allow easy maintenance and shall provide security from unauthorized access. Stairs or a ladder shall be provided as needed to ensure safe entry into the tank for cleaning and inspection.
- (h) The suction intake from the interactive water feature circulation pump shall be located in the lowest portion of the underground reservoir.
- (i) A means of vacuuming and completely draining the interactive water feature tank shall be provided.
 - (11) An interactive water feature is exempt from:
 - (a) The wall requirement of section R392-302-10;
- (b) The ladder, recessed step, stair, and handrail requirements of section R392-302-12;
- (c) The fencing and access barrier requirements of section R392 302-14;
- (d) The outlet requirements of section R392 302 18 except any submerged outlet that may create an entrapment hazard to users of the feature shall meet the requirements of R392 302 18(1)(a);
- (e) The overflow gutter and skimming device requirements of section R392-302-19:
- (f) The safety and lifesaving requirements of section R392-302-22, except that an interactive water feature shall be equipped with a first aid kit as required by subsection R392-302-22(3);
- (g) The restroom and shower facility requirements of section R392-302-25 as long as toilets, lavatories and changing tables are available within 150 feet;
- (h) The pool water clarity and temperature requirements of subsection R392 302 27(5):

- (i) The diving area requirement of R392-302-11 except R392-302-11(4)(a) and (b) may be required by the Local Health Officer if the Local Health Officer determines that a diving risk exists;
- (j) The depth marking and safety rope requirements of R392-302-15:
- (k) The underwater lighting requirements of R392-302-23(1),(2), and (3);
 - (1) The supervision of bathers requirements of R392-302-30;
- (m) The bather load requirements of R392-302-7; and
 - (n) The pool color requirements of R392-302-6(5).
- (12) All interactive water features shall be constructed with a collection zone that meets the requirements of R392-302-6. Vinyl liners that are not bonded to a collection zone surface are prohibited. A vinyl liner that is bonded to a collection zone shall have at least a 60 millimeter thickness. Sand, clay, or earth collection zones are prohibited.
- (a) The collection zone material of an interactive water feature must withstand the stresses associated with the normal uses of the interactive water feature and regular maintenance. The collection zone structure and associated tanks shall withstand, without any damage to the structure, the stresses of complete emptying of the interactive water feature and associated tanks without shoring or additional support. (b) The collection zone of an interactive water feature must be designed and constructed in a manner that provides a smooth, easily eleanable, non-abrasive, and slip resistant surface. The collection zone surfaces must be free of cracks or open joints with the exception of structural expansion joints or openings that allow water to drain to the collector tank. Openings that drain to the collector tank shall not pass a one-half inch sphere. The owner of a non-cementitious interactive water feature shall submit documentation with the plans required in R392-302-8 that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material
- (i) for pools built with prefabricated pool sections or pool members, the ISO 19712-1:2008 Plastics—Decorative solid surfacing materials—Part 1: Classification and specifications, which is incorporated by reference; or
- (ii) a standard that has been approved by the Department based on whether the standard is applicable to the surface and whether it determines compliance with the requirements of Section R392-302-6.

R392-302-36. Special Purpose Pools: Instructional Pools.

used:

- (1) The Department shall undertake to investigate the public health related experiences and science of instructional pools operating with the exemptions in this section. That investigation shall be completed on June 30th, 2021, after which time this section will expire and may be replaced with minimum requirements based on the findings of the investigation. The Department will make those findings public 90 days prior to the expiration date.
- (a) This investigation shall include periodic testing of the pool's water balance, disinfection level, total coliform, and heterotrophic plate count.
- (2) An instructional pool is exempt from all requirements of R392-302.
- (a) Pools operating under this exemption shall post a prominent sign stating that the pool does not conform to a standard design and is under evaluation to determine applicable standards to be implemented in the future. The lettering in this sign shall be no less than one centimeter in height.
- (b) Pools operating under this exemption shall require parents of participating children to sign an acknowledgment that they have read and understand the notice required in R392 302 36(2)(a).

R392-302-37. Advisory Committee.

- (1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.
- (2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.
- (3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

R392-302-38. Cryptosporidiosis Watches and Warnings.

- cryptosporidiosis watches or cryptosporidiosis warnings as methods of intervention for likely or indicated outbreaks of cryptosporidiosis. The Executive Director or local health officer may issue a cryptosporidiosis watch if there is a heightened likelihood of a cryptosporidiosis outbreak. The Executive Director or local health officer may issue a cryptosporidiosis warning if there have been reports of cryptosporidiosis above the background level reported for the disease. The Executive Director or local health officer shall include the geographic area and pool type covered in the warning and may restrict certain persons from using public pools.
- (2) If a cryptosporidiosis watch or a cryptosporidiosis warning has been issued, the operator of any public pool shall post a notice sign meeting at a minimum the ANSI Z535.2-2011, which is incorporated by reference, requirements for NOTICE signs with a 10-foot viewing distance and approved by the local health officer. An Adobe Acrobat .pdf version of the sign that meets the requirements of this section shall be made available from the Department or the local health department. The notice sign shall be placed so that all patrons are alerted to the cryptosporidium targeted requirements prior to deciding whether to use the swimming pool. The sign shall be at least 17 inches, 43 centimeters, wide by 11 inches, 28 centimeters, high.
- (a) Centered immediately below the blue panel shall appear the words "CRYPTO DISEASE PREVENTION" in capital letters.
- (b) The body of the notice sign shall be in upper case letters at least 0.39 inches, 1.0 centimeters, high and include the following four bulleted statements in black letters:
- -All with diarrhea in the past 2 weeks shall not use the pool.
 -All users must shower with soap to remove all fecal material prior to pool entry and after using the toilet or a diaper change.
- All less than 3 yrs or who wear diapers must wear a swim diaper and waterproof swimwear. Diapers may only be changed in restrooms or changing stations.
 - -Keep pool water out of your mouth.
- (3) If a cryptosporidium warning has been issued, each operator of a public pool subject to the warning shall, at a minimum, implement the following cryptosporidium counter measures:
- (a) maintain the disinfectant concentration within the range between two mg/l (four mg/l for bromine) and the concentration listed on the product's Environmental Protection Agency mandated label as the maximum reentry concentration, but in no case more than five mg/l (10 mg/l for bromine);
 - (b) maintain the pH between 7.2 and 7.5; and
- (c) maintain the cyanuric acid level that meets the requirement of R392-302-27(3), except the maximum level shall be reduced to 30 mg/l.
- (4)(a) If a cryptosporidium warning has been issued, in addition to the requirements listed in R392 302 38(3), the owner or operator of a public pool shall implement any additional cryptosporidium countermeasures listed in subsection below sufficient

- to achieve at least a 99.9 percent destruction or removal of eryptosporidium oocysts twice weekly, except as provided in R392-302-38(41/h).
- (b) Hyperchlorination using sodium hypochlorite or calcium hypochlorite to achieve a concentration multiplied by time (CT) value of 15,300 mg/l minutes. Table 7 lists examples of chlorine concentrations and time periods that may be used to achieve the required CT value. The operator shall not allow anyone to use the pool if the chlorine concentration exceeds the Environmental Protection Agency maximum reentry concentration listed on the product's label, but in no case if the concentration exceeds five mg/l. The operator of any public pool not required to have a lifeguard by R392-302-30(2) shall hyperchlorinate at least once weekly.
- (c) A full flow ultraviolet treatment system that meets the requirements of standard NSF/ANSI 50-2015, which is incorporated by reference, for ultraviolet light process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99.9 percent inactivation of cryptosporidium or the bacteriophage MS2 at the pool design flow rate and during normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.
- (d) An ozone treatment system that achieves a CT value of 7.4 and a flow through rate at least four times the volume of the pool every three and a half days. The system shall meet the requirements of standard NSF/ANSI 50 2015, which is incorporated by reference, for ozone process equipment. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations.
- (e) A cryptosporidium oocyst targeted filter system installed and operated according to the manufacturer's recommendations. The filter shall meet the requirements of R392-302-20. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99 percent reduction of particles in the range of 4 to 6 microns or cryptosporidium oocysts at the pool design flow rate and normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.
- (f) A system approved by the local health officer. The health officer's approval of a system for use as an alternative shall be based on the system's documented ability to:
- (i) achieve cryptosporidium removal or inactivation to a level at least equivalent to the requirements in R392-302-38(4)(a);
- (ii) assure safety for swimmers and pool operators; and
 (iii) comply with all other applicable rules and federal
- regulations.

Chlorine Concentration and Contact Time to Achieve CT = 15,300 Chlorine Concentration Contact Time

_	1 0 mg/l	15,300 minutes (255 hours)
	1.0 1119/1	13,300 minutes (233 mours)
_	10 mg/l	1,530 minutes (25.5 hours)
	10 1119/1	1,000 minutes (20.0 nours)
_	20 mg/1	765 minutes (12.75 hours)
	Lo mg/ i	700 minutes (12.70 nours)

(5) If the Executive Director or local health officer issues a restriction on the use of public pools by certain persons as part of the cryptosporidium warning the operator shall restrict persons within that segment of the population from using the facility. (6) If the Executive Director or local health officer determines that a pool is a cryptosporidiosis threat to public health, he may order the pool to close. The owner or operator of the pool may not reopen until the person issuing the order has reseinded it.

R392-302-39. Signs.

- (1) Signs required in R392-302 shall be placed to alert and inform patrons in enough time that the patrons may take appropriate actions.
- (2) Signs shall be written in a lettering style, stroke width, spacing, and contrast with the background such that the sign is clearly visible.
- (3) As required in different subsections of this rule, sign lettering shall meet one or more, if stated, of the following minimum size standards:
- (a) "4 Inch Safety Sign" shall be written in all capital letters that are at least four inches, 10.2 centimeters in height.
- (b) "2 Inch Safety Sign" shall be written in all capital letters that are at least two inches, 5.1 centimeters, in height.
- (c) "Rule Signs" shall be written with any required signal word, warning or caution, as the sign heading in letters at least two inches, 5.1 centimeters, in height and the body or bulleted rules in letters at least 0.5 inches, 1.27 centimeters, in height.
- (i) If the sign can only be viewed from more than a distance of ten feet, 3.048 meters, the letter height shall be larger in the same proportion as the required viewing distance is to ten feet, 3.048 meters.
- (ii) The Local Health Officer may approve smaller letter sizes than those required in R392-39(3)(c) if the sign will always be viewed from less than a ten foot, 3.048 meters, distance and if the Local Health Officer agrees that the sign meets the requirements of R392-302-39(1) and (2).

R392-302-1. Authority and Purpose of Rule.

- (1) This rule is authorized under Sections 26B-1-202, 26B-7-113 and 26B-7-402.
- (2) This rule establishes minimum standards for the sanitation, design, construction, operation, and maintenance of public pools and provides for the prevention and control of hazards associated with public pools that are likely to adversely affect public health and wellness including risk factors contributing to injury, sickness, death, disability, and the spread of disease.

R392-302-2. Applicability.

- (1) Unless exempted in Subsection R392-302-2(2), this rule applies to any person who owns or operates a facility or public pool.
 - (2) This rule does not apply to:
 - (a) a float tank;
- (b) a short-term public recreation activity involving a body of water that is temporary in nature:
 - (c) a private residential pool, including any that are:
 - (i) not operated or intended for public use;
 - (ii) used for swim instruction;
 - (iii) rented to guests for hourly or daily use; or
 - (iv) included as an amenity in a vacation rental;
- (d) a body of water whose primary intent is already regulated by another rule promulgated under Title R392; or
 - (e) the following bodies of water:
 - (i) streams;
 - (ii) lakes;
 - (iii) ponds;
 - (iv) watercourses;
 - (v) waterways;

- (vi) wells;
- (vii) springs;
- (viii) irrigations systems; or
 - (ix) drainage systems.

R392-302-3. Definitions.

As used in this rule:

- (1) "Backwash" means the process of cleaning a certain type of pool filter by reversing the flow of water through the filter.
- (2) "Bather" means a person at a pool who has contact with water either through spray or partial or total immersion. The term bather as defined also includes staff members and refers to those users who can be exposed to contaminated water as well as potentially contaminate the water.
- (3) "Bather load" means the number of persons using the pool water at any one time.
- (4) "Breakpoint chlorination" means the conversion of inorganic combined chlorine compounds to nitrogen gas by a reaction of the inorganic combined chlorine compound with the addition of a certain amount of free available chlorine.
- (5) "Building code" means Article 680 of the National Electric Code as incorporated and amended under Title 15a, State Construction and Fire Codes Act.
- (6) "Cleansing shower" means cleaning the entire body surface with soap and water.
- (7) "Circulation system" means the mechanical components that are part of a recirculation system on a pool. Circulation equipment may include a pump, filter, hair and lint strainer, a valve, a gauge, a meter, a heater, a skimmer, a drain, an outlet fitting, or a chemical feeding device that facilitates water movement through connected piping to promote water flow and maintain pool water in a clean and sanitary condition.
 - (8) "Collection tank" see "Surge system"
- (9) "Collection zone" means the area of an interactive water feature where water from the feature is collected for treatment.
- (10) "Combined chlorine" means the portion of the total chlorine that is combined with other molecules such as ammonia, urine, sweat, or other environmental contaminants, as calculated by determining the difference between the total available chlorine residual and the free available chlorine residual. Combined chlorine, commonly known as "chloramines," is responsible for the chlorine odor often associated with indoor pools.
 - (11) "CPR" means Cardiopulmonary Resuscitation.
- (12) "Cryptosporidium outbreak warning" means the department has received reports of cryptosporidiosis above the typical number of background cases of the disease, which may trigger cryptosporidium disease prevention countermeasures as described Section R392-302-35.
- (13) "Department" means the Utah Department of Health and Human Services.
- (14) "Diving area" means the area of a pool that is designed for diving.
- (15) "Facility" means the premises, building, equipment, and accessory objects related to the operation of a public pool.
- (16) "Float tank" means a tub or tank containing a saturated solution of salt having:
- (a) a specific gravity high enough to allow the user to float on the surface;
- (b) a temperature typically maintained between 92 to 96 degrees Fahrenheit; and
 - (c) a design intended for:
 - (i) solitary use; and

- (ii) light and sound sensory deprivation of the user.
- (17) "Flume" means the riding channel of a waterslide that directs the path of travel and rate of descent of the bather.
- (18) "Free available chlorine" or "free chlorine residual" means the portion of the total available chlorine that is not combined with other molecules and is present as hypochlorous acid (HOCl) and hypochlorite ion (OCl).
- (19) "Gravity drain system" means a pool drain system wherein the drains are connected to a surge system or collection tank rather than drawing directly from the drain, and the surface of the water contained in the tank is maintained at atmospheric pressure.
- (20) "Hyperchlorination" means the intentional and specific raising of chlorine levels for a prolonged period to inactivate pathogens following a fecal or vomit release in a pool, or in response to a cryptosporidium outbreak warning.
- (21) "Instructional pool" means a pool used solely for providing water safety and survival instruction taught by a certified instructor. Instructional pools do not include private residential pools.
- (22) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that can cause infection, disease transmission, pest infestation, or hazardous condition that requires immediate correction or cessation of operation to prevent injury, illness, or death.
- (23) "Infinity edge" means a pool wall structure and adjacent pool deck that is designed in such a way that the top of the pool wall and adjacent deck are not visible from certain vantage points in the pool and that water from the pool flows over the edge and is captured and treated for reuse through the pool filtration system. They are often referred to as "vanishing edge," "negative edge," or "zero edge" pools.
- (24) "Interactive water feature" means a public-use indoor or outdoor installation such as a splash pad, spray pad, wet deck, or other water feature that includes:
- (a) sprayed, jetted, or other water sources contacting bathers;
 - (b) recirculating water;
- (c) a drainage system that prevents ponding or captured water in the bather activity area; and
- (d) a collection reservoir that the water from the interactive water feature completely drains to when the feature pump turns off.
- (25) "Lazy river" means a channeled flow of water where the water is moved by pumps or other means to provide a flow to transport bathers over a defined path and are generally consistent in depth throughout the channel of water.
- (26) "Lifeguard" means an attendant who actively supervises the safety of bathers and is certified according to the requirements of Subsection R392-302-29(6).
- (27) "Living unit" means a room or space that is temporarily or permanently occupied by an individual, group of individuals, or a family, for residential or overnight lodging purposes. A living unit may include:
 - (a) a room in a public lodging facility;
 - (b) a condominium unit;
 - (c) a recreational vehicle;
 - (d) a manufactured home;
 - (e) a single-family home;
 - (f) a campground site; or
 - (g) an individual unit in a multiple-unit housing complex.

- (28) "Local health officer" means the health officer of the local health department having jurisdiction, or a designated representative.
- (29) "Local health department" has the meaning defined in Subsection 26A-1-102(5).
- (30) "Manager" means a person who, owns, manages, or controls a public pool, or a designated representative.
- (31) "mg/L" means milligrams per liter and is an equivalent measure to parts per million (ppm).
- (32) "Onsite wastewater system" means an underground wastewater dispersal system that is designed, constructed, and operated in accordance with Rule R317-4, Onsite Wastewater Systems.
- (33) "Overflow gutter system" means a method to remove water from a pool surface to return the water to the circulation system for filtration using a level structure along the pool perimeter. Overflow gutter systems require the use of a surge system to facilitate a consistent water level in the pool to allow for the removal of surface water.
- (34) "Oxidation" means the process of changing the chemical structure of water contaminants that allows the contaminant to be more readily removed from the water or made more soluble in the water.
- (35) "Oxidation Reduction Potential" (ORP) means a measure of the tendency for a solution to either gain or lose electrons; higher, or more positive, oxidation reduction potential indicates more potential for oxidation. This technology is commonly used in automatic disinfectant feed controllers.
- (36) "Parts Per Million (ppm)" means a measurement commonly used for chemical testing in pools and is an equivalent measure to mg/L.
- (37) "Peak occupancy" means the anticipated maximum number of bathers in the pool water.
- (38) "Plumbing code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.
- (39) "Plumbing fixture" means a receptacle or device that is connected to the water supply system of the premises, or discharges wastewater, liquid-borne waste materials, or sewage to the drainage system of the premises.
- (40)(a) "Pool" means an artificially constructed structure or modified natural structure designed for total or partial bather immersion in, or contact with water, that is intended for recreational or therapeutic purposes.
 - (b) A pool may include a:
 - (i) swimming pool;
 - (ii) a special purpose pool; or
- (iii) a structured body of water designated as a pool by a local health officer:
- (41) "Pool operator" means an individual responsible for the day-to-day operation and maintenance of the water and air quality systems and the associated infrastructure of the pool and who is certified according to the requirements of Subsection R392-302-34(1).
- (42) "Pool deck" means the horizontal surface area immediately adjacent to and extending from the pool edge a minimum distance as described in Section R392-302-15, and Subsection R392-302-37(2).
- (43) "Pool shell" means the rigid encasing structure of a pool that confines the pool water.

- (44) "Private residential pool" means a pool that:
- (a) is not used by the general public;
- (b) is not a public pool;
- (c) is designated or intended for private residential use by an individual, family, or a living unit member or guest; and
 - (d) serves three or fewer associated living units.
- (45)(a) "Public pool" means a pool used by the general public regardless of whether there is a charge or payment for facility use.
 - (b) A private residential pool is not a public pool.
- (46) "Recessed steps" means a way of entry or exit for a pool similar to a ladder but the individual treads are recessed into the pool wall.
- (47) "Runout" means a part of a waterslide consisting of a continuation of a waterslide flume surface where bathers are intended to decelerate, come to a stop, and exit the waterslide.
- (48) "Saturation index" means a mathematical value for indicating the corrosive or scale forming nature of pool water as determined by application of the formula provided in Table 2, which is based on the interrelation of pH, total alkalinity, calcium hardness, temperature, and Total Dissolved Solids (TDS).
- (49) "Skimmer" means a device installed in the pool wall to remove floating debris and surface water to return the water to the circulation system for filtration. A skimmer may be used as one device, or as a system of devices located periodically along the top of the pool wall.
- (50) "Spa pool" means a hot or cold water pool designed for relaxation or recreational use where the user is usually sitting, reclining, or at rest, and may include jetted circulation, bubbles produced by air induction, or a mineral bath.
- (51) "Splash pool" means the area of water located at the ending point of a waterslide or vehicle slide designed to receive a bather emerging from a flume to end the slide action and provide a means of exit to a deck or walkway area.
- (52) "Special purpose pool" means a pool that is regulated with certain exemptions or additional requirements described under sections within this rule that are designated in the section title as a "special purpose pool".:
- (53) "Surf pool" means a pool designed to generate waves dedicated to the activity of surfing on a surfing device such as a surfboard or boogie board, commonly used in the ocean and intended for sport as opposed to general play intent for a wave pool.
- (54) "Surge system" means a tank, gutter, or other technology designed to handle bather water displacement and surge and to promote continuous skimming in any surge condition. A surge system receives the gravity flow of water from an overflow gutter system and water from the suction outlet system, or main drain or drains. A circulation system pump receives water from the surge system for treatment and filtration.
- (55) "Swimming pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.
- (56) "Temporary pool" means a body of water that operates as a pool for a period of no more than 14 consecutive days in conjunction with a single event or celebration.
- (57) "Therapy pool" means a pool primarily used for supervised treatment.
- (58) "Turnover" means the circulation of a quantity of water equal to the pool volume through the circulation system.
- (59) "Unblockable drain" means a drain with a suction outlet fitting assembly that, when installed according to the manufacturer's instructions, cannot be shadowed by an 18 inch by 23

- inch body blocking element, and has a rated flow through the remaining open area beyond the shadowed portion to prevent a body suction entrapment hazard.
- (60) "Vacation rental" means a furnished living unit that is rented out on a temporary basis as an alternative to a public lodging facility as defined in Rule R392-502.
- (61) "Vehicle slide" means a pool where bathers ride a vehicle such as a toboggan, a sled, or tube, on a slide into a splash pool.
- (62) "Wading area" means any area within a pool used for wading or water play activities where the water depth is two feet or less.
- (63) "Wading pool" means a pool that is a maximum of two feet deep at the deepest point, physically separated from other pools, has an independent circulation system, and is primarily used for wading or water play activities.
- (64) "Wastewater", as defined in this rule, means the discharge of pool water or backwash.
- (65) "Water slide" means a recreational pool consisting of a flume lubricated by water flow upon which a bather slides into a splash pool or runout.
- (66)(a) "Wave pool" means a pool designed to simulate breaking or cyclic waves for general play.
- (b) A surf pool is not a wave pool, which generates waves dedicated to the activity of surfing on a surfing device such as a surfboard or boogie board.

R392-302-4. General Requirements.

- (1) Any public pool regulated under Section R392-302-2 shall meet the requirements of this rule.
- (2) This rule does not require a construction or operational change in any portion of a public pool facility if the facility was installed in compliance with the law in effect when the facility was installed, except as specifically provided otherwise in this rule.
- (3) Notwithstanding Subsection (2), if the local health officer determines that any facility is dangerous, unsafe, unsanitary, a nuisance, or menace to life, health, or property, the local health officer may order construction changes consistent with the requirements of this rule to existing facilities.
- (4) Requirements of this rule supersede the requirements of building code pertaining to standards for specialized buildings as described in Section 15A-1-208.

R392-302-5. Design Requirements and Plan Approval.

- (1) The manager shall submit plans to the local health department for:
 - (a) a new pool;
 - (b) a modification project of an existing pool; or
- (c) replacement of equipment that is different from that originally approved by the local health officer.
 - (2) The manager shall ensure that:
- (a) new pool construction or a modification project of an existing pool does not begin until the requirements of Subsection (4) have been met;
- (b) plans submitted, as required in Subsection (1) are certified and stamped by a designing engineer or architect who is licensed by the Utah Division of Professional Licensing (DOPL) and contain the following verifications:
 - (i) the structure is stable;
- (ii) the shape of a pool and location of appurtenances are designed such that the following are not impaired:
 - (A) pool water circulation;

- (B) pool water quality; and
- (C) bather safety;
- (iii) a pool is designed with a circulation system, meeting the requirements of Section R392-302-19, that incorporates treatment and filtration equipment, as required in Sections R392-302-23 and R392-302-24;
- (iv) in climates where a facility is subject to freezing temperatures, parts of the facility subject to freezing damage is designed to provide protection from damage due to freezing; and
- (v) the facility has adequate fencing and barriers, showers, hand sinks, toilets, and dressing areas; and
- (c) the pool is constructed to meet the requirements of Subsection (2)(b) and is constructed in accordance with approved plans.
- (3) If any substantive changes are made to the originally approved design plans, the manager shall submit the amended design plan drawings, stamped and signed by the designing engineer or architect to the local health department for approval.
 - (4) The local health officer shall:
- (a) conduct a review of the plans described in Subsection (1) within 30 days of submittal; and
- (b) send to the manager a letter of review with plan review findings.
- (5) The local health officer may exempt the manager from Subsection (1) for a modification project of an existing pool when the manager can satisfactorily demonstrate to the local health officer that the modification will not adversely affect facility operations, public health, or wellness.

R392-302-6. Water Supply.

- (1) The manager shall ensure that:
- (a) the water supply serving a public pool and any plumbing fixtures, including drinking fountains, hand washing sinks, and showers, is designed, installed, and operated according to the requirements set forth by:
 - (i) Plumbing Code;
- (ii) the Utah Department of Environmental Quality, Division of Drinking Water under Title R309; and
 - (iii) local health department regulations;
- (b) any portion of water supply, recirculation, and distribution system serving the facility is protected against backflow; and
- (c) water introduced into the pool, either directly or through the circulation system, is supplied through a backflow preventer that:
- (i) protects against contamination from back-siphonage or backpressure in accordance with the Plumbing Code, such as an air gap or backflow prevention assembly; and
- (ii) is not connected to the pool recirculation system on the discharge side of the pool recirculation pump.

R392-302-7. Wastewater.

- (1) The manager shall ensure that:
- (a) the public sanitary sewer system or onsite wastewater system serving a public pool facility is designed, installed, and operated according to the requirements set forth by:
 - (i) Plumbing Code;
- (ii) the Utah Department of Environmental Quality, Division of Water Quality under Title R317; and
 - (iii) local health department regulations;
- (b) except as specified in Subsections (1)(c) and (1)(d), wastewater is discharged to:

- (i) a public sanitary sewer system when practicable;
- (ii) an onsite wastewater system when a public sanitary sewer system is not practicable;
- (iii) an area where the wastewater will not flow into a storm drain or surface water only when the disinfectant level is reduced to less than one milligram per liter before discharge; or
- (iv) the facility's property if it does not flow off the property;
- (c) salt-laden wastewater is only discharged to a public sanitary sewer system, or an onsite wastewater system designed to receive salt-laden wastewater;
- (d) filter backwash water is only discharged to a sanitary sewer system or an onsite wastewater system;
- (e) wastewater is not directly discharged to storm sewers or surface waters; and
- (f) wastewater is discharged in a manner that will not create an imminent health hazard.

R392-302-8. Solid Waste.

- (1) The manager shall ensure that solid waste generated at a pool is:
 - (a) stored in a leak-proof, non-absorbent container; and
- (b) disposed of with sufficient frequency and in such a manner to prevent a health hazard.

R392-302-9. Construction Materials.

- (1) The manager shall ensure that:
- (a) a public pool and the appurtenances necessary for its proper function and operation are constructed of materials that are:
 - (i) inert;
 - (ii) non-toxic to humans;
 - (iii) impervious;
 - (iv) durable; and
- (v) resistant to the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions;
 - (b) a pool shell:
- (i) withstands the stresses associated with normal use and regular maintenance including completely emptying the pool without shoring or additional support;
 - (ii) with a vinyl liner meets the following requirements:
 - (A) is bonded to the pool form; and
 - (B) is a minimum of 60 mil thickness;
- (iii) has an interior surface designed and constructed in a manner that provides a smooth, easily cleanable, non-abrasive, and slip-resistant surface; and
- <u>(iv)</u> surface is free of cracks or open joints except for structural expansion joints;
- (c) the floor and wall of a pool below the waterline is white or light color such that from the pool deck a bather is visible on the pool floor and the following items can be identified:
 - (i) algae growth, debris, or dirt within the pool;
 - (ii) cracks in the surface finish of the pool; and
 - (iii) markings as required in Section R392-302-14; and
- (d) the floor or wall of a pool is not constructed of wood, sand, clay, or earth.
- (2) A local health officer may make exemptions to the color requirements of Subsection (1)(c) for:
 - (a) competitive lane markings;
 - (b) dedicated competitive diving well floors;
 - (c) step or bench edge markings;
 - (d) a pool less than 24 inches deep;

- <u>(e)</u> waterline tiles or equivalent scum line protection material;
 - (f) floor slope change indicator tiles; or
- (g) other designs where it can be demonstrated that the requirements of Subsection (1)(c) are met.
- (3) The manager shall ensure that a non-cementitious pool is made of surface material that has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that are appropriate to the material used:
- (a) for a fiberglass reinforced plastic spa pool, the International Association of Plumbing and Mechanical Officials (IAPMO) standard IAPMO/ANSI Z 124.7-2013, which is incorporated by reference;
- (b) for a fiberglass reinforced plastic swimming pool, the IAPMO IGC 158-2000 standard, which is incorporated by reference;
- (c) for pools built with prefabricated pool sections, International Organization for Standardization (ISO) standard ISO 19712-1:2008 Plastics -- Decorative solid surfacing materials -- Part 1: Classification and specifications, which is incorporated by reference; or
- (d) a standard that has been approved by the local health officer based on whether the standard applies to the surface and whether it determines compliance with the requirements of this rule.
- (4) The manager of a non-cementitious pool shall submit to the local health department documentation that the surface material has been tested and passed according to the requirement set forth in Subsection (3).

R392-302-10. Floor Slopes.

The manager shall ensure that:

- (1) except for a pool used exclusively for scuba diving training, the floor slope of any portion of a pool having a water depth of five feet or less may not exceed a ratio of one foot vertical change to ten foot horizontal change;
- (2) except for a pool used exclusively for scuba diving training, the floor slope of any portion of a pool having a water depth greater than five feet may not exceed a ratio of one foot vertical change to three foot horizontal change;
- (3) the floor slope of the pool in a diving area is consistent with the requirements for minimum water depths as specified in Section R392-302-12 for diving areas; and
 - (4) the floor slope:
- (a) is designed to drain without leaving puddles or trapped standing water; and
 - (b) is uniform.

R392-302-11. Walls.

- (1) The manager shall ensure that each pool wall is vertical or within plus three degrees of vertical to a depth of at least two feet and nine inches.
- (2) If a pool wall transitions from wall to the floor using a radius, the manager shall ensure that the wall transition radius meets the following requirements:
- (a) at water depths of three feet or less, a transitional radius from wall to floor:
 - (i) does not exceed six inches;
 - (ii) is tangent to the wall; and
 - (iii) is tangent to or intersects the floor;
- (b) at a water depth between three feet to five feet, the maximum transitional radius from wall to the floor is determined by calculating the radius as it varies progressively from a maximum six-

- inch radius at a three foot depth to a maximum of two feet radius at five feet of depth; and
- (c) at a water depth greater than five feet the maximum transitional radius from wall to the floor is equivalent to the water depth of the pool less three feet.
- (3) If a pool wall transitions from wall to the floor using an angle, the manager shall ensure that the transitional angle meets the following requirements:
- (a) at water depths of three feet or less, a transitional angle from wall to floor starts no more than three inches above the floor and intersects the floor at an angle equal to or steeper than 45 degrees from horizontal;
- (b) at a water depth between three feet to five feet the transitional angle from wall to floor varies progressively starting no more than three inches above the floor at a three foot depth to no more than 18 inches above the floor at the five foot depth and intersects the floor at an angle equal to or steeper than 45 degrees from horizontal; and
- (c) at water depths greater than five feet the transitional angle from the wall to the floor is equivalent to the water depth of the pool less three feet six inches and intersects the floor at an angle:
 - (i) equal to or steeper than 45 degrees from horizontal; or
- (ii) equal to or a shallower angle than the one to three floor slope ratio required in Subsection R392-302-10(2).
- (4) The manager shall ensure that any outside corner created by adjoining walls or floor are rounded or chamfered.
 - (5) The manager shall ensure that:
- (a) a pool contains no underwater ledges except when approved by the local health officer for a special purpose pool;
- (b) a pool contains no underwater ledges in areas of a pool designed for diving; and
- (c) if underwater ledges are allowed by the local health officer a line marks the extent of the ledge within two inches of its leading edge and is at least two inches in width and in a contrasting dark color for maximum visual distinction.
- (6) The manager shall ensure that an underwater seat or bench:
- (a) if not located on a perimeter wall of the pool, the back of the seat or bench extends above the operating level of the pool and is clearly visible to users and meets the requirements Subsections (2), (3) and (4); and
- (b) has a maximum water depth to the horizontal surface of 20 inches below the waterline;
- (c) has an unobstructed surface that is a minimum of ten inches, and a maximum of 20 inches from front to back, and a minimum of 24 inches wide;
- (d) does not transverse a pool depth change of more than 24 inches;
- (e) has a minimum horizontal separation between sections of seats and benches of five feet;
- (f) has a leading edge, or vertical face, that is flush with the pool wall under the seat or bench and meets the requirements of Subsection (1);
- (g) does not replace the stairs or ladders required in Section R392-302-13, but is allowed in conjunction with pool stairs;
- (h) is located outside of the minimum water envelope for diving equipment if a seat or bench is located in the deep area of the pool where diving equipment is installed; and
 - (i) is marked with a line that:
 - (i) is at least two inches in width;
- (ii) is a contrasting color for maximum visual distinction; and

- (iii) marks the extent of the seat or bench within two inches of its leading edge.
- (7) The manager shall ensure that recessed steps in a pool wall are at least four feet under water and meet the requirements of Subsection R392-302-13(4).

R392-302-12. Diving Areas.

- (1) The manager shall ensure that:
- (a) where diving is permitted and at least one diving board or platform is over 3.28 feet, 1 meter, from the normal water level, the diving area design, equipment placement, and clearances meet the minimum standards of:
- (i) The 2015-2017 USA Diving Official Technical Rules, Appendix B -- FINA Dimensions for Diving Facilities, which are incorporated by reference;
- (ii) Rule 1, Section 1, Article 4 and Rule 1, Section 2, Article 4 of the NCAA Men's and Women's Swimming and Diving 2014-2015 Rules and Interpretations, which is incorporated by reference; or
- (iii) Table 4.8.2.2 and Figure 4.8.2.2.1 and Figure 4.8.2.2.2 of the 2018 Model Aquatic Health Code, which are incorporated by reference;
- (b) where diving is permitted from a height of less than or equal to 3.28 feet, 1 meter, from normal water level the diving area design, equipment placement, and clearances meet the minimum standards of Section 402.12, Table 402.12, and Figure 402.12 of the 2018 International Swimming Pool and Spa Code, which is incorporated by reference, for type VI, VII and VIII pools such that:
- (i) type VI is a maximum of 26 inches, 2/3 meter, above the normal water level;
- (ii) type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; or
- (iii) type VIII is a maximum of 3.28 feet, 1 meter, above the normal water level;
- (c) the use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events;
- (i) if starting platforms are used for competitive swimming or training, the water depth is at least four feet; or
- (ii) when starting platforms are not in competitive use they are removed, or secured with a starting platform safety cover;
- (d) each diving board, platform, and appurtenance related to a diving area is maintained in a good condition; and
- (e) areas of a pool where diving is not permitted have a "no diving" warning with a contrasting color located on the horizontal surface of the deck or coping as close to the water's edge as practical and spacing between each warning no greater than 25 feet.
- (2) The manager may use any of the following options to meet the "no diving" warning requirement specified in Subsection (1)(e):
- (a) a "no diving" sign in block letters at least four inches in height as required in Section R392-302-32;
- (b) the international no diving icon, that must include at least one "no diving" sign posted vertically in plain view within the pool enclosure with lettering at least four inches in height and a stroke width of at least one-half inch; or
 - (c) both a sign and an icon.

R392-302-13. Pool Entry and Exits.

- (1) The manager shall ensure that:
- (a) each pool is equipped with a minimum of two points of entry or exit meeting the requirements of this section including:

- (i) at least one point located within ten feet of the shallowest area of the pool; and
- (ii) at least one point located within 15 feet of the deepest area of the pool, if applicable;
- (b) an acceptable means of pool entry and exit as described in Subsection (1)(a) includes:
 - (i) a set of stairs with a handrail;
 - (ii) recessed steps with grab rails;
 - (iii) a ladder; or
 - (iv) a sloped entry; and
- (c) for a pool wider than 30 feet an acceptable means of entry and exit as described in Subsection (1)(b) is:
 - (i) provided on opposite sides of the pool; and
 - (ii) not more than 75 feet apart.
- (2) If stairs with handrails are used for pool entry and exit, the manager shall ensure that stairs, that consist of one or more stair risers:
- (a) have at least one handrail as described in Subsection (3);
- (b) are constructed of slip-resistant material that is easily cleanable and of a safe design;
 - (c) have a minimum run of ten inches;
 - (d) have a maximum rise of 12 inches;
- (e) have a minimum width of 18 inches as measured at the leading edge of the step; and
- (f) have a line at least one inch in width of a contrasting dark color within two inches of the leading edge of each step.
- (3) If stairs with handrails are used for pool entry and exit, the manager shall ensure that handrails:
- (a) are rigidly installed and constructed in such a way that they can only be removed with tools;
 - (b) are constructed of corrosion-resistant materials;
 - (c) do not have an outside diameter exceeding two inches;
 - (d) have a uniform profile;
 - (e) are free of sharp edges;
 - (f) are mounted:
 - (i) on the deck; or
- (ii) if stairs transition water depths within a pool, handrails may be mounted on the shallowest walking surface at the top of the stairs; and
- (g) extend to the bottom step of the stairs or to the pool floor by either an attachment at or a cantilever to the bottom step of the stairs or pool floor.
- (4) If recessed steps and grab rails are used for pool entry and exit, the manager shall ensure that recessed steps:
- (a) have a set of grab rails provided at the top of both sides of the recessed steps;
 - (b) are easily cleanable and provide drainage into the pool;
 - (c) have a minimum run of five inches;
 - (d) have a maximum rise of 12 inches; and
 - (e) have a minimum width of 14 inches.
- (5) If recessed steps and grab rails are used for pool entry and exit, the manager shall ensure that grab rails:
- (a) are mounted to the pool deck, coping, or gutter walking surface;
- (b) extend to, or beyond the edge of the pool above the water;
- (c) are attached equidistant from the centerline of the recessed steps on both sides of the recessed steps as required in Subsection (4)(a);
 - (d) have a horizontal space between grab rails that is:
 - (i) not less than 18 inches; or

- (ii) greater than 24 inches;
- (e) are rigidly installed and constructed in such a way that they can only be removed with tools;
 - (f) are constructed of corrosion-resistant materials;
 - (g) do not have an outside diameter exceeding two inches;
 - (h) have a uniform profile; and
 - (i) are free of sharp edges.
- (6) If a ladder is used for pool entry and exit, the manager shall ensure that each ladder is:
- (a) constructed of corrosion-resistant material that is easily cleanable;
 - (b) designed to provide a handhold;
 - (c) rigidly installed;
 - (d) maintained in a safe working condition; and
 - (e) equipped with slip-resistant rungs that:
- (i) maintain a horizontal clear space between the ladder rung and the pool wall not less than three inches and not more than five inches;
 - (ii) have a maximum rise of 12 inches;
 - (iii) have a minimum width of 14 inches; and
- (iv) have a minimum horizontal ladder tread depth of 1.5 inches.
- (7) If a sloped entry is used for pool entry and exit, the manager shall ensure that a sloped entry:
 - (a) is constructed of slip-resistant materials; and
- (b) has a floor slope that meets the requirements described in Subsections R392-302-10(1) and R392-302-10(4).

R392-302-14. Depth Markings, Safety Markings, and Safety Ropes.

- (1) The manager shall ensure that:
- (a) pool water depth is plainly marked at least at the point of:
 - (i) minimum pool water depth;
 - (ii) maximum pool water depth; and
- (iii) demarcation between the diving area and any other areas of the pool as described in Subsection (1)(c);
- (iv) at depths of five feet or less, pool water depths are marked at water depth increments not to exceed one foot;
- (v) at depths greater than five feet, pool water depths are marked at water depth increments not to exceed two feet;
 - (b) depth markings:
 - (i) are spaced no more than 25 feet from each other;
- (ii) are located above the waterline or within two inches from the coping on the vertical wall of the pool;
- (iii) are located on the horizontal surface of the deck or coping as close as practical to the pool water's edge; and
- (iv) have numerals meeting the requirements of a four-inch safety sign as described in Subsection R392-302-32(1);
- (c) a pool constructed with a change in the slope of the pool floor from a shallower area to a deeper area has:
- (i) a line of demarcation on the pool floor that is marked with a contrasting dark color that is:
 - (A) at least two inches in width; and
- (B) located 12 inches toward the shallow end from the point of change in slope; and.
- (ii) a floating safety rope designating a change in slope of the pool floor that meets the requirements of Subsection(1)(d) and is placed directly above and parallel to the line of demarcation on the pool floor;
- (d) except for special activities including swimming contests or training exercises where the full unobstructed length of a

- pool is used, a pool with a diving area has a floating safety rope that is:
 - (i) securely fastened to wall anchors that are:
 - (A) made of corrosion-resistant materials; and
- (B) recessed with no projections that could be a safety hazard if the floating safety rope is removed;
- (ii) marked with visible floats spaced at intervals of seven feet or less;
- (iii) at least 1/2 inch in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities; and
- (iv) separates the diving area from any other area of the pool; and
- (e) a pool used exclusively for diving is exempt from the requirements of a safety rope as described in Subsection (1)(d).

R392-302-15. Decks and Walkways.

- (1) Except as described in Subsections (5) and (6), the manager shall ensure that a continuous, unobstructed pool deck extends at least five feet around the entire pool as measured from:
- (a) the poolside edge of the coping if the coping is flush with the pool deck; or
- (b) the deck-side edge of the pool coping if the coping is elevated from the pool deck.
- (2) If the coping is elevated from the pool deck, the manager shall ensure that the elevation difference between the top of the coping surface and the surrounding deck is:
 - (a) no less than four inches; and
 - (b) no more than 19 inches.
 - (3) The manager shall ensure that:
- (a) each pool has coping that is a minimum of 12 inches wide:
- (b) the deck area is maintained clear of obstructions for at least a four-foot width around the entire pool unless otherwise allowed by this rule:
- (c) except as specified in Subsection (4), the pool deck slopes away from the pool to a deck drain at a grade of 1/4 inch to 3/8 inch per linear foot;
 - (d) each deck and walkway:
- (i) is constructed to drain standing water in a way that prevents it from returning to the pool or circulation system;
 - (ii) has non-slip surfaces;
 - (iii) is not constructed of wood; and
- (iv) is maintained in a sanitary condition free from litter; and
- (e)(i) carpeting is not installed within five feet of the water side edge of the coping; and
- (ii) carpet is wet vacuumed as often as necessary to keep it clean and free of accumulated water or debris.
- (4) The local health officer may exempt a pool from Subsection (3)(c) and may allow the pool deck to slope toward the pool if:
- (a) the manager can demonstrate to the local health officer that water draining toward the pool will not adversely affect pool water quality;
- (b) the pool deck slopes toward the pool for a maximum distance of five feet from the water's edge;
- (c) the portion of the pool deck that slopes toward the pool does so at a grade of 1/4 inch to 3/8 inch per linear foot; and
- (d) a minimum of three feet of additional deck that meets the requirements of Subsection (3) is provided beyond the high point of the slope.

- (5) The local health officer may allow a deck to be obstructed by a diving board, a platform, a slide, stairs, or a ladder if there is at least five feet of deck area provided around the deck side of the obstruction;
- (6) The local health officer may allow other types of deck obstructions, if the obstructions meet the following criteria:
- (a) no more than 15 linear feet of pool perimeter is obstructed in any one location;
- (b) the combined total length of the deck obstructions may not exceed 10% of the total linear pool perimeter;
 - (c) multiple obstructions are separated by at least five feet;
- (d) the design of the obstruction does not endanger the health or safety of bathers; and
- (e) a spa and pool that share a common wall that meets the requirements of Subsection R392-302-37(2)(f) is not considered a deck obstruction.
- (7) The manager shall ensure that stairs serving decks have uniform stair risers that meet the following requirements:
 - (a) a minimum rise of four inches;
 - (b) a maximum rise of seven inches;
- (c) a minimum run of ten inches; and
 - (d) a minimum width of 18 inches.

R392-302-16. Handholds.

- (1) Except in areas of a pool that are zero-depth or where water depth does not exceed 24 inches, the manager shall ensure that there is a continuous handhold around the entire perimeter of the pool that;
- (a) is installed not more than nine inches above the normal operating water level of the pool;
 - (b) has rounded edges; and
 - (c) is slip-resistant.
- (2) If an overflow gutter is provided, the manager shall ensure that the construction of the overflow gutter allows for use of the overflow gutter as a continuous handhold as described in Subsection (1).
- (3) Where an overflow system is not provided, a pool coping, decking, or other material used on a skimmer type pool may be used as the continuous handhold. The manager shall ensure that the overhang of the coping decking, or other material used as a continuous handhold is:
 - (a) a maximum thickness of four inches.
 - (b) a minimum of one inch beyond the vertical pool wall;
- (c) a maximum of two inches beyond the vertical pool wall, unless accommodating an automatic pool cover track system; and
- (d) if an overhang of the pool coping, decking, or other material used as a continuous handhold is accommodating an automatic pool cover, the local health officer may allow the pool coping, decking, or other material to be three inches beyond the vertical pool wall.

R392-302-17. Fencing and Barriers.

- (1) The manager shall ensure that the complete perimeter of the pool, pool deck, and additional decking area, if provided, is enclosed with a fence or other barrier to prevent unauthorized entry that:
- (a) is at least six feet in height measured from the exterior side of the barrier;
- (b) does not allow passage of a four-inch diameter sphere through any fence or barrier opening including below the barrier;

- (c) the vertical clearance between a surface below the barrier is constructed of a solid surface such as concrete, paving stones, or other solid surface material approved by the local health officer;
- (d) if the fence or barrier has horizontal members, the horizontal members are at least 45 inches apart from each other;
- (e) if the fence or barrier includes a gate or door to access the pool enclosure, the gate or door is self-closing and:
- (i) has a self-latching mechanism that includes a self-locking mechanism installed between 34 inches and 48 inches above the ground; or
- (ii) has a self-latching mechanism that does not include a self-locking mechanism installed 54 inches above the ground, and a lock such as a keyhole, electronic sensor, or combination dial installed between 34 inches and 48 inches above the ground;
- (iii) has no opening greater than 1/2 inch within 18 inches of the self-latching mechanism;
- (iv) is designed in such a way that it does not prevent egress in the event of an emergency;
- (v) is constructed to prevent unauthorized entry from the perimeter of the facility; and
- (vi) at least one exit gate is required for each pool enclosure that opens outward from the pool area.
- (2)(a) The manager shall ensure that any pool enclosure accessible to the public when one or more of the pools are closed and not being maintained for use has a sign that meets the requirements of a four-inch safety sign as described in Subsection R392-302-32(1) identifying each closed pool; and
- (b) access to each closed pool is prevented by one of the following:
- (i) a safety cover that restricts bather access and meets ASTM standard F1346-91 that is incorporated by reference;
- (ii) a secondary barrier that is approved by the local health officer; or
- (iii) another bather restriction method approved by the local health officer.
- (3)(a) The local health officer may exempt indoor pools from any portion of Subsection (1) if it is determined that bather safety is not compromised.
- (b) The local health officer may exempt pools designed for hotels motels and apartment complexes from the height requirements described in Subsection (1) in consideration of architectural and landscaping features.
- (c) A local health officer may exempt an entrance to the pool enclosure from Subsection (1) if:
- (i) the gate or door to a facility or pool area is staffed and controlled, and is locked when the facility or pool area is not open to the public; or
- (ii) the pool or facility has certified lifeguards conducting bather surveillance when the pool area or facility is open, and the gate or door is locked when the facility or pool area is not open to the public.

R392-302-18. Lighting, Ventilation, and Electrical Requirements.

- (1) The manager shall ensure that a pool constructed after September 16, 1996, is not used for night swimming in the absence of underwater lighting.
- (2) The local health officer may grant an exemption to the lighting requirement described in Subsection (1) if:
- (a) the manager demonstrates that a six-inch diameter black disk on a white background placed in the deepest part of the

- pool can be clearly observed from the pool deck during nighttime hours, which are 30 minutes before sunset to 30 minutes after sunrise; and
 - (b) a written record of this exemption is kept by:
 - (i) the local health department; and
 - (ii) the manager, at the pool facility.
- (3) Where night swimming is permitted and underwater lighting is used, the manager shall ensure that:
- (a) artificial lighting is provided so that each area of the pool, including the deepest portion, is visible from the edge of the pool deck;
- (b) area lighting is provided for the pool deck at not less than ten horizontal foot-candles, ten lumens per square foot, or 108 lux that is directed away from the pool surface as practical to reduce glare;
- (c) for outdoor pools any combination of overhead and underwater lighting provides maintained illumination not less than ten horizontal foot-candles, ten lumens per square foot, or 108 lux at the pool water surface; and
- (d) for indoor pools, any combination of overhead and underwater lighting provides maintained illumination not less than 30 horizontal foot-candles, 30 lumens per square foot, or 323 lux at the pool water surface.
- (4) The manager shall ensure that electrical wiring conforms building code.
- (5) The manager shall ensure that facilities with indoor pools, pool equipment rooms, access spaces, dressing rooms, shower rooms, and toilet spaces are ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 62.1-2016, which is incorporated by reference.

R392-302-19. Circulation Systems.

- (1) The manager shall ensure that:
- (a) a circulation system is provided and in continuous operation;
- (b) when the pool is open for bathing, the normal waterline of the pool is maintained to promote continuous skimming for any surge condition;
- (c) when an overflow gutter system is used the water is maintained at the overflow rim of the gutter;
- (d) when a skimmer is used the water is maintained at the midpoint of the skimmer opening;
- (e) the circulation system meets the minimum turnover time listed in Table 1:
- (f) if a single pool circulation system incorporates more than one of the pool types listed in Table 1:
- (i) the entire pool circulation system is designed with the shortest turnover rate required in Table 1 for the incorporated pool types; or
- (ii) the pool circulation system is designed with multiple circulation zones that each meet the recirculation flow rate required in Table 1;
- (g) the circulation equipment is operated continuously except for periods of maintenance;
- (h) a rate-of-flow indicator, reading in gallons per minute, is:
 - (i) functioning; and
 - (ii) properly installed:
 - (A) according to manufacturer recommendations; and
- (B) in a place and position where it can be easily read by authorized personnel;

- (i) the area housing the circulation equipment, the pump room, is designed and maintained:
 - (i) according to manufacturer recommendations;
- (ii) with adequate working space for equipment maintenance including disassembly removal, and replacement;
- (iii) protected from environmental conditions including UV radiation; and
 - (iv) secured from unauthorized personnel;
- (j) each circulation pipe is regulated to control the circulation system flow with one or more valves that are located to be easily accessible for maintenance or replacement;
- (k) written operational instructions for circulation equipment are available to the local health officer upon request;
- (1) circulation equipment including multiport valves, if used, comply with NSF/ANSI 50-2015, which is incorporated by reference; and
- (m) each pump or series of pumps used for pool water circulation under normal operating conditions:
- (i) have adequate capacity to provide the minimum turnover rate specified in Table 1;
- (ii) are capable of providing flow adequate for the backwashing of filters; and
- (iii) are capable of maintaining the required minimum circulation flow rate at a dynamic head that includes, in addition to fitting and friction losses:
- (A) except as described in Subsection R392-302-20(4)(b), an additional of 15 feet of head for pool inlet orifices; and
- (B) an additional 15 feet of head for rapid sand filters, vacuum precoat media filters or vacuum cartridge filters; or
- (C) an additional 40 feet of head for pressure precoat media filters, high-rate sand filters, or cartridge filters.
- (2) A variable speed pump is permitted for pool water circulation if the manager ensures that the minimum circulation flow rate in the approved design and the minimum turnover rate required in Table 1 is maintained, and the requirements of Section R392-302-25 are met.
 - (3) The manager shall ensure that:
 - (a) piping is:
 - (i) made of non-toxic material;
 - (ii) resistant to corrosion;
 - (iii) able to withstand normal operating pressures;
 - (iv) identified by a color code or label; and
 - (v) maintained in good condition; and
 - (b) the maximum water velocity in:
- (i) discharge piping is ten feet per second, except for copper pipe where the maximum velocity for discharge piping is eight feet per second; and
 - (ii) suction piping is six feet per second.
- (4) The manager shall ensure that the circulation system includes a pump strainer that:
- (a) prevents hair, lint, and other debris from reaching the pump;
 - (b) is corrosion-resistant;
 - (c) has openings not more than 1/8 inch in size;
- (d) provides a free flow capacity of at least four times the area of the pump suction line;
 - (e) is easily accessible for frequent cleaning;
 - (f) is maintained in a clean and sanitary condition; and
- (g) is provided with necessary valves to facilitate cleaning of the system without excessive flooding.

- (5) The manager shall ensure that a pool facility has a vacuum-cleaning system that:
- (a) facilitates access to any area of the pool through hoses less than 50 feet in length;
- (b) except for a vacuum system operated from a skimmer, includes one or more vacuum connections located in the pool wall, at least eight inches below the water line for any vacuum system that is an integral part of the circulation system; and
- (c) each dedicated vacuum connection located in a pool wall, as described in Subsection (5)(b), has a finish fitting that is installed such that tools are necessary to open and close the fitting.
- (6) The manager shall ensure that pool water boilers and pressure vessels:
 - (a) meet the requirements of Rule R616-2;
- (b) have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet; and
- (c) are provided with a heatsink as required by the manufacturer's instructions.
- <u>(7) The manager shall ensure that pool water heat exchangers:</u>
- (a) have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet; and
- (b) are provided with a heatsink as required by manufacturer's instructions.
- (8) The manager shall ensure that each air induction system is designed and maintained to prevent:
- (a) any possibility of water backup that could cause electrical shock hazards;
- (b) an air intake from introducing contaminants such as noxious chemicals, fumes, deck water, dirt, or other debris into the pool; and
- (c) the circulation line of a jet system or other form of water agitation from connecting to the pool water circulation, filtration, or heating system.
- (9) Notwithstanding Subsection R392-302-4(1), the manager shall ensure that by January 31, 2023 each chemical feed system includes two layers of interlocking protection for a low or no flow condition so that the operation of any chemical feeder is dependent upon the operational flow of the main circulation system and:
- (a) the functionality of the interlocking mechanism is verified and documented to the local health department; and
- (b) the interlocking mechanism is accomplished through an electrical interlock consisting of:
- (i) a flow meter or flow switch at the chemical controller if a controller is being used; and
- (ii) each chemical feeder is wired electrically to the circulation system by use of a differential pressure switch, a pump power monitor, or other suitable means.
- (10) The local health officer may require the manager to demonstrate that the circulation system is performing in accordance with the approved design.
- (11) The local health officer may reduce the head loss requirement for pool inlet orifices as described in Subsection (1)(1)(iii) if the manager can demonstrate that at least a six to one pressure ratio from the pool inlet orifice to the return loop is maintained.

	<u>TABLE 1</u> Circulation			
Pool Type	Minimum Number of Wall Inlets	Minimum	Minimum Turnover Rate	
1. Swimming pool	One per ten linear feet of perimeter or fraction thereof	One per 500 square feet of surface area	Six hours	
3. Wading pool	One per 20 linear feet of perimeter, or fraction thereof, with a minimum of two equally spaced		One hour	
4. Spa pool	One per 20 linear feet or fraction thereof	One per 100 square feet of surface area	<u>1/2 hour</u>	
5. Wave pool	One per ten linear feet or fraction thereof	One per 500 square feet of surface area	Six hours	
6. Splash pool	One per ten linear feet or fraction thereof	One per 500 square feet of surface area	One hour	
7. Vehicle slide	One per ten linear feet or fraction thereof	One per 500 square feet of surface area	One hour	
8. Special purpose pool	One per ten linear feet or fraction thereof	One per 500 square feet of surface area	One hour	

R392-302-20. Return Inlets.

- (1) The manager shall ensure that:
- (a) return inlets for potable or treated water are:
- (i) located to facilitate:
- (A) uniform circulation of water; and
- (B) a uniform disinfectant residual throughout the entire pool; and
- (ii) hydraulically sized to provide the designed flow rate for each zone of multi-zoned pools based on the designed turnover rate for each zone;
- - (i) flush with the pool wall, and located:
 - (A) at least five feet below the normal water level; or

- (B) at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool;
- (ii) except as provided in Subsection R392-302-37(4) and Subsection R392-302-38(1)(g), spaced no greater than every ten feet around the pool perimeter; and
- (iii) designed as a directionally adjustable and lockable orifice with sufficient head loss to ensure balancing of flow through each wall inlet as related to the other wall inlets such that:
- (A) the return loop piping is sized to provide less than 2-1/2 feet of head loss to the most distant orifice to ensure equal flow through all orifices; and
- (B) wall inlets are locked in place once adjusted for uniform circulation.
- (2) If floor inlets are installed in addition to wall inlets, the manager shall ensure there is a minimum of one row of floor inlets centered in the pool width with piping installed in accordance with Subsection R392-302-19(3) such that:
- (a) individual floor inlets and rows of floor inlets are spaced a maximum of 15 feet from each other; and
- (b) floor inlets are at least 15 feet from a pool wall with wall inlets.
- (3) If floor inlets from the circulation system are used, the manager shall ensure each floor inlet is:
 - (a) flush with the floor;
- (b) placed at no more than 15 foot intervals from other floor inlets;
- (c) spaced no more than 7-1/2 feet from the pool wall if there are no wall inlets on that wall;
- (d) designed such that the flow can be adjusted to provide sufficient head loss to ensure balancing of flow through all floor inlets; and
- (e) designed such that the flow cannot be adjusted without the use of a tool such that:
- (i) the return supply piping is sized to provide less than 2-1/2 feet of head loss to the most distant floor inlet to ensure equal flow through all floor inlets; and
- (ii) floor inlets are locked in place once adjusted for uniform circulation.
 - (4) The local health officer may:
- (a) exempt the inlet placement requirements for inlet designs that can be demonstrated to produce uniform mixing of pool water through a dye test;
- (b) reduce the head loss requirement if the manager can demonstrate that at least a 6:1 pressure ratio from orifice to the return loop is maintained; and
- (c) require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet.

R392-302-21. Suction Outlets.

- (1) The manager shall ensure that each interactive water feature and pool circulation system pump is connected to at least two suction outlets unless the pump is connected to:
 - (a) a gravity drain system; or
 - (b) an unblockable drain.
 - (2) The manager shall ensure that:
- (a) each grate or cover of a submerged suction outlet conforms to the standards of ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011);

- (b) each suction outlet is constructed so that if one of the outlets is completely obstructed, the remaining outlets and related piping are capable of handling 100% of the maximum design circulation flow;
- (c) each suction outlet connected to a pump through a single common suction line is connected to the common suction line:
 - (i) through pipes of equal diameter;
- (ii) with a fitting that is located about midway between the suction outlets; and
- (iii) without an isolation valve or other means to cut any individual suction outlet out of the system;
- (d) at least one of the suction outlets is located at the deepest point of the pool; and
- (e) when the pool has multiple main drain suction outlets, the center of each suction outlet cover or grate is spaced:
 - (i) no more than 30 feet apart; and
 - (ii) no less than three feet apart;
- (3) The local health officer may allow multiple pumps to connect to the same suction outlets only if:
- (a) the outlets are sized to accommodate 100% of the total design flow from all pumps combined; and
- (b) the flow characteristics of the system meet the requirements of Subsections (4), (5) and (6);
 - (4) The manager shall ensure that:
- (a) there is one main drain suction outlet for each 30 feet of pool width;
- (b) the center of the outlet cover or grate of any outermost main drain suction outlet is located within 15 feet of a side wall;
- (c) any device or method used for draining a pool does not overcharge the sanitary sewer; and
- (d) the pool is not open to any bathers if a suction outlet grate or cover is broken, damaged, missing, or not securely fastened.
 - (5) The manager shall ensure that
- (a) a pool drain, drain cover, or drain grate is installed according to the manufacturer's instructions; and
- (b) a pool is not operated with a drain, drain cover, or drain grate that is positioned or applied in a manner that conflicts with any mandatory markings on the drain, drain cover, or drain grate under the standard required in Subsection (2)(a) that includes:
 - (i) whether the drain is for single or multiple drain use;
 - (ii) the maximum flow through the drain cover; and
 - (iii) whether the drain may be installed on a wall or a floor.
- (6) The manager shall ensure that each drain cover or drain grate is installed on a sump:
 - (a) recommended by the manufacturer;
- (b) specifically designed for that drain by a Registered Design Professional as defined in ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 (July 5, 2011); or
- (c) that meets the ANSI/APSP-16 2011 standard, as incorporated in 16 CFR 1450.3 (July 5, 2011).
- (7) When installed, the manager shall ensure that any entrapment release system, such as a safety vacuum release system:
- (a) is inspected and tested as specified by the manufacturer at least once a week but no less often than established by the manufacturer;
 - (b) includes a notification system that:
- (i) alerts bathers and the pool operator when the safety vacuum release system has inactivated the circulation system; and
- (ii) activates a continuous clearly audible alarm that can be heard in each area of the pool or a continuous visible alarm that can be seen in each area of the pool;

- (c) has a sign that:
- (i) states, "Do not use the pool if this alarm is activated";
- (ii) meets the requirements of a two-inch safety sign as described in Subsection R392-302-32(1), including a heading containing a safety signal such as warning, caution, or attention;
- (iii) is posted next to the audible or visible alarm source; and
 - (iv) provides the phone number of the pool operator.
- (8) The manager shall close to bathers any pool that has a single main drain with a malfunctioning safety vacuum release system.

R392-302-22. Overflow Gutter System and Skimming Devices.

- (1) The manager shall ensure that:
- (a) a pool having a surface area greater than 3,500 square feet has an overflow gutter system; and
- (b) a pool having a surface area equal to or less than 3,500 square feet has either an overflow gutter system or a skimmer.
- (2) The local health officer may allow an exemption to the size requirement for overflow gutter systems and allow a skimmer system in a pool that has a surface area greater than 3,500 square feet if sufficient skimming is provided through the skimmer system.
- (3) If the pool has an overflow gutter system, the manager shall ensure that the overflow gutter system:
- (a) extends completely around the pool, except at stairs, sloped entries, recessed steps, ladders, or other areas approved by the local health officer;
- (b) is capable of continuously removing pool water at 100% of the maximum flow rate;
- (c) is connected to the circulation system by a surge system that:
- (i) has a surge capacity of not less than one gallon for each square foot of surface area;
- (ii) has water level sensors and controls built in to maintain the pool water level; and
- (iii) promotes continuous skimming in each surge condition; and
 - (d) is designed and constructed:
 - (i) to prevent entrapment of any part of a bather's body;
- (ii) with the opening into the gutter system beneath the coping or grating that:
 - (A) is at least three inches in height; and
 - (B) has a depth of at least three inches;
- (iii) with a handhold as described in Subsection R392-302-16(2);
- (iv) with suction outlet pipes that are at least two inches in diameter; and
- (v) with the total combined area of all unobstructed openings in the outlet grates being equal to or greater than a minimum of 1-1/2 times the total cross sectional area of all connected suction outlet pipes.
- (4) If the pool has a skimmer, the manager shall ensure that each skimmer:
- (a) complies with NSF/ANSI 50-2015 standards, which is incorporated by reference;
- (b) is installed on any pool with a surface area equal to or less than 3,500 square feet;
- (c) has at least one skimming device provided for each 500 square feet of water surface area or fraction thereof;
- (d) is spaced to provide an effective skimming action over the entire surface of the pool if two or more skimmers are required;

- (e) is installed with the normal operating level of the pool water at the midpoint of the skimmer opening or in accordance with the manufacturer's instructions;
 - (f) is built into the pool wall;
- (g) has piping and other components that are designed for a total capacity of at least 80% of the maximum flow rate of the circulation system;
- (h) is designed with a minimum flow rate of 25 gallons per minute, and a maximum flow rate of 55 gallons per minute; and
 - (i) is equipped with a weir that:
- (i) is maintained properly for continuous skimming of the surface water;
- (ii) moves freely and automatically adjusts to variations in water level over a range of at least four inches; and
 - (iii) operates at any flow variation.
- (j) is provided with one of the following systems to prevent air-lock:
 - (i) an equalizer pipe as described in Subsection (6);
 - (ii) a surge system; or
- (iii) another system approved by the local health officer that will assure enough water for pump suction in the event the pool water drops below the weir level.
- (5)(a) The local health officer may allow a higher maximum flow rate through a skimmer up to the skimmer's NSF rating if the piping system is designed to accommodate the higher flow rates; or
- (b) The local health officer may allow may allow the manager to install a skimmer that is designed with a minimum of 3.125 gallons to a maximum of 6.875 gallons per linear inch of weir.
- (6) The manager shall ensure that an easily removable and cleanable basket or screen through which any overflow water passes:
 - (a) is provided to trap large solids;
 - (b) is maintained in good working condition; and
- (c) is emptied as often as necessary to prevent clogging and buildup of potentially infectious debris.
- (7) The manager shall ensure that if an equalizer pipe is used to prevent air-lock, the equalizer pipe is:
- (a) sized to meet the capacity requirements for the filter and pump;
 - (b) not less than two inches in diameter;
- (c) designed to control velocity through the pipe in accordance with Subsection R392-302-19(3)(b)(ii);
- (d) located at least one foot below a valve or float assembly that prevents suction from the equalizer pipe under normal operating conditions;
- (e) protected with a cover or grate that meets the requirements of ANSI/APSP-16 2011, as incorporated in 16 CFR 1450.3 dated July 5, 2011; and
- (f) sized to accommodate the design flow requirements described in Subsection (3).
- (8) The manager shall maintain proper operation of each valve and float assembly.

R392-302-23. Filtration.

- (1) The manager shall ensure that a filter system:
- (a) has a way to isolate each individual filter for backwashing or other service; and
- (b) is designed to allow the pool operator to easily observe the discharged filter backwash water to determine if the filter system is clean.

- (2) The manager shall ensure that a pool uses one of the following filters:
 - (a) a rapid rate sand filter;
 - (b) a high-rate sand filter;
 - (c) a precoat filter;
 - (d) a cartridge filter; or
- (e) another filter type deemed equivalent by the local health officer.
- (3) The manager shall ensure that each filter complies with the standard NSF/ANSI 50-2015, which is incorporated by reference.
- (4) The manager shall ensure that a gravity and pressure rapid rate sand filter system is:
- (a) designed for a filter media rate of three gallons, or less, per minute per square foot of bed area at time of maximum head loss;
- (b) equipped with a filter bed surface area that is sufficient to meet the design rate of flow required by Section R392-302-19, Table 1, for required turnover;
- (c) equipped with either an influent pressure gauge, vacuum gauge, or compound gauge, as determined by the filter type, to show the condition of each filter;
- (d) equipped with an air-relief valve at or near the high point of the filter or piping system; and
 - (e) designed with necessary valves and piping to allow:
 - (i) filtering of pool water;
 - (ii) individual backwashing of each filter:
- (A) to a system as required in Subsection R392-302-7(1)(d); and
- (B) at a minimum flow rate of 15 gallons per minute per square foot of filter area;
 - (iii) isolation of each individual filter;
 - (iv) complete drainage of the filtration system; and
 - (v) convenient maintenance, operation, and inspection.
- (5) The manager shall ensure that a pressure rapid rate sand filter system is provided with an access opening of at least a standard size 11 inch, by 15 inch manhole with a cover.
- (6) The manager shall ensure that each high-rate sand filter system is:
 - (a) designed with:
- (i) a minimum filter media rate of 13 gallons per minute per square foot of bed area; and
- (ii) a maximum filter media rate of 18 gallons per minute per square foot of bed area;
 - (b) equipped with:
- (i) a filter bed area sufficient to meet the design flow rate required by Section R392-302-19, Table 1, for required turnover:
- (ii) an influent pressure gauge to show the condition of the filter; and
- (iii) an air-relief valve at or near the high point of the filter; and
- (c) installed in compliance with the manufacturer's recommendations for each system component.
- (7) The local health officer may reduce the minimum filter media rate as required in Subsection (5)(a)(i) to a rate as low as ten gallons per minute per square foot of bed area where:
- (a) more than one high-rate sand filter is installed and operating;
- (b) the filter system includes a valve downstream of the filters that is designed to regulate the backwash flow rate; and
- (c) adequate backwash flow is maintained through each filter according to the manufacturer's requirements.

- (8) The manager shall ensure that each precoat filter system is:
 - (a) designed with:
- (i) a filtering area that is compatible with the design pump capacity as required by Subsection R392-302-19(1)(m);
 - (ii) a filter media rate that:
- (A) is a maximum of two gallons per minute per square foot of effective filtering surface without continuous precoat media feed; or
- (B) is a maximum of 2-1/2 gallons per minute per square foot with continuous precoat media feed;
 - (b) equipped with a feeder device that feeds precoat media:
 - (i) accurate to within 10%;
- (ii) continuously within a calibrated range that is adjustable from two to six milligrams per liter; and
 - (iii) at the design capacity of the circulation pump;
- (c) designed and constructed with materials that will withstand normal continuous use without significant deformation or deterioration that could adversely affect filter operations;
- (d) supplied with potable water delivered through an air gap as required in Section R392-302-6;
 - (e) equipped with:
- (i) an influent pressure gauge, vacuum gauge, or a compound gauge to show the condition of the filter; and
- (ii) an air-relief valve at or near the high point of the filter or piping system; and
 - (f) designed to facilitate:
 - (i) cleaning by one or more of the following methods:
 - (A) backwashing;
 - (B) air-bump-assist backwashing;
 - (C) automatic or manual water spray; or
 - (D) agitation; and
 - (ii) complete and rapid draining of the filter system.
- (9) If fabric is used, the manager shall ensure that filtration area is determined based on effective filtering surfaces.
 - (10) The manager shall ensure that:
- (a) diatomaceous earth filter backwash water is discharged as required in Subsection R392-302-7(1)(d) through a separation tank that has a sign that meets the requirements of a two-inch safety sign described in Subsection R392-302-32(1), warning the user not to start up the filter pump without first opening the air-relief valve; and
- (b) personal protective equipment suitable for preventing inhalation of diatomaceous earth or other filter aid material is provided for pool operator use:
- (11) In vacuum filter system installations where the circulating pump is rated at two horsepower or higher, the manager shall ensure that an adjustable high vacuum automatic shut-off device is provided to prevent damage to the pump.
 - (12) The local health officer may:
- (a) exempt a pool from the requirement in Subsection (3) for precoat filters if the precoat filter elements are easily accessible for cleaning by hand hosing after each filter backwash cycle;
- (b) approve site-built or custom-built vacuum precoat filters if the precoat filter elements are easily accessible for cleaning by hand hosing after each filter backwash cycle if it complies with the design requirements in Subsection (7); and
- (c) approve any design that provides equivalent cleaning of precoat filter elements.
- (13) The manager shall ensure that each hose bib is equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the

- American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.
- (14) The manager shall ensure that a cartridge filter system is:
 - (a) designed and constructed with:
- (i) sufficient filter area to meet the design pump capacity as required by Section R392-302-19, Table 1;
- (ii) a maximum filter media rate of 0.375 gallons per minute per square foot of effective filter area; and
- (iii) materials that will withstand normal continuous use without significant deformation or deterioration that could adversely affect filter operations such as polyester fiber;
 - (b) equipped with
- (i) an influent pressure gauge, vacuum gauge, or compound gauge to show the condition of the filter; and
- (ii) an air-relief valve at or near the high point of the filter system; and
- (c) cleaned in accordance with the manufacturer's recommendations.

R392-302-24. Disinfectant and Chemical Feeders.

- (1) The manager shall ensure that:
- (a) a pool is equipped with disinfectant dosing or disinfectant generating equipment that:
- (i) conforms to the NSF/ANSI 50-2015, which is incorporated by reference; or
- (ii) is deemed equivalent by the local health officer;
- (b) chlorine dosing or disinfectant generating equipment is designed with a capacity to provide the following chlorine amounts:
- (i) outdoor pools require four pounds of free available chlorine per day per 10,000 gallons of pool water; or
- (ii) indoor pools require 2-1/2 pounds of free available chlorine per day per 10,000 gallons of pool water.
- (2) Where ORP controllers are used, the manager shall ensure that:
 - (a) pool side water testing is performed at least weekly;
- (b) an ORP calibration check is completed as needed when pool side water testing results are inconsistent with the ORP controller results; and
- (c) inspection and cleaning of sensor probes and chemical injectors is performed in accordance with the manufacturer's recommendations and as needed to reconcile pool side water testing results with the ORP controller results.
 - (3) The manager shall ensure that:
- (a) compressed chlorine gas is not used as a pool water disinfectant unless approved by the local health officer;
- (b) any bactericidal agent, other than chlorine and bromine, and their feeding apparatus is approved by the local health officer and each bactericidal agent is registered by the U.S. Environmental Protection Agency for use in swimming pools; and
- (c) positive displacement equipment and piping used to apply a chemical to the water is:
- (i) designed and constructed of materials that can be cleaned and maintained free from clogging; and
 - (ii) resistant to the damaging effects of the chemical in use.
 - (4) The manager shall ensure that:
- (a) each pool complies with Subsections (4)(b) and (4)(c) by January 31, 2023;
- (b) each chemical feed system includes the following two layers of interlock protection for a low or no flow condition:
- (i) a flow meter or flow switch at the chemical controller; and

- (ii) each chemical feeder wired electrically to the circulation system that may include the use of a differential pressure switch, a pump power monitor, or other suitable means; and
- (c) the functionality of the interlocking protection mechanism is verified, and documentation is prepared for the local health officer to review upon request.
- (5) The local health officer may exempt an erosion type chemical feeder from the requirements of Subsection (4)(b)(ii).

R392-302-25. Disinfection and Quality of Water.

- (1) The manager shall ensure that:
- (a) each pool is continuously disinfected by a product that:
- (i) is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for pool water;
- (ii) imparts a disinfectant residual that may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use;
- (iii) is compatible for use with other chemicals normally used in pool water treatment;
- (iv) does not create an imminent health hazard for bathers if applied according to manufacturer's specifications; and
- (v) does not create an imminent health hazard if handled, stored, and used according to manufacturer's directions;
- (b) the concentration of the active disinfectant within the pool water is consistent with:
- (i) the manufacturer's directions for the disinfectant in use; and
 - (ii) the minimum concentration listed in Table 3;
- (c) the concentration of free available chlorine is not above ten milligrams per liter while the facility is open to bathers;
- (d) products used to treat or condition pool water are used according to the manufacturer's directions;
 - (e) expired test kit reagents are not used; and
- (f) if cyanuric acid or stabilized chlorine is used to stabilize the free chlorine residual from the effects of UV light:
- (i) a test kit for cyanuric acid accurate to within 10.0 milligrams per liter is provided; and
 - (ii) the concentration of cyanuric acid in the water is:
 - (A) at least ten milligrams per liter; and
 - (B) does not exceed 100 milligrams per liter;
- (g) if the concentration of combined chlorine residual is greater than 0.5 milligrams per liter the combined chlorine level is reduced by:
- (i) breakpoint chlorination, as described in Subsection (15); or
- (ii) a full or partial exchange of the pool water with potable water; and
 - (h) the total alkalinity measurement is within the range of:
- (i) 100 to 125 milligrams per liter for a pool lined with plaster;
- (ii) 80 to 150 milligrams per liter for a spa pool lined with plaster; and
- (iii) 125 to 150 milligrams per liter for a pool lined with other approved construction materials.
- (2) The manager shall provide an easy to operate, portable disinfectant test kit compatible with the disinfectant in use and accurate to within 0.5 milligrams per liter at each facility.
- (3) The manager shall calculate the saturation index in accordance with Table 2 and ensure that the saturation index value of the pool water is within the range of -0.3 and +0.3.

- (4) The manager shall ensure that:
- (a) the pool water has sufficient clarity to easily see the drain grate or cover in the deepest part of the pool, or that a black disk six inches in diameter on a white field is easily visible if placed in the deepest part of the pool;
- (b) the minimum water temperature for a pool is 78 degrees Fahrenheit; and
- (c) the maximum water temperature for a pool is 104 degrees Fahrenheit.
- (5) The local health officer may grant an exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool but may not exempt the water temperature requirement listed in Subsection (4)(c).
- (6) The manager or a representative of the local health department, as determined by the local health officer, shall:
- (a) collect a pool water sample from each pool at least once per month or at a more frequent interval as determined by the local health officer;
- (b) submit the collected pool water sample to a laboratory approved under Rule R444-14, Certification of Environmental Laboratories, to perform total coliform and heterotrophic plate count testing; and
- (c) ensure that the collected sample is analyzed in a laboratory for total coliform and heterotrophic plate count using methods allowed under Section R444-14-4.
- (7) The individual who submits the collected sample to the analyzing laboratory shall ensure that the laboratory provides sample results within five working days to the local health department and the manager.
- (8) The local health officer and manager shall review the sample results to determine if the pool water has failed the bacteriological quality standard as determined by the following sample failure criteria:
- (a) the sample contains more than 200 colony forming units (CFUs) per milliliter, as determined by the heterotrophic plate count; or
- (b) the sample indicates the presence of coliform bacteria or contains more than one CFU of coliform bacteria per 100 milliliters.
- (9) If the local health officer determines that the sample fails as described in Subsection (8), an additional sample shall be collected and submitted as described in Subsection (6) within one laboratory receiving day after the sample report was received.
- (10) A local health officer may exempt a pool from the requirement of monthly sampling if:
- (a) the pool is closed, whether permanently or seasonally; or
- (b) the pool is temporarily closed for an interval exceeding half of a calendar month.
- (11) If the pool water samples required in Subsection (6) fail bacteriological quality standards as described in Subsection (8), the manager shall develop a corrective action plan and submit the plan to the local health department for approval.
- (12) If a more than one of five pool water samples required in Subsection (6) fail bacteriological quality standards as described in Subsection (8), the local health officer may require any of the following:
 - (a) more frequent water bacteriological sample collection;
 - (b) a health inspection;
 - (c) additional training for the pool operator; or

- (d) more frequent water quality monitoring including:
- (i) disinfectant residuals, pH, and pool water temperature are checked and recorded four times a day; and
- (ii) flow rate gauges and pool circulation rates are checked and recorded four times a day.
- (13) If ORP technology is used in accordance with Subsection R392-302-24(2), the local health officer may reduce the water quality monitoring frequency described in Subsection (12)(d)(i).
- (14) The local health officer may limit peak bather load as described in Section R392-302-26, to ensure proper pool water quality.
- (15) The manager shall calculate the dose of additional free available chlorine to add to the pool to achieve breakpoint chlorination as follows:
 - (a) find the amount of combined chlorine in the pool by:
- (i) testing the pool water for free available chlorine and total chlorine and subtracting the free available chlorine from the total chlorine; or
 - (ii) testing the pool water for combined chlorine;
- (b) multiplying the combined chlorine level by ten to find the amount of free available chlorine to add to the water to achieve breakpoint chlorination.

TABLE 2 CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

The formula for calculating the saturation index is: SI = pH + TF + CF + AF -- TDSF

SI means Saturation Index

TF means temperature factor

CF means calcium factor

mg/l means milligrams per liter

deg F means degrees Fahrenheit

AF means alkalinity factor

TDSF means total dissolved solids factor

<u>Temperature</u>	<u>TF</u>	<u>Calcium</u>	<u>CF</u>	<u>Total</u>	<u>AF</u>
in deg F		<u>Hardness</u>		<u>Alkalinity</u>	
		in mg/l		in mg/l	
<u>32</u>	0.0	<u>25</u>	1.0	<u>25</u>	1.4
<u>37</u>	0.1	<u>50</u>	1.3	<u>50</u>	1.7
<u>46</u>	0.2	<u>75</u>	1.5	<u>75</u>	1.9
<u>52</u>	0.3	100	1.6	100	2.0
Ī	0.4	<u>125</u>	<u>1.7</u>	<u>125</u>	<u>2.1</u>
<u>66</u>	0.5	<u>150</u>	1.8	<u>150</u>	2.2
<u>76</u>	0.6	<u>200</u>	<u>1.9</u>	<u>200</u>	2.3
<u>84</u>	0.7	<u>250</u>	2.0	<u>250</u>	<u>2.4</u>
<u>94</u>	0.8	<u>300</u>	2.1	<u>300</u>	<u>2.5</u>
<u>105</u>	0.9	<u>400</u>	<u>2.2</u>	<u>400</u>	<u>2.6</u>
<u>128</u>	1.0	<u>800</u>	<u>2.5</u>	<u>800</u>	<u>2.9</u>
Total Dissolved Solids in mg/l		TDSF			
0 to 999		<u>12.1</u>			
1000 to 1999			12.2		
2000 to 2999		12.3			
3000 to 3999		12.4			
4000 to 4999		12.5			
5000 to 5999		12.55			
6000 to 6999		12.6			
7000 to 7999			12.65		

Each additional 1000	Add 0.05	
If the SATURATION INDEX is 0	, the water is chemically in	
balance.		
If the INDEX is a minus value	, corrosive tendencies are	
indicated.		
If the INDEX is a positive value, s	cale forming tendencies are	
indicated.	-	
EXAMPLE: Assume the following	g factors:	
pH 7.5; temperature 80 degrees	F, 19 degrees C; calcium	
hardness 235; total alkalinity 100	; and total dissolved solids	
<u>999.</u>		
pH = 7.5		
TF = 0.7		
$\overline{\text{CF}} = 1.9$		
$\overline{AF} = 2.0$		
$\overline{\text{TDSF}} = 12.1$		
$\overline{\text{TOTAL}}$: 7.5 + 0.7 + 1.9 + 2.0 - 12	2.1 = 0.0	

This water is chemically balanced.

	TABLE 3			
DISINFECTA			EMICAI	
PARAMETERS				
THUMBIERS	CONDITI		LIGITING	
Stabilized Chlorine	POOLS	SPA	SPECIAL	
measured in	TOOLS	POOLS	PURPOSE	
milligrams per liter		TOOLS	POOLS	
see note 2			TOOLS	
pH 7.2 to 7.6	2.0, see	3.0, see	2.0, see note 1	
<u>p11 7.2 to 7.0</u>	note 1	note 1	2.0, 500 11010 1	
pH 7.7 to 8.0	3.0, see	5.0, see	3.0, see note 1	
<u> </u>	note 1	note 1	510,500 11010 1	
Non-Stabilized				
Chlorine				
measured in				
milligrams per liter				
see note 2				
pH 7.2 to 7.6	1.0, see	2.0, see	2.0, see note 1	
	note 1	note 1		
pH 7.7 to 8.0	2.0, see	3.0, see	3.0, see note 1	
	note 1	note 1		
Bromine	4.0, see	4.0, see	4.0, see note 1	
measured in	note 1	note 1		
milligrams per liter				
<u>Iodine</u>	1.0, see	1.0, see	1.0, see note 1	
measured in	note 1	note 1		
milligrams per liter				
<u>pH</u>	<u>7.2 to</u>	<u>7.2 to</u>	7.2 to 7.8	
	<u>7.8</u>	<u>7.8</u>		
Cyanuric acid	<u>10 to</u>	<u>10 to</u>	<u>10 to 100</u>	
measured in	<u>100</u>	<u>100</u>		
milligrams per liter				

Minimum water	<u>78</u>	<u>78</u>	<u>78</u>	
temperature				
measured in				
degrees Fahrenheit				
see Subsections				
R392-302-25(4)(b)				
and R392-302-25(5)				
Maximum water	<u>104</u>	<u>104</u>	<u>104</u>	
temperature				
measured in				
degrees Fahrenheit				
see Subsections				
R392-302-25(4)(c)				
and R392-302-25(5)				
Calcium Hardness	200, see	200, see	200, see note 1	
measured in	note 1	note 1		
milligrams per liter				
as calcium				
<u>carbonate</u>				
Total Alkalinity				
Measured in				
milligrams per liter				
<u>Plaster pools</u>	<u>100 to</u>	<u>80 to</u>	100 to 125	
	<u>125</u>	<u>150</u>		
Painted or	<u>125 to</u>	<u>80 to</u>	125 to 150	
Fiberglass pools	<u>150</u>	<u>150</u>		
Saturation Index	<u>-0.3</u> to	<u>-0.3</u> to	<u>-0.3 to +0.3</u>	
see Table 2	+0.3	+0.3		
Chloramines or	0.5, see	<u>0.5, see</u>	0.5, see note 3	
combined chlorine	note 3	note 3		
residual measured				
in milligrams per				
<u>liter</u>				
	Note 1: Minimum value			
	Note 2: Maximum value of free chlorine is ten milligrams per			
liter as described in Subsection R392-302-25(1)(c)				
Note 3: Maximum value of chloramines or combined chlorine				
residual as described in Subsection R392-302-25(1)(g)				

R392-302-26. Bather Load.

- (1) The manager shall ensure that peak bather load, as described in Subsection (3), is not exceeded.
- as described in Subsection R392-302-32(1) with a heading containing a safety signal such as warning, caution, or attention is posted:
- (a) indicating the allowed peak bather load for each pool; and
 - (b) within the pool enclosure.
 - (3) The peak bather load shall be determined as follows:
- (a) ten square feet of pool water surface area per bather is provided in a spa pool;
- (b) 20 square feet of pool water surface area per bather is provided for each bather in:

- (i) a swimming pool;
 - (ii) a lazy river;
- (iii) an instructional pool;
- (iv) a therapy pool;
 - (v) a wading pool;
 - (vi) an interactive water feature collection zone; or
 - (vii) a wave pool;
- (c) 50 square feet of pool water surface area per bather is provided;
 - (i) a splash pool; or
 - (ii) a slide runout; and
- <u>(d)</u> a manufacturer established capacity is followed in a surf pool.
- (4) The local health officer may approve a different peak bather load during the pool plan approval process as described in Section R392-302-5.

R392-302-27. Dressing Rooms.

- The manager shall ensure that:
- (1) each area and fixture within a dressing room is maintained in an operable, clean, and sanitary condition;
- (2) where dressing rooms are provided, the entrances and exits are designed to break the line of sight into the dressing areas from other locations;
- (3) each dressing room is constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture;
- (4) dressing room floors slope to a drain and are constructed to prevent accumulation of water;
 - (5) carpeting is not installed on dressing room floors;
 - (6) each junction between walls and floors are coved;
- (7) the walls or partitions between dressing cubicles begin at a height not more than 12 inches from and extend not less than 60 inches above the finished floor surface or are placed on continuous raised masonry or concrete bases at least four inches high;
 - (8) each locker is:
 - (a) set on:
 - (i) a solid masonry base no less than four inches high; or
- (ii) legs elevating the bottom locker at least four inches above the floor; and
 - (b) equipped with louvers for ventilation; and
- (9) at least one covered waste receptacle is provided in each dressing room.

R392-302-28. Restroom and Shower Facilities.

- (1) The manager shall ensure that:
- (a) a bather has access to a restroom with a shower facility in accordance with Table 4 and Table 5, and the restroom and shower facility is:
 - (i) located with convenient access for bathers;
- (ii) located no further than 150 feet from the pool deck; and
- (iii) designed to break the line of sight into the restroom and shower facilities from other locations;
- (b) the minimum number of toilets provided is based upon the designed peak bather load with a minimum of two unisex facilities, or one for each gender, except where the facility is used exclusively by one gender;
- (c) the minimum number of toilet and shower fixtures are installed in accordance with Table 4 and Table 5, except as described in Subsection (2); and

- (d) handwashing sinks are installed at the ratio of one handwashing sink for each toilet up to four toilets, then one handwashing sink for each two additional toilets.
- (2) By considering the number of available sanitary fixtures within 150 feet of the pool deck perimeter, the local health officer may reduce the minimum number of fixtures to no fewer than two toilets and one shower fixture for a unisex restroom, or one toilet and shower fixture for each gendered restroom, except where the peak bather load is 25 or fewer bathers, in which case the minimum number may be one toilet and one shower fixture for a unisex restroom.

TABLE 4		
SANITARY FIXTURE MINIMUM REQUIREMENTS		
	<u>TOILETS</u>	
Male	<u>Female</u>	
1:1 to 25	1:1 to 25	
2:26 to 75	2:26 to 75	
3:76 to 125	3:76 to 125	
4:126 to 200	4:126 to 200	
5:201 to 300	5:201 to 300	
6:301 to 400	<u>6:301 to 400</u>	
Over 400, add one fixture for each additional 200 males or 150		
females		

Where urinals are installed, the manager may reduce the number of toilets by one toilet for each installed urinal, except that the number of toilets may not be reduced to fewer than 1/2 of the minimum number of toilets required.

TABLE 5		
SANITARY FIXTURE MINIMUM REQUIREMENTS		
SHOWER FIXTURES		
<u>Male</u>	Female	
1:4000 square feet of pool	1:4000 square feet of pool	
surface area or portion	surface area or portion thereof	
thereof	_	

- (3) The manager shall ensure that each restroom is supplied with:
 - (a) soap and toilet tissue in suitable dispensers;
- (b) individual disposable towels or other hand drying fixture approved by the local health officer, such as an air dryer; and
- (c) a solid, durable, covered, and easily cleanable waste receptacle.
 - (4) The manager shall ensure that each shower fixture:
 - (a) is enclosed for privacy;
- (b) has a thermostatically controlled mixing valve capable of providing two gallons per minute of 90 degree Fahrenheit water to each shower fixture; and
 - (c) has a liquid soap in a suitable dispenser.
- (5) The manager shall ensure that each plumbing fixture is:
- (a) designed to be easily cleanable, and withstand frequent cleaning and disinfecting:
- (b) maintained in an operable, clean, and sanitary condition; and
 - (6) The manager shall ensure that:
- (a) each restroom is constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture;

- (b) the floor of a restroom and shower facility slopes to a drain and is constructed to prevent accumulation of water;
- (c) carpeting is not installed on restroom or shower floors;
 - (d) junctions between walls and floors are coved.

R392-302-29. Supervision of Bathers and Lifeguard Requirements.

- (1) The manager shall ensure that access to a pool is prohibited for bathers when the pool is not open.
- (2) The manager shall ensure that lifeguard service is provided at a pool if direct fees are charged, or public funds support the operation of the pool.
- (3) The manager shall ensure that lifeguard service is provided at a pool if direct fees are not charged or public funds do not support the operation of the pool, except when signs are clearly posted indicating that lifeguard service is not provided.
- (4) For a pool as described in Subsection (3), the manager shall ensure that lifeguard service is provided during the period of use that would require lifeguard as described in Subsection (2).
 - (5) Each lifeguard training program provider shall:
- (a) before providing training or certification to a lifeguard, apply to the department for approval by submitting;
 - (i) a completed application;
- (ii) a written summary describing how the training program meets each training objective listed in the application;
- (iii) a copy of the course curriculum, including slides, handouts, talking points, script, videos, brochures, or any additional information used during the course, or full access to the online course; and
- (iv) a copy of the exam questions, if applicable; and
- (b) every five years from the date of initial approval by the department, submit an application to the department for training program revalidation.
 - (6) A lifeguard shall:
 - (a) obtain training and certification in:
- (i) lifeguarding by the American Red Cross or an equivalent program approved by the department as described in Subsection (5);
- (ii) CPR, automated external defibrillator use, and other resuscitation skills consistent with the American Heart Association Guidelines; and
- (iii) first aid consistent with the American Heart Association Guidelines;
- (b) be on duty any time when the pool is open for use by bathers, except as provided in Subsection (3).
- (7) A lifeguard on duty shall only perform responsibilities related to the supervision, health, and safety of bathers.
- (8) Where lifeguard service is required, the manager shall ensure that the number of lifeguards is sufficient to allow for continuous supervision of bathers, and surveillance over each pool floor area in use.
 - (9) The manager shall ensure that lifeguards:
- (a) operate in a manner to provide an alternation of tasks such that no lifeguard conducts bather surveillance activities for more than 60 continuous minutes; and
- (b) maintain coverage of the zone of bather surveillance during a lifeguard rotation.
- (10) An alternation of tasks, as described in Subsection (9)(a), may include any one of the following:

- (a) a change of bather surveillance zone where the lifeguard must walk or be transported to another bather surveillance zone; or
- (b) a period of at least 10 minutes of non-bather surveillance activity such as:
 - (i) taking a break;
 - (ii) conducting maintenance; or
 - (iii) conducting slide or ride dispatch.
 - (11) The manager or lifeguard staff shall ensure that:
- (a) any child under three years old, any child not toilet trained, or anyone who lacks control of defecation wears a water-resistant swim diaper and waterproof swimwear that has waist and leg openings fitted such that they are in contact with the waist and leg around the entire circumference; and
 - (b) diapers are changed only in restrooms.
- (12) Each bather shall comply with the following personal hygiene and behavior rules:
- (a) a bather using the facility shall take a cleansing shower before entering the pool enclosure;
- (b) any bather diagnosed with a communicable disease transmissible by water shall not use the pool;
- (c) a bather with diarrhea within the last two weeks caused by an unknown source or from any communicable or fecal-borne disease shall not use the pool;
- (d) any person who changes a diaper washes hands thoroughly with soap before returning to the pool.
- (e) running, boisterous play, or rough play, except supervised water sports, are prohibited;
- (f) where no lifeguard service is provided, children aged 14 years and under shall not use a pool without responsible adult supervision; and
- (g) children aged five years and under shall not use a spa or hot tub.
- (13) The manager shall ensure a sign that meets the requirements of a rule sign in Subsection R392-302-32(1) is conspicuously posted in the pool enclosure, in each dressing room, and each lifeguard room that includes rules of personal hygiene and behavior, as described in Subsection (12).
- (14) The local health officer may approve alternative but equivalent signage language than those required in Subsection (13).

R392-302-30. Lifeguard and Safety Related Equipment.

- (1) The manager shall ensure that each pool facility has the following lifesaving equipment provided for each 2,000 square feet of pool water surface area or fraction thereof:
- (a) a Coast Guard approved ring buoy with an attached rope equal in length to the maximum width of the pool plus ten feet; and
- (b) a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet.
- (2) The manager shall ensure that the lifesaving equipment required in Subsection (1) is
 - (a) mounted;
 - (b) readily accessible;
 - (c) conspicuously located;
 - (d) in the pool area;
 - (e) in good repair; and
 - (f) maintained in an operable condition.
- (3) Where lifeguard service is provided, the manager may substitute a rescue tube for the lifesaving equipment required in Subsection (1).

- (4) The manager shall ensure that each pool facility is equipped with a first aid kit that:
 - (a) is accessible to bathers;
 - (b) is stored in a manner that prevents contamination;
 - (c) is restocked as needed; and
 - (d) includes a minimum of the following unexpired items:
 - (i) adhesive bandages of various sizes and applications;
 - (ii) compression bandages;
 - (iii) sterile gauze pads;
 - (iv) medical tape;
 - (v) scissors;
 - (vi) instant cold packs;
 - (vii) antiseptic wipes;
 - (viii) sting relief wipes;
 - (ix) eyewash solution; (x) single-use gloves; and
 - (xi) tweezers.
- (5) The manager shall ensure that each pool facility has a sign that meets the requirements of a two-inch safety sign as described in Subsection R392-302-32(1), that includes a heading containing a safety signal such as warning, caution, or attention, posted in the pool area that states the emergency telephone number including 911 or other local emergency numbers.
- (6) Where lifeguard service is provided as required in Subsection R392-302-29(2), the manager shall provide:
- (a) a minimum number of elevated lifeguard stations in accordance with Table 6 that:
- (i) are located to provide a clear, unobstructed view of the pool floor by the lifeguards on duty; and
 - (ii) provide safe access and egress for the lifeguard;
- (b) at least one backboard designed with straps and head stabilization capability; and
- (c) a readily accessible area designated for first aid equipment and emergency first aid care.
- (7) In areas of a pool with water depth greater than six feet or a maximum width greater than 40 feet and a depth greater than four feet, the manager shall provide for a minimum number of elevated lifeguard stations in accordance with Table 6.
- (8) Where lifeguard service is not provided, the manager shall ensure that:
- (a) a warning sign that meets the requirements of a fourinch safety sign, as described in Subsection R392-302-32(1), is posted that states: "Warning - No Lifeguard on Duty"; and
- (b) in addition to the sign required in Subsection (8)(a), a sign that meets the requirements of two-inch safety sign, as described in Subsection R392-302-32(1), is posted that states:
 - (i) "Bathers should not swim alone"; and
- (ii) "Children aged 14 years and under shall not use pool without responsible adult supervision".

TABLE 6		
<u>Lifesaving Equipment</u>		
SAFETY	POOLS WITH	POOLS WITH
<u>EQUIPMENT</u>	LIFEGUARD	NO LIFEGUARD
Elevated lifeguard	One per 2,000	None
station	square feet of	
	pool area or	
	fraction thereof	
Backboard	One per facility	<u>None</u>
Room for	One per facility	None
Emergency Care		

Ring Buoy with and attached rope equal in length to the maximum width of the pool plus ten feet	<u>None</u>	One per 2,000 square feet or pool area or fraction thereof
Rescue Tube used as a substitute for ring buoys, shepherd crook, and life pole when lifeguards are present	One per 2,000 square feet of pool area or fraction thereof	<u>None</u>
Life pole or shepherd's crook	None	One per 2,000 square feet of pool area of fraction thereof
First Aid Kit	One per facility	One per facility

R392-302-31. Visitor and Spectator Areas.

- (1) The manager shall ensure that:
- (a) visitors, spectators, or animals are not allowed within ten horizontal feet of the pool edge;
 - (b) food or drink is not consumed:
 - (i) within ten horizontal feet of the pool edge; or
 - (ii) from a glass or ceramic container;
- (c) solid waste containers are provided and maintained as required in Section R392-302-8; and
- (d) each visitor and spectator area is maintained free of litter, and in a clean, sanitary condition.
- (2) The local health officer may allow a service animal on a pool deck, but not within a pool or interactive water feature.

R392-302-32. Signs.

- (1) The manager shall ensure that:
- (a) signs required in this rule are placed to alert and inform bathers in enough time that the bathers may take appropriate actions;
- (b) signs are written in a lettering style, stroke width, spacing, and contrast with the background such that the sign is clearly visible; and
- (c) sign lettering shall meet one or more of the following minimum size standards:
- (i) each heading of a four-inch safety sign as required in Subsections R392-302-12(2)(a), R392-302-14(b), R392-302-16(3), R392-302-22(3)(d), R392-302-23(6)(a), R392-302-32(11)(b), and R392-302-37(24):
 - (A) is written in capital letters;
 - (B) is at least four inches in height; and
 - (C) includes a signal word as the sign heading;
- (ii) each heading of a two-inch safety sign as required in Subsections R392-302-20(7)(c), R392-302-21(8), R392-302-23(6)(b), and R392-302-23(8):
 - (A) is written in capital letters;
 - (B) is at least two inches in height;
 - (C) includes a signal word as the sign heading;
- (iii) except for the heading, the sign text is written in letters at least 1/2 inch in height; and
- (iv) if the sign can only be viewed from a distance more than ten feet, the letter height shall be larger in the same proportion as the required viewing distance at ten feet.
- (2) The local health officer may approve alternative letter sizes to those required in Subsection (1)(c).

R392-302-33. Cleaning Pools.

- (1) The manager shall ensure that:
- (a) the bottom of each pool is cleaned as often as needed to keep the pool free of visible dirt;
- (b) the surface of each pool is cleaned as often as needed to keep the pool free of visible scum or floating matter; and
- (c) each pool facility is maintained clean, sanitary, and in good repair.
- (4) The manager shall respond to any known fecal matter release into a pool in accordance with the Centers for Disease Control and Prevention, Fecal Accident Response Recommendations for Aquatic Staff, released June 22, 2018, which is incorporated by reference.
- (5) The manager shall include a record as required in Subsection R392-302-34(2) with information about any fecal matter release into a pool including:
 - (a) date;
 - (b) time;
 - (c) location that the fecal matter was discovered;
 - (d) whether the fecal matter was diarrheal or formed; and
 - (e) the response taken by pool staff.
- (6) The local health officer may approve alternative fecal accident response recommendations from those required in Subsection (4) if the manager can achieve equivalent protection with other operational or engineering controls.

R392-302-34. Pool Operation and Record Keeping.

- (1) The manager shall ensure that:
- (a) pools are operated by a pool operator who is certified or recertified by a program of training and testing approved by the department; and
- (b) before opening a pool, a written plan regarding the operation, maintenance, and sanitation of the pool is developed that:
- (i) includes the measurement frequency of the parameters specified in Subsection (2)(c):
- (ii) specifies who is responsible to take and record the measurements; and
 - (iii) is available for inspection by the local health officer.
 - (2) The pool operator shall ensure that:
- (a) written or digital records are maintained to include any information pertinent to the operation, maintenance, and sanitation of each pool;
- (b) records are available for review and are easily accessible to the local health officer upon request;
 - (c) records include:
 - (i) disinfectant residual in the pool water:
 - (ii) pH of the pool water;
 - (iii) temperature of the pool water;
 - (iv) flow rate;
 - (v) quantity of pool treatment chemicals used;
- (vi) filter backwash or cartridge filter replacement schedule;
- (vii) cleaning and disinfecting schedule for pool decks, showers, restrooms, and dressing rooms;
- (viii) occurrences of fecal release into the pool water or onto the pool deck;
 - (ix) bather load; and
- (x) other information required by the local health officer; and
- (d) records are maintained and stored at the facility for at least two operating seasons.

(3) The local health officer may determine the appropriate number of pools any one certified pool operator may supervise using criteria based on pool compliance history, local considerations of time and distance, and the individual pool operator's abilities.

R392-302-35. Cryptosporidiosis Outbreak Watches and Warnings.

- (1) The local health officer may issue a cryptosporidiosis outbreak watch or warning in coordination with the department:
- (a) as a method of intervention for a likely or indicated outbreak of cryptosporidiosis;
- (b) if there is a heightened likelihood of a cryptosporidiosis outbreak; or
- (c) if there have been reports of cryptosporidiosis above the background level reported for the disease.
- (2) For any issued cryptosporidiosis outbreak watch or warning, the local health officer, in coordination with the department, shall include:
- (a) the geographic area of the cryptosporidiosis outbreak watch or warning;
- (b) each pool type affected by the cryptosporidiosis outbreak watch or warning; and
 - (c) and any persons restricted from public pool use.
- (3) If a cryptosporidiosis outbreak watch or warning has been issued, the manager shall post a notice sign meeting the two-inch safety sign as described in Subsection R392-302-32(1) that includes a "warning" heading.
- (4) The local health department or the department shall provide a digital or printed copy of a sign that meets the requirements of Subsection (3) to the manager upon request.
 - (5) The manager shall ensure that the notice sign:
 - (a) is at least 17 inches wide by 11 inches in length;
- (b) has the words "Crypto Disease Prevention" written in capital letters and centered immediately below the heading as required in Subsection R392-302-32(1);
- (c) includes the following bulleted statements written in capital black letters at least 0.39 inches high:
- (i) "Any bather with diarrhea in the past two weeks may not use the pool";
- (ii) "Each bather shall shower with soap before pool entry and after using the toilet":
- (iii) "Any bather wearing a diaper or any bather younger than three years old shall wear a water-resistant swim diaper and waterproof swimwear";
- (iv) "Diapers shall only be changed in restrooms or changing stations"; and
- (v) "Bathers shall avoid taking pool water into their mouth".
- (6) If a cryptosporidium outbreak warning has been issued, each manager of a pool subject to the warning shall maintain the following pool water chemistry balance measures:
- (a) disinfectant concentration is within the range of 2.0 ppm to 10.0 ppm for chlorine, or 4.0 ppm to 10.0 ppm for bromine;
 - (b) pH is between 7.2 and 7.5; and
- (c) the cyanuric acid level meets the requirement of Subsection R392-302-25(1)(f), except the maximum level shall be reduced to 30 ppm.
- (7) If a cryptosporidium outbreak warning has been issued, in addition to the requirements listed in Subsection (6), the manager shall implement any of the following cryptosporidium countermeasures:

- (a) Hyperchlorination using a non-stabilized chlorine product such as sodium hypochlorite or calcium hypochlorite at least twice weekly to achieve a free chlorine residual concentration multiplied by a time value of 15,300 mg/L minutes as found in Table 7;
- (b) a full flow ultraviolet treatment system that meets the requirements of standard NSF/ANSI 50-2015, which is incorporated by reference, for ultraviolet light process equipment;
- (c) an ozone treatment system installed and operated according to the manufacturer's recommendations that meets the requirements of the NSF/ANSI 50-2015 standard for ozone process equipment, which is incorporated by reference, and a flow-through rate at least four times the volume of the pool every three and a half days;
- (d) a cryptosporidium oocyst-targeted filter system installed and operated according to the manufacturer's recommendations in addition to any installed filtration system as required in Section R392-302-23; or
- (e) another engineered or operational cryptosporidium countermeasure approved by the local health officer.
- (8) The manager shall ensure that the cryptosporidium countermeasure selected from Subsections (7)(b) through (7)(e) has manufacturer's documentation available for inspection at the request of the local health officer and is:
- (a) installed and operated according to the manufacturer's recommendations;
- (b) able to achieve a 99.9% inactivation of cryptosporidium oocysts at pool design flow rate and normal operating conditions; and
- (c) operated to assure safety for swimmers and pool operators.
- (9)(a) If a pool continues to pose a cryptosporidium outbreak threat to the public after cryptosporidium countermeasures as described in Subsections (6) through (8) have been implemented, the local health officer shall order the pool to close.
- (b) The manager may not reopen the pool until the local health officer has rescinded the pool closure order.

TABLE 7		
Chlorine Concentration and Contact time to achieve CT for		
<u>Cryptosporidium</u>		
Chlorine	Contact Time	
Concentration		
1.0 mg/l	15,300 minutes or 255 hours	
<u>10 mg/l</u>	1,530 minutes or 25.5 hours	
20 mg/l	765 minutes or 12.75 hours	

R392-302-36. Advisory Committee.

- (1) An advisory committee to the department regarding regulation of public pools is authorized.
- (2) The advisory committee members shall be appointed by the department and include representation from local health departments, pool engineering, construction, or maintenance companies, and pool managers or pool operators.
- (3) Consistent with Rule R380-1, the department may seek the advice of the advisory committee regarding interpretation of this rule, the granting of variances, and related matters.

R392-302-37. Special Purpose Pools: Spa Pools.

- (1) The manager shall ensure that each spa pool:
- (a) meets any applicable requirement of this rule in addition to this section;

- (b) meets the bather load requirement of Subsection R392-302-26(3)(a):
 - (c) does not exceed a maximum water depth of four feet;
- (d) is equipped with at least one handrail, as described in Subsection R392-302-13(3) for each 50 linear feet of perimeter, or portion thereof, evenly spaced around the perimeter to designate the point of entry and exit and provide an unobstructed entry and exit;
- (e) that is constructed adjacent to another pool and shares a common pool sidewall separating the two pools is constructed such that:
- (i) the top surface of the common pool sidewall does not exceed 18 inches in width;
- (ii) the top surface of the common pool sidewall has a marking or icon sign indicating "No walking" provided in block letters at least four inches in height, as required by Subsection R392-302-32(1) in a contrasting color on the horizontal surface of the common sidewall; and
- (iii) the deck space around the rest of the spa is a minimum of five feet;
- (f) has a minimum of one turnover each 30 minutes as described in Table 1;
- (g) has a minimum number of surface skimmers based on one skimmer for each 100 square feet of surface area;
- (h) is equipped with an ORP controller that monitors chemical demands, including pH and disinfectant demands, and regulates the amount of chemical fed into the pool circulation system; and
- (i) meets the total alkalinity requirements of Subsection R392-302-25(1)(h).
- (2) The manager may allow a pool deck to be included as part of the spa deck if the pools are separated by a minimum of five feet.
- (3) The manager shall ensure that each spa pool with an air induction system meets the requirements of Subsection R392-302-19(8) including jet or water agitation systems.
- (4) The manager shall ensure that each spa pool filtration system inlet is a wall-type inlet, and the number of inlets is based on a minimum of one for each 20 feet, or fraction thereof, of pool perimeter.
- (5) The manager shall ensure that each spa pool suction outlet meets the requirements of Section R392-302-21.
- (6) The manager shall ensure that each spa pool that has multiple suction outlets that the outlets are spaced at least three feet apart from each other as measured from the centers of the drain covers or grates, or a third drain is provided and the separation distance between individual outlets is at the maximum possible spacing.
- (7) The manager shall ensure that the maximum water temperature for a spa pool is 104 degrees Fahrenheit.
 - (8) The manager shall ensure that:
- (a) water jets and air induction ports on a spa pool are controlled by an automatic timer that limits the duration of their use to 15 minutes per each cycle of operation;
- (b) the timer switch is mounted in a location that requires the bather to exit the spa pool before the timer can be reset for another 15-minute cycle or part thereof;
- (c) a clearly labeled emergency shutoff or a control switch that stops the motor providing power to the recirculation system, jet system, and water feature systems is installed:
 - (i) at a point readily accessible to a bather;
 - (ii) not less than five feet away from the spa poo;
 - (iii) adjacent to the spa pool; and

- (iv) within sight of the spa pool; and
- (d) a non-lifeguarded spa pool has an audible alarm sound when the emergency shutoff or control switch is activated.
- (9) The manager shall post a sign that meets the requirements of a two-inch safety sign as described in Subsection R392-302-32(1), that contains the following information:
- (a) a sign heading with the safety signal word "caution" centered at the top of the sign;
 - (b) sign text that states:
- (i) "elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool";
- (ii) "persons suffering from a communicable disease transmissible via water may not use the spa pool";
- (iii) "persons using prescription medications should consult a physician before using the spa";
- (iv) "individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool";
- (v) "bathers should not use the spa pool alone";
- (vi) "pregnant women should not use the spa pool without consulting a physician";
- (vii) "bathers should not spend more than 15 minutes in the spa in any one session";
- (viii) "children age 14 years and younger must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty";
- (ix) "children age five years and younger are prohibited from bathing in a spa pool or hot tub"; and
- (x) "running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited".
 - (10) The local health officer may exempt a spa pool from:
- (a) Subsection R392-302-9(1)(c) to allow a spa pool shell to be a color other than white or light pastel;
- (b) Subsection R392-302-13(1)(a) to allow a spa pool to be equipped with a single entry or exit point;
- (c) Subsection R392-302-13(2)(d) to allow the bottom rise to be a maximum of 14 inches, if the bottom step serves as a bench or seat;
- (d) Subsection R392-302-15(1) to allow a spa pool to have a continuous, unobstructed deck that is at least three feet wide around 25% or more of the spa pool;
- (e) Subsection R392-302-15(3)(d)(iii) to allow a spa pool deck or steps to be made of sealed heart redwood;
- (f) Section R392-302-30, except that a spa pool is equipped with a first aid kit as described in Subsection R392-302-30(4);
- (g) the maximum water depth as described in Subsection (1)(d) if the spa pool is used for instruction, treatment, or therapy; or
- (h) the requirement to locate outlets at the deepest point in the pool if the outlets are located on sidewalls within three inches of the pool floor and a wet vacuum is available on site to remove any water left in the pool after draining if the spa pool is an acrylic or fiberglass spa pool.
- (11) A spa pool constructed and approved before September 16, 1996 is exempt from Subsection (1)(h) if the spa pool can meet bacteriological quality standards required in Subsections R392-302-25(11) and R392-302-25(12).

R392-302-38. Special Purpose Pools: Wading Pools.

(1) The manager shall consult with the local health officer before opening a wading pool.

- (2) The manager shall ensure that each wading pool:
- (a) meets any applicable requirement of this rule in addition to this section;
 - (b) is separate from other pools;
- (c) does not share common circulation, filtration, chemical treatment systems, or a wall with other pools;
 - (d) does not exceed a maximum water depth of two feet;
- (e) has a minimum of one turnover per hour as described in Table 1;
- (f) has a minimum of two equally spaced inlets around the perimeter of the wading pool, if the wading pool has wall inlets;
- (g) with a perimeter that exceeds 20 feet, has wall inlets that are spaced at a minimum of one in each 20 feet or fraction thereof; and
- (h) has a drain to waste for wastewater disposal as described in Section R392-302-7 through a quick opening valve to facilitate emptying the wading pool for a fecal release or other contamination.
- (3) The local health officer may allow the deck of a wading pool to be included as part of adjacent pool decks.

R392-302-39. Special Purpose Pools: Therapy Pools.

- (1) The manager shall consult with the local health officer before opening a therapy pool.
 - (2) The manager shall ensure that each therapy pool:
- (a) meets any applicable requirement of this rule in addition to this section; and
- (b) complies with Sections R392-302-25 Disinfection and Quality of Water, R392-302-33 Cleaning of Pools, and R392-302-34 Pool Operation and Record Keeping unless it is drained, cleaned, and sanitized after each individual use.
- (3) The local health officer may exempt a therapy pool from any other requirement of this rule, if the therapy pool is used exclusively for aquatic therapy, physical therapy, or rehabilitation to treat a diagnosed injury, illness or medical condition and is under the direct supervision of a person licensed by the Utah Division of Professional Licensing to perform the assigned task.
- (4) The manager shall allow the local health officer to enter and investigate the use of a therapy pool in response to a complaint, to assure that use of the pool is properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

R392-302-40. Special Purpose Pools: Water Slides and Splash Pools.

- (1) The manager shall consult with the local health officer before opening a water slide or a splash pool.
- (2) The manager shall ensure that each waterslide or splash pool meets any applicable requirement of this rule in addition to this section.
 - (3) The manager shall ensure that each waterslide flume:
- (a) within an enclosed waterslide is designed to prevent accumulation of hazardous concentrations of toxic chemical fumes;
- (b) curve, turn, or tunnel is designed so that body contact with the flume or tunnel does not present an injury hazard and that the waterslide flume is banked to keep the slider's body safely inside the flume;
- (c) is free of hazards including joints, mechanical attachments, separations, splinters, holes, cracks, or abrasive characteristics;

- (d) wall thickness is thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures that could result in injury; and
- (e) exit provides a safe entry into a splash pool that includes design features for safe entry such as a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed.
- (4) The local health officer may approve other methods for safe exiting from the waterslide flume if the safe exiting method is demonstrated to the local health officer.
- (5) The manager shall ensure that multiple-flume waterslides have parallel exits or are constructed so that the projected path of their centerlines does not intersect within less than eight feet beyond the point of forward momentum of the heaviest bather permitted by the engineered design.
- (6) The manager shall ensure that repairs or patchwork maintains originally designed levels of safety and structural integrity and that repairs or patchwork is performed in accordance with the manufacturer's guidelines.
- (7) The manager shall ensure that each flume clearance has a distance:
- (a) of at least four feet provided between the side of a waterslide flume exit and a splash pool sidewall;
- (b) of at least six feet between the nearest sides of adjacent waterslide flume exits;
- (c) of at least 20 feet between a waterslide flume exit and the opposite end of the splash pool, excluding steps;
- (d) of at least six feet between the side of the vehicle flume exit and the pool sidewall;
- (e) of at least eight feet between the nearest sides of adjacent vehicle slide flume exits; and
- (f) between a vehicle slide flume exit and the opposite end of the splash pool, excluding steps, that is long enough to provide clear, unobstructed travel for at least eight feet beyond the point of forward momentum of the heaviest bather permitted by the engineered design.
- (8) The manager shall ensure that the operating depth of a waterslide splash pool at the end of a horizontally oriented slide flume exit is:
 - (a) a minimum of three feet deep;
- (b) the minimum depth is maintained for a distance of at least 20 horizontal feet from the slide flume exit; and
- (c) if the waterslide splash pool extends more than 20 horizontal feet from the slide flume exit, the floor slope may have a constant slope from deep to shallow that is not steeper than a one to ten ratio.
- (9) The local health officer may require the depth of a waterslide splash pool at the end of a horizontally oriented waterslide flume to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the local health officer.
- (10) The manager shall ensure that the operating water depth of a vehicle slide splash pool at the flume exit is
 - (a) a minimum of three feet six inches;
- (b) the minimum depth is maintained to the point that forward travel of the vehicle ends; and
- (c) from the point at which forward travel ends, the floor may have a constant slope from deep to shallow at a ratio that is not steeper than a one to ten ratio.

- (11) The local health officer may exempt minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the local health officer that a safe exit from the flume into the splash pool can be assured.
 - (12) The manager shall ensure that;
- (a) a walkway, ramp, or set of stairs with a minimum width of four feet is provided between the splash pool deck and the top of the waterslide flume;
- (b) if stairs are provided between the splash pool deck and the top of the water slide flume, the stairs;
- (i) have uniform stair risers that meet building code requirements;
 - (ii) are constructed of slip-resistant material; and
 - (iii) drain standing water away from the walkway;
- (c) waterslide vehicles, including toboggans, sleds, inflatable tubes, and mats are:
- (i) designed and manufactured of materials that do not present an injury hazard; and
- (ii) constructed of a smooth, easily cleanable, durable material that can withstand the continuous and combined action of hydrostatic, dynamic, and static loads and natural environmental deterioration;
 - (d) each splash pool overflow reservoir:
- (i) has sufficient volume to contain at least two minutes of flow from the splash pool overflow and maintain a constant water depth in the splash pool; and
- (ii) circulates water through the circulation system when flume supply service pumps are turned off;
- (e) flume pumps and motors are sized as specified by the flume manufacturer, and meet NSF/ANSI 50-2015, which is incorporated by reference;
- (f) the splash pool and the splash pool overflow reservoir is designed to prevent bather entrapment as water flows from the splash pool to the overflow reservoir;
- (g) perimeter overflow gutter systems meet the requirements of Section R392-302-22, except that gutter systems are not required directly under slide flumes or along the weirs that separate splash pools and splash pool overflow reservoirs; and
- (h) pump reservoir areas are accessible for cleaning and maintenance.
- (13) The manager shall post a sign that meets the requirements of a two-inch safety sign as described in Subsection R392-302-32(1) that:
- (a) includes the waterslide manufacturer's recommendations;
- (b) the heading of the waterslide sign says, "Slide Instructions, Warnings, and Requirements";
- (c) the body of the waterslide sign includes the following waterslide riding instructions:
 - (i) proper riding position;
 - (ii) expected rider conduct;
 - (iii) dispatch procedures;
 - (iv) exiting procedures; and
- (v) that riders shall obey slide attendant or lifeguard instructions; and
- (d) the body of the waterslide sign includes the following warnings:
 - (i) slide characteristics such as speed;
 - (ii) depth of water in splash zone; and
- (iii) requirements that include riders are free of medical conditions identified by the manufacturer such as pregnancy, heart conditions, back conditions, or musculoskeletal conditions.

R392-302-41. Special Purpose Pools: Interactive Water Features.

- (1) The manager shall consult with the local health officer before opening an interactive water feature.
- (2) The manager shall ensure that each interactive water feature:
- (a) meets any applicable requirement of this rule in addition to this section;
- (b) component is designed, constructed, maintained, and operated so there is no slip, fall, or other safety hazards; and
- (c) meets the standards of Title 15a, State Construction and Fire Codes Act.
- (3) If an interactive water feature is constructed of a noncementitious material, the manager shall ensure that documentation is submitted to the local health department with plans as described in Section R392-302-5 including that the surface material has been tested and passed by an American National Standards Institute (ANSI) accredited testing facility using one of the following standards that is appropriate to the material used:
- (a) for pools built with prefabricated pool sections or pool members, the ISO 19712-1:2008 Plastics -- Decorative solid surfacing materials -- Part 1: Classification and specifications, which is incorporated by reference; or
- (b) a standard that has been approved by the local health officer based on whether the standard applies to the surface and whether it determines compliance with the requirements of Section R392-302-9.
- (4) The manager shall ensure that each interactive water feature collection zone:
- (a) meets the construction material requirements described in Section R392-302-9;
- (b) is free of cracks or open joints, except for structural expansion joints or openings that allow water to drain to the collector tank; and
- (c) openings that drain to the collector tank do not pass a one-half inch sphere.
 - (5) The manager shall ensure that:
- (a) any nozzle that sprays from the ground level is flush with the ground, with openings no greater than 1/2 inch in diameter;
- (b) if the spray nozzle extends above ground level the spray nozzle is clearly visible and does not present a trip hazard;
- (c) each area adjacent to the water feature collection zone is sloped away from the interactive water feature at a minimum of 2% to deck drains or other approved surface water disposal systems;
- (d) each interactive water feature has a continuous deck at least three feet wide as measured from the edge of the collection zones and extends completely around the interactive water feature;
- (e) water discharged from each interactive water feature fountain or spray feature freely drains by gravity flow through a main drain fitting to a below grade sump or collection system that discharges to a collector tank;
- (f) when the interactive water feature is not in operation, water drains freely so there is no ponding; and
- (g) each interactive water feature fogger or mister that produces finely atomized mist is supplied directly from a potable water source and not from the underground reservoir.
- (6) The manager shall ensure that an interactive water feature:
- (a) has an automated ORP and pH controller installed and in operation when the feature is open for use that is capable of maintaining disinfection and pH levels within the requirements for special purpose pools described in Table 3; and

- (b) has an approved secondary disinfection system that meets the requirements described in Subsection R392-302-35(8).
- (7) The manager shall post a sign that meets the requirements of a two-inch safety sign as described in Subsection R392-302-32(1) that contains the following information:
- (a) a sign heading with the safety signal word "caution" centered at the top of the sign; and
 - (b) sign text that states:
 - (i) "no running on or around the interactive water feature";
- (ii) "children age 12 and under must have adult supervision";
- (iii) "no food, drink, glass or pets are allowed on or around the interactive water feature"; and
 - (iv) "diapers shall only be changed in restrooms".
- (8) If the interactive water feature is operated at night, the manager shall ensure that five foot-candles of light are provided in the each area of the water feature and lighting is:
- (a) installed in accordance with manufacturer's specifications; and
 - (b) meets the requirements of building code as defined.
 - (9) The manager shall ensure that:
 - (a) the interactive water feature filter system:
- (i) is capable of filtering and treating the entire water volume of the water feature within 30 minutes;
- (ii) has a minimum of four equally spaced inlet fittings that pump from the collector tank and return filtered and treated water to the tank, and that the inlet spacing meets the requirements of Section R392-302-20;
- (b) the interactive water feature circulation system is on a separate loop and not directly interconnected with the interactive water feature pump;
- (c) the suction intake of the interactive water feature pump in the underground reservoir is located adjacent to the circulation return line and is located to maximize uniform circulation of the tank;
- (d) the suction intake from the interactive water feature circulation pump is in the lowest portion of the underground reservoir;
- (e) an automated water level controller is provided for the interactive water feature, and the potable water line that supplies the feature meets the requirements of Section R392-302-6:
- (f) the water velocity through each feature nozzle of the interactive water feature meets manufacturer's specifications and does not exceed 20 feet per second;
- (g) the minimum size of the interactive water feature sump or collector tank is equal to the volume of three minutes of the combined flow of each feature pump and the filter pump;
- (h) access lids or doors for the sump and collection tank are provided that:
 - (i) are sized to allow easy maintenance;
 - (ii) provide security from unauthorized access; and
- (iii) have stairs or a ladder provided, as needed, to ensure safe entry into the tank for cleaning and inspection; and
- (j) a means of vacuuming and completely draining the interactive water feature tank is provided.
- (10) The local health officer may exempt interactive water feature from:
- (a) Subsection R392-302-9(1)(c) to allow an interactive water feature to be a color other than white or light pastel;
 - (b) Section R392-302-11. Walls;
 - (c) Section R392-302-12. Diving Areas;
 - (d) Section R392-302-13. Pool Entry and Exits;

- (e) Section R392-302-14. Depth Markings, Safety Markings and Safety Ropes;
 - (f) Section R392-302-16. Handholds;
 - (g) Section R392-302-17. Fencing and Barriers;
- (h) Section R392-302-22. Overflow Gutters and Skimming Devices;
 - (i) Section R392-302-27. Dressing Rooms;
- (j) Section R392-302-28, if a toilet, hand washing sink, and changing table is available within 150 feet;
- (k) Section R392-302-30, except that an interactive water feature is equipped with a first aid kit as described in Subsection R392-302-30(4); and
- (1) Subsection R392-302-24(4), water clarity and temperature requirements.

R392-302-42. Special Purpose Pools: Instructional Pools.

(1) The manager shall ensure that an instructional pool meets the requirements this rule except that an instructional pool is exempt from Subsection R392-302-11(5) that restricts the use of teaching implements, including underwater ledges.

R392-303-43. Enforcement and Penalties.

A manager who violates this rule may be subject to criminal and civil penalties as provided in Section 26B-1-224.

KEY: pools, spas, swimming, water

Date of Last Change: <u>2023</u>[August 10, 2020] Notice of Continuation: October 21, 2021

Authorizing, and Implemented or Interpreted Law: [26-1-5; 26-

1-30; 26-15-2|26B-1-202; 26B-7-402; 26B-1-224

NOTICE OF PROF	POSED RULE	
TYPE OF FILING:	Amendment	
Rule or Section Number:	R432-13	Filing ID: 55415

Agency Information

1. Department:	Health a	nd Human Services
Agency:	Health C	Care Facility Licensing
Room number:	1st Floo	r
Building:	Multi-Agency State Office Bldg	
Street address:	195 N 1	950 W
City, state and zip:	Salt Lak	e City, UT 84116
Mailing address:	PO Box	144103
City, state and zip:	Salt Lake City, UT 84114-4103	
Contact persons:		
Name:	Phone: Email:	
		Liliali.
Janice Weinman	385- 321- 5586	jweinman@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R432-13. Freestanding Ambulatory Surgical Center Construction Rule

3. Purpose of the new rule or reason for the change:

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:

The revisions include more specific language consistent with the Utah Rulewriting Manual.

Additionally, this rule replaces outdated citations with their updated counterparts, this is due to the recodification of the Department of Health and Human Services' (Department) statute, Title 26B, Chapter 2, following the 2023 General Session.

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.

Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the Department plans review process of Rule R432-4.

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 Freestanding Ambulatory Surgical Construction 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.

Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the Department plans review process of Rule R432-4.

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.

Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the Department plans review process of Rule R432-4.

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.

Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the Department plans review process of Rule R432-4.

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.

Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the department plans review process of Rule R432-4.

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.

Substantive changes only constitute removal of incorporated materials that will be encompassed as recommended standards in the Department plans review process of Rule R432-4.

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 Ir	npact Table)	
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 26B-2-202

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Tracy S. Gruber,	Date:	05/15/2023
or designee	Executive Director		
and title:			

R432. Health and Human Services, [Family Health and Preparedness, | Health Care Facility Licensing.

R432-13. Freestanding Ambulatory Surgical Center Construction Rule.

R432-13-1. Legal Authority.

This rule is [adopted pursuant to]authorized by [Title 26, Chapter 21-]Section 26B-2-202.

R432-13-2. Purpose.

The purpose of this rule is to establish construction and physical plant standards for the operation of a freestanding surgical facility that provides surgical services to patients not requiring hospitalization.

R432-13-3. General Design Requirements.

- (1) An [A]ambulatory [S]gurgical [G]center[s] shall be constructed in accordance with the requirements of Rule R432-4.[-1 through R432-4.23 and the requirements of the Guidelines for Design and Construction of Health Care Facilities, Sections 3.1 and 3.7, 2010 edition (Guidelines). Where a modification is cited, the] Any modification listed in Rule R432-13 supersedes any conflicting requirement[s] of Rule R432-4[-or the Guidelines].
- (2) The licensee of an ambulatory surgical center shall ensure there are [Ambulatory Surgical Centers shall consist of support facilities and at least two Class C deep sedation operating rooms[, meeting the requirements of Guidelines section 3.7-3.3.4, and support facilities].
- (3) The licensee shall ensure that the facility is [Ambulatory Surgical Centers shall be] equipped to perform general anesthesia. Flammable anesthetics may not be used in an [A]ambulatory [S]surgical [G]center[s].
- (4) The licensee shall comply with [Ambulatory Surgical Centers shall comply with NFPA 101, Life Safety Code, Chapter 20.] Section R432-4-12, Plans Review.
- (5) The <u>licensee shall provide[facility shall have</u>] at least two exits leading directly to the exterior of the building.
- (6) <u>The licensee shall ensure that d[D]</u>esign [shall preclude <u>]prevents unrelated traffic from passing through units or suites of the licensed facility.</u>

R432-13-4. General Construction, Patient Facilities.

- (1) [Adequate]The licensee shall maintain sterile supplies [shall be maintained] in the facility to meet the maximum demands of one day's case[-]load.
- (2) The licensee shall ensure that an [Θ]operating room[s] used for cystoscopic procedures [shall eomply]complies with Section 2.2-3.3.2.4 of the Guidelines.
- (3) The licensee shall ensure that a[A] toilet room [shall be] is readily accessible to recovery rooms and recovery lounge.
- (4) <u>If [S]special</u> or additional service areas such as radiology[, <u>if]</u> <u>are</u> required by the functional program, <u>the licensee</u> shall comply with the requirements of [the General Hospital Rules, |Rule R432-100, General Hospital Rule.

R432-13-5. General Construction.

- (1) The administration and public areas [which]that are not part of the [A]ambulatory [S]surgical [C]center's exiting system, may be located outside of the institutional occupancy envelope when authorized by the local building official[having jurisdiction].
- (2) The licensee shall ensure the following general construction requirements are met:[Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.]
- (a) cubicle curtains and draperies are affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted;
- ([3]b) [A]an elevator with minimum dimensions of the inside of the cab measuring 5'8" wide by 8'5" deep and a minimum clear door width of 3'8" [shall be]is provided when an ambulatory surgical center is located on a level other than at grade[. The minimum inside dimensions of the cab shall be at least 5'8" wide by 8'5" deep with a minimum clear door width of 3'8".];
- ([4]c) [¥]yard 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[-]:
- ([5]d) [Ŧ]the facility [shall-]provides for the sanitary storage and treatment or disposal of [all]each category[ies] of waste, including hazardous and infectious wastes, if applicable, using procedures established by the Utah Department of Environmental Quality and the local health department; having jurisdiction.
- ([6]e) [All]each room[s shall be] is mechanically ventilated; and[-]
- ([7]f) [A]access to medical gas supply and storage areas [shall be]is arranged to [preclude]prevent travel through clean or sterile areas. There shall be space for enough reserve gas cylinders to complete [at least-]one routine day's procedures.
- ([§]3) An on-site emergency generator shall be provided by the licensee and [the following services shall be connected to the emergency generator:]connected services approved through the plans review as outlined in Section R432-4-12.
- (b) critical branch as defined in 517-33 of the National Electric Code NFPA 70;
- (c) equipment system as defined in 517-34 of the National Electric Code NFPA 70.
- ([9]4) The licensee shall ensure that there is [There shall be sufficient]enough fuel storage capacity to permit [at least]four hours continuous operation.[-shall be provided.]
- ([40]5) The licensee shall ensure that I[L]ighting [shall]complies[y] with the lighting requirement section of Subsection R432-4-19(2)(t).[-23(21)(a).]

R432-13-6. Extended Recovery Care Unit.

- (1) A [facility]licensee that provides extended recovery services shall maintain a patient care area that is distinct and separate from the post-anesthesia recovery area. The licensee shall ensure that the patient care area [shall-]provides the following:
- (a) a room or area that ensures patient privacy, including visual privacy;
- (b) a minimum of 80 square feet of space for each patient bed with [at least] three feet between patient beds and between the sides of patient beds and adjacent walls[-];
- (c) a nurse call system at each patient's bed and at the toilet, shower, and bathroom[s], [which]that [shall-]transmits a visual and auditory signal to a centrally staffed location [which]and identifies the location of the patient summoning help;
 - (d) a patient bathroom with a [lavatory]sink and toilet;
 - (e) oxygen and suction equipment; and
- (f) medical and personal care equipment necessary to meet patient needs.
- (2) The licensee shall provide a[A] separate food nutrition area [which]that [shall—]includes a counter, sink, refrigerator, heating[f], warming oven, or microwave, and [sufficient]enough storage for food items.

[R432-13-7. Exclusions to Guidelines.

The following sections of the Guidelines do not apply to Freestanding Surgical Center construction:

(1) Waste Management Facilities, Section 3.1-5.4.]

R432-13-[8]7. Penalties.

- (1) 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 for approval before conducting the work.[Bureau of Licensing].[—The Department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow Department approved architectural plans. The 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 licensing agency approval.]
- (2) The department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow department-approved architectural plans.
- (3) The 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 licensing agency approval.
- (4) The department is authorized by Section 26B-2-208 to issue civil money penalties.

KEY: health care facilities

Date of Last Change: <u>2023</u>[February 21, 2012] Notice of Continuation: March 21, 2019

Authorizing, and Implemented or Interpreted Law: [26-21-5;

26-21-16|26B-2-202

NOTICE OF PROP	OSED RULE	
TYPE OF FILING:	Amendment	
Rule or Section Number:	R460-3	Filing ID: 55430

Agency Information

1. Department:	Housing	Corporation	
Agency:	Adminis	tration	
Street address:	2479 La	2479 Lake Park Boulevard	
City, state and zip:	West Va	ılley City, UT 84120	
Contact persons	:		
Name:	Phone:	Email:	
Jonathan Hanks	801- 902- 8221	jhanks@uthc.org	

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R460-3. Programs of UHC

3. Purpose of the new rule or reason for the change:

The purpose of changes to this rule include: 1) adding verbiage to implement changes required by Section 63H-8-502, First-time Homebuyer Assistance Program; 2) removing unnecessary or duplicative verbiage; and 3) adding verbiage for clarity and consistency.

4. Summary of the new rule or change:

The changes add definitions at the beginning of this rule section for improved clarity.

Several subsections are renumbered and are amended to reorder language for clarity.

Language is added regarding the First-time Homebuyer Assistance Program (Assistance Program) to:

- 1) clarify that the Assistance Program may only be used in conjunction with a mortgage loan;
- 2) clarify that a reservation shall automatically terminate if requested or required documentation is not received by Utah Housing:
- 3) clarify language that some single-family mortgage programs may include the ability to purchase a single real estate interest dwelling with one or two units;
- clarify language that includes the purchase of a single real estate interest dwelling with one or two units for some single-family programs;
- 5) clarify language regarding the applicability of income limits, acquisition limits, and purchase price limits to each mortgage loan:
- 6) define when Assistance Program funds may be used and how the disbursement of those funds will be evidenced;
- 7) provide guidance on requesting and reserving Assistance Program funds and associated timelines;
- 8) establish funds as first-come, first-serve;
- 9) state that Assistance Program funds are considered a loan and repayable under certain circumstances;

- 10) require the recipient of Assistance Program funds to be a Utah resident for a period of time;
- 11) explain that Assistance Program funds may be used in conjunction with a mortgage loan to pay off a construction loan or similar financing for a manufactured or modular residential unit placed on a permanent foundation;
- 12) clarify UHC's president's ability to establish income limits for the Assistance Program;
- clarify the limits that are applicable when determining acquisition costs when Assistance Program funds are used: and
- 14) clarify a limitation on Assistance Program reservation requests.

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 because Subsection 63H-8-102(3)(b) states that the Utah Housing Corporation (UHC) is a "financially independent body" and therefore, receives no state appropriation.

B) Local governments:

There is expected to be an inestimable fiscal benefit to local governments in the form of increased building permit and impact fees, sales tax, and property tax revenues.

However, it is impossible to estimate the amount by which local government may benefit as it is unknown where and when eligible new homes will be constructed, the amount of building materials to be purchased in any given municipality, or the number of workers hired from local communities and how long they might be working in a given community and contribute to sales tax revenue.

Further, it is impractical to gather building permit data from every political subdivision because each is unique and addresses building permit and impact fees differently.

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

There is expected to be an inestimable fiscal benefit to small businesses engaged in mortgage lending for single-family properties.

However, it is impossible to predict the revenue that may be received by small business mortgage lenders because it is impossible to predict which mortgage lender a consumer may engage to process, underwrite, close, and fund a mortgage.

Further, it is not feasible to gather a list of applicable fees charged by each mortgage lender (as well as each branch of the mortgage lender) to determine the amount of revenue they may receive for processing and funding a mortgage loan.

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

There is expected to be an inestimable fiscal benefit to non-small businesses engaged in mortgage lending for single-family properties.

However, it is impossible to predict the revenue that may be received by non-small businesses because it is impossible to predict which mortgage lender a consumer may engage to process, underwrite, close, and fund a mortgage.

Further, it is not feasible to gather a list of applicable fees charged by each mortgage lender (as well as each branch of the mortgage lender) to determine the amount of revenue they may receive for processing and funding a mortgage loan.

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 cost to a person receiving Assistance Program funds may range from \$0 - \$1,000 based on the number of extension, reservation transfer, or other similar requests.

The cost is considered inestimable because every home and mortgage scenario is unique, i.e., some persons may not need any requests and some may need one, two, or more.

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

There may be some cost to affected persons in terms of systems programming to add additional steps to include Assistance Program funds in the processing, underwriting, and funding a lender undertakes with a mortgage loan. Because this will vary by lender, software vendor, etc. the cost is considered inestimable though negligible.

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

Regulatory Impact Table Fiscal Cost FY2024 FY2025 FY2026 State \$0 \$0 \$0 Government \$0 Local \$0 \$0 Governments Small \$0 \$0 \$0 Businesses \$0 Non-Small \$0 \$0 Businesses

Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The President and CEO of the Utah Housing Corporation, David C. Damschen, 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 63H-8-301	Section 63H-8-302	Section 63H-8-303
Section 63H-8-502		

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	07/03/2023
unti	l:				

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	David C.	Date:	05/15/2023
or designee	Damschen,		
and title:	President and		
	CEO		

R460. Housing Corporation, Administration.

R460-3. Programs of UHC.

R460-3-1. Single-Family Program.

- (1) Definitions. In addition to the definitions found in Sections 63H-8-103 and 63H-8-501, the following terms are defined for this rule:
- (a) "Mortgage Lender" shall mean a mortgage lender that UHC has determined to be an eligible mortgage lender in accordance with this rule.
- (b) "Mortgage Loan" shall mean a loan secured by a deed of trust or mortgage on a single-family residence or single real estate interest dwelling with one or two units that UHC has determined to be an eligible mortgage loan in accordance with this rule.

(2[4]) Eligible mortgage lender.

- (a) To be eligible to participate in the single-family program, a mortgage lender must have as one of its principal purposes the origination of mortgage loans in its usual and regular course of business.
- (b) UHC may establish criteria that mortgage lenders must meet relating to approved mortgagee status by the Federal Housing Administration, Rural Housing Service or Department of Veterans Affairs, the financial condition of the mortgage lender, the number of mortgage loan originations during a period specified by UHC, the length of time a mortgage loan origination office has been maintained in the state, seller/servicer approval by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and other criteria as UHC deems necessary to maintain a safe and sound program and to establish that mortgage loans are a part of a mortgage lender's usual and regular business activities and that the mortgage lender possesses the capability to make and to have adequate financial resources to fund mortgage loans.
- (c) UHC may require that mortgage lenders, from time to time, furnish to UHC evidence as UHC may request to confirm a mortgage lender's eligibility to participate in the single-family program.
- (d) A mortgage lender shall employ and maintain qualified personnel to carry out the obligations arising under contracts with UHC.
- (e) All transactions between a mortgage lender and UHC shall be subject to the relevant single-family program contract documents which may include the following: participation agreement, selling supplement, mortgage credit certificate program guide, mortgage purchase agreement (["]MPA["]), MPA request, mortgage credit certificate request and reservation (["]MCC request["]), Assistance Program policies and procedures, Assistance Program funding request and reservation, notice of availability of funds, [MPA request,]and other documents deemed necessary by UHC (["]Program Documents["]).
- (3[2]) Mortgage purchase agreement request; mortgage purchase agreement; <u>Assistance Program request and reservation</u>; mortgage credit certificate request and reservation.

- (a) UHC may distribute to mortgage lenders via any electronic, digital, or written means, any interest rate [and/]or program changes affecting the single-family program.
- (b) Mortgage lenders may submit one or more mortgage purchase agreement requests, Assistance Program requests, or MCC requests to UHC via electronic, digital or written means as specified by UHC, in which an amount of funds is requested for a specific mortgage loan, Assistance Program loan, or MCC that the mortgage lender is processing.
- (c) UHC may require that each mortgage purchase agreement request, Assistance Program request, or MCC request submitted by a mortgage lender be accompanied by an application or other fee in an amount specified by UHC in its Program Documents. The fee shall not be refunded or accrue interest payable by UHC, unless otherwise specified by UHC in the Program Documents.
- (d) Upon receipt of a mortgage purchase agreement request, an Assistance Program request, or MCC request, UHC may deliver to the mortgage lender 1) a mortgage purchase agreement confirming UHC's commitment to purchase the specified mortgage loan; 2) an Assistance Program reservation confirming UHC's commitment to fund an Assistance Program amount in conjunction with its purchase of a mortgage loan; or [2]3) an MCC reservation confirming UHC's commitment to issue an MCC for the requested amount. The mortgage purchase agreement, Assistance Program reservation, or MCC reservation[request] cancelled[terminate] automatically if the mortgage lender fails to deliver to UHC all documentation requested or required [necessary Program Documents] with respect to the mortgage loan, Assistance Program funds, or MCC [to UHC]on or [prior to]before the date specified in the Program Documents.
 - (4[3]) Single-family mortgage loans.
- (a) From time to time, UHC may develop individualized mortgage programs for single-family or single real estate interest dwellings with one or two units [mortgage programs-]designed to meet the needs of certain populations. In such cases, UHC shall establish maximum fees that may be charged or collected, final mortgage delivery date, interest rate, and loan term. Fee requirements shall be uniformly applied to all mortgage lenders, without preference of one mortgage lender over another.
- (b) All mortgage loans shall be made to finance single-family residential housing or single real estate interest dwellings with one or two units located in the state which conform to the requirements of the single-family mortgage program or any other requirements specified in the Program Documents.
- (c) UHC may provide priority allocations to make mortgage financing available to persons qualified for any of UHC's single-family programs or in targeted, rural, inner city or other areas experiencing difficulty securing mortgage loans to make housing available to persons of low and moderate income.
- (d) Each mortgage loan purchased by UHC shall conform to the credit underwriting, property valuation, hazard insurance, title insurance, mortgage insurance, security and collateralization, income limits, acquisition cost limits, purchase price limits, and all other requirements of the Program Documents. Closings or deliveries must occur on or before the date established in Program Documents. UHC shall have the right to decline to finance any mortgage loan if, in the reasonable opinion of UHC, the mortgage loan does not meet all requirements of the Program Documents.
- (5) First-time Homebuyer Assistance Program (Assistance Program)
- (a) UHC will make Assistance Program funds available in conjunction with a mortgage loan and UHC down payment (DPA)

- second mortgage loan, if applicable, to purchase a to-be-constructed or newly constructed but never inhabited single-family residential unit within the state. Assistance Program funds will be provided at closing if funds are properly reserved as specified in the Program Documents. Disbursed Assistance Program funds will be evidenced by a promissory note and secured by a deed of trust which shall be recorded subordinate only to a UHC mortgage loan and a UHC DPA second mortgage loan.
- (b) A mortgage lender may apply for an Assistance Program reservation with UHC. The recipients identified in the Assistance Program reservation request must be credit-qualified by the mortgage lender for a UHC mortgage loan before requesting a reservation. It is not required that the residential unit to be purchased with the mortgage loan is specifically identified in the reservation request. Once UHC has verified the reservation request complies with the Program Documents, UHC shall issue to the mortgage lender a reservation for Assistance Program funds that is effective for 90 days from the date of issuance. If the specific residential unit to be purchased is not identified in this time period, the reservation will be automatically canceled. Extension requests beyond the initial 90-day reservation period will be allowed if a specific residential unit to be purchased is identified by the mortgage lender and the mortgage lender complies with status update and documentation requirements established in the Program Documents. Additional 120-day extension requests may be approved by UHC. The number of Assistance Program reservation requests for a specific recipient may be limited and the request for transfer of an Assistance Program reservation to another lender may also be either limited or denied as established in the Program Documents.
- (c) Assistance Program funds will be reserved and funded on a first-come, first-served basis.
- (d) Assistance Program funds may be used in conjunction with a UHC mortgage loan and a UHC DPA second mortgage loan but not with any other grant program administered by UHC unless otherwise specified in the Program Documents.
- (d) Assistance Program funds are generally repayable. The Assistance Program funds are considered a loan that is interest free with no payments required until the residential unit is sold or the mortgage loan is refinanced. The Assistance Program amount to be repaid is the lesser of 1) the total amount of Assistance Program funds disbursed at closing or 2) one-half of the home equity amount. Generally, the home equity amount is computed as the difference between the sales price for which the residential unit is sold or, in the case of a refinance, the current appraised value, and the payoff amount of the mortgage loan used to finance the unit plus the UHC DPA second mortgage loan, if any, but not including Assistance Program funds. Additional details are established in the Program Documents.
- (e) A recipient of Assistance Program funds must have lived in the state continually for at least the last 12 months before the closing date of the mortgage loan.
- (f) A construction loan or similar financing, with a term of 24 months or less, used to construct a new home, including a manufactured or modular home assembled and placed on a permanent foundation, may be paid off using a mortgage loan, Assistance Program funds, and a UHC DPA second mortgage, if needed. The residential unit may not be occupied before the closing of the mortgage loan.
 - $(\underline{6}[4])$ Income limits of borrowers.

Income limits for low and moderate income persons eligible as borrowers for UHC financing are based on area or state median income as determined and published by the U.S. Department

of Housing and Urban Development (HUD). UHC's president may[is authorized to] establish income limits of UHC's single—family programs and the Assistance Program, and such limits shall not exceed 140% of area or state median income as determined and published by HUD. UHC shall post income limits on its website, incorporate the limits as terms of the Program Documents, and shall make information concerning the limits available to all interested persons. Income limits may vary based on several factors including[, but not limited to,] loan program, household size, county, targeted area, source and availability of funds, and risk to UHC.

(7[5]) Acquisition cost limits.

When loan funding sources have federal regulations that require the establishment of acquisition cost limits, UHC's president may[is authorized to] establish acquisition cost limits in accordance with the requirements detailed in Section 143 of the Internal Revenue Code.

When loan funding sources have no federal regulations requiring acquisition cost limits, UHC may or may not establish acquisition cost limits. UHC's president will establish any acquisition cost limits based on Average Area Purchase Prices as published by the Internal Revenue Service (IRS). The acquisition cost of residential housing is the cost of acquiring a completed residential [housing-]unit and [shall-]include all amounts paid in cash or in kind for all structures, fixtures, improvements, and land. UHC shall post any acquisition cost limits on its website, incorporate the limits as terms of the Program Documents, and shall make information concerning the limits available to all interested persons. Acquisition cost limits will be the lower of the single-family program limits, if any, under which a mortgage purchase agreement is issued or the Assistance Program if Assistance Program funds are used.

- (8[6]) Mortgage Credit Certificates (MCC).
- (a) From time to time, UHC may make available amounts to issue mortgage credit certificates to qualified applicants in conjunction with a mortgage loan obtained to purchase residential housing within the state[-of Utah].
- (b) All MCCs issued by UHC shall only be done when an eligible mortgage loan shall be made to finance single-family residential housing in the state which conforms to the requirements of the single-family mortgage program or any other requirements specified in the Program Documents.
- (c) UHC may provide priority allocations to make mortgage credit certificates available to persons qualified for any of UHC's single-family loan programs or in targeted, rural, inner city or other areas experiencing difficulty securing mortgage loans to make housing available to persons of low and moderate income. Furthermore, UHC may provide an allocation of MCCs to a particular development subject to certain conditions.
- (d) Each MCC request reserved and issued by UHC shall conform to all requirements of the Program Documents. UHC shall have the right to decline to issue an MCC if, in the reasonable opinion of UHC, the MCC request does not meet all requirements of the Program Documents.
 - (9[7]) Assumption of single-family mortgage loans.
- (a) UHC shall establish and may amend conditions and requirements for the assumption of mortgage loans. The conditions and requirements for the assumption of mortgage loans may vary between the different series of bonds and mortgage insurers or guarantors under which the various mortgage loans have been purchased.
- (b) Conditions and requirements for the assumption of mortgage loans may include the following: acquisition cost limits for the residential housing; income limits for the assuming purchaser; the

- establishment of a limit, expressed as a percentage of the assuming purchaser's income, of the purchaser's monthly housing expenses; a requirement that the purchaser not own any other properties financed under any other UHC program; and any other requirements and qualifications deemed necessary or advisable by UHC. Purchasers, who assume mortgage loans, shall generally be required to satisfy the same requirements that applied to the original borrower.
- (c) UHC may impose limits on the maximum amount of assumption fees that may be charged in connection with the assumption of mortgage loans.
- (d) UHC may require the continuing liability of the original borrowers in connection with the assumption of mortgage loans
- (e) The required documentation for the assumption of mortgage loans may include documents deemed necessary by UHC, applicable to the particular program.
- (10[8]) Limitation of frequency <u>or number</u> of loan applications <u>or Assistance Program reservation requests</u>.
- UHC may establish limitations on the frequency with which a [M]mortgage [L]lender, on behalf of a particular mortgage applicant or co-applicant, may request a mortgage purchase agreement or otherwise apply for a reservation of a mortgage loan or Assistance Program funds if UHC deems a limitation to be necessary to ensure the efficient and equitable allocation of funds.
 - (9) Definitions.
- (a) As used herein, "Mortgage Lender" shall mean a mortgage lender that UHC has determined to be an eligible mortgage lender in accordance with this Rule.
- (b) As used herein, "Mortgage Loan" shall mean a loan secured by a deed of trust or mortgage on a single-family residence that UHC has determined to be an eligible mortgage loan in accordance with this Rule.]

R460-3-2. Multifamily Mortgage Programs.

- (1) No Standard Program.
- (a) UHC does not have a standard financing program for bond financed multifamily rental housing. It is the developer's responsibility to engage professionals to assist in obtaining adequate bond credit enhancement and in structuring a sale or placement of the bonds. UHC, as issuer, reserves the right to approve or disapprove the terms of any proposed project or the bond financing enhancement or structure.
- (b) The sole source of repayment of the bonds, including all interest and any premiums, for a multifamily rental housing project shall be the revenue sources related to the project financed by the bonds. Neither the bonds nor any interest or premium shall constitute a general indebtedness of UHC.
- (c) One or more national rating services must rate publicly offered bonds issued by UHC. A minimum rating as determined by UHC is required, unless specifically waived for good cause. A type of credit enhancement backing the bonds must be in place to increase the probability that the bond holders will be repaid even if the project and its underlying mortgage loan defaults. UHC reserves the right to approve all forms of credit enhancement for the bonds. With certain restrictions, UHC may permit bonds privately placed with institutional investors to be unrated.
- (d) Publicly offered bonds issued by UHC shall be sold to underwriter[(|s[)]) with the financial backing and capability to generate cash at closing equal to the amount of the bonds, regardless of whether the bonds have been resold to investors. UHC may appoint underwriters requested by the developer; however, UHC

reserves the right to approve any underwriter, and may appoint counderwriters, as it deems appropriate.

- (2) Legal Opinions.
- (a) UHC appoints bond counsel to provide[render] any opinion with respect to the tax exemption of the interest on the bonds.
- (b) Any other opinions regarding UHC that may be required by other parties to a bond transaction will be provided[rendered]] by counsel appointed by UHC but paid for by the developer.
 - (3) Income limits of qualifying tenants.

UHC shall establish and may amend maximum income limits for low and moderate income persons eligible as qualifying tenants of multifamily developments. UHC's president may[is authorized to] establish income limits of UHC's multifamily programs and such limits shall not exceed 140% of area or state median income as determined and published by HUD. UHC shall make information concerning the limits available to interested persons including potential renters and developers and shall incorporate the limits into appropriate documents. Income limits may vary based on several factors including[, but not limited to; Joan program, household size, county, targeted area, source and availability of funds, and risk to UHC.

- (4) Eligible developers and [/] owners.
- (a) To be eligible to participate in the multifamily financings, the mortgagor or [7] owner may be an individual, a limited liability company, a partnership or a corporation having the legal capacity and authority to borrow money for the purposes of constructing, owning and operating a multifamily development.
- (b) UHC may establish criteria relating to the credit worthiness and the financial, construction and operating capacity of the developer or [f] owner as UHC deems necessary to maintain a secure program and to provide decent, safe and sanitary rental housing. Alternatively, in situations where UHC will be issuing bonds the proceeds of which will be loaned to the developer or [f] owner, UHC may rely on the due diligence of the underwriters or purchasers of the bonds [and/] or the issuer of the credit enhancement for the bonds in making the determination that the developer or [f] owner possesses sufficient creditworthiness and sufficient financial, construction and operating capacity.
 - (5) Fees and Expenses.

The developer shall be responsible for all fees and expenses incurred in connection with the issuance of any bonds. UHC may charge a developer a fee for issuing the bonds or for performing any services required by UHC.

R460-3-3. Home Improvement Loan Programs (Reserved). $[\frac{(1)}{}]$ Reserved.

R460-3-4. Low-Income Housing Tax Credit Program.

- (1) Application procedures.
- (a) UHC shall prepare a low-income housing tax credit allocation plan that provides the administration procedures, allocation procedures, and compliance monitoring procedures that UHC will follow in administering the low-income housing tax credit program for the state. The allocation plan may be amended by UHC as is necessary to comply with amendments to Internal Revenue Code (Code) S[s] ection 42 of the C[e] ode or as deemed necessary by UHC to maintain a sound program. UHC shall prepare an application form that shall be used to request an allocation of both federal and state low-income housing tax credits for a proposed residential housing development. The allocation plan and application form shall be made available electronically via UHC's website or upon request.

- (b) UHC may establish and collect fees payable by low—income housing tax credit applicants to cover administrative and legal expenses of UHC incurred in processing and reviewing applications, allocating tax credits, monitoring compliance with the provisions of $\underline{S}[s]$ ection 42 of the $\underline{C}[e]$ ode, and other program requirements.
 - (2) Reservation of credits.
- (a) UHC shall score and rank all applications according to the procedures set forth in the allocation plan. A reservation of low-income housing tax credits allocated to an applicant shall be in an amount determined by UHC and shall be based upon the facts, circumstances, and representations made by the applicant in the application.
- (b) UHC may condition a reservation of low-income housing tax credits to an applicant upon any restrictions and conditions UHC believes are consistent with the purpose and intent of the program, and those which will ensure the completion of the residential housing development.
- (c) No reservation of low-income housing tax credits may be transferred by an applicant unless the specific written approval of UHC is obtained before the proposed transfer. Any transfer shall be made in writing, with copies of all written documents provided to UHC.
- (d) Applicants shall provide UHC with any information that may be requested by UHC in performing its duties and responsibilities required under the low-income housing tax credit program and the allocation plan.
 - (3) Allocation.
- (a) UHC shall enter into an agreement for the carry-over allocation of low-income housing tax credits, or make a final allocation of low-income housing tax credits, to applicants who have received a reservation of low-income housing tax credits upon satisfaction to UHC of all [ef-]the conditions to the reservation of the low-income housing tax credits and satisfaction of all other requirements under $\underline{S}[s]$ ection 42 of the $\underline{C}[e]$ ode and the allocation plan.
- (b) UHC may disclose the application materials, or any allocating documents, to the Rural Housing Service, Department of Housing and Urban Development or other state or federal agency as is necessary to comply with state or federal law requiring the review of financial subsidies to low-income housing developments.
- (c) As a condition to making any allocation of low-income housing tax credits, UHC may require an applicant to make a deposit, or provide other guarantees of performance, in an amount and manner as determined by UHC to ensure the completion of the residential housing development. Circumstances under which deposits or performance guarantees will be returned or forfeited, in whole or in part, shall be made known to applicants in the allocation plan before the collection of the deposit or performance guarantee.
- (d) UHC may reserve or allocate low-income housing tax credits in amounts that are less than amounts requested by housing credit applicants. UHC may also forward-reserve credits from the following calendar year to complete the reservation of credits for an applicant that scored well enough to receive a partial reservation of the current year credits.
 - (4) Compliance monitoring.
- (a) UHC shall prepare a compliance monitoring plan which satisfies the requirements of $\underline{S}[s]$ ection 42 of the $\underline{C}[e]$ ode.
- (b) Recipients of low-income housing tax credits shall provide to UHC documentation, certifications and other evidences of compliance with the provisions of $\underline{S}[s]$ ection 42 of the $\underline{C}[e]$ ode as

required in the compliance monitoring plan or other guidance issued by the IRS.

- (c) UHC may establish and collect fees payable by recipients of low-income housing tax credits to cover administrative and legal expenses of UHC incurred in on-site [and/]or office-based physical and file compliance reviews, associated documentation review and data input, internal and external reporting of compliance results, maintenance and updating of IT systems which support the program, or other requirements required under $\underline{S[s]}$ ection 42 of the $\underline{C[e]}$ ode.
- (d) If an applicant for low-income housing tax credits is considered not in good standing, as detailed in the allocation plan, UHC may disallow any application in which that individual or entity is participating in any way. UHC may bar individuals or entities considered not in good standing from submitting low-income housing tax credit applications for a period [of time-]not to exceed five continuous tax-credit cycles which time will be calculated from the date of notification to the affected individuals or entities of the determination of not in good standing status.

R460-3-5. Housing Development Program.

- (1) Financial assistance to housing sponsors.
- UHC may provide financial assistance to a housing sponsor for [the purpose of]financing the construction, development, rehabilitation, purchase or operations of residential housing.
- (a) UHC shall determine that the project proposed by the housing sponsor increases or maintains the supply of affordable, well-planned, well-designed, permanent, temporary transitional or emergency housing for low and moderate income persons.
- (b) The housing sponsor shall agree to provide a specified number of units of residential housing for persons whose income does not exceed the maximum income limits established by UHC. UHC's president may[is authorized to] establish income limits of UHC's housing development programs and such limits shall not exceed 140% of area or state median income as determined and published by HUD.
- UHC shall incorporate the income limits in associated $\underline{P[p]}$ rogram $\underline{D[d]}$ ocuments and shall make information concerning the limits available to all interested persons. Income limits may vary based on several factors including[, but not limited to,] program, household size, county, targeted area, source and availability of funds, and risk to UHC. UHC may require that the income limits for a project be lower than the maximum income limits.
- (c) The amount of the financial assistance shall not exceed the amount required to achieve financial feasibility in providing affordable housing for the intended occupants of the residential housing development.
- (d) In determining the amount of financial assistance, UHC shall determine that the costs, including developer fees and reserves, incurred by the housing sponsor with respect to a residential housing development, are not excessively greater than similar housing developments.
- (e) The housing sponsor shall agree to the controls and procedures required by UHC to ensure that the financial assistance is used only for the approved purposes.
- (f) The housing sponsor shall agree to the continued availability and affordability of the residential housing to low and moderate income persons, pursuant to an enforceable covenant running with the land which is prepared by UHC and recorded with the real estate records of the county in which the residential housing is located.

- (g) UHC shall determine that the housing sponsor has the necessary competence, experience and financial capability to complete or operate the residential housing development through an internal review of a sponsor's previous projects [and/]or through interviews of individuals involved with the sponsor in previous projects.
- (h) UHC shall require security for any loan in a form and amount as UHC determines is reasonably necessary to secure repayment. The security shall include a lien on the project property and may also include an irrevocable letter of credit, personal guarantees, security interests in unrelated real or personal property of the developer, assignments of contract rights and interests related to proposed development of the project, [and/]or power of attorney to replace manager, general partner or other principals of the developer. The lien on the project property may be subordinate to other financing of the project. Loans to non-profit or governmental entities are not required to be secured by personal guarantees.
- (i) If[In the event that] UHC makes a loan that is funded by or subject to any federal or state program, the terms of the loan shall be consistent with the requirements of the applicable program, notwithstanding any inconsistency with this $\underline{r}[\mathbb{R}]$ ule.
- (j) <u>In this rule, [As used herein,</u>] the "amount of financial assistance" means the principal amount of the loan together with the benefit of loan terms that are not typically available in the market, such as low, [(]or no[)], interest rate, a long maturity date [and/]or a deferred, [(]or no[)], amortization period.
- (2) Financial assistance to low and moderate income persons.

UHC may provide financial assistance to low and moderate income persons for [the purpose of]construction, rehabilitation, purchase, [and/]or financing of residential housing.

- (a) UHC shall determine that, [in order]to make homeownership feasible for certain low and moderate income persons, financial assistance is necessary to reduce the cost of constructing, rehabilitating, purchasing [and/]or financing the residential housing.
- (b) UHC may establish and amend maximum income limits for low and moderate income persons eligible to receive the financial assistance. The limits shall not exceed 140% of area or state median income as determined and published by HUD. UHC shall incorporate the income limits in associated P[p]rogram D[d]ocuments and shall make information concerning the limits available to all interested persons. Income limits may vary based on several factors including[, but not limited to,] loan program, household size, county, targeted area, source and availability of funds, and risk to UHC. UHC may require that the income limits for a project be lower than the maximum income limits.
- (c) The financial assistance will be provided only to assist with the construction, rehabilitation, purchase, [and/]or financing of residential housing which does not exceed the maximum acquisition cost and appraised value limits established by UHC. The acquisition cost of residential housing is the cost of acquiring a completed residential housing unit and shall include all amounts paid in such or in kind for all structures, fixtures, and land. UHC shall establish and may amend the limits in open public meetings of UHC for which UHC shall have given public notice as required by state law.
- (d) UHC may condition the financial assistance provided to the home[-]buyer upon its repayment, with or without interest, to UHC.
- (3) UHC may agree to provide any financial assistance pursuant to such additional conditions, terms and restrictions to ensure that the financial assistance is used as specified by UHC.

- (4) UHC may establish application procedures and forms of applications and may collect fees payable by housing sponsors [and/]or low and moderate income persons to cover administrative and legal expenses of UHC incurred in processing and reviewing applications.
- (5) UHC may provide financial assistance only if sufficient funds exist for that purpose and the financial assistance can be provided without jeopardizing the financial self-sufficiency of UHC.
- (6) UHC may provide financial assistance to any subsidiary of UHC for any of the purposes set forth in this rule provided the applicable conditions for such financial assistance are satisfied.
- (7) For financial assistance provided under a program established by the Trustees of UHC, the general terms of the financial assistance shall be consistent with the requirements of the program and the specific terms shall be determined by the [P]president or another officer designated by the [P]president. For all other financial assistance, the general terms shall be determined by the Trustees and the specific terms shall be determined by the [P]president consistent with the terms determined by the Trustees.

R460-3-6. State Low-Income Housing Tax Credit Program.

- (1) Application procedures.
- (a) UHC shall incorporate in the low-income housing tax credit allocation plan prepared by UHC pursuant to <u>Section R460-3-4</u> criteria and allocation procedures that UHC will follow in administering state low-income housing tax credits.
- (b) UHC shall designate the form of application which shall be used to request an allocation of state low-income housing tax credits.
 - (2) Reservation of credits.
- (a) UHC shall evaluate all applications according to the procedures set forth in the allocation plan, however, the applications will not be scored and ranked for purposes of reserving state low-income housing tax credits. A reservation of state low-income housing tax credits allocated to an applicant shall be in an amount determined by UHC and shall be based upon the facts, circumstances, and representations contained in the application. UHC may reserve state low-income housing tax credits to projects either in conjunction with the reservation of federal low-income housing tax credits or at a later date to a project not yet placed-in-service that previously received a reservation of federal low-income housing tax credits.
- (b) UHC may condition a reservation of state low-income housing tax credits to an applicant upon any restrictions and conditions UHC believes are consistent with the purpose and intent of the program, and those which will ensure the completion of the residential housing development.
- (c) No reservation of state low-income housing tax credits may be transferred by an applicant unless the specific written approval of UHC is obtained before the proposed transfer. Any transfer shall be made in writing, with copies of all written documents provided to UHC.
- (d) Applicants shall provide UHC with any information that may be requested by UHC in performing its duties and responsibilities required under the low-income housing tax credit program and the allocation plan.
 - (3) Allocation.
- (a) UHC shall enter into an agreement for the carry-over allocation of state low-income housing tax credits, or make a final allocation of state low-income housing tax credits, to applicants who have received a reservation of state low-income housing tax credits

upon satisfaction to UHC of all [of the-]conditions to the reservation of the state and federal low-income housing tax credits.

- (b) As a condition to making any allocation of state lowincome housing tax credits, UHC may require an applicant to make a deposit, or provide other guarantees of performance, in an amount and manner as determined by UHC to ensure the completion of the residential housing development. Circumstances under which deposits or performance guarantees will be returned or forfeited, in whole or in part, shall be made known to applicants before the collection of the deposit or performance guarantee.
- (c) UHC may reserve or allocate state low-income housing tax credits in amounts that are less than amounts requested by applicants.

KEY: housing finance homebuyer assistance
Date of Last Change: 2023 [March 9, 2016]
Notice of Continuation: September 14, 2022

Authorizing, and Implemented or Interpreted Law: 63H-8-301;

63H-8-302; 63H-8-303; 63H-8-502

NOTICE OF PROP	OSED RULE	
TYPE OF FILING:	Repeal and Ree	nact
Rule or Section Number:	R501-13	Filing ID: 55421

Agency Information

1. Department:	Health a	ind Human Services	
Agency:	Health S	Services Program Licensing	
Building:	MASOB	MASOB	
Street address:	195 N 1	950 W	
City, state and zip:	Salt Lak	Salt Lake City, UT 84116	
Contact persons	:		
Name:	Phone:	Email:	
Name: Janice Weinman	385- 321- 5586	Email: jweinman@utah.gov	
	385- 321-		

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R501-13. Adult Day Care

3. Purpose of the new rule or reason for the change:

The purpose of this amendment is to modify and replace outdated language with the Utah Rulewriting Manual.

Additionally, this amendment replaces outdated citations following the consolidation of the Department of Health

and Human Services' (Department) statute, Title 26B, Chapter 2.

4. Summary of the new rule or change:

The revisions include more specific language and formatting consistent with the Utah Rulewriting Manual.

Additionally, it removes outdated citations and aligns this rule with current industry 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.

No change to the state budget is expected because this amendment modifies and replaces outdated language and citations, most of the stricken content is now located in Rule R501-1.

New content aligns with federal and industry standards already in practice.

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 Day Treatment Programs are regulated by the 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.

There are no fiscal impacts to local governments resulting from the substantive or nonsubstantive changes in this rule content.

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

Small businesses impacted will be insignificant, as the new rule content was amended to address duplicative content across all rule categories.

Rule R501-1 is the streamlined and updated version of the stricken content of this rule as it applies to all license categories. These entities have always fit into the statutory definition requiring licensure, so the new content better addresses their services and clarifies and guides them toward compliance.

There are no fiscal impacts to small businesses resulting from the substantive or nonsubstantive changes in this rule content.

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

Non-small businesses impacted will be insignificant, as the new rule content was amended to address duplicative content across all rule categories.

Rule R501-1 is the streamlined and updated version of the stricken content of this rule as it applies to all license categories. These entities have always fit into the statutory definition requiring licensure, so the new content just better addresses their services and clarifies and guides them toward compliance.

There are no fiscal impacts to non-small businesses resulting from the substantive or nonsubstantive changes in this rule content.

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 any affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards.

The substantive and nonsubstantive changes being made clarify and outline existing industry standards and requirements for the protection of clients in adult daycare programs. There will be no fiscal impacts on any affected persons as a result 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?):

This rule amendment does not introduce any new processes that will incur a cost for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 26B-2-104 Section 26B-2-101

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Tracy S. Gruber,	Date:	05/15/2023
or designee	Executive Director		
and title:			

R501. Health and Human Services, [Administration, Administrative Services,] Human Services Program Licensing. R501-13. Adult Day Care.

[R501-13-1. Authority.

Pursuant to 62A 2-101 et seq., the Office of Licensing, hereinafter referred to as Office, shall license adult day care programs according to the following rules.

R501-13-2. Purpose.

Adult day care is designed to meet the needs of functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a protective setting.

R501-13-3. Definition.

Pursuant to 62A-2-101(1) adult day care means continuous care and supervision for three or more adults 18 years of age and over for at least four but less than 24 hours a day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

R501-13-4. Governance.

- A. The program shall have a governing body which has responsibility for and authority over the policies, procedures and activities of the program.
 - B. The governing body shall be one of the following:
 - a Board of Directors in a nonprofit organization; or
- 2. commissioners or appointed officials of a governmental unit; or
- 3. Board of Directors or individual owners of a for-profit organization.
- C. The program shall have a list of members of the governing body, indicating name, address and term of membership.
- D. The program shall have an organization chart which identifies operating units of the program and their interrelationship. The chart shall define lines of authority and responsibility for all program staff.
- E. When the governing body is composed of more than one person, the governing body shall establish bylaws, and shall hold formal meetings at least twice a year to evaluate quality assurance. A written record of meetings including date, attendance, agenda and actions shall be maintained on site.
- F. The responsibilities of the governing body shall be as follows:
- to ensure program policy and procedure compliance,
- to ensure continual compliance with relevant local, state and federal requirements.
- 3. to notify the Office within thirty days of changes in program administration or purpose, and
- 4. to ensure that the program is fiscally sound.

R501-13-5. Statutory Authority.

A. A publicly operated program shall document the statutory basis for existence.

B. A privately operated program shall document ownership or incorporation.

R501-13-6. Program Administration.

A. A qualified Director shall be designated by the governing body to be responsible for day to day program operation.

B. Records as specified shall be maintained on-site.

C. Program personnel shall not handle consumer finances. demographic information, D. There shall be a written statement of purpose to include 2. Medicaid and Medicare number, when appropriate, the following: 3. biographical information, 1. mission statement, 4. pertinent background information, personal history, including social, emotional, and 2. description of services provided, 3. description of services not provided, physical development, 4. description of population to be served, b. legal status, including consent forms for dependent 5. fees to be charged, and consumers, and 6. participation of consumers in activities related to fund e. an emergency contact with name, address and telephone raising, publicity, research projects, and work activities that benefit number. anyone other than the consumer. 5. consumer health records including the following, E. The statement of purpose shall be provided to the record of medication including dosage consumer and the responsible person and shall be available to the Office, upon request. Notice of such availability shall be posted. a current health assessment signed by a physician, and F. There shall be a quality assurance plan to include a signed consent form, description of methods and standards used to assure high quality 6. intake assessment, services. Implementation of the plan shall be documented and 7. signed consumer agreement, and available for review by the Office, the consumer, and the responsible 8. copy of consumers' service plan. C. The Director shall have an employment file on-site for G. There shall be written reports of all grievances and their each staff person. conclusion or disposition. Grievance reports shall be maintained on-D. The Office shall have the authority to review program records at anytime. site. H. The program shall have clearly stated guidelines and administrative procedures to ensure the following: R501-13-8. Direct Service Management. 1. program management, A. The program shall have a written eligibility, admission 2. maintenance of complete and accurate accounts, books, and discharge policy and procedure to include the following: and records, and intake process, 3. maintenance of records in an accessible, standardized 2. self-admission, 3. notification of the responsible person, order and retained as required by law. I. All program staff, consultants, volunteers, interns and 4. reasons for admission refusal which includes a written, other personnel shall read, understand, and sign the current signed statement, and Department of Human Services, hereinafter referred to as DHS, 5. reasons for discharge or dismissal. Provider Code of Conduct. B. Intake Assessment J. The program shall post their license in a conspicuous 1. Before a program admits a consumer, a written place on the premises. assessment shall be completed to evaluate current health and medical K. Each program shall comply with State and Federal laws history, legal status, social, psychological and, as appropriate, regarding abuse, shall post a copy of State Law 62A-3-301, and developmental, vocational or educational factors. provide an informational flyer to each consumer and the responsible 2. In emergency drop-in care situations which necessitate immediate placement, the assessment shall be completed on the same The program shall meet American Disabilities day of service in all situations. Act,(ADA) guidelines and make reasonable accommodation for All methods used during intake shall consider age, consumers and staff. ADA guidelines and reasonable cultural background, dominant language, and mode of accommodation shall be determined by the authority having communication. 4. During intake, the consumer's legal status, according to iurisdiction. M. The program shall comply with local building code State Law, shall be determined as it relates to the responsible person enforcement for disability accessibility. who may have legal authority to make decisions on the consumer's behalf. R501-13-7. Record Keeping. C. Consumer Agreement A. The Director shall maintain the following information A written agreement, developed with the consumer, the on-site at all times: responsible person and the Director or designee, shall be completed, 1. organizational chart, signed by all parties, and kept in the consumer's record. It shall 2. bylaws of the governing body if applicable, include the following: minutes of formal meetings, 1. rules of program, 2. consumer and family expectations as appropriate and 4. daily consumer attendance records, 5. all program related leases, contracts and purchase-ofagreed upon, service agreements to which the governing body is a party, 3. services to be provided and not provided and cost of 6. annual budgets and audit reports, service, including refunds, 7. annual fire inspection report and any other inspection 4. authorization to serve and to obtain emergency medical reports as required by law, and care, and copies of all policies and procedures. arrangements regarding absenteeism, visits, vacation, B. The Director shall have written records onsite for each mail, gifts, and telephone calls, as appropriate. consumer, to include the following: D. Individual Consumer Service Plan

1. A program staff member in collaboration with the	G. All consumers shall receive the same standard of care
Director, shall be assigned to each consumer and have responsibility	regardless of funding source.
and authority for development, implementation, and review of the	regardless of funding source.
individual consumer service plan.	R501-13-10. Behavior Management.
2. The plan shall include the following:	A. There shall be a written policy and procedure for
a. findings of the intake assessment and consumer records,	methods of behavior management to include the following:
b. individualized program plan to enhance consumer well-	1. definition of appropriate and inappropriate consumer
being,	behaviors, and
c. specification of daily activities and services,	2. acceptable staff responses to inappropriate behaviors.
d. methods for evaluation, and	B. The policy shall be provided to all staff prior to working
e. discharge summary.	with consumers and staff shall receive annual training relative to
3. Individual consumer service plans shall be developed	behavior management.
within three working days of admission and evaluated within 30 days	C. No staff member shall use, nor permit the use of
of admission and every 90 days thereafter or as changes occur.	physical restraint, humiliating or frightening methods of punishmen
4. All persons working directly with the consumer shall	on consumers at anytime.
review the individual consumer service plan.	D. Passive physical restraint shall be used only in
E. Incident or Crisis Intervention Reports	behavioral related situations as a temporary means of physical
1. There shall be written reports to document consumer	containment to protect the consumer, other persons, or property from
death, injuries, fights, or physical confrontations, situations requiring	harm. Passive physical restraint shall not be associated with
the use of passive physical restraints, suspected incidents of abuse or	punishment in any way.
neglect, unusual incidents, and other situations or circumstances	
affecting the health, safety, or well-being of a consumer while in care.	R501-13-11. Rights of Consumers.
2. The report shall include the following:	A. The program shall have a written statement of
a. summary information,	consumers' rights to include the following:
b. date and time of emergency intervention,	1. privacy of information and privacy for both current and
e. list of referrals if any,	closed consumers' records,
d. follow-up information, and	2. reasons for involuntary termination and criteria for
e. signature of person preparing report and other witnesses	readmission to the program,
confirming the contents of the report.	3. potential harm or acts of violence to consumers or
3. The report shall be completed within 48 hours of each	others,
occurrence and maintained in the individual consumer's record.	4. consumers' responsibilities including household tasks
4. When an incident or crisis involves abuse, neglect or	privileges, and rules of conduct,
death of a consumer, the Director or designee shall document the	5. service fees and other costs,
following:	6. grievance and complaint procedures,
a. a preliminary written report within 24 hours of the	7. freedom from discrimination,
incident, and	8. the right to be treated with dignity, and
b. immediate notification to the Office, the consumer's	9. the right to communicate with family, attorney
legally responsible person, the nearest Human Services office, and as	physician clergyman, and others.
appropriate a law enforcement authority.	B. The consumer and the responsible person shall be
	informed of the consumer rights statement to his or her understanding
R501-13-9. Direct Service.	verbally and in writing.
A. Adult day care activity plans shall be prepared to meet	
individual consumer and group needs and preferences. Daily activity	R501-13-12. Personnel Administration.
plans may include, community living skills, work activity, recreation,	A. There shall be written policies and procedures to
nutrition, personal hygiene, social appropriateness, and recreational	include the following:
activities that facilitate physical, social, psychological, and emotional	1. staff grievances,
development.	2. lines of authority,
B. Activity plans shall be written, staff shall be oriented to	 orientation and ongoing training,
their use, and shall be maintained on file at the program.	4. performance appraisals, and
C. There shall be a daily schedule, posted and implemented	5. rules of conduct.
as designed.	 B. Individual staff and the Director shall review policy
D. Each consumer shall have the opportunity to use at least	together.
four of the following activity areas each day: general activities,	C. The program shall have a Director, appointed by the
sedentary activities, specialized activities, rest area, self care area,	governing body, who shall be responsible for day to day program and
appointed outdoor area, kitchen and nutrition area, and reality	facility management.
orientation area.	D. The Director or designee shall be on-site at all times
E. A sufficient amount of equipment and materials shall be	during program operating hours.

rules.

and be encouraged to participate in activities.

simultaneously.

provided so that consumers can participate in a variety of activities

F. Consumers shall receive direct supervision at all times

E. The program shall employ a sufficient number of

trained, licensed, and qualified staff in order to meet the needs of the

consumers, implement the service plan, and comply with licensing

- F. The program shall have a written job description for For programs with nine or more each position, to include a specific statement of duties and administrative and maintenance staff shall not be included in staff to responsibilities and the minimum required level of education, consumer ratio. В. The Director shall meet one of the following training and work experience. G. The governing body shall ensure that all staff are credentials: certified or licensed as legally required and appropriate to their 1. a licensed nurse, 2. a licensed social worker, assignment. H. The program shall have access to a physician licensed 3. a licensed psychologist, to practice medicine in the State of Utah. 4. a recreational, or physical therapist, properly licensed or I. The Director shall have a file on-site for each staff person certified. 5. other licensed professionals in related fields who have to include the following: 1. application for employment, including record of demonstrated competence in working with functionally impaired previous employment with references, adults, or applicable credentials and certifications, a person that has received verifiable training to work initial health evaluation including medical history, with functionally impaired adults, and is in consultation on an Tuberculin test, ongoing basis with a licensed or certified professional with Director 5. food handler permit as required, eredentials. 6. training record, including first aid and CPR, C. Directors shall obtain 10 hours of related training on an 7. performance evaluations, and annual basis. 8. signed copy of Code of Conduct. D. Minimum Staff Requirements J. Provisions of R501-14 and R501-18 shall be met. 1. Staff shall be 18 years of age or older and demonstrate competency in working with functionally impaired adults. K. Staff shall have access to his or her staff file and shall be allowed to add written statements to the file. 2. Staff shall receive eight hours of initial orientation L. Staff files shall be retained for a minimum of two years training designed by the Director to meet the needs of the program, after termination of employment. plus 10 hours of work related training on a yearly basis. M. A program using volunteers, student interns or other personnel, shall have a written policy to include the following: R501-13-14. Physical Facility. The governing body shall provide written 1. direct supervision by a paid staff member, 2. orientation and training in the philosophy of the documentation of compliance with the following: program, the needs of consumers, and methods of meeting those 1. local zoning, 2. local business license, needs, 3. character reference checks, and 3. local building codes, 4. all personnel shall complete an employment application 4. local fire safety regulations, and and shall read and sign the current Provider Code of Conduct. The 5. local health codes, as applicable, including but not limited to Utah Food Service and Sanitation Act. application shall be maintained on-site for two years. N. Staff Training: B. In the event of ownership change, structural remodeling or a change in category of service, the Office and other regulatory
- 1. Staff members shall be trained in all program policies
- 2. Staff shall have Food Handler permits as required to fulfill their job description. The program shall have a staff person trained, by a certified instructor, in first aid and CPR on duty with the consumers at all times.
- 3. DHS may require further specific training, which will be defined in applicable State contracts.
- Training shall be documented and maintained in individual staff files.

R501-13-13. Staffing.

- A. Adult Day Care Staffing Ratios
- 1. When eight or fewer consumers are present, one staff person shall provide direct supervision at all times with a second staff person meeting minimum staff requirements immediately available.
- 2. When nine to 16 consumers are present, two staff shall provide direct supervision at all times. The ratio of one staff person per eight consumers will continue progressively.
- 3. In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.
- Staff supervision shall be provided continually throughout staff training periods.

R501-13-15. Physical Environment.

agencies shall be immediately notified.

C. Building and Grounds

cleanliness of the building and grounds are maintained.

safe physical environment for its consumers and staff.

A. There shall be a minimum of fifty square feet of indoor floor space per consumer designated specifically for adult day care during program operational hours. Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.

The program shall ensure that the appearance and

2. The program shall take reasonable measures to ensure a

- B. Outdoor recreational space on or off site and compatible recreational equipment shall be available to facilitate activity plans.
- C. All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.
- D. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off.
- E. Space shall be used exclusively for adult day care during designated hours of operation.
 - F. Bathrooms

- 1. There shall be at least one bathroom exclusively for consumers use during business hours. For facilities serving more than ten consumers there shall be separate male and female bathrooms exclusively for consumer use.
 - 2. Adult day care programs shall provide the following:

TABLE 1

-	Toilets	Sinks	
	Male 1:15	Female 1:15	
	Female 1:15	Male 1:15	

- 3. Bathrooms shall accommodate physically disabled consumers.
- 4. Each bathroom shall be properly supplied with toilet paper, individual disposable hand towels or air dryers, soap dispensers, and other items required for personal hygiene. Consumers' personal items shall be labeled and stored separately for each consumer.
- 5. Toilet rooms shall be ventilated by mechanical means or equipped with a screened window that opens. Toilet rooms shall be maintained in good operating order and in a clean and safe condition.
- 6. Each toilet shall be individually stalled with closing doors for privacy.
- G. Safety
- 1. All furniture and equipment shall be maintained in a clean and safe condition. Equipment shall be operated and maintained as specified by manufacturer instructions.
- 2. Grade level entrance, approved ramps, handrails and other safety features shall be provided as determined by local, state and federal regulations and fire authorities in order to facilitate safe movement.
- 3. Provisions of the Utah Clean Air Act shall be followed if smoking is allowed in the building.
- 4. Use of restrictive barriers shall be approved by fire authorities.
- Use of throw rugs is prohibited.
- 6. Hot water accessible to consumers shall be maintained at a temperature that does not exceed 110 Fahrenheit.
- 7. A secured storage area, inaccessible to consumers, shall be used for volatile and toxic substances.
- 8. Heating, ventilation, and lighting shall be adequate to protect the health of the consumers. Indoor temperature shall be maintained at a minimum of 70 Fahrenheit.
 - H. Food Service
 - 1. Meals provided by program:
- a. Kitchens used for meal preparation shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals. All equipment shall be maintained in working order. Food preparation areas shall be maintained in a clean and safe condition.
- b. One person shall be responsible for food service.
- e. The person responsible for food service shall maintain a current list of consumers with special nutritional needs or allergies. Records of consumer special nutritional needs shall be kept in the consumer's service records. Food shall be prepared and served in accordance with special nutritional needs.
- 2. Food activities in which consumers participate shall be directly supervised by staff with a food handlers permit.
- 3. Catered foods and beverages provided from outside sources shall have adequate on site storage and refrigeration as well as a method to maintain adequate temperature control.

- 4. Dining space shall be designated and maintained in a clean and safe condition.
- 5. Menus shall be approved by a registered dietitian unless the program is participating in the Federal Adult and Child Nutrition program administrated through the State Office of Education.
- 6. Consumers shall receive meals or snacks according to the following:

TABLE 2

Hours in Care	Meals/Snacks That Shall Be Served
8 or more hours	— 1 meal and 2 snacks or — 2 meals and 1 snack
4 hours but less than 8 hours	1 meal and 2 snacks

- Sufficient food shall be available for second servings.
- 8. There shall be no more than three hours between snack or meal service.
 - 9. Powdered milk shall be used for cooking only.
 - I. Medication
- 1. All prescribed and over the counter medication shall be provided by the consumer, the responsible person or by special arrangement with a licensed pharmacy.
- 2. All medications shall be clearly labeled. Medication shall be stored in a locked storage area. Refrigeration shall be provided as needed with medication stored in a separate container.
- 3. There shall be written policy and procedure to include self administered medication, medication administered by persons with legal authority to do so and the storage, control, release, and disposal of medication in accordance with federal and state law.
- 4. Any assisted administration of medication shall be documented daily by the Director or designee.

R501-13-16. Infectious Disease and Illness.

- A. The program shall have policies and procedures designed to prevent or control infectious and communicable diseases in the facility.
- B. If a consumer shows signs of illness after arrival, staff shall contact the family or the responsible person immediately. The consumer shall be isolated.
- C. No consumer shall be admitted for care or allowed to remain at the program if there are signs of vomiting, diarrhea, fever or unexplained skin rash.
- D. Staff shall follow Department of Health rules in the event of suspected communicable and infectious disease.

R501-13-17. Emergency Plans and General Safety.

- A. Each program shall have a written plan of action for disaster developed in coordination with local emergency planning services and agencies.
- B. Consumers and staff shall receive instructions on how to respond to fire warnings and other instructions for life safety.
- C. The program shall have a written plan which staff follow in medical emergencies and in arrangements for medical care, including notification of consumers' physician and the responsible person.
- D. Fire drills shall be conducted at least monthly at different times during hours of operation, and documented. Notation of inadequate response shall be documented.

- E. The program shall have immediate access to 24 hour telephone service. Telephone numbers for emergency assistance shall be posted by the telephone.
- F. The program shall have an adequately supplied first aid kit on-site, appropriate to program size.

R501-13-18. Transportation.

- A. There shall be written policy and procedures for transporting consumers.
- B. A list of all occupants or consumers, and the name, address and phone number of the program shall be maintained in each vehicle.
- C. There shall be a means of transportation in case of emergency.
- D. Vehicle drivers shall have a drivers license valid in the State of Utah and follow safety requirements of State Motor Vehicles and Public Safety. Drivers shall have certified first aid and CPR training.
- E. Each vehicle shall be equipped with an adequately supplied first aid kit.
- F. A belt cutter shall be kept in all vehicles used to transport consumers. The belt cutter shall be located in an easily accessible, safe place.
- G. Loose items shall be secured within the vehicle to reduce the danger of flying objects in an emergency.

R501-13-1. Authority and Purpose.

- (1) Section 26B-2-104 authorizes this rule.
- (2) This rule establishes standards for the licensure of adult daycare programs. This rule is intended to supplement the general provisions required in Rule R501-1.
- (3) This rule supersedes any conflicting requirements outlined in Rule R501-1 as they pertain to adult daycare.
- (4) Adult Daycare is defined in Sections 26B-2-101 and R432-270-29 and does not require separate licensure for an adult daycare in a Type 1 or Type 2 assisted living licensed health care facility.

R501-13-2. Record Keeping.

- (1)(a) In addition to record keeping requirements in Rule R501-1, the director shall maintain the following onsite at all times:
 - (b) daily client attendance records; and
- (c) a current health assessment signed by a physician for each client.

R501-13-3. Activity Plans.

- (1) Each licensee shall prepare daily activity plans that meet individual client and group physical, social, psychological, or emotional, development. These plans may include:
 - (a) community living skills;
 - (b) work activity;
 - (c) recreation;
 - (d) nutrition;
 - (e) personal hygiene; or
 - (f) social skills.
- (2) The licensee shall maintain activity plans on file and orient staff to their use.
- (3) There shall be a daily schedule posted and implemented onsite.
- (4) Each client shall have the opportunity to use four of the following activity areas each day:
 - (a) general activities;
 - (b) sedentary activities;

- (c) specialized activities;
- (d) rest area;
- (e) self-care area;
- (f) appointed outdoor area;
 - (g) kitchen and nutrition area; or(h) reality orientation area.

R501-13-4. Staffing.

- (1) The licensee shall ensure that staff to client ratios meet the following:
- (a) except as outlined in Subsection R501-13-4(1)(e), eight or less clients require one staff person to provide direct supervision at all times with a second staff person meeting minimum staff requirements immediately available;
- (b) nine to sixteen clients require two staff providing direct supervision at all times;
- (c) sixteen or more clients require a staffing ratio of one staff to each eight clients;
- (d) administrative and maintenance staff shall not be included in the staff to client ratio when nine or more clients are present;
- (e) in each program where one-half or more of the clients are medically diagnosed with Alzheimer's Disease or related dementia, a staffing ratio of one staff to six clients is required; and
- (f) staff trainees shall be supervised at all times while with clients.
- (2) The director shall meet one of the following credentials:
 - (a) licensed nurse;
 - (b) licensed social worker;
 - (c) licensed psychologist;
 - (d) licensed or certified recreational or physical therapist;
- (e) other licensed professionals in related fields who have demonstrated competence in working with functionally impaired adults; or
- (f) an individual who has received verifiable training to work with functionally impaired adults and is in consultation on an ongoing basis with a licensed or certified professional with director credentials.
- (3) The director shall obtain and document 10 hours of related training on an annual basis.
- (4) Direct care staff shall be 18 years of age or older and able to demonstrate competency in working with functionally impaired adults.
- (5) In addition to the training requirements of Subsection R501-1-19(2)(d), direct care staff shall receive:
- (a) eight hours of initial orientation training specific to the program and client needs; and
 - (b) ten hours of work-related training on an annual basis.

R501-13-5. Physical Environment.

- (1) The licensee shall ensure that a minimum of 50 square feet of indoor floor space per client is designated specifically for adult daycare during operation hours. Hallways, kitchens, offices, storage, and bathrooms may not be included in the computation.
- (2) The licensee shall ensure that there is at least one bathroom exclusively for clients during operation hours.
- (3) The licensee shall maintain indoor air temperature at a minimum of 70 degrees Fahrenheit.
- (4) The licensee shall ensure that clients receive meals or snacks in accordance with the Child and Adult Care Food Program (CACFP) and the following:

- (a) there is no more than three hours between snack or meal service;
 - (b) there is sufficient food for second servings; and
 - (c) powdered milk is used for cooking only.
- (5) The licensee shall provide outdoor recreational space on or off site with compatible recreational equipment available to facilitate activity plans.
- (6) The licensee shall comply with local building code enforcement for disability accessibility.
- (7) The licensee shall abate and mitigate hazards on the property, including burning, falling, or drowning hazards, through protective hardware, fences, banisters, railings, grates, natural barriers, or other licensor or local fire authority approved methods.

KEY: human services, licensing

Date of Last Change: [April 15, 2000] 2023 Notice of Continuation: October 3, 2022

Authorizing, and Implemented or Interpreted Law: [62A-2-101

et seq.; 62A-4|26B-2-101; 26B-2-104

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Amendment			
Rule or Section R653-11 Filing ID: 55429			

Agency Information

1. Department:	Natural Resources
Agency:	Water Resources
Room number:	310
Building:	Natural Resources Building
Street address:	1594 W North Temple
City, state and zip:	Salt Lake City, UT 84114
Contact porsons	•

Contact persons:

Name:	Phone:	Email:
Martin Bushman	801- 538- 7273	martinbushman@agutah.gov
Joel Williams	801- 538- 7349	joelwilliams@utah.gov
Shelby Ericksen	801- 300- 1623	shelbyericksen@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or s	ection o	catchline:		
R653-11. Incentives	Water	Conservation	Requirements	and

3. Purpose of the new rule or reason for the change:

The Utah Legislature enacted S.B. 118 in the 2023 General Session, which amends Section 73-10-37. This section of code directs the Utah Division of Water Resources (Division) to provide a financial incentive to landowners that convert lawn to water efficient landscaping, consistent with statutory and regulatory requirements.

The S.B. 118 (2023) amendment includes:

- 1) new and revised definitions;
- refined directives governing the Division's administration of the existing lawn conversion incentive program; and
- 3) directives for a new program authorizing the Division to award grants to eligible water conservancy districts to augment financial incentives provided through their respective lawn conversion incentive programs.

The purpose of the proposed rule changes is to implement the Legislature's directives in S.B. 118 (Section 73-10-37), as authorized and instructed in Subsection 73-10-37(5).

4. Summary of the new rule or change:

The proposed amendments to Rule R653-11 reconcile and harmonize existing rule with new legislative provisions and directives in Section 73-10-37, as enacted in S.B. 118 (2023).

The proposed rule amendments:

- 1) alter existing definitions to harmonize with and implement new statutory requirements;
- 2) blend and reconcile existing rule language with new statutory directives governing lawn conversion financial incentives awarded by the Division to landowners, and grants awarded to water conservancy districts;
- 3) establish the process by which landowners may receive a lawn conversion incentive and water conservancy districts receive lawn conversion grants (Subsection 73-10-37(5)(a));
- 4) define "water efficient landscaping" (Subsection 73-10-37(5)(b));
- 5) identify the maximum incentive from grant money allowable for each square foot of lawn converted to water efficient landscaping or maximum aggregate amount (Subsection 73-10-37(5)(c)); and
- 6) establish regional-based water use efficiency standards designed to reduce water consumption and conserve culinary and secondary water supplies (Subsection 73-10-37(5)(d)).

The amendments fulfill statutory directives in Subsection 73-10-37(5) will enable the Division to better perform the responsibilities and administer the programs it is charged to in S.B. 118 (2023).

Fiscal Information

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

A) State budget:

The rule amendments implement water conservation incentives imposed in Section 73-10-37.

In S.B. 118, the Legislature appropriated \$3,011,200 in funding to the Division for planning and administering the lawn conversion incentive programs (\$11,200), and to distribute to landowners and water conservancy districts for financial incentives to convert existing lawn to drought resistant landscaping (\$3,000,000).

This rule governs the distribution of \$3,000,000 to:

- 1) reimburse some costs incurred converting lawn to drought resistant landscaping; and
- 2) assist eligible water conservancy districts fund incentives under their respective lawn conversion incentive programs.

The incentive programs will be administered by existing staff at the Division; no new hires or overtime pay will be required.

B) Local governments:

The lawn conversion incentive program will not fiscally impact local governments negatively.

The program makes funding available to:

- 1) property owners as an incentive to convert lawns into water efficient landscaping; and
- water conservancy districts for use in funding financial incentives awarded through their respective lawn conversion incentive programs.

The rule does not require:

- landowners to convert their lawns to drought resistant landscaping or to seek reimbursement of costs for such conversions from the Division; or
- water conservancy districts to implement and fund lawn conversion incentive programs or to seek a grant from the Division.

Grants are not reimbursed to the Division or any other entity by recipient districts.

Participation in the program is completely voluntary under this rule. Those that choose to participate and receive funding, however, must pay whatever portion of the conversion's costs not covered by the incentive award.

The cost to convert lawn to drought resistant landscaping varies considerably depending on contractor, region of the state, and actual work performed but average costs are generally between \$4 and \$12 a square foot. The state incentive provided in the rule is \$1.50 a square foot.

A lawn conversion, once completed, will reduce the landowner's outdoor water use and the associated costs.

and eliminate lawn maintenance. It will also conserve water supplies in the community, reduce the likelihood of shortages, and delay the need for further water development by water providers.

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

To the extent a landowner is not a local government and more closely related to a small or large business, it will be impacted similarly to that described in the local government section.

A residual benefit of the rule amendment and the incentive program it implements to small and large businesses will be increased demand for:

- 1) landscaping services by qualified contractors; and
- organic and inorganic materials (plants, shrubs, trees, gravel, rock, etc.) used in water efficient landscaping.

In total, the incentive program over the next couple years will infuse \$3,000,000 in state incentive money and participant's corresponding cost share into the purchase of landscaping services and associated materials.

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

Impacts to non-small businesses are anticipated to be no different than to small businesses. See small business impact response above.

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):

No anticipated impacts to other persons different than local governments, small businesses, or non-small businesses. See the previous responses above.

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

The rule does not require landowners to convert their lawns to drought resistant landscaping or to seek reimbursement of costs for such conversions from the Division. Nor does it compel water conservancy districts to implement and fund lawn conversion incentive programs or to seek a grant from the Division.

Participation in the program is completely voluntary under this rule. Those that choose to participate and receive funding, however, must pay whatever portion of the conversion's costs not covered by the incentive award.

The cost to convert lawn to water efficient landscaping varies considerably depending on contractor, region of the state, and actual work performed but average costs are generally between \$4 and \$12 a square foot. The state incentive provided in the rule is \$1.50 a square foot.

A lawn conversion, once completed, will reduce the landowner's outdoor water use and the associated costs, and the need for eliminate lawn maintenance. It will also conserve water supplies in the community, reduce the likelihood of shortages, and delay the need for further water development by water providers.

Again, participation in the program under this rule is voluntary.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this regulatory impact analysis.

Citation Information

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

•	•	
Section 73-10-37	Subsection	
	73-10-37(5)	

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head	Candice	Date:	05/15/2023
or designee	Hasenyager,		
and title:	Director		

R653. Natural Resources, Water Resources.

R653-11. Water Conservation Requirements and Incentives. R653-11-1. Authority and Purpose.

- (1) This rule is promulgated to:
- (a) define terms, identify exemptions, and further the objectives of Section 63A-5b-1108 in reducing outdoor water use at state government facilities; [and]
- (b) clarify terms and further the implementation and administration of the water conservation program created in Section 73-10-37 that financially incentivizes [private]landowners to replace lawn with [drought resistant]water efficient landscaping[-]; and
- (c) fulfill the legislative directives in Subsection 73-10-37(5).

R653-11-2. Definitions.

- (1) Terms used in this rule and not otherwise defined in this section are defined in Subsections 63A-5b-1108(1) and 73-10-37(1).
 - (2) As used in this section:
- (a) "District" means a water conservancy district, as that term is defined in Section 73-10-32.

[(a)](b) "Division" means the Division of Water Resources.

(c) "Landscaping conversion incentive program" means a program administered by a district that pays an owner a financial incentive to remove lawn from a project area on land owned by the owner.

- (d) "Program guidelines" means guidelines adopted by a district for the district's landscaping conversion incentive program.
- [(b)](e) "Outdoor water use" means water used for outdoor landscape irrigation and ornamental landscape water features.
 - [(e)](f) "Owner" means a person or entity [who]that[:
- (i)] holds legal or rightful title, or a controlling interest in that title, to <u>private or public</u> nonagricultural land where a water end user is located.[†]
- (ii) is the water end user on the property; and
- (iii) whose residence or place of employment is located on the property.
- [(d)](g) "Drip irrigation system" means a system of narrow distribution tubes or pipes that deliver water from a dedicated low pressure supply valve to individual plants and trees through drip emitters. Drip emitters do not include micro spray, fogger, or bubbler emitters.

[(e) "Good standing" means to have no past due water bills with a retail water provider.]

- [(f)](h) "Lawn" means nonagricultural land planted in closely mowed, managed grasses, excluding golf courses, parks, athletic fields, and sod farms.
- [(g)](i) "Nonagricultural land" means privately <u>or publicly</u> owned real property immediately surrounding a home, apartment, [business]office building, or similar structure routinely occupied by people for dwelling, business, employment, or recreation; and that is not used to grow crops or to hold, house, or feed livestock.
- [(h)](j) "Project area" means the [total-]area [of]from which lawn [proposed for removal on a given property and replacement with drought resistant] is removed and replaced with water efficient landscaping under Section[s] 73-10-37, [and-]R653-11-[6]7, and R653-11-8.
- [(i)](k) ["Retail water provider"]"Water end user" means a person or entity that [supplies]contracts with a retail water provider to obtain [eulinary-]water [or secondary water to a water end user]for residential, commercial, industrial, or institutional use.

R653-11-3. Lawn Limitations at State Government Facilities.

- (1) As provided in Subsection 63A-5b-1108(2), a state agency that owns or occupies a state government facility built or reconstructed on or after May 4, 2022, may not have more than 20% of the grounds of the state government facility be in lawn.
- (2) The 20% lawn limitation in Subsection 63A-5b-1108(2) does not apply to state government facilities under construction or reconstruction and incomplete as of May 4, 2022.
- (3) Upon written request to the division, the division may exempt a state government facility from the 20% lawn limitations in Subsection 63A-5b-1108(2) where it determines that the purpose of the requesting state agency that occupies the facility requires additional lawn.

R653-11-4. Reductions in Outdoor Water Use at State Government Facilities.

- (1) As provided in Subsection 63A-5b-1108(3)(a), a state agency shall reduce its outdoor water use compared to the state agency's outdoor water use for fiscal year 2020:
 - (a) 5% or more by June 30, 2023; and
 - (b) 25% or more by June 30, 2026.
- (2) The unit of measurement for outdoor water use under Subsection 63A-5b-1108(3) is gallons of use per fiscal year.

R653-11-5. Timing of Landscape Irrigation at State Government Facilities.

- (1) As provided in Subsection 63A-5b-1108(4), a state agency may not water outdoor landscaping at a state government facility between the hours of 10 a.m. and 6 p.m.
- (2) Upon written request to the division, the division may authorize a state agency to water landscapes at a state government facility between 10 a.m. and 6 p.m. where nighttime watering is:
- (a) infeasible due to water availability, insufficient water pressure, landscape use patterns or events, or similar impediments; or
- (b) detrimental to establishing and maintaining a landscape or landscape element in a condition that fulfills its fundamental purpose or ensures its perennial survival.

R653-11-6. State Incentives for [Drought Resistant]Water Efficient Landscaping.

- (1) The division may provide an incentive under Sections 73-10-37 and R653-11-7 to an owner to remove lawn from a project area on land owned by the owner in an area without a landscaping conversion incentive program.
- (2) The division may award a grant under Sections 73-10-37 and R653-11-8 to a district to help fund financial incentives provided through a landscaping conversion incentive program administered by the district.

R653-11-7. Division Administered Water Efficient Landscaping Incentives.

- (1) [As provided in Subsection 73-10-37(2)]In an area without an existing landscaping conversion incentive program, the division or its contractor may provide a financial incentive to an owner of private or public property to remove lawn from the property and replace it with [drought resistant]water efficient landscaping, as described in [Subsection-]Section R653-11-[6(7)]9.
- (2) An owner may not receive an incentive under this rule if:
- (a) the owner has previously received an incentive under this section for the same [property]project area;
 - (b) the project area is less than 200 square feet; or
- (c) the project area is located within a municipality or unincorporated area of a county that has not adopted or imposed water use efficiency standards satisfying the minimum benchmarks in [Subsection (8)] Section R653-11-10.
- (3) To obtain an incentive under this section an applicant must submit an application to the division or its designated contractor that includes the following:
- (a) the applicant's name, mailing address, email address, and phone number;
- (b) a description of the property where the proposed lawn removal and replacement will occur;
- (c) a description of the lawn area proposed for removal and replacement, including its dimensions and location on the property, ie. project area;
- (d) the applicant's [acknowledgement-]acknowledgment and verification that:
- (i) [applicant]they hold[s] legal or rightful title or a controlling interest in the title to the project area;
 - (ii) the project area is nonagricultural land;
- (iii) the project area consists of lawn that is living, mowed, and actively managed;

- (iv) the project area is not part of or located on a golf course, park, athletic field, or sod farm;
- (v) [applicant's residence or place of employment]a water end user is located on the property where the project area is located;
- (vi) [applicant]the water end user contracts [with and is in good standing] with a retail water provider for residential, commercial, industrial, or institutional use of water on the project area;
- (vii) the project area is currently irrigated with water supplied by the retail water provider under contract with the [applicant]water end user;
- (viii) the<u>y have[-applicant has]</u> legal authority to authorize lawn removal and replacement on the project area;
- (ix) they [applicant] voluntarily seek[s] to remove the lawn in the project area and replace it with [drought resistant]water efficient landscaping, and [is]are not required to do so by government code or policy;
- (x) the <u>y have[-applicant has]</u> not previously received an incentive under Section 73-10-37 and this rule for the same [property] project area;
- (xi) they [applicant-]agree[s]:[-not to return a project area to lawn after replacing it with drought resistant landscaping and receiving an incentive to do so;]
- (A) to maintain the water efficient landscaping and drip irrigation system installed in the project area and not return it to lawn or overhead spray irrigation after receiving payment for converting the project area to water efficient landscaping; or
- (B) return to the division or to a district the payments received for removal of lawn from the project area;
- (xii) the lawn conversion project will not violate any applicable law, regulation, ordinance, zoning requirement, contractual obligation, or other legal limitation; and
- (xiii) they [applicant-]understand[s] and acknowledge[s] that neither the lawn removal incentive program, its requirements, nor the award of an incentive by the division supersede applicable laws, regulations, ordinances, or contract terms to the contrary; and
 - (e) submission of the following documents:
- (i) billing statement showing that the [applicant]water end user contracts with [and is in good standing with-]the retail water provider that services the project area; and
- (ii) [drought resistant]water efficient landscaping plan for the project area detailing the:
- (A) location on the property and square footage of lawn planned for removal and conversion to [drought resistant]water efficient landscaping, including drawings with dimensional measurements, aerial imagery, and photographs of the project area; and
- (B) types and locations of the inorganic ground cover, weed barriers, plants, shrubs, trees, and irrigation systems satisfying the requirements in [Subsection (7);] Section R653-11-9.[-and
 - (C) projected costs for the project.
- (f) Upon request by the division, submission of documentation showing the applicant is the owner of the property and possesses legal authority to authorize the lawn removal and replacement.
- (4)(a) The division or its contractors will receive and review lawn conversion incentive applications for completeness and compliance with the requirements of Section 73-10-37 and this rule.
- (b) Before approving an incentive application, the division or its contractors will verify the location and eligibility of the project area for an incentive by:

- (i) reviewing information submitted with the application;
- (ii) physically or virtually inspecting <u>and verifying</u> the project area.
- (c)(i) The division or its contractors will approve incentives to qualified applicants under Section 73-10-37 and this rule in the order that eligible applications are filed.
- (ii) The division may end an incentive application and corresponding contract where the owner has not completed the project, as prescribed in the application and contract, within 12 months of the date that the application is filed.
- (d) An incentive authorized for any single application under Section 73-10-37 and this rule shall not exceed:
- (i) \$50,000 in the aggregate, except as otherwise approved by the division in writing on a case-by-case basis; and
 - (ii) [the lessor of:
- (A) 50% of the cost of replacing the lawn with drought resistant landscaping; or
- (B) \$1.50]\$1.50 for each square foot of lawn replaced with [drought resistant]water efficient landscaping.
- (e) Incentives offered under Section 73-10-37 and this rule are subject to [a \$5,000,000 aggregate cap]the availability of funding as appropriated by the Legislature.
- (5) Upon approval of an incentive and as a condition to receiving the incentive, the participant shall:
- (a) provide the division the information required to complete a federal W-9 tax form; and
- (b) execute a lawn conversion incentive contract with the division detailing the parties' mutual obligations and responsibilities, including:
- (i) terms and conditions for receiving the incentive payment;
 - (ii) participant's commitment to:
- (A) complete the project consistent with the approved [drought resistant]water efficient landscaping plan within 365 days of approval of the application; [-and]
- (B) [never return the project area to lawn after replacing it with drought resistant landscaping and receiving an incentive to do so]maintain the water efficient landscaping and drip irrigation system installed in the project area and not return it to lawn or overhead spray irrigation after receiving payment for converting the project area to water efficient landscaping; and
- (C) return to the division the payments received for removing lawn from the project area and replacing it with water efficient landscaping in the event of violating Subsection (B);
- (iii) other matters determined by the division necessary to effectively administer the incentive program; and
- (iv) participant's [acknowledgement]acknowledgment that incentive payments received may be subject to state and federal taxation.
- (6) Before the division disburses any portion of an incentive to a participant, the division or its contractors will physically or virtually inspect[visit] the project area and verify the lawn conversion to [drought resistant]water efficient landscaping is completed and consistent with:
 - (a) the requirements of Section 73-10-37 and this rule;
- (b) the approved $[\frac{drought\ resistant}{}]\underline{water\ efficient}$ landscaping plan; and
- (c) the lawn conversion incentive contract between the participant and the division.

R653-11-8. Grants for District Administered Water Efficient Landscaping Incentives.

- (1) A district may obtain a grant from the division to help fund a financial incentive provided to an owner through a landscaping conversion incentive program administered by the district.
- (2) To obtain a grant, a district shall file an application with the division that includes:
 - (a) the district's name, address, and contact information;
 - (b) verification that the district:
- (i) has an operational landscaping conversion incentive program;
- (ii) commits to implement the minimum requirements of Subsection 73-10-37(4)(c) and either this rule or program guidelines approved by the division under Subsection (3) in administering the program;
- (iii) commits to use grant money exclusively to fund financial incentives provided to owners that remove lawn or turf from a project area in the district's landscaping conversion incentive program;
- (iv) commits not pay an incentive amount with grant money that exceeds the maximum amounts established in Subsection R653-11-7(4)(d); and
- (v) commits to provide an equal amount or more of matching funds for its landscaping conversion incentive program from sources other than the grant money the district receives under this rule;
- (c) a detailed description of the landscaping conversion incentive program;
- (d) a copy of the program guidelines governing the district's landscaping conversion incentive program;
- (e) a request that the division approve the district's program guidelines under Subsection (3), if the district wants to be subject to program guidelines in lieu of rule requirements; and
 - (f) any additional information requested by the division.
- (3)(a) The division may approve a district's request to use its program guidelines in lieu of requirements in this rule that are not specifically mandated in Section 73-10-37 when the program guidelines satisfy the criteria in Subsection (b).
 - (b) The district's program guidelines must:
- (i) result in at least as much water use savings as the waived rule provisions; and
- (ii) accomplish the same objectives as the waived rule provisions.
- (4) To obtain a grant under this rule, a district shall enter in a contract with the division that:
- (a) identifies the amount of grant funding provided by the division;
- (b) confirms the district's contribution of matching funds from sources other than the grant, that equal or exceed the grant amount, for its landscaping conversion incentive program;
- (c) restricts the district from paying an incentive amount with grant money that exceeds the maximum amounts established in Subsection R653-11-7(4)(d):
- (d) confirms the district's commitment to comply with and ensure all grant funded landscaping conversion projects proposed, undertaken, and completed by participants under its landscaping conversion incentive program satisfy the requirements in Subsection 73-10-37(3) and the contract before using grant money for a financial incentive;

- (e) enjoins the use of grant money for a financial incentive in any landscaping conversion project that fails to satisfy the requirements in Subsection 73-37-10(3) and either this rule or program guidelines approved by the division under Subsection (3);
- (f) requires the district submit to the division quarterly reports on funding status;
- (g) requires the district to prepare and submit an annual accounting to the division on the use of grant money for financial incentives in the district's landscaping conversion incentive program;
- (h) directs return to the division of all grant funding not dispersed by the district pursuant to Section 73-10-37 and this rule within 24 months of receiving the grant; and
- (i) includes other matters determined by the division necessary to effectively administer the grant award.
- (5)(a) The quarterly report referenced in Subsection (4)(f) should include a summary detailing:
 - (i) grant funding status;
- (ii) the division and district's cumulative contributions, respectively, to all incentive payments dispersed by the district over the reporting period; and
- (iii) the estimated amount of grant funding needed to satisfy incentive payments for approved projects that are underway but not completed.
- (b) The annual accounting referenced in Subsection (4)(g) should include the:
- (i) division and district's cumulative contributions, respectively, to all incentive payments dispersed by the district over the reporting period; and
- (ii) following information pertaining to each incentive payment:
- (A) an identifying number or participant name for the landscape conversion project;
 - (B) landscape conversion project location;
- (C) total square feet of lawn converted to water efficient landscaping:
 - (D) date of project approval;
 - (E) date of project completion;
 - (F) date of incentive payment;
- (G) photographs of the project area before lawn removal and after conversion to water efficient landscaping;
 - (H) total amount paid as an incentive; and
- (I) division and district's respective contributions to the incentive payment.
- (6)(a) Upon expenditure of 70% of the grant money awarded to a district and an annual accounting on the use of that grant money, a district may apply for additional grant money in accordance with Subsections (2) and (4).
- (b) The division may award a district an additional grant based on the:
 - (i) availability of grant money;
- (ii) priority or importance of the grant proposal in relation to the availability of grant money for:
- (A) the division's landscaping conversion incentive program under Section R653-11-7;
- (B) other landscaping conversion incentive program grant requests; and
 - (C) regional needs and goals;
- (iii) effectiveness of the district's landscaping conversion incentive program in incentivizing owners to convert lawn or turf to water efficient landscaping;

- (iv) district's past compliance with Section 73-10-37, this rule, and contract terms and conditions; and
- (v) any matter bearing on the district's ability to responsibly handle and disperse grant money consistent with the requirements in Section 73-10-37, this rule, and contract terms and conditions.

R653-11-9. Water Efficient Landscaping.

- [(7)](1)(a) Except as otherwise determined by the division under Subsection (2), [drought resistant]water efficient landscaping, for purposes of Sections R653-11-7 and R653-11-8, is a mixture of inorganic and organic ground cover that:
 - (i) controls the invasion of common weeds and grasses;
- (ii) includes perennial, [drought resistant]water efficient plants, shrubs, or trees; and
- (iii) [drought resistant]water efficient plants and shrubs, excluding tree canopy, cover 50% or more of the project area at maturity;
- [(A) tree canopy may not be used to satisfy the 50% plant and shrub coverage requirement;]
 - (iv) has a drip irrigation system that:
- (A) replaces the existing irrigation system servicing the project area;
 - (B) minimizes evapotranspiration losses; and
- (C) maintains the [drought resistant]water efficient plants, shrubs, and trees in the project area in a healthy state; and
- (v) is officially approved by the division, [er_]its contractors, or a district.
- (b) All treatment locations in the project area, not otherwise covered in [artificial turf, concrete,] brick, or stone shall be covered in [3]2-4 inches of permeable gravel, rock, bark, compost mulch, or similar material to control weeds and improve the appearance of the landscaping.
- (c) $[\underline{\text{Drought resistant}}]\underline{\text{Water efficient}}$ landscaping may include permeable:
 - (i) weed barrier fabric; and
- (ii) configurations of pavers, brick, stone, and similar hard surfaced materials, provided the project area satisfies the 50% plant and shrub cover requirement with the treated area counted as contributing nothing toward[s] that cover.[; or
- (iii) artificial turf, provided the project area satisfies the 50% plant and shrub cover requirement with treated area counted as contributing nothing toward that cover.]
 - (d) Water efficient landscaping does not include:
- (i) a swimming pool, pond, fountain, waterfall, rivulet, or similar above ground landscape water feature;
 - (ii) concrete or artificial turf; and
- (iii) a project area configuration that leaves adjacent strips of lawn less than eight feet in width.
- (2) The division may approve a district's request to use or partially use its program guidelines definition of "water efficient landscaping" in lieu of the definition in Subsection (1), if the division determines that application of the program guidelines' definition will:
- (a) conserve as much or more water as the definition in Subsection (1):
 - (b) satisfy environmental needs; and
- (c) further the water conservation objectives in Section 73-10-37.

R653-11-10. Water Use Efficiency Standards.

- [(8)](1) For purposes of [Subsection (2)]Sections R653-11-7 and R653-11-8, water use efficiency standards for counties and municipalities within a county consist of the following outdoor lawn limitations on new residential development.
 - (a) Statewide requirements are as follows:
- (i) No lawn on parking strips or areas less than eight feet in width in new [residential-]development.
- (ii)(A) Except as provided in Subsection (ii)(B), no lawn exceeding 20% of total landscaped area in new commercial, industrial, and institutional development.
- (B) The 20% limitation does not apply to lawn areas developed and used for outdoor recreation activities that require lawn in an outdoor environment.
 - (b) Regional requirements are as follows:
- (i) Washington County no more than 15% of the lot size in new residential development is lawn;
- (ii) Salt Lake, Utah, Weber, and Davis counties no more than 35% of the front and side yard landscaped area in new residential development is lawn; and
- (iii) All other counties in Utah no more than 50% of the front and side yard landscaped area in new residential development is lawn.
- (c) The lawn limitations in Subsections (a) and (b) do not apply to small [residential] lots with less than 250 square feet in landscaped area.
- (2)(a) A municipality or county may adopt more aggressive water use efficiency standards, provided the new standards increase water conservation and efficiency over the standards in Subsection (1).
- (b) A municipality or county that adopts more aggressive water use efficiency standards in compliance with Subsection (2)(a) shall be deemed compliant with the requirements of Subsection (1).

KEY: water conservation measures

Date of Last Change: [October 24, 2022]2023

Authorizing, and Implemented or Interpreted Law: 63A-5b-1108; 73-10-37

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R657-5	Filing ID: 55414

Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room number:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state and zip:	Salt Lake City, UT 84114-6301	

Contact persons:			
Name:	Phone:	Email:	
Staci Coons	801- 450- 3093	stacicoons@utah.gov	

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R657-5. Taking Big Game

3. Purpose of the new rule or reason for the change:

This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to taking Big Game.

4. Summary of the new rule or change:

The proposed amendments to this rule:

- 1) requires mandatory reporting within 30 days of the season end for all antlerless hunters;
- 2) sets requirements for game retrieval and meat salvage;
- allows for permits to be issued due to wildlife health considerations;
- discontinues issuing a replacement tag for CWDpositive animals;
- 5) prohibits the sale of "inedible byproducts";
- 6) restricts the use of electronics on weapons;
- sets weapon restrictions for Handgun-Archery-Muzzleloader-Shotgun-Straight-walled Rifle hunts;
- 8) sets weapon restrictions for "restricted weapon hunts";
- prohibits the use of projectiles for which the path can be altered or electronically tracked after it is sent in motion;
- 10) prohibits the use of real-time information on hunter or game location to aid in the stalking of a specific big game animal on HAMSS and Restricted Weapon Hunts;
- 11) prohibits the use of visual enhancement technology;
- 12) prohibits the use of pattern recognition technology;
- 13) prohibits the use of live-feed aerial imaging;
- 14) prohibits the use of electronically amplified calls or sounds for the taking of big game;
- 15) prohibits the use of any type of aircraft, drone, or other airborne vehicle or device between July 31 and January 31st to locate, or attempt to observe or locate any protected wildlife;
- 16) prohibit the use of any type of night vision device between July 31 and January 31st to locate, or attempt to observe or locate any protected wildlife; and
- 17) technical corrections as needed.

Fiscal Information

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

A) State budget:

The proposed rule amendments allows for the implementation of the Technology Committee recommendations as requested by the Utah Wildlife Board, the DWR determines that these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR does not believe that these amendments would create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

B) Local governments:

Local governments are not directly or indirectly impacted by these proposed amendments because the rule does not create a situation requiring services from local governments.

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

The proposed rule amendments do have the potential to impact small businesses that deal in the sale of inedible animal byproducts as this will no longer be legal.

It is impossible to estimate the number of small businesses that may be impacted or the financial loss because the sale of inedible animal byproducts is currently not regulated.

This would include the sale of sinew, bones, spoiled meat, and ground up carcasses from wild game as feed.

This would not impact a small businesses entire operation because it is only limited to wild game species and would not impact domestic meat sources.

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

The proposed rule amendments do not have the potential to impact non-small businesses nor is a service required of them to implement the rule amendments.

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

The proposed rule amendments do not have the potential to impact other persons that hunt big game in Utah, nor is a service required of them, however the amendments may require them to remove equipment that is now illegal to hunt with from their firearms.

The amendments are changes to equipment requirements and do not result in a fiscal impact.

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

The DWR determines that this amendment may not create additional costs for those individuals wishing to hunt big game in Utah.

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

Regulatory Impact Table			
			Fiscal Cost
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a measurable fiscal impact to businesses. The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 23-14-18 | Section 23-14-19

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 07/03/2023 until:

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

	J. Shirley, Division Director	Date:	05/15/2023
and title:			

R657. Natural Resources, Wildlife Resources.

R657-5. Taking Big Game.

R657-5-1. Purpose and Authority.

- (1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established:
- (a) this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.
- (b) appropriate weapons or devices to take big game and restrictions to weapons or devices to take big game.
- (2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

R657-5-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
- (a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.
- (b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.
- (c) "Antlerless elk control permit" means a permit allowing an individual to harvest an antlerless elk on an antlerless elk control unit.
- (d) "Antlerless moose" means a moose with antlers shorter than its ears.
- (e) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.
- (f) "Buck deer" means a deer with antlers longer than five inches.

- (g) "Buck pronghorn" means a pronghorn with horns longer than five inches.
- (h) "Bull elk" means an elk with antlers longer than five inches.
- $\hbox{ (i) "Bull moose" means a moose with antlers longer than its ears.} \\$
 - (j) "Cow bison" means a female bison.
- (k) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.
- (l) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.
- (m) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.
- (n)(i) "Night Vision Device" means any device that enhances visible or non-visible light, including[-but not limited to]: night vision, thermal imaging, infrared imaging, or electronics that enhance the visible or non-visible light spectrum.
- (ii) "Night Vision Device" does not include $[\mp]\underline{t}$ rail $[\in]\underline{c}$ ameras as defined in Subsection (x).
- (o) "Ewe" means a female bighorn sheep or any bighorn sheep younger than one year of age.
 - (p) "Hunter's choice" means either sex may be taken.
- (q) "Immediate family member" means the landowner's or lessee's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild, grandchild, grandfather, and grandmother.
- (r) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.
- (s) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.
- (t) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.
- (u) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.
- (v) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep older than one year of age.
- (w) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.
- (x) "Stalking" means when game has been located and the hunter engages in deliberate movements, on foot, in an effort to harvest the located game.
- (y) "Trail camera" means a device that is not held or manually operated by a person and is used to capture images, video, or location data of wildlife using heat, or motion to trigger the device.

R657-5-7. Prohibited Weapons and Devices.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

- (2) A person may not use the following prohibited weapons or devices to take big game:
 - (a) a firearm capable of being fired fully automatic;
- (b) any light enhancement device or aiming device that casts a visible beam of light; [or]
- (c) a firearm equipped with a computerized targeting system that marks a target, calculates a firing solution and automatically discharges the firearm at a point calculated most likely to hit the acquired target[-];
- (d) a projectile for which the path can be altered or electronically tracked after it is sent in motion; or
- (3) Nothing in this section shall be construed as prohibiting laser range finding devices or illuminated sight pins for archery equipment.
- (4) [Use]The following restrictions are placed on the use of specialized hunting technologies and equipment.
- (a) A person may not use any night vision device to locate or attempt to locate a big game animal [from 48 hours before any big game hunt in the area through 48 hours after any big game hunt ends in the area]between July 31 and January 31;
- (b)(i) A person shall not place, maintain, or use any trail camera or non-handheld device capable of capturing image, video, location, time, or date data in the field to take, attempt to take, or aid in the take or attempted take of big game between July 31 and December 31;
- (ii) Engage in the sale [of]or purchase of trail camera or other non-handheld device media, including images, video, location, time or date data to take, aid in the take or attempted take of big game; or
- (iii) Engage in the storage and sale or purchase of stored media, including images, video, location, time, or date data to take, aid in the take or attempted take of big game.
- (c) The prohibition on the use of trail cameras does not apply to:
- (i) private landowners monitoring or protecting their property from trespass;
 - (ii) monitoring active agricultural operations;
- (iii) to aid in the take of bear and cougar depredating livestock; and
- $\hbox{ (iv)} \quad \hbox{municipalities participating in the Urban Deer} \\ \text{Program}.$
- (d) trail cameras and other non-handheld devices described in Subsection 5-7(4)(b)(i) on private property cannot be used to take, attempt to take, or aid in the take or attempted take of big game between July 31 and December 31.
- (e) A person may not use visual enhancement technology, such as nanotechnology, except for basic devises used solely for magnification:
- (f) A person may not use pattern recognition technology, such as artificial intelligence;
 - (g) a person may not use live feed aerial imagery; or
- (h) a person may not use electronically amplified calls or sounds.

R657-5-8. Rifles, Shotguns, Airguns, and Crossbows.

- (1) A rifle used to hunt big game must:
- (a) fire centerfire cartridges and expanding bullets; and
- (b) have no attachment capable of electronic function, other than illuminated reticles.
 - (2) A shotgun used to hunt big game must:
 - (a) be 20 gauge or larger[, firing];
 - (b) fire only 00 or larger buckshot or slug ammunition; and

- (c) have no attachment capable of electronic function, other than illuminated reticles.
 - (3) An airgun used to hunt big game must:
 - (a) be pneumatically powered;
- (b) be pressurized solely through a separate charging device; and
 - (c) may only fire a bolt or arrow:
 - (i) no less than 16 inches long;
- (ii) with a fixed or expandable broadhead at least 7/8 inch wide at its widest position; and
- (d) have no attachment capable of electronic function, other than illuminated reticles.
- (b) A crossbow arrow or bolt used to hunt big game must be at least 16 inches long and have:
- (i) fixed broadheads that are at least 7/8 inch wide at the widest point; or
- (ii) expandable, mechanical broadheads that are at least 7/8 inch wide at the widest point when the broadhead is in the open position; and
 - (iii) no electronic function other than an illuminated nock.
- (c) Unless otherwise authorized by the division through a certificate of registration, it is unlawful for any person to:
- (i) hunt big game with a crossbow or airgun during a big game archery hunt;
- (ii) carry a cocked crossbow containing an arrow or a bolt while in or on any motorized vehicle on a public highway or other public right-of-way; or
- (iii) hunt any protected wildlife with a crossbow utilizing a bolt that has any chemical, explosive or electronic device attached.
- (5) A crossbow used to hunt big game may have a [fixed or variable magnifying scope]telescopic sight only during an any weapon hunt But no other attachment capable of electronic function, other than illuminated reticles.

R657-5-9. Handguns.

- (1) A handgun used to take big game may not have an attachment capable of electronic function, other than illuminated reticles.
- (2) A handgun may be used to take deer and pronghorn, provided the handgun:
 - (a) is a minimum of .24 caliber;
- (b) fires a centerfire cartridge with an expanding bullet; and
 - (c) develops 500 foot-pounds of energy at the muzzle.
- ([2]3) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat, provided the handgun[:]:
 - (a) is a minimum of .24 caliber;
- (b) fires a centerfire cartridge with an expanding bullet; and
 - (c) develops 500 foot-pounds of energy at 100 yards.

R657-5-10. Muzzleloaders.

- (1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:
 - (a) has both the powder and bullet loaded from the muzzle;
- (b) has open sights, peep sights, or a variable or fixed power scope, including a magnifying scope;

- (c) has a single barrel;
- (d) has a minimum barrel length of 18 inches;
- (e) is capable of being fired only once without reloading;
- (f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;
- (g) is loaded with black powder or black powder substitute, which must not contain smokeless powder; and
- (h) has no attachment capable of electronic function, other than illuminated reticles.
- (2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.
- (b) A bullet 130 grains or heavier, or a sabot 170 grains or heavier, must be used for taking deer and pronghorn.
- (c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.
- (3) A person who has obtained a muzzleloader permit for a big game hunt may use only muzzleloader equipment authorized in [this-]Subsections (1) and (2) to take the species authorized in the permit.
- (4) A person who has obtained an any weapon permit for a big game hunt may use muzzleloader equipment authorized in this section to take the species authorized in the permit.

R657-5-11. Archery Equipment.

- (1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:
- (a) the minimum bow pull is 30 pounds at the draw or the peak, whichever comes first;
- (b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;
- (c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded[5]; and
 - (d) arrows must:
- (i) be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock; and
- (ii) have no electronic function other than illuminated nocks; and
- (iii) the bow does not include, have attached ,or use any electronic device other than:
 - (A) illuminated sight pins; or
- (B) a device capable of capturing picture or video data provided the given device cannot aid in the take of a big game animal.
- (2) The following equipment or devices may not be used to take big game:
- (a) a crossbow, except as provided in Subsection (5) and Rule R657-12;
- (b) arrows with chemically treated or explosive arrowheads;
- (c) a mechanical device for holding the bow at any increment of draw, except as provided in Subsection (5) and Rule R657-12:
- (d) a release aid that is not hand held or that supports the draw weight of the bow, except as provided in Subsection (5) and Rule R657-12;
- (e) a bow with a magnifying <u>aiming device</u>, a <u>single lens</u>, <u>peep-mounted glass does not constitute a magnified</u> aiming device; or
 - (f) an airgun, except as provided in Subsection (5).
- (3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

- (4) A person who has obtained an archery permit for a big game hunt may only use archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit.
- (5) A person who has obtained an any weapon permit for a big game hunt may use archery equipment authorized in this section to take the species authorized in the permit, and may also use a crossbow, draw-lock, or airgun satisfying the minimum requirements of this rule.
- (6) A person hunting an archery-only season on a once-ina-lifetime hunt may only use archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit.

R657-5-14. Use of Vehicle or Aircraft.

- (1)(a) A person may not use an airplane, drone, or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.
- (b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by any vehicle, device, or conveyance listed in Subsection (a).
 - (c) Big game may be taken from a vessel provided:
 - (i) the motor of a motorboat has been completely shut off;
 - (ii) the sails of a sailboat have been furled; and
- (iii) the vessel's progress caused by the motor or sail has ceased.
- (2) A person may not use any type of aircraft, drone, or other airborne vehicle or device [from 48 hours before any big game hunt begins in the area where they are flying through 48 hours after any big game hunting season ends in the area where they are flying]between July 31 and January 31 to locate, or attempt to observe or locate any protected wildlife.
- (3)(a) [The provisions of]T[t]his section does not apply to the operation of an aircraft, drone, or other airborne vehicle or device used for the purposes of transporting hunters, equipment, or legally harvested wildlife, provided the aircraft takes off and lands only from an improved airstrip, where there is no attempt or intent to locate protected wildlife.
- (b) Hunters that are transported by aircraft into an area may not hunt protected wildlife until the following day.
- (c) For the purposes of this section, "improved airstrip" means a take-off and landing area with a graded or otherwise mechanically improved surface free of barriers or other hazards that is traditionally used by pilots for the purposes of air travel.

R657-5-20. Purchasing or Selling Big Game or its Parts.

- (1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or its parts as follows:
- (a) [A]antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;
- (b) [<u>U</u>]<u>u</u>ntanned hides of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;
- (c) [Inedible byproducts, excluding]tanned hides[, antlers and horns] of legally [possessed]taken big game [as provided in Subsection 23-20-3,]may be purchased or sold at any time;
- [(d) tanned hides of legally taken big game may be purchased or sold at any time;] and
- $([e]\underline{d})$ shed antlers and horns may be purchased or sold at any time.

- (2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.
- (b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.
- (3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:
- (a) the name and address of the person who harvested the animal:
 - (b) the transaction date; and
- (c) the permit number of the person who harvested the animal.
- (4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-22. Poaching-Reported Reward Permits.

[(1)]Big Game poaching-reported reward permits are issued pursuant to [rule]Rule R657-51 Poaching-Reported Reward Permits.

R657-5-23. General Archery Buck Deer Hunt.

- (1) The dates of the general archery buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.
- (2)(a) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment prescribed in Section R657-5-11 to take:
- ([a]i) one buck deer within the general hunt area specified on the permit for the time specified in the guidebook of the Wildlife Board for taking big game; or
- $([b]\underline{ii})$ a deer of hunter's choice within extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.
- ([e]b) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.
- ([d]c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.
- (3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b)
- (b)(i) A person must complete the Archery Ethics Course annually to hunt any extended archery areas during the extended archery season.
- (ii) A person must possess an Archery Ethics Course Certificate of Completion while hunting.
- (4) A person who has obtained a general archery buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer and extended archery areas.
- (5) If a person 17 years of age or younger obtains a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Subsection R657-5-23(3).

R657-5-25. General Muzzleloader Buck Deer Hunt.

- (1) The dates for the general muzzleloader buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.
- (2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader, as prescribed in <u>Section R657-5-10</u>, to take one buck deer within the general hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.
- (b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within any deer Cooperative Wildlife Management unit.
- (c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.
- (3)(a) A person who has obtained a general muzzleloader buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer, as provided in <u>Section</u> R657-5-27.
- (b) If a person 17 years of age or younger purchases a general muzzleloader buck deer permit, that person may only hunt during the general muzzleloader deer season.

R657-5-26. Premium Limited Entry and Limited Entry Buck Deer Hunts.

- (1)(a) To hunt in a premium limited entry or limited entry buck deer area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck deer, general any weapon buck deer, or general muzzleloader buck deer hunting, except as specified in the guidebook of the Wildlife Board for taking big game.
- (b)(i) The Wildlife Board may establish in guidebook a limited entry buck deer hunt on a general season buck deer unit.
- (ii) The season dates for a limited entry hunt under this Subsection will not overlap the season dates for the underlying general season hunt on the unit.
- (iii) A landowner association under <u>Rule</u> R657-43 is not eligible to receive limited entry permits that occur on general season units.
- (2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, excluding deer cooperative wildlife management units located within the limited entry unit.
- (3)(a) A person who has obtained a premium limited entry, limited entry, management, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.
- (b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's [Internet address] website.
- (c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus point in the following year.
- (d) Late questionnaires may be accepted pursuant to [Rule] Subsection R657-42-9(3).
- (4) A person who has obtained a premium limited entry or limited entry buck permit may not:

- (a) obtain any other deer permit, except an antlerless deer permit, as provided in <u>Section R657-5-27</u> and the guidebooks of the Wildlife Board; or
- (b) hunt during any other deer hunt, except unsuccessful archery hunters may hunt within extended archery areas as provided in Subsection (7).
- (5)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected premium limited entry and limited entry buck deer hunts.
- (b) A person that obtains a premium limited entry or limited entry buck deer permit with a multi-season opportunity may hunt during any of the following limited entry buck deer seasons established in the guidebooks of the Wildlife Board for the unit specified on the premium limited entry or limited entry buck deer permit:
- (i) archery season, using only archery equipment prescribed in <u>Section R657-5-11</u> for taking deer;
- (ii) muzzleloader season, using only muzzleloader equipment prescribed in <u>Section R657-5-10</u> for taking deer; and
- (iii) any weapon season, using any legal weapon prescribed in Rule R657-5 for taking deer.
- (c) A landowner association under <u>Rule</u> R657-43 is not eligible to receive a multi-season hunting opportunity for premium limited entry or limited entry units.
- (6) A premium limited entry or limited entry buck deer permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:
 - (a) areas closed to hunting;
 - (b) deer cooperative wildlife management units; and
 - (c) Indian tribal trust lands.
- (7) A person who possesses an archery buck deer permit for a premium limited entry or limited entry unit, including a permit with a multi-season opportunity, may hunt buck deer within any extended archery area during the established extended archery season for that area, provided the person:
- (a) did not take a buck deer during the premium limited entry or limited entry hunt;
- (b) uses the prescribed archery equipment for the extended archery area;
- (c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and
 - (d) possesses on their person while hunting:
- (i) the multi-season limited entry or limited entry buck deer permit; and
 - (ii) the Archery Ethics Course Certificate of Completion.

R657-5-27. Antlerless Deer Hunts.

- (1)(a) To hunt antlerless deer, a hunter must obtain an antlerless deer permit.
- (b) A person may obtain only one antlerless deer permit or a two-doe antlerless deer permit through the division's antlerless big game drawing.
- (2)(a) An antlerless deer permit allows a person to take one antlerless deer using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.
- (b) A two-doe antlerless deer permit allows a person to take two antlerless deer using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

- (c) A person may not hunt antlerless deer on any deer cooperative wildlife management unit unless that person obtains an antlerless deer permit for that specific cooperative wildlife management unit.
- (3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permits, except as provided in <u>Section R657-44-3</u>.
- (4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the applicable permits listed in Subsection (b) provided:
 - (i) the permits are both valid for the same area;
- (ii) the appropriate archery equipment is used, if hunting antlerless deer during an archery season or hunt; and
- (iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless deer during a muzzleloader season or hunt.
 - (b) Applicable permits as described in Subsection (a) are:
- _____(i) General buck deer for archery, muzzleloader, any weapon, or dedicated hunter;
- (ii)_ General bull elk for archery, muzzleloader, any weapon, or multi-season;
- (iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;
- (iv) Limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;
- (v) Limited entry bull elk for archery, muzzleloader, any weapon, or multi-season; or
 - (vi) Antlerless elk.
- (c) A person that possess an unfilled antlerless deer permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless deer as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.
- (5)(a) A person who has obtained an antlerless deer permit must report hunt information within 30 days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting an antlerless deer.
- (b) Antlerless deer permit holders must report hunt information by telephone, or through the division's website.
- (c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any general season antlerless, general season doe, general season antlerless cooperative wildlife management unit, or general season doe cooperative wildlife management unit permit or preference points in the following year.
- (d) Late questionnaires may be accepted pursuant to Subsection R657-42-9(3).

R657-5-34. Antlerless Elk Hunts.

- (1) To hunt antlerless elk, a hunter must obtain an antlerless elk permit.
- (2)(a) An antlerless elk permit allows a person to take one antlerless elk using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.
- (b) A person may not hunt antlerless elk on an elk cooperative wildlife management unit unless that person obtains an antlerless elk permit for that specific cooperative wildlife management unit.
- (c) Antlerless elk control permits are not valid on cooperative wildlife management units.

- (3)(a) A person may obtain three elk permits each year, in combination as follows:
 - (i) a maximum of one bull elk permit;
- (ii) a maximum of one antlerless elk permit issued through the division's antlerless big game drawing; and
- (iii) a maximum of two antlerless elk permits acquired over the counter or online after the antlerless big game drawing is finalized, including antlerless elk:
 - (A) control permits, as described in Subsection (5);
 - (B) depredation permits, as described in Section R657-44-
- (C) mitigation permit vouchers, as defined in Subsection R657-44-2(2); and
- (D) private lands only permits, as described in Subsection (6).
- (b) Antlerless elk mitigation permits obtained by a landowner or lessee under Section R657-44-3 do not count toward the annual three elk permit limitation prescribed in this subsection.
- (i) "Mitigation permit" has the same meaning as defined in Subsection R657-44-2(2).
- (c) For the purposes of obtaining multiple elk permits, a hunter's choice elk permit is considered a bull elk permit.
- (4)(a) To obtain an antlerless elk control permit, a person must first obtain a big game buck, bull, or once-in-a-lifetime permit. An antlerless elk control permit allows a person to take one antlerless elk using the same weapon type, during the same season dates, and within areas of overlap between the boundary of the buck, bull, or once-in-a-lifetime permit and the boundary of the antlerless elk control unit, as provided in the Antlerless guidebook by the Wildlife Board.
- (b) Antlerless elk control permits are sold over the counter or online after the division's antlerless big game drawing is finalized.
- (c) A person that possesses an unfilled antlerless elk control permit and harvests an animal under the buck, bull, or once-in-a-lifetime permit referenced in Subsection (b), may continue hunting antlerless elk as prescribed in Subsection (b) during the remaining portions of the buck, bull, or once-in-a-lifetime permit season.
- (5)(a) A private lands only permit allows a person to take one antlerless elk on private land within a prescribed unit using any weapon during the season dates and area provided in the Big Game guidebook by the Wildlife Board.
- (b) No boundary extension or buffer zones on public land will be applied to private lands only permits.
- (c) Private lands only permits are sold over the counter or online after the division's antlerless big game drawing is finalized.
- (d) "Private lands" means, for purposes of this subsection, any land owned in fee by an individual or legal entity, excluding:
 - (i) land owned by the state or federal government;
 - (ii) land owned by a county or municipality;
 - (iii) land owned by an Indian tribe;
- (iv) land enrolled in a Cooperative Wildlife Management Unit under Rule R657-37; and
- $\left(v\right)\,$ land where public access for big game hunting has been secured.
- (6)(a) A person who has obtained an antlerless elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting an antlerless elk.
- (b) Antlerless elk permit holders must report hunt information by telephone, or through the division's website.

- (c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any general season antlerless, general season doe, general season antlerless cooperative wildlife management unit, or general season doe cooperative wildlife management unit permit or preference points in the following year.
- (d) Late questionnaires may be accepted pursuant to Subsection R657-42-9(3).

R657-5-36. Doe Pronghorn Hunts.

- (1)(a) To hunt doe pronghorn, a hunter must obtain a doe pronghorn permit.
- (b) A person may obtain only one doe pronghorn permit or a two-doe pronghorn permit through the division's antlerless big game drawing.
- (2)(a) A doe pronghorn permit allows a person to take one doe pronghorn using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.
- (b) A two-doe pronghorn permit allows a person to take two doe pronghorn using the weapon type, within the area, and during the season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.
- (c) A person may not hunt doe pronghorn on any pronghorn cooperative wildlife management unit unless that person obtains a doe pronghorn permit for that specific cooperative wildlife management unit.
- (3)(a) A person who has obtained a doe pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a doe pronghorn.
- (b) Doe pronghorn permit holders must report hunt information by telephone, or through the division's website.
- (c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any general season antlerless, general season doe, general season antlerless cooperative wildlife management unit, or general season doe cooperative wildlife management unit permit or preference points in the following year.
- (d) Late questionnaires may be accepted pursuant to Subsection R657-42-9(3).

R657-5-37. Antlerless Moose Hunts.

- (1) To hunt antlerless moose, a hunter must obtain an antlerless moose permit.
- (2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.
- (b) A person may not hunt antlerless moose on a moose cooperative wildlife management unit unless that person obtains an antlerless moose permit for that specific cooperative wildlife management unit as specified on the permit.
- (3)(a) A person who has obtained an antlerless moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting an antlerless moose.
- (b) Antlerless moose permit holders must report hunt information by telephone, or through the division's website.
- (c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any limited entry antlerless, or limited entry ewe permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Subsection R657-42-9(3).

R657-5-40.5. Desert Bighorn and Rocky Mountain Bighorn Ewe Hunts.

- (1) To hunt a ewe desert bighorn sheep or a ewe Rocky Mountain bighorn sheep, a hunter must obtain the respective ewe permit.
- (2)(a) A ewe permit allows a person to take one ewe using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.
- (3) Ewe desert bighorn sheep and ewe Rocky Mountain bighorn sheep permits are considered separate hunting opportunities.
- (4)(a) A person who has obtained an ewe desert bighorn sheep or a ewe Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a ewe desert bighorn sheep or a ewe Rocky Mountain bighorn sheep.
- (b) Ewe desert bighorn sheep and ewe Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's website.
- (c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any limited entry antlerless, or limited entry ewe permit or bonus points in the following year.
- (d) Late questionnaires may be accepted pursuant to Subsection R657-42-9(3).

R657-5-43. Carcass Importation.

- (1) It is unlawful to import dead elk, moose, mule deer, or white-tailed deer or their parts from any state or province which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:
- (a) meat that is cut and wrapped either commercially or privately;
- (b) quarters or other portion of meat with no part of the spinal column or head attached;
 - (c) meat that is boned out;
 - (d) hides with no heads attached;
- (e) skulls or skull plates with antlers attached, so long as all brain matter and spinal column material is removed;
 - (f) antlers with no meat or tissue attached;
- (g) upper canine teeth, also known as buglers, whistlers, or ivories; or
 - (h) finished taxidermy heads.
- (2)(a) [The] A list of the affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer, elk, or moose diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's website.
- (b) Importation of harvested elk, moose, mule deer, or white-tailed deer or its parts from the affected areas are restricted pursuant to Subsection (1).
- (3) Nonresidents of Utah transporting harvested elk, moose, mule deer, or white-tailed deer from the affected areas are exempt if they:
- (a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in Utah;

- (b) do not have their deer, elk, or moose processed in Utah;
- (c) do not leave any parts of the carcass in Utah.

or

R657-5-44. Chronic Wasting Disease - Infected Animals and Testing.

- (1) Any person who under the authority of a permit issued by the division legally takes a deer, elk, or moose that is later confirmed to be infected with Chronic Wasting Disease may:
 - (a) retain the entire carcass of the animal; or
- (b) retain any parts of the carcass, including antlers, and surrender the rest to the division for proper disposal; [-er]
- ([e) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.]
- [(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the guidebook of the Wildlife Board for taking big game published in the year the new permit is valid.]
- [(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(e).
- [————(4]2)(a) The division may identify big game hunting units where [an individual]all or some permit holders may be [randomly selected]required to submit their harvested animal to the division for Chronic Wasting Disease testing.
- (b) Big game hunting units that are eligible for mandatory testing will be identified in the guidebook of the Wildlife Board for taking big game.
- (c) Individuals <u>possessing permits</u> who are [<u>randomly</u>] selected as participants in the big game Chronic Wasting Disease testing program will be notified in writing before the opening day of their hunt with a list of program requirements.
- (d) An individual who fails to comply with mandatory testing requirements in this rule may be declared ineligible to apply for or receive any big game licenses, permits, or certificates of registration until they comply with the requirements of this rule and any assessment of fees under Section R657-42-9.

$R657\text{-}5\text{-}47. \quad Handgun-Archery-Muzzleloader-Shotgun-\underline{Straight-walled\ Rifle-}Only\ Hunt.$

- (1) The [division]Wildlife Board may [establish]prescribe Handgun-Archery-Muzzleloader-Shotgun-Straight-walled Rifle-Only hunts for any big game species.
- (2) An individual may only use the following weapons on a Handgun-Archery-Muzzleloader-Shotgun-<u>Straight-walled Rifle-</u>Only hunt:
- (a) a legal handgun for the species being hunted, consistent with Section R657-5-9 [and Subsection]must:
 - ([5]i)[, with] have no attached scope;
- (ii) have no more than a single barrel 15 inches or less in length, including the chamber;
 - (iii) be no more than 24 inches in overall length; and
 - (iv) have a single rear handgrip without any form of:
 - (A) a fixed, detachable, or collapsible buttstock;
- (B) an apparatus or extension behind the rear grip capable of being used to steady the handgun against the body while firing; or
 - (C) a vertical foregrip;

- (b) legal archery equipment consistent with Section R657-5-11:
- (c) a legal muzzleloader consistent with Section R657-5-10, with no attached scope; [-or]
- (d) a legal shotgun consistent with [Section]Subsection R[657-5-8]657-5-8(2), with the following restrictions:
 - (i) no attached scope; or
 - (ii) not semi-automatic.
- (e) a rifle as detailed in Subsection R657-5-8(1), with the following restrictions:
 - (i) not semi-automatic;
 - (ii) no attached scope; and
- (iii) utilizes a straight-walled cartridge with a minimum bullet diameter of .35 caliber and a minimum case length of not less than 1.16 inches.
- (3) A person who has obtained a Handgun-Archery-Muzzleloader-Shotgun-<u>Straight-walled Rifle-</u>Only permit may take one animal of the big game species identified on the permit.
- (4) A person who has obtained a Handgun-Archery-Muzzleloader-Shotgun-<u>Straight-walled Rifle-</u>Only permit may only hunt under that permit during the season dates and within the boundaries identified on the permit and in the guidebooks of the Wildlife Board for taking big game.
- [(5) In addition to the requirements in Section R657-5-9, a handgun used to take a big game animal in a Handgun Archery-Muzzleloader Shotgun-Only hunt must:]
- [_____(a) have no more than a single barrel 15 inches or less in length, including the chamber;]
- (b) have a single rear handgrip without any form of a:]
 - (i) fixed, detachable, or collapsible buttstock;
- [(ii) apparatus or extension behind the rear grip capable of being used to steady the handgun against the body while firing; or]
 - (iii) vertical foregrip; and
 - (c) be no more than 24 inches in overall length.]
- [_____(6]___(5) A Handgun-Archery-Muzzleloader-Shotgun-Straight-walled Rifle-Only hunt is not a centerfire rifle hunt for purposes of Section 23-20-31 or R657-5-48.
- ([7]6) A Handgun-Archery-Muzzleloader-Shotgun-Straight-walled Rifle-Only permit may not be used on an extended archery hunt.
- (7) Electronic communication to receive real-time information on hunter or game location to aid in the stalking of a specific big game animal is prohibited on a Handgun-Archery-Muzzleloader-Shotgun-Straight-walled Rifle-Only hunt.

R657-5-48. Restricted Weapons Hunt.

- (1)(a) The Wildlife Board may prescribe Restricted Weapon Type hunts for any big game species.
- (b) A person who has obtained a Restricted Weapon Type permit may not hunt within Cooperative Wildlife Management unit areas.
- (c) A person who has obtained a Restricted Weapon Type permit may only hunt within the unit specified on the permit and no other general season, limited entry, or premium limited units, except as provided by the Wildlife Board in the guidebooks for big game.
- (d) A permit issued for a Restricted Weapon Type season identified in Subsection (1)(a) allows a person to take a species designated on the permit within the area, during the season dates, and using the weapon type described in Subsections (2) through (6) and specified on the permit.

- (2) "Restricted Archery Equipment" means archery equipment as detailed in Subsections R657-5-11(1) through (3) with the following restrictions:
- (a) must be a single stringed long bow or recurve bow with no cables, pulleys or cams;
 - (b) has no sights; and
 - (c) has a draw weight of 40 pounds or more.
- (3) "Restricted Muzzleloader Equipment" means muzzleloader equipment as detailed in Subsections R657-5-10(1) and (2) with the following restrictions:
- (a) the ignition system is limited to traditional flintlock, wheellock, matchlock, musket cap, or percussion cap which must be entirely visible when the hammer is drawn back. All other ignition systems, including 209 primers, are prohibited; and
 - (b) contains only open sights or peep sights.
- (4) "Restricted Rifle Equipment" means a rifle as detailed in Subsection R657-5-8(1) with the following exceptions:
 - (a) contains only open sights or peeps sights; and
 - (b) cannot be semi-automatic.
- (5) Restricted Archery permits may not be used on an extended archery hunt.
- (6) A person who has obtained an any weapon permit for big game may use any restricted weapon authorized in this section to take the species authorized on the permit.
- (7) Electronic communication to receive real-time information on hunter or game location to aid in the stalking of a specific big game animal is prohibited on a restricted weapon hunt.

R657-5-49. Hunter Orange Exceptions.

- (1) A person shall wear a minimum of 400 inches of hunter orange material on the head, chest, and back while hunting any species of big game, with the following exceptions:
- (a) [<u>H]h</u>unters participating in a once-in-a-lifetime, statewide conservation, or statewide sportsmen hunt;
- (b) [H]hunters participating in an archery or muzzleloader hunt outside of an area where an any weapon general season bull elk or any weapon general season buck deer hunt is occurring;
- (c) [H]hunters participating in a Handgun-Archery-Muzzleloader-Shotgun-Straight-walled Rifle-Only hunt outside of an area where an any weapon general season bull elk or any weapon general season buck deer hunt is occurring;
- (d) [H]hunters hunting on a cooperative wildlife management unit unless otherwise required by the operator of the cooperative wildlife management units;
- (e) [H]hunters participating in a nuisance wildlife removal hunt authorized under a certificate of registration by the division; and
- (f) [H]hunters participating in an archery hunt with unit boundaries and season dates that overlap the unit boundaries and season dates for the youth any bull elk hunt.

R[657-5-49]657-5-50. Authorization to Remove Bighorn Sheep from Domestic Sheep Operations.

- (1) The division may issue a certificate of registration to the owner of a domestic sheep operation allowing for the removal of Rocky Mountain bighorn sheep or desert bighorn sheep found to have physical contact with domestic sheep.
- (2) If a domestic sheep grazing operation wishes to acquire a certificate of registration, it must submit an application to the division.
- (3) In evaluating the application, the division may consider:
 - (a) the size and location of the domestic sheep operation;

- (b) past efforts to maintain spatial separation between wild and domestic sheep:
- (c) the ability of state officials to respond to potential commingling events in a timely manner;
- (d) future plans to improve spatial separation between wild and domestic sheep;
- (e) historical disease status of the wild sheep population; and
 - (f) management priorities for the wild sheep population.
- (4) The division may deny an application for a certificate of registration if, in the opinion of the division, there are other means available to respond to a commingling event.
- (5) The division shall require any certificate of registration holder to comply with the following provisions:
- (a) the grazing operation shall immediately notify the division if a wild bighorn sheep is found within 1 mile of any domestic sheep;
- (b) the grazing operation shall utilize all reasonable means to notify the division of the threatened commingling event before undertaking any lethal removal action;
- (c) a wild bighorn sheep may only be lethally removed if it is within 1 mile of a domestic sheep;
- (d) the grazing operation will inform the division within 24 hours of a lethal removal effort, or as soon as practical thereafter, considering access and logistic limitations;
- (e) all lethally removed wild bighorn sheep will be field-dressed and preserved in a manner so as to allow donation for human consumption;
- (f) the entire carcass of each lethally removed bighorn sheep shall be relinquished to division personnel, including intact head, horns and cape; and
- (g) only legal weapons identified in Rule R657-5 may be used in lethal removal activities.
- (6)(a) Owners, employees, and immediate family members may be named as authorized individuals to act under the authority of a certificate of registration.
- (b) Any individual acting under the authority of a certificate of registration must be specifically named on the certificate of registration.
- (7)(a) The division may establish a term for the validity of a certificate of registration.
- (b) The division may revoke a certificate of registration where the certificate of registration holder, an individual named on the certificate, or someone acting under their direct authority violated this rule, the Wildlife Resources Code, or the certificate of registration.
- (8) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

R657-5-51. Game Retrieval and Meat Salvage Minimum Requirements.

- (1)(a) No person shall wound or kill big game animal without making a reasonable effort to retrieve it and take it into possession.
- (b) A reasonable effort under Subsection (1)(a) shall include:
- (i) physically going to the big game animal's location where a person attempted to take it and search for any sign that the big game animal was wounded or killed; and
 - (ii) taking the big game animal into possession and

properly tagging it as per Section R657-5-17.

(2) Any hunter who harvests a big game animal shall salvage the meat from the front quarters as far down as the knees, meat from the hindquarters as far down as the hocks, and the meat along the backbone between the neck and hindquarters including the loins and tenderloins, excluding meat on the ribs and neck.

KEY: wildlife, game laws, big game seasons Date of Last Change: <u>2023[February 14, 2023]</u> Notice of Continuation: September 8, 2020

Authorizing, and Implemented or Interpreted Law: 23-14-18;

23-14-19; 23-16-5; 23-16-6

NOTICE OF PROPOSED RULE		
TYPE OF FILING: Amendment		
Rule or Section Number:	R657-37	Filing ID: 55410

Agency Information

Agency Information			
1. Department:	Natural Resources		
Agency:	Wildlife Resources		
Room number:	Suite 2110		
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Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R657-37. Cooperative Wildlife Management Units for Big Game or Turkey

3. Purpose of the new rule or reason for the change:

This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR)rule pursuant to Big Game CWMU's.

4. Summary of the new rule or change:

The proposed amendments to this rule remove "landowner association members" and replaces it with "landowners, presidents, operators" general members of the association should not have been included in the original language.

Fiscal Information

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

A) State budget:

The proposed rule amendments clarifies who cannot apply for CWMU permits, all of these changes can be initiated within the current workload and resources of the DWR, therefore, the DWR determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget since the changes will not increase workload and can be carried out with existing budget.

B) Local governments:

Since the proposed amendments make adjustments to current application regulations this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting opportunities provided by CWMU's because there are no additional requirements placed on them.

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

The DWR determines that this amendment will not create additional costs for those participating in big game hunting in Utah.

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

Regulatory Impact Table			
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Natural Resources, Joel Ferry, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 23-23-3

Public Notice Information

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

	•				
A)	Comments	will	be	accepted	07/03/2023
unti	l·				

9. This rule change MAY 07/10/2023 become effective on:

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

Agency Authorization Information

Agency head or designee	Justin Shirley, Division Director	Date:	05/08/2023
and title:			

R657. Natural Resources, Wildlife Resources.

R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.

R657-37-1. Purpose and Authority.

- (1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management Units organized for the hunting of big game or turkey.
- (2) Cooperative Wildlife Management Units are established to:
 - (a) increase wildlife resources;
 - (b) provide income to landowners;
- (c) provide the general public access to private and public lands for hunting big game or turkey within a Cooperative Wildlife Management Unit;
 - (d) create satisfying hunting opportunities;
- (e) provide adequate protection to landowners who open their lands for hunting; and
- (f) provide landowners an incentive to manage lands to protect and sustain wildlife habitat and benefit wildlife.

R657-37-9. Permit Allocation.

- (1) The division shall issue CWMU permits for hunting big game or turkey to permittees:
- (a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or
- (b) named by the landowner association member or landowner association operator.
- (2) CWMU [landowner association members]landowners, presidents, operators, and their spouses and dependent children cannot apply for CWMU permits specific to their CWMU that are offered in the public drawing.
- (3) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.
- (4)(a) The division and the landowner association operator must, in accordance with Subsection (4), determine:
- (i) the total number of permits to be issued for the CWMU; and
- (ii) the number of permits that may be offered by the landowner association to the general public as defined in Subsection R657-37-2(2)(c).
- (b) In determining the total number of permits allocated under Subsection (4)(a), the division will consider:
 - (i) acreage and habitat conditions on the CWMU;
- (ii) management objectives of the CWMU and surrounding wildlife management units;
 - (iii) classification and survey data;
 - (iv) depredation and nuisance conflicts; and

- (v) other factors that may influence hunt quality and the division's ability to meet wildlife management objectives.
- (c) A CWMU may only offer a management buck permit for a public hunter if that CWMU lies entirely within a wildlife management unit that also offers management buck hunts.
- (5) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportion of public lands to private lands within the CWMU.
- (6)(a) Big game permits may be allocated using an option from:
 - (i) [t] Table [one] 1 for moose and pronghorn; or
 - (ii) [t]Table [two]2 for elk and deer.
- (b)(i) Over the term of the certificate of registration, and at all times during the its term, at least 40% of the total permits for bull moose and buck pronghorn and at least 60% of the antlerless moose and antlerless pronghorn permits will be allocated to the public and distributed via the public drawing.
- (ii) Notwithstanding [s]Subsection (b)(i) [above—] and Tables 1 and 2, if the proportion of permits allocated to the public over consecutive certificate of registration terms substantially deviates from that identified in [s]Subsection (b)(i), the Wildlife Board may approve a modified permit distribution scheme that fairly allocates public and private permits.
- (c) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.
 - (d) Permits shall not be issued for spike bull elk.
- (e) Turkey permits shall be allocated in a ratio of [fifty percent] 50% to the CWMU and [fifty percent] 50% to the general public, with the public receiving the extra permit when there is an odd number of total permits.

[TABLE 1

MOOSE AND PRONGH		Unit's Share
Option Option		Does/Antlerl
1	60%	40%
Public's Share		
- Option	Bucks/Bulls	- Does/Antlerl
1	40%	60%

TABLE 2

ELK AND DEER		
Cooperative Wil	dlife Management Un	it's Share
Option	Bucks/Bulls	Antlerle
1	90%	
2	85%	25%
3	80%	40%
4	75%	50%
Public's Share		
Option	Bucks/Bulls	
1	10%	100%
2	15%	75%
2	20%	60%

<u>Table 1</u> Moose and Pronghorn				
Cooperative Wildlife Management Unit's Share	Bucks/Bulls	<u>Does/Antlerless</u>		
Option 1	60%	<u>40%</u>		
Public's Share	Bucks/Bulls	Does/Antlerless		
Option 1	40%	<u>60%</u>		

<u>Table 2</u> Elk and Deer				
Cooperative Wildlife	Bucks/Bulls	Antlerless		
Management Unit's share				
Option 1	90%	<u>0%</u>		
Option 2	<u>85%</u>	<u>25%</u>		
Option 3	80%	40%		
Option 4	<u>75%</u>	<u>501%</u>		
Public's Share				
Option 1	10%	100%		
Option 2	15%	<u>75%</u>		
Option 3	20%	60%		
Option4	<u>25%</u>	<u>50%</u>		

- (7)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under Subsection R657-37-4(3)(a)(ii).
- (b) Failure to meet antlerless harvest objectives based on a three-year average may result in discipline under Section R657-37-14.
- (8) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings, except as provided in Section 23-23-11.
- (9) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, depredation, and other mitigating factors.
- (10) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.
- (11) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.
- (12)(a) If a landowner association has a CWMU voucher that is not redeemed during the previous year, a landowner association may donate that voucher to a 501(c)(3) tax exempt organization, provided the following conditions are satisfied:
- (i) the voucher donation is approved by the director [prior to]before transfer;
- (ii) the voucher is donated for a charitable cause, and the landowner association does not receive compensation or consideration of any kind other than tax benefit; and

- (iii) the recipient of the voucher is identified [prior to]before obtaining the director's approval for the donation.
- (b) A CWMU voucher approved for donation under this section may be extended no more than one year.
- (c) The division must be notified in writing and the donation completed before August 1st the year the CWMU voucher is to be redeemed.
- (d) Vouchers may be used in reciprocal hunting agreements in accordance with Subsection R657-7-(2)(b).
- (13)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.
- (b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for

taking big game or turkey. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to the public permit holders that would otherwise draw out on the public permits.

KEY: wildlife, cooperative wildlife management unit Date of Last Change: 2023[June 22, 2020] Notice of Continuation: March 15, 2023

Authorizing, and Implemented or Interpreted Law: 23-23-3

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **Proposed Rule**, a **Change in Proposed Rule** is preceded by a **Rule Analysis**. This analysis provides summary information about the **Change in Proposed Rule** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends July 03, 2023.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them ([example]). A row of dots in the text between paragraphs (.....) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Office of Administrative Rules may include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through <u>September 29, 2023</u>, an agency may notify the Office of Administrative Rules that it wants to make the **Change in Proposed Rule** effective. When an agency submits a **Notice of Effective Date** for a **Change in Proposed Rule**, the **Proposed Rule** as amended by the **Change in Proposed Rule** as amended by the **Change in Proposed Rule**. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **Change in Proposed Rule**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **Change in Proposed Rule** in response to additional comments received. If the Office of Administrative Rules does not receive a **Notice of Effective Date** or another **Change in Proposed Rule** by the end of the 120-day period after publication, the **Change in Proposed Rule** filing, along with its associated **Proposed Rule**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

NOTICE OF CHANGE IN PROPOSED RULE				
Rule or Section Number:	R307-315	Filing ID: 55176		
Date of Previous Publication:	01/15/2023			

Agency Information

agency information			
1. Department:	Environmental Quality		
Agency:	Air Quality		
Building:	MASOB		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144820		
City, state and zip:	Salt Lake City, UT 84114-4820		

Contact persons:

Name:	Phone:	Email:
Erica Pryor	385- 499- 3416	epryor1@utah.gov
Ryan Bares	385- 536- 4216	rbares@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R307-315. NOx Emission Controls for Natural Gas-Fired Boilers 2.0-5.0 MMBtu

3. Reason for this change:

The changes were made to the proposed rule after comments received during the public comment period.

4. Summary of this change:

The changes are: 1) clarifying language was added; 2) the compliance schedule was extended from May 1, 2023, to May 1, 2024; 3) the testing and compliance methods were changed to allow for portable gas analyzers to be used to verify compliance with requirements in this rule.

(EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the January 15, 2023, issue of the Utah State Bulletin, on page 37. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule together to understand all

of the changes that will be enforceable should the agency make this rule effective.)

Fiscal Information

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

A) State budget:

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts to the state budget.

The fiscal impact of this rule on state budgets is unknown. This rule will eventually impact all boilers between 2.0 and 5.0MMBtu in impacted counties, a portion of which are owned and operated by the state. This rule does not require retrofits to existing boilers, so the near-term impact of this rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A Division of Air Quality (DAQ) analysis identified 2,026 boilers in the 2.0-5.0MMBtu range located in the impacted counties, but the proportion owned and operated by state government is not known. DAQ estimates a cost difference of approximately \$19,000 for replacing a 3.34MMBtu standard boiler with an Ultra-Low NOx boiler rated at 9ppmv. However, the timing of replacements is unknown and therefore the fiscal impact cannot be accurately estimated.

B) Local government:

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts to local governments.

The fiscal impact of this rule on local governments is unknown. This rule will eventually impact all boilers between 2.0 and 5.0 MMBtu in impacted counties, a portion of which are owned and operated by local governments. This rule does not require retrofits to existing boilers, so the near-term impact of the rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A DAQ analysis identified 2,026 boilers in the 2.0-5.0MMBtu range located in the impacted counties, but the proportion owned and operated by local governments is not known. DAQ estimates a cost difference of approximately \$19,000 for replacing a 3.34MMBtu standard boiler with an Ultra-Low NOx boiler rated at 9ppmv. However, the timing of replacements is unknown and therefore, the fiscal impact cannot be accurately estimated.

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

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts for small businesses.

The fiscal impact of this rule on small business is unknown. This rule will eventually impact all boilers between 2.0 and 5.0MMBtu in impacted counties, a portion of which are owned and operated by small businesses. This rule does not require retrofits to existing boilers, so the near-term impact of the rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A DAQ analysis identified 2,026 boilers in the 2.0-5.0MMBtu range located in the impacted counties, but the proportion owned and operated by small businesses is not known. DAQ estimates a cost difference of approximately \$19,000 for replacing a 3.34MMBtu standard boiler with an Ultra-Low NOx boiler rated at 9ppmv. However, the timing of replacements is unknown and therefore, the fiscal impact cannot be accurately estimated.

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

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts to non-small businesses.

The fiscal impact of this rule on non-small business is unknown. This rule will eventually impact all boilers between 2.0 and 5.0MMBtu in impacted counties, a portion of which are owned and operated by non-small businesses. This rule does not require retrofits to existing boilers, so the near-term impact of the rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A DAQ analysis identified 2,026 boilers in the 2.0-5.0MMBtu range located in the impacted counties, but the proportion owned and operated by non-small businesses is not known. DAQ estimates a cost difference of approximately \$19,000 for replacing a 3.34MMBtu standard boiler with an Ultra-Low NOx boiler rated at 9ppmv. However, the timing of replacements is unknown and therefore the fiscal impact cannot be accurately estimated.

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

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts to other persons.

The fiscal impact of this rule on other persons is unknown. This rule will eventually impact all boilers between 2.0 and

5.0MMBtu in impacted counties, a portion of which are owned and operated persons other than small businesses, non-small businesses, state, or local governments. This rule does not require retrofits to existing boilers, so the near-term impact of the rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A DAQ analysis identified 2,026 boilers in the 2.0-5.0MMBtu range located in the impacted counties, but the proportion owned and operated by other persons is not known. DAQ estimates a cost difference of approximately \$19,000 for replacing a 3.34MMBtu standard boiler with an Ultra-Low NOx boiler rated at 9ppmv. However, the timing of replacements is unknown and therefore the fiscal impact cannot be accurately estimated.

F) Compliance costs for affected persons:

Based on quotes received from boiler distributors and maintenance companies, compliance costs for affected persons are estimated at \$600 once every five years.

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.)

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Regulatory In	Regulatory Impact Table					
Fiscal Cost	FY2024	FY2025	FY2026			
State Government	\$0	\$0	\$0			
Local Governments	\$0	\$0	\$0			
Small Businesses	\$0	\$0	\$0			
Non-Small Businesses	\$0	\$0	\$0			
Other Persons	\$0	\$0	\$0			
Total Fiscal Cost	\$0	\$0	\$0			
Fiscal Benefits	FY2024	FY2025	FY2026			
State Government	\$0	\$0	\$0			
Local Governments	\$0	\$0	\$0			
Small Businesses	\$0	\$0	\$0			
Non-Small Businesses	\$0	\$0	\$0			
Other Persons	\$0	\$0	\$0			

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Environmental Quality, Kim D Shelly, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 19-2-104

Public Notice Information

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

A) Comments will be accepted 07/03/2023 until:

9. This rule change MAY become 07/10/2023 effective on:

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

Agency Authorization Information

Agency head	Bryce C. Bird,	Date:	04/18/2023
or designee	Director		
and title:			

R307. Environmental Quality, Air Quality.

 $R307\text{-}315.\ NO_x$ Emission Controls for Natural Gas-Fired Boilers 2.0-5.0 MMBtu.

R307-315-1. Purpose.

Rule R307-315 establishes maximum emission thresholds for the emissions of oxides of nitrogen (NO_x) for new or modified natural gas-fired boilers with a total rated heat input of at least 2.0 million British Thermal Units per hour (MMBtu/hr) and not more than 5.0 MMBtu/hr.

R307-315-2. Applicability.

(1) Rule R307-315 applies to each boiler that [commences] begins construction or modification after the compliance date defined in Section R307-315-6 that:

([1]a) is fueled exclusively by natural gas;

([2]b) has a total rated heat input greater than 2.0 MMBtu/hr and not more than 5.0 MMBtu/hr;

- ([3]c) is [operated in-]an industrial boiler, institutional boiler, or commercial boiler[setting];
- $([4]\underline{d})$ is located in Salt Lake, Utah, Davis, Weber, or Tooele County; and
 - ([5]e) is not a temporary boiler.
 - (2) Exemptions to this rule include:
 - (a) residential boilers as defined in this rule;
 - (b) CO boilers as defined in this rule;
 - (c) waste heat boilers as defined by this rule; and
 - (d) process heaters as defined by this rule.

R307-315-3. Definitions.

As used in this rule:

"Boiler" means [boiler as defined in 40 CFR 63.11237, Subpart JJJJJ National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources, which is incorporated by reference in Rule R307 210-]an enclosed device using controlled flame combustion of natural gas, as defined by this rule, in which water is heated to recover thermal energy in the form of steam or hot water. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel or oxidizer feed rates are controlled.

"Burner" means the functional component of a boiler that provides the heat input by combustion of a fossil fuel, with air or oxygen. Burners are available either as part of the boiler package from the manufacturer, as stand-alone products for custom installations, or as replacement products.

"CO boiler" means a boiler that is fired with gaseous fuel with an integral waste heat recovery system used to oxidize CO-rich waste gases generated by a Fluid Catalytic Cracking Unit.

"Commercial boiler" means a boiler used in commercial establishments such as hotels, restaurants, and laundries to provide electricity, steam, or hot water.

"Construction" means any physical change or change [in the method of operation-]including fabrication, erection, installation, demolition, or modification of a [source]boiler which would result in [a change]an increase in actual NO_x emissions.

"Industrial boiler" means a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, or electricity.

"Institutional boiler" means a boiler used in institutional establishments such as medical centers, nursing homes, research centers, institutions of higher education, elementary and secondary schools, libraries, religious establishments, and governmental buildings to provide electricity, steam, or hot water.

"Modification" means any planned change in a [source]boiler which results in an [potential-]increase of actual NO_x emissions.

"Natural gas" means:

- [(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane;
- (2) Liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835, Section 63.14;
- (3) A mixture of hydrocarbons that maintains a gaseous state at ISO conditions. For example, a temperature of 288 Kelvin, a relative humidity of 60%, and a pressure of 101.3 kilopascals. Additionally, natural gas must either be composed of at least 70% methane by volume or have a gross calorific value between 35 and

41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 Btu per dry standard cubic foot); or

- (4) Propane or propane derived synthetic natural gas. Propane means a colorless gas derived from petroleum and natural gas, with the molecular structure C3H8.]
- (1) a mixture of gaseous hydrocarbons, with at least 80% methane by volume, and of pipeline quality, such as the gas sold or distributed by any utility company regulated by the Utah Division of Public Utilities:
- (2) liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835, or propane, propane-derived synthetic natural gas, or mixtures thereof; or
 - (3) propane or propane-derived synthetic natural gas.

"Process Heater" means an enclosed device using controlled flame, and the unit's primary purpose is to transfer heat indirectly to a process material such as liquid, gas, or solid, or to a heat transfer material such as glycol or a mixture of glycol and water, for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not come into direct contact with process materials. Process heaters include units that heat water and water mixtures for pool heating, sidewalk heating, cooling tower water heating, power washing, or oil heating.

"Propane" means a colorless gas derived from petroleum and natural gas, with the molecular structure C3H8.

"Residential boiler" means a boiler used to provide heat or hot water or as part of a residential combined heat and power system. This definition includes boilers located at an institutional facility such as a university campus, military base, church grounds, or a commercial, or industrial, such as a farm, used primarily to provide heat or hot water for:

- (1) a dwelling containing four or fewer families; or
- (2) a single unit residence dwelling that has since been converted or sub-divided into condominiums or apartments.

"Temporary boiler" means any gaseous or liquid fuel-fired steam generating unit that is designed to, and is capable of, being carried or moved from one location to another by wheels, skids, carrying handles, dollies, trailers, or platforms. A steam generating unit is not a temporary boiler if any one of the following conditions exists:

- (1) $[\underline{\mathbf{T}}]\underline{\mathbf{t}}$ he equipment is attached to a foundation $[\underline{\mathbf{r}}]\underline{\mathbf{t}}$
- (2) [Ŧ]the steam generating unit or a replacement remains at a location for more than 180 consecutive days[-] and [A]any temporary boiler that replaces a temporary boiler at a location and performs the same or similar function [will]shall be included in calculating the consecutive time period[-];
- (3) [Ŧ]the equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least two years, and operates at that facility for at least three months each year[-]; or
- (4) [<u>T]the</u> equipment is moved from one location to another in an attempt to circumvent the residence time requirements of this definition.

"Waste heat boiler" means a device that recovers normally unused energy such as hot exhaust gas and converts it to usable heat. Waste heat boilers are also referred to as heat recovery steam generators. Waste heat boilers are heat exchangers generating steam from incoming hot exhaust gas from an industrial or power equipment such as thermal oxidizers, kilns, furnaces, combustion

turbines, and engines. Duct burners are sometimes used to increase the temperature of the incoming hot exhaust gas.

R307-315-4. Requirements.

- (1) A person that:
- (a) [eommences]begins construction, or modification of a boiler:
- (b) replaces a burner in a boiler[5] having only a single burner; or
- (c) replaces 50% or more of the burners in a multi-burner boiler for a boiler meeting the requirements of Section R307-315-2 shall[±] install a burner that meets a NO_x emission rate of nine parts per million by volume (ppmv) or less at 3% volume stack gas oxygen on a dry basis.
- [(2) Install a burner that is certified to meet a NOx emission rate of nine parts per million by volume (ppmv) or less at 3% volume stack gas oxygen on a dry basis averaged over a 24-hour period.]
- ([3]2) An owner or operator of a boiler subject to Subsection R307-315-4(1) shall: [operate and maintain the boiler and boiler subsystems, including burner or burners, according to the manufacturer's instructions.]
- (a) operate and maintain the boiler and boiler subsystems, including burners, according to the manufacturer's instructions;
- [(4) A manufacturer of a boiler or boiler burner meeting the requirement of Subsection R307-315-4(2) shall certify the boiler or boiler burner as complying with the emission rate in Subsection R307-315-4(2).
- (5) Manufacturer's operational specifications, records, and testing of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device.
- (b) determine continued compliance based on Section R307-315-6; and
- ([6]c) [The owner or operator must_]meet the applicable recordkeeping requirements for any control device.

R307-315-5. Recordkeeping.

- (1) The owner or operator of any $\underline{boiler[unit]}$ subject to Rule R307-315 shall:
- (a) [R]retain documentation of the unit's emission rate specifications;
- (b) [R]retain a copy of the manufacturer's recommendations for proper operation and maintenance of units covered by Rule R307-315; and
- (c) [M]maintain records showing proper operation and maintenance of units covered by Rule R307-315 following manufacturer's recommendations [; and]
- [(d) Retain a copy of the manufacturer's certification for any replacement burner.]
- (2) Operation and maintenance records shall be retained for five years and shall be made available to the director upon request.

R307-315-6. Compliance Schedule.

- [The compliance schedule for this rule shall begin on May 1, 2023.]
- (1) Compliance with the NO_x emission requirement listed in Subsection R307-315-4(1)(c) shall be determined according to the following procedures:

- (a) U.S. EPA Reference Method 7E, Determination of Nitrogen Oxides Emissions from Stationary Sources;
- (b) other EPA-approved testing methods acceptable to the Director; or
- (c) combustion analysis as part of a regular maintenance schedule.
- (2) Compliance Determination shall be conducted once every five years.
- (3) The compliance schedule for this rule shall begin on May 1, 2024.

KEY: air pollution, boiler, NO_x, nitrogen oxides

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 19-2-104

NOTICE OF CHANGE IN PROPOSED RULE		
Rule or Section Number:	R307-316	Filing ID: 55177
Date of Previous Publication:	01/15/2023	

Agency Information

-g,		
1. Department:	Environmental Quality	
Agency:	Air Quality	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state and zip:	Salt Lake City, UT 84114-4820	

Contact persons:

Contact persons:		
Name:	Phone:	Email:
Erica Pryor	385- 499- 3416	epryor1@utah.gov
Ryan Bares	385- 536- 4216	rbares@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R307-316. NOx Emission Controls for Natural Gas-Fired Boilers greater than 5.0 MMBtu

3. Reason for this change:

The changes were made to the proposed rule after comments received during the public comment period.

4. Summary of this change:

The changes are: 1) clarifying language was added; 2) the compliance schedule was extended from May 1, 2023, to May 1, 2024; 3) the testing and compliance methods were changed to allow for portable gas analyzers to be used to verify compliance with requirements in this rule.

(EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the January 15, 2023, issue of the Utah State Bulletin, on page 41. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

Fiscal Information

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

A) State budget:

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts to the state budget.

The fiscal impact of this rule on state budgets is unknown. This rule will eventually impact all boilers above 5 MMBtu in impacted counties, a portion of which are owned and operated by the state. This rule does not require retrofits to existing boilers, so the near-term impact of the rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A Division of Air Quality (DAQ) analysis identified 620 boilers greater than 5 MMBtu located in the impacted counties, but the proportion owned and operated by state government is not known. DAQ estimates a cost difference between \$13,000 and \$26,000 for a 6.7MMBtu standard boiler that is replaced with an Ultra-Low NOx boiler rated at 9 ppmv. However, since the timing of replacement is unknown; the fiscal impact cannot be accurately estimated.

B) Local government:

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts to local governments.

The fiscal impact of this rule on local governments is unknown. This rule will eventually impact all boilers above 5 MMBtu in impacted counties, a portion of which are owned and operated by local governments. This rule does not require retrofits to existing boilers, so the near-term impact of the rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A DAQ analysis identified 620 boilers over 5 MMBtu located in the impacted counties, but the proportion owned and operated by local governments is not known. DAQ estimates a cost difference between \$13,000 and \$26,000 for a 6.7MMBtu standard boiler that is replaced with an Ultra-Low NOx boiler rated at 9 ppmv. However, since the timing of replacement is unknown; the fiscal impact cannot be accurately estimated.

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

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts for small businesses.

The fiscal impact of this rule on small business is unknown. This rule will eventually impact all boilers above 5 MMBtu in impacted counties, a portion of which are owned and operated by small businesses. This rule does not require retrofits to existing boilers, so the near-term impact of the rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A DAQ analysis identified 620 boilers over 5 MMBtu located in the impacted counties, but the proportion owned and operated by small businesses is not known. DAQ estimates a cost difference between \$13,000 and \$26,000 for a 6.7MMBtu standard boiler that is replaced with an Ultra-Low NOx boiler rated at 9 ppmv. However, since the timing of replacement is unknown; the fiscal impact cannot be accurately estimated.

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

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts to non-small businesses.

The fiscal impact of this rule on non-small business is unknown. This rule will eventually impact all boilers above 5 MMBtu in impacted counties, a portion of which are owned and operated by non-small businesses. This rule does not require retrofits to existing boilers, so the nearterm impact of the rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A DAQ analysis identified 620 boilers over 5 MMBtu located in the impacted counties, but the proportion owned and operated by non-small businesses is not known. DAQ estimates a cost difference between \$13,000 and \$26,000 for a 6.7MMBtu standard boiler that is replaced with an Ultra-Low NOx boiler rated at 9 ppmv. However, since the timing of replacement is unknown; the fiscal impact cannot be accurately estimated.

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

The changes to the proposed rule do not result in changes to the originally identified fiscal impacts to other persons.

The fiscal impact of this rule on other persons is unknown. This rule will eventually impact all boilers above 5 MMBtu in impacted counties, a portion of which are owned and operated persons other than small businesses, non-small businesses, state, or local governments. This rule does not require retrofits to existing boilers, so the near-term impact of the rule will be limited to new installations, burner replacements, and boilers reaching the end of their useful life.

A DAQ analysis identified 620 boilers over 5 MMBtu located in the impacted counties, but the proportion owned and operated by other persons is not known. DAQ estimates a cost difference between \$13,000 and \$26,000 for a 6.7MMBtu standard boiler that is replaced with an Ultra Low NOx boiler rated at 9 ppmv. However, since the timing of replacement is unknown, the fiscal impact cannot be accurately estimated.

F) Compliance costs for affected persons:

Based on quotes received from boiler distributors and maintenance companies, compliance costs for affected persons are estimated at \$600 once every five years.

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	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Environmental Quality, Kim D Shelly, has reviewed and approved this regulatory impact analysis.

Citation Information

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

Section 19-2-104		
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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	07/03/2023
unti	l:				

9. This rule change MAY become	07/10/2023
effective on:	

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

Agency Authorization Information

Agency head or designee	Bryce C. Bird, Director	Date:	04/18/2023
and title:			

R307. Environmental Quality, Air Quality.

R307-316. NO $_{\rm X}$ Emission Controls for Natural Gas-Fired Boilers Greater Than 5.0 MMBtu.

R307-316-1. Purpose.

Rule R307-316 establishes maximum emission thresholds for the emissions of oxides of nitrogen (NO_x) for new or modified

natural gas-fired boilers with a total rated heat input greater than 5.0 million British Thermal Units per hour (MMBtu/hr).

R307-316-2. Applicability.

(1) Rule R307-316 applies to each boiler that [emmences]begins construction or modification after the compliance date defined in Section R307-316-6 that:

([1]a) is fueled exclusively by natural gas;

 $([2]\underline{b})$ has a total rated heat input greater than 5.0 MMBtu/hr;

([3]c) is [operated in-]an industrial_boiler, institutional boiler, or commercial [setting]boiler;

 $([4]\underline{d})$ is located in Salt Lake, Utah, Davis, Weber, or Tooele County; and

([5]e) is not a temporary boiler.

- (2) Exemptions to this rule include:
- (a) residential boilers as defined in this rule;
- (b) CO boilers as defined in this rule;
- (c) waste heat boilers as defined by this rule; and
- (d) process heaters as defined by this rule.

R307-316-3. Definitions.

As used in this rule:

"Boiler" means [boiler as defined in 40 CFR 63.11237, Subpart JJJJJ National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources, which is incorporated by reference in Rule R307 210.]an enclosed device using controlled flame combustion of natural gas, as defined by this rule, in which water is heated to recover thermal energy in the form of steam or hot water. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel or oxidizer feed rates are controlled.

"Burner" means the functional component of a boiler that provides the heat input by combustion of a fossil fuel with air or oxygen. Burners are available either as part of the boiler package from the manufacturer, as stand-alone products for custom installations, or as replacement products.

"CO boiler" means a boiler that is fired with gaseous fuel with an integral waste heat recovery system used to oxidize CO-rich waste gases generated by a Fluid Catalytic Cracking Unit.

"Commercial boiler" means a boiler used in commercial establishments such as hotels, restaurants, and laundries to provide electricity, steam, or hot water.

"Construction" means any physical change [or change in the method of operation-]including fabrication, erection, installation, demolition, or modification of a [source]boiler which would result in an [change]increase in actual NO_x emissions.

"Industrial boiler" means a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam, hot water, or electricity.

"Institutional boiler" means a boiler used in institutional establishments such as medical centers, nursing homes, research centers, institutions of higher education, elementary and secondary schools, libraries, religious establishments, and governmental buildings to provide electricity, steam, or hot water.

"Modification" means any planned change in a $[\underline{source}]\underline{boiler}$ $[\underline{that}]\underline{which}$ results in an $[\underline{potential}]$ increase of \underline{actual} NO_x emissions.

"Natural gas" means:

- (1) [A]a [naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface of which the principal constituent is methane]mixture of gaseous hydrocarbons, with at least 80% methane by volume, and of pipeline quality, such as the gas sold or distributed by any utility company regulated by the Utah Division of Public Utilities;
- (2) Liquefied petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835,[-Section 63.14;] or propane, propane-derived synthetic natural gas, or mixtures thereof; or
- [(3) A mixture of hydrocarbons that maintains a gaseous state at ISO conditions. For example, a temperature of 288 Kelvin, a relative humidity of 60%, and a pressure of 101.3 kilopascals. Additionally, natural gas must either be composed of at least 70% methane by volume or have a gross calorific value between 35 and 41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 Btu per dry standard cubic foot); or]
- ([4]3) [P]propane or propane-derived synthetic natural gas.[Propane means a colorless gas derived from petroleum and natural gas, with the molecular structure C3H8.]

"Process Heater" means an enclosed device using controlled flame, and the unit's primary purpose is to transfer heat indirectly to a process material such as liquid, gas, or solid, or to a heat transfer material such as glycol or a mixture of glycol and water, for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not come into direct contact with process materials. Process heaters include units that heat water and water mixtures for pool heating, sidewalk heating, cooling tower water heating, power washing, or oil heating.

"Propane" means a colorless gas derived from petroleum and natural gas, with the molecular structure C3H8.

"Residential boiler" means a boiler used to provide heat or hot water as part of a residential combined heat and power system. This definition includes boilers located at an institutional facility such as a university campus, military base, church grounds or commercial or industrial facility such as a farm used primarily to provide heat or hot water for:

- (1) a dwelling containing four or fewer families; or
- (2) a single unit residence dwelling that has since been converted or sub-divided into condominiums or apartments.

"Temporary boiler" means any gaseous or liquid fuel-fired steam generating unit that is designed to, and is capable of, being carried or moved from one location to another by wheels, skids, carrying handles, dollies, trailers, or platforms. A steam generating unit is not a temporary boiler if any one of the following conditions exists:

- (1) [T]the equipment is attached to a foundation[-];
- (2) [<u>T]the</u> steam generating unit or a replacement remains at a location for more than 180 consecutive days. Any temporary boiler that replaces a temporary boiler at a location and performs the same or similar function [<u>will]shall</u> be included in calculating the consecutive time period[-];
- (3) [Ŧ]the equipment is located at a seasonal facility and operates during the full annual operating period of the seasonal facility, remains at the facility for at least two years, and operates at that facility for at least three months each year[-]; or
- (4) [<u>T]the</u> equipment is moved from one location to another in an attempt to circumvent the residence time requirements of this definition.

"Waste heat boiler" means a device that recovers normally unused energy such as hot exhaust gas and converts it to usable heat. Waste heat boilers are also referred to as heat recovery steam generators. Waste heat boilers are heat exchangers generating steam from incoming hot exhaust gas from an industrial or power equipment such as thermal oxidizers, kilns, furnaces, combustion turbines, and engines. Duct burners are sometimes used to increase the temperature of the incoming hot exhaust gas.

R307-316-4. Requirements.

- (1) Except as provided in Subsection R307-316-4([8]3), a person that:
- (a) [commences]begins construction, or modification of a boiler;
- (b) replaces a burner in a boiler having only a single burner; or
- (c) replaces 50% or more of the burners in a multi-burner boiler for a boiler meeting the requirements of Section R307-316-2 shall[±] install a burner that meets a NO_x emission rate of nine parts per million by volume (ppmv) or less at 3% volume stack gas oxygen on a dry basis.
- [(2) Install a burner that is certified to meet a NOx emission rate of nine parts per million by volume (ppmv) or less at 3% volume stack gas oxygen on a dry basis averaged over a 24 hour period.]
- ([3]2) An owner or operator of a boiler subject to Subsection R307-316-4(1) shall: operate and maintain the boiler and boiler subsystems, including burner or burners, according to the manufacturer's instructions.
- (a) operate and maintain the boiler and boiler subsystems, including burners, according to the manufacturer's instructions;
- [(4) A manufacturer of a boiler or boiler burner meeting the requirement of Subsection R307-316-4(2) shall certify the boiler or boiler burner as complying with the emission rate in Subsection R307-316-4(2).
- (5) Boilers over 40 MMBtu/hr shall be tested for compliance with the emission limit in Subsection R307-316-4(2) no less than once every three years using EPA Reference Method 7E.
- (b) determine continued compliance based on Section R307-315-6; and
- ([6]c) ensure that [M]manufacturer's operational specifications, records, and testing of any control system shall use the applicable EPA Reference Methods of 40 CFR Part 60, the most recent EPA test methods, or EPA-approved state methods, to determine the efficiency of the control device[-]; and
- $([7]\underline{d})$ [The owner or operator must-]meet the applicable recordkeeping requirements for any control device.
- ([8]3) Any person may apply to the director for approval of an alternate method of control. The application [must]shall include a demonstration that the proposed alternate produces an equal air quality benefit as required by Subsection R307-316-4([2]1)(c) or [the best achievable level of control available]that meets Best Available Control Technology thresholds.

R307-316-5. Recordkeeping.

- (1) The owner or operator of any [unit]boiler subject to Rule R307-316 shall:
- (a) [R]retain documentation of the unit's emission rate specifications;

- (b) [R]retain a copy of the manufacturer's recommendations for proper operation and maintenance of units covered by Rule R307-316;
- (c) [M]maintain records showing proper operation and maintenance of units covered by Rule R307-316 following manufacturer's recommendations; and
- [(d) Retain a copy of the manufacturer's certification for any replacement burner;
- (e) Retain records of any certification testing as required under Subsection R307-316-4(5); and
- $([f]\underline{d})$ [R]retain a record of approval of any alternative method of control as outlined in Subsection R307-316-4([8]3).
- (2) Operation and maintenance records shall be retained for five years and shall be made available to the director upon request.

R307-316-6. Compliance <u>Determination and Schedule.</u>

- [The compliance schedule for this rule shall begin on May 1, 2023.]
- (1) Compliance with the NO_x emission requirement listed in Subsection R307-316-4(1)(c) shall be determined according to the following procedures:
- (a) U.S.EPA Reference Method 7E, Determination of Nitrogen Oxides Emissions from Stationary Sources;
- (b) a continuous in-stack nitrogen oxide monitor or equivalent verification system in compliance with 40 CFR Part 60 Appendix B Specification 2;
- (c) other EPA-approved testing methods acceptable to the director; or

- (d) combustion analysis as part of a regular maintenance schedule.
- (2) Compliance Determination shall be conducted according to the following frequency
- (a) once every three years for units with a rated heat input capacity greater than or equal to 10 MMBtu/hr, except for boilers subject to Subsection R307-316-6(1)(b); and
- (b) once every five years for units with a rated heat input capacity less than 10 MMBtu/hr down to and including 5 MMBtu/hr.
- (3) Provided an emissions test is conducted within the same calendar year as the test required in Subsection R307-316-6(2), an owner or operator may use the following emissions tests to comply with Subsection R307-316-6(2):
- (a) periodic monitoring or testing of a unit as required in a Title V permit; or
- (b) relative accuracy testing for continuous emissions monitoring verification pursuant to 40 CFR Part 60 Appendix B Specification 2.
- (4) The compliance schedule for this rule shall begin on May 1, 2024.

KEY: air pollution, boiler, NO_x, nitrogen oxides

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 19-2-104

End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (<u>example</u>) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.....) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULEs**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or 120-DAY RULES are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Rule or Section Number:	R650-302 Filing ID: 55407	
Effective Date:	05/11/2023	

Agency Information

1. Department:	Natural Resources			
Agency:	Outdoor	Outdoor Recreation		
Room number:	100			
Building:	Department of Natural Resources Building			
Street address:	1594 W	North Temple		
City, state and zip:	Salt Lake City, UT 84116			
Contact persons	s:			
Name:	Phone:	Email:		
Tara McKee	801- 538-	tmckee@utah.gov		
	5500			

Caroline Weiler	801- 538- 5500	cweiler@utah.gov
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Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R650-302. Utah Outdoor Recreation Infrastructure Grant

3. Purpose of the new rule or reason for the change:

Subsection 79-8-402(1) provides the Division shall make rules "establishing the eligibility and reporting criteria for an entity to receive an infrastructure grant [....]"

The Division of Outdoor Recreation (Division) has been working to finalize the Utah Outdoor Recreation Infrastructure Grant rule pursuant to this statutory mandate but was unable to finalize the rule prior to the 2023 grant cycle. The Division believes this emergency rule is necessary given the Utah Code provides the Division shall make rules to establish the eligibility and reporting criteria for this cycle's grants. The Division anticipates promulgating a final, permanent rule within the next 120 days pursuant to Section 63G-3-301.

4. Summary of the new rule or change:

This rule establishes eligibility and reporting criteria for an entity to receive a Utah Outdoor Recreation Infrastructure Grant, including: the form and process of submitting an application to the Division for an infrastructure grant; which entities are eligible to apply for an infrastructure grant; specific categories of recreational infrastructure projects that are eligible for an infrastructure grant; the method and formula for determining grant amounts; and the reporting requirements of grant recipients.

5A) The agency finds that regular rulemaking would:

- cause an imminent peril to the public health, safety, or welfare:
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

B) Specific reasons and justifications for this finding:

Subsection 79-8-402(1) provides the Division shall make rules "establishing the eligibility and reporting criteria for an entity to receive an infrastructure grant [....]"

This rule carries out this rulemaking mandate and therefore, brings the Division into compliance with Utah law.

Fiscal Information

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

A) State budget:

There are no anticipated costs or savings to the state budget associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to merging the Office of Outdoor Recreation (from the Governor's Office) into the Division of Outdoor Recreation (under the Department of Natural Resources) and the content of this rule is the same/what entities have been functioning under.

B) Local governments:

There are no anticipated costs or savings to local governments associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to merging the Office of Outdoor Recreation into the Division of Outdoor Recreation and the content of this rule is the same/what entities have been functioning under.

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

There are no anticipated costs or savings to the small businesses associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to merging the Office of Outdoor Recreation into the Division of Outdoor Recreation and the content of this rule is the same/what entities have been functioning under.

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

There are no anticipated costs or savings to persons other than small businesses, state, or local government entities associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to merging the Office of Outdoor Recreation into the Division of Outdoor Recreation and the content of this rule is the same/what entities have been functioning under.

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

There are no anticipated compliance costs associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to merging the Office of Outdoor Recreation into the Division of Outdoor Recreation and the content of this rule is the same/what entities have been functioning under.

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

No fiscal impact on businesses. Joel Ferry, Executive Director

Citation Information

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

Agency Authorization Information

Agency head or designee and title:	Jason Curry, Director	Date:	05/05/2023
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R650. Natural Resources, Outdoor Recreation. R650-302. Utah Outdoor Recreation Infrastructure Grant. R650-302-1. Authority.

(1) Utah Code section 79-8-402 requires the Division to establish by rule eligibility and reporting criteria for entities receiving an infrastructure grant.

- (2) Pursuant to Utah Code section 79-8-401, the Division seeks to accomplish the following objectives in administering the grant program:
- (a) build, maintain, and promote recreational infrastructure to provide greater access to low-cost outdoor recreation for the state's citizens;
- (b) encourage residents and nonresidents of the state to take advantage of the beauty of Utah's outdoors;
- (c) encourage individuals and businesses to relocate to the state;
 - (d) promote outdoor exercise; and
- (e) provide outdoor recreational opportunities to an underserved community in the state.

R650-302-2. Definitions as Used In this Rule.

- (1) "Accessible to the general public," when used in relation to the awarding of an infrastructure grant, means that:
- (a) the public may use the infrastructure in accordance with federal and state regulations; and
- (b) no individual, community, group, or organization retains exclusive rights to access the infrastructure.
- (2) "Advisory Committee" means the Utah Outdoor Recreation Infrastructure Advisory Committee created in Utah Code section 79-7-206.
- (3) "Director" means the Director of the Division of Outdoor Recreation.
 - (4) "Division" mean the Division of Outdoor Recreation
- (5) "Executive Director" means the Executive Director of the Department of Natural Resources.
- (6) "Infrastructure grant" means an outdoor recreational infrastructure grant described in Utah Code section 79-8-401.
- (7) "Mini-grant category" means a grant request that is \$15,000 or less.
- (8) "Recreational infrastructure project" means an undertaking to build or improve approved facilities and installations needed for the public to access and enjoy the state's outdoors.
- (9) "Recreational infrastructure project" may include but is not limited to the following:
- (a) establishment, construction, or renovation of a trail, trail infrastructure, or trail facilities;
- (b) construction of a project for water-related outdoor recreational activities;
- (c) development of a project for wildlife watching opportunities, including bird watching;
- (d) development of a project that provides winter recreation amenities, including groomed recreation trails or warming huts for motorized or non-motorized winter recreation activities, outdoor ice skating rinks or loops, sledding hill infrastructure, or other improvements that further winter recreation activities;
- (e) construction or improvement of a community park that has amenities for outdoor recreation; or
- (f) construction or improvement of an accessible playground or a playground that includes improvements that resemble naturally occurring features like logs and boulders, or other improvements make with or made to resemble natural materials.
- (9) "Underserved or underprivileged community" means a group of people, including a subset of the population of a municipality, county, or American Indian tribe, that is economically disadvantaged.
- (a) "Underserved or underprivileged community" includes an economically disadvantaged community where, in relation to

awarding an infrastructure grant, the community has limited access to or has demonstrated a low use of recreational infrastructure.

R650-302-3. Application Form and Submission Procedure.

- (1) The application form shall be provided by the Division and contain the following:
 - (a) general submission instructions;
 - (b) grants available to be awarded;
 - (c) criteria to qualify for award of a grant;
- (d) instructions regarding submission of a project description, including a timeline;
- (e) Instructions for providing an outlined budget for total project costs, highlight of funds already procured for the project, and an itemized budget showing planned use of the requested grant funds;
- (f) instructions for reporting project impacts, including community and economic impacts;
 - (g) the application scoring system;
 - (h) any required deadlines, reports, and relevant timelines;
- (i) all documents and information the Division considers necessary for its evaluation of the application.
- (2) The Division shall create an application in an electronic form available to the public on the Division's website.
- (3) The Division shall supply a paper application to any person or entity requesting it.
- (4) Applications shall be submitted to the Division of Outdoor Recreation staff on or before the deadline specified in the application.
- (5) Staff shall review final applications for completeness and the Division of Outdoor Recreation program manager shall verify that the documentation is complete and meets the program criteria outlined in the statute and this rule.
- (6) All completed documentation shall be reviewed, and awardees selected, via the criteria and method outlined in this rule.

R650-302-4. Eligible Entities.

and

- (1) Grants may be awarded only to the following entities within the State of Utah:
- (2) Utah non-profit corporations with a 501(c)(3) or and (c)(6) status whose project is physically located within the State;
 - (3) Utah Municipalities;
 - (4) Utah Counties;
 - (5) Utah political subdivisions;
 - (6) Utah state agencies;
 - (7) Federal government agencies; and
 - (8) Tribal governments.

R650-302-5. Infrastructure Project Eligibility Criteria.

- (1)(a) The grant recipient shall provide matching funds based on an algorithm determined by the Division and made available in the application or the program guide that considers the total population of the county and its per capita income. For grant awards within the mini-grant category, the grant recipient shall provide matching funds having a value equal to or greater than the amount of the infrastructure grant.
- (b) The maximum grant request depends on available funds as set out in the grant application.
- (c) Up to 50% of the grant recipient match may be provided through an in-kind contribution by the grant recipient, if:
- (i) approved by the Director and the Executive Director after consultation with the Advisory Committee; and

- (ii) the in-kind donation does not include real property.
- (d) The grant application shall provide matching requirements, eligible and ineligible matching costs, and other matching funding requirements.
- (e) Applicants shall secure at least 75% of the project's matching funds prior to application.
- (f) Applicants budget estimates may be rounded to the nearest \$1000 or \$500.
- (2)(a) The application shall include a letter of support from the local economic development office or local tourism Director for grant awards of over \$15,000. Ideally, the letter of support should state that the project has the potential to attract growth and retention in the community/area or increase visitation to the region.
- (b) The applicant shall include a Statement of Responsibility from the entity that will maintain the recreational infrastructure in the future.
- (3)(a) The project shall have approval from the appropriate land management entity if located on public lands.
- (b) The applicant may be required to show approval from a land management agency that follows the National Environmental Policy Act (NEPA) process to receive the grant.
- (4)(a) All projects shall be located on land owned by or under the applicant's control, or on land owned by a management agency partner (e.g., Federal, State, or local government or a conservancy).
- (b) If the project crosses private property, as in the case of a trail, the applicant shall ensure public access to the portion of the project that crosses the private property for a minimum of 10 years. This guarantee shall be in a form of a binding agreement, easement, right-of-way, or other negotiated written agreement acceptable to the Division.
- (5) Applicants shall coordinate with the Utah Division of Wildlife Resources to determine if the project is located within a special management area for sensitive species.
- (6) Applicant shall comply with the requirements of Utah Code sections 9-8-401 through 405 before beginning any project.
- (7) infrastructure projects may include but are not limited to:
- (a) the establishment, construction, or renovation of trails, trail facilities, and trail infrastructure, including trail kiosks, trail wayfinding signage, trailhead parking, restroom facilities, and trail bridges or tunnels;
- (b) the construction of a project for water-related outdoor recreational activities;
- (c) the development of a project for wildlife watching opportunities, including bird watching;
- (d) the development of a project that provides winter recreation amenities;
- (e) the construction or improvement of a community park that has amenities for outdoor recreation;
- (f) The construction or improvement of a naturalistic and accessible playground;
- (g) the construction of a community-owned or sponsored campground;
- (h) the establishment or construction of a communityowned outdoor shooting or archery range;
- (i) projects similar to those listed in subsections (7)(a) through (h); or
- (j) except for ineligible projects listed under subsection (8), projects that increase outdoor recreation facilities available for public use.
 - (8) Ineligible infrastructure projects include:

- (a) Outdoor education programming;
- (b) Golf courses;
- (c) Athletic fields or courts;
 - (d) General community wayfinding signage;
 - (e) Harbor dredging projects; or
- (f) projects similar to those listed in subsections (8)(a) through (g).
- (9) An infrastructure grant may not be awarded if the grant, or the grant recipient match, will be used for the purchase of real property or for the purchase or transfer of a conservation easement.

R650-302-6. Method and Formula for Determining Grant Amounts.

- (1) The Division shall use a weighted scoring system to enable the Advisory Council to analyze, advise, and make recommendations to the Division regarding the award of grants and grant amounts.
- (a) The scoring system shall be made available in the application;
- (b) The scoring system shall assess and value general categories, including:
- (i) Community need; Economic impact, including the potential to increase area tourism; Recreation access and value; Project readiness; and Location within an underserved population or area.
- (2) The Division shall distribute the grant applications among the Advisory Committee members and ensure that each application is reviewed and scored by members of the Advisory Committee.
- (3) The Division shall use the average of the scores to create a prioritization matrix ranking the applications in ascending order.
- (4) The Division shall convene the Advisory Committee for a meeting to select the projects that are recommended for the review
- (5) The following constitutes the method and formula for determining grant awards in Advisory Committee meetings:
- (a) A prioritization matrix shall be utilized to rank the projects.
- (b) All but the lowest ranked projects, as determined by a threshold determined by the Division shall receive a review during the meeting of the committee.
- (i) Subject to procedural rules, a member and a second may request a vote to bring a low-scored project that was not scheduled for review to receive consideration by the Advisory Committee.
- (ii) Subject to procedural rules, a member and a second may request a full Advisory Committee vote for a recommendation of an award
 - (c) The Advisory Committee may prioritize projects that:
- (i) Conform to the criteria and eligibility as outlined in the program guide;
 - (ii) increase visitation to the project area;
 - (iii) will serve an underserved community;
- (iv) will further the goal of providing geographic distribution of recreation infrastructure throughout the state;
- (v) are trails that are accessible to all members of the public, including trails that are usable with adaptive equipment;
 - (vi) are trail segments that complete trail gaps;
- (vii) will add to connect trails for a more extensive trail network;
- (viii) enhance an outdoor recreation amenity that draws tourists; or

- (ix) where project applicants coordinated with the local tourism office to market the project as a tourism attraction.
 - (d) Rules for scoring during Grant scoring meeting
- (i) To aid in the meeting evaluation, the staff shall provide a synopsis of each of the projects, and each reviewer shall have access to all scored evaluations
- (e) In accordance with available funds, the Advisory Committee shall advise and make recommendations to the Division regarding proposals for funding.
- (f) The recommendations for grant awards shall be forwarded to the Executive Director of the Department, who shall consult with the Division Director and give final approval.
- (g) If an awardee declines an awarded grant, the Division may give the funding to another high-scoring project upon a recommendation from the Advisory Committee and approval of the Division Director and Executive Director.
- (h) All applicants shall be notified of the funding decision within two weeks of the Division's final decision.
- (i) Successful applicants shall be notified of expected contractual requirements.
- (ii) The grant applicants who were unsuccessful in obtaining a grant award shall be notified of the rejection.
- (iii) A copy of the reviewers' written comments, with reviewers' names redacted, shall be provided to rejected applicants upon request.

Requirements. Reporting and Reimbursement Cooperation

- (1) Grant recipients shall cooperate with the Division's reasonable requests for site visits during and after the completion of the Project.
- (2) Grant recipients shall provide any financial records related to the grant project upon the Division's request.
- (3) Grant recipients shall provide the Division with a progress report twice yearly until the project's completion.
- (4) Grant recipients shall provide economic development information and supporting documentation of economic development goals achieved at a minimum on an annual basis or upon the Division's request.
- (a) The recipient shall provide economic development information for up to 10 years following completion of the Project.
- (5) Grant recipients shall provide the Division with a description and an itemized report detailing the expenditure of the grant or the intended cost of any unspent funds.
- (6) Grant recipients shall provide the Division with a final written itemized report after the project's completion.
- (7) The reports referenced in subsections (5) and (6) shall be provided at least annually and no later than 60 days after the grant agreement has expired.
- (a) Each report shall include assurances that all monies paid to the grant recipient went to planning, construction, or improvements as described in the recipient's grant application and grant agreement.
- (8) Awarded entities shall be required to submit the following documentation upon reimbursement request:
- (a) a reimbursement request form in a format provided by the Division;
- (b) copies of all invoices and evidence of payment (checks, bank statements, or receipts) as well as records of volunteer labor or other in-kind donations for work completed on the project;

- (c) several photos that show the project is complete;
- (d) a final report with the description of the project and data requested by the Division; and
- (e) any other documentation the Division deems necessary to ensure compliance with the grant agreement.
- (9) Partial reimbursement payment may be made through the course of the terms of the contract, not to exceed 75% of expenses incurred during the development of the project.
- (10) The Division shall provide in the program guide a reference to which an applicant may refer to make a request and be granted upfront funding, up to 50% of the award.
- (a) The applicant shall indicate within the application that they intend to request upfront funding so that the Advisory Committee may consider the advance funding request.
- (b) The Division may advance no more than 75% of the grant award to the project recipient before completion of the project.
- (c) The recipient shall make a written request to the Division, outlining the need and use for an advance of funds needed for project costs over the six months.
- (d) The Grant recipient shall provide the Division with a description and an itemized report detailing the expenditure of the grant or the intended cost of the advanced funds.
- (11) All project spending should occur during the contract period.
- (a) The Division shall not reimburse the recipient for costs incurred before or after the contract period.
- (b) Submission of documentation for reimbursement may occur within sixty days following the contract expiration, provided the expenditures were incurred during the contract period.

R650-302-8. Modifications to the Original Contract.

(1) Modifications to an original grant contract may be made only by subsequent, written amendment, approved by the program Director and Division Director, and signed by all parties to the original contract.

KEY: Outdoor Recreation Infrastructure Grant, outdoor recreation grants

Date of Last Change: May 11, 2023

Authorizing, and Implemented or Interpreted Law: 79-8-402(1)

NOTICE OF EMERGENCY (120-DAY) RULE			
Rule or Section Number:	R650-303	Filing ID: 55408	
Effective Date:	05/11/2023		

Agency Information

1. Department:	Natural Resources		
Agency:	Outdoor Recreation		
Room number:	100		
Building:	Department of Natural Resources Building		
Street address:	1594 W North Temple		
City, state and zip:	Salt Lake City, UT 84116		

Contact persons:			
Name:	Phone:	Email:	
Tara McKee	801- 538- 5500	tmckee@utah.gov	
Patrick Morrison	801- 538- 5500	patrickmorrison@utah.gov	
Caroline Weiler	801- 538- 5500	cweiler@utah.gov	

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

R650-303. Restoration Recreation Infrastructure Grant Program

3. Purpose of the new rule or reason for the change:

Subsection 79-8-202(3) provides the Division of Outdoor Recreation (Division) shall make rules "establishing the eligibility and reporting criteria for an entity to receive a recreation restoration infrastructure grant [....]"

The Division has been working to finalize the Restoration Recreation Infrastructure Grant Program rule pursuant to this statutory mandate but was unable to finalize this rule prior to the 2023 grant cycle. The Division believes this emergency rule is necessary given the Utah Code provides the Division shall make rules to establish the eligibility and reporting criteria for this cycle's grants.

The Division anticipates promulgating a final, permanent rule within the next 120 days pursuant to Section 63G-3-301.

4. Summary of the new rule or change:

This rule establishes eligibility and reporting criteria for an entity to receive a Restoration Recreation Infrastructure Grant, including: the form and process of submitting annual project proposals to the Division for a recreation restoration infrastructure grant; which entities are eligible to apply for a recreation restoration infrastructure grant; specific categories of recreation restoration projects that are eligible for a recreation restoration infrastructure grant; the method and formula for determining recreation restoration infrastructure grant amounts; and the reporting requirements of a recipient of a recreation restoration infrastructure grant.

5A) The agency finds that regular rulemaking would:

- cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or

place the agency in violation of federal or state law.

B) Specific reasons and justifications for this finding:

Subsection 79-8-202(3) provides the Division shall make rules "establishing the eligibility and reporting criteria for an entity to apply for and receive a recreation restoration infrastructure grant [....]"

This rule carries out this rulemaking mandate and therefore, brings the Division into compliance with Utah law.

Fiscal Information

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

A) State budget:

There are no anticipated costs or savings to the state budget associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to merging the Office of Outdoor Recreation (from the Governor's Office) into the Division of Outdoor Recreation (under the Department of Natural Resources) and the content of this rule is the same/what entities have been functioning under.

B) Local governments:

There are no anticipated costs or savings to local governments associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to merging the Office of Outdoor Recreation into the Division of Outdoor Recreation and the content of this rule is the same/what entities have been functioning under.

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

There are no anticipated costs or savings to the small businesses associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to merging the Office of Outdoor Recreation into the Division of Outdoor Recreation and the content of this rule is the same/what entities have been functioning under.

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

There are no anticipated costs or savings to persons other than small businesses, state, or local government entities associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to

merging the Office of Outdoor Recreation into the Division of Outdoor Recreation and the content of this rule is the same/what entities have been functioning under.

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

There are no anticipated compliance costs associated with this emergency rule because this rule had existed under the Office of Outdoor Recreation (under the Governor's Office of Economic Opportunity) prior to merging the Office of Outdoor Recreation into the Division of Outdoor Recreation and the content of this rule is the same/what entities have been functioning under.

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

No fiscal impact on businesses. Joel Ferry, Executive Director

Citation Information

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

-	
Subsection	
79-8-202(3)	

Agency Authorization Information

Agency head	Jason Curry,	Date:	05/05/2023
or designee	Director		
and title:			

R650. Natural Resources, Outdoor Recreation

R650-303. Restoration Recreation Infrastructure Grant Program.

R650-303-1. Authority.

- (1) Subsection 79-8-402(1) requires the Division to establish through rule the eligibility and reporting criteria for an entity to receive a recreation restoration infrastructure grant.
- (2) The Division may seek to accomplish the following objectives in administering the grant program:
- (a) rehabilitate or restore high priority trails for both motorized and nonmotorized uses;
- (b) rehabilitate or restore high demand recreation areas on public lands; and
- (c) encourage the public land entities to engage with volunteer groups to aid with portions of needed trail work.

R650-303-2. Definitions.

As used in this rule:

- (1) "Advisory Committee" means the Utah Outdoor Recreation Infrastructure Advisory Committee created in Utah Code Section 79--7--206.
- (2) "Developed campground" mean campgrounds that have been improved or developed from a moderate to a highly developed level.

- (3) "Developed recreation site" means an area that has been improved or developed for recreation.
- (4) "Developed trail" means trails that are trails that have constructed features of either native or imported materials and incorporate route identification signage as needed for user reassurance such that they can be considered developed, highly developed, or fully developed.
- (5) "Developed water recreation facilities" means recreational facilities that offer water-based recreation opportunities for visitors' use, enjoyment, and safety.
- (6) "Director" means the Director of the Division of Outdoor Recreation.
 - (7) "Division" mean the Division of Outdoor Recreation
- (8) "Executive Director" means the Executive Director of the Department of Natural Resources.
- (9) "Partner" means two or more entities collaborating with the grant recipient with a common interest or goal of restoring or rehabilitating recreational infrastructure.

R650-303-3. Application Form and Submission Process.

- (1) The application form shall be provided by the Division and contain the following:
 - (a) General submission instructions;
 - (b) Grants available to be claimed;
 - (c) Criteria for qualification of a grant;
- (d) Instructions regarding a project description, including a timeline;
- (e) Instructions for providing an outlined budget for total project cost, highlight of funds already procured for the project, and an itemized budget showing planned use of the requested grant funds;
- (f) Instructions for reporting project impacts, including community and economic impacts;
 - (g) The application scoring system;
- (h) Any required deadlines, reports, and relevant timelines; and
- (i) All required documents and information necessary for verification and approval of the application.
- (2) The Division shall create an application in an electronic form available to the public at http://recreation.utah.gov
- (3) The Division shall supply a paper application to any person or entity requesting it.
- (4) Applications must be submitted to the Division of Outdoor Recreation staff on or before the deadline specified in the application.
- (5) Division staff shall review applications for completeness and the Division of Outdoor Recreation program manager shall verify that the documentation is complete and meets the program criteria outlined in the statute and this rule.
- (6) All completed documentation shall be reviewed, and awardees shall be selected, via the criteria and method outlined in this rule.

R650-303-4. Eligible Entities.

Grants may be awarded only to the following entities within the State of Utah:

- (1) Utah non-profit corporations with a 501(c)(3) or and (c)(6) status whose project is physically located within the State;
 - (2) Utah Municipalities;
 - (3) Utah Counties;
 - (4) Utah political subdivisions;
 - (5) Tribal governments;

- (6) State agencies; or
- (7) Federal Land Management agencies

R650-303-5. Recreation Restoration Eligibility Criteria.

- (1) The Division will not fund more than 50% of the proposed project's eligible costs for federal and state grant recipients.
- (2) Grant recipient other than federal or state entities shall provide matching funds based on an algorithm determined by the Division and made available in the application or the program guide that considers the total population of the county and its per capita income.
- (3) The maximum grant request depends on available annual funds and shall be outlined in the grant application.
- (4) Up to 50% of the grant recipient's match may be provided through an in-kind contribution by the grant recipient, if:
- (a) approved by the Executive Director after consultation with the Director and the Advisory Committee;
- (b) the in-kind donation meets the requirements for an eligible match; and
- (c) the in-kind donation is for services or materials directly related to the project's construction.
- (5) The grant application or program guide shall provide matching requirements, eligible and ineligible matching costs, and other matching funding requirements.
- (6) Applications for which at least 50% of the matching funds for the project have been secured at time of application shall be prioritized over application for which at 50% of the matching funds for the project have not been secured.
- (7) Recreation restoration infrastructure projects are limited to projects for reconstructing, rehabilitating, replacing, and restoring existing recreation infrastructure to meet visitor needs.
- (8) Project sites that are primitive or semi-primitive are not eligible.
- (9) Rehabilitation projects shall include those where an existing trail is re-routed for sustainability, or a campsite is moved.
 - (10) Eligible recreational infrastructure projects include:
- (a) trail improvements such as the realignment, rerouting, and reconstruction of existing or destroyed developed trail and trail systems:
- (b) the updating, repair, replacement, or improvement of existing or destroyed developed trailside amenities;
- (c) the restoration or rehabilitation of developed campground infrastructure to meet the needs of visitors and improve their safety;
- (d) the restoration or rehabilitation of developed recreation sites for day use sites which shall include such as picnic tables, fire pit/grill areas, shade structures (including pavilions for larger groups), and restrooms;
- (e) the restoration or rehabilitation of developed water recreation facilities include piers, docks, and boat ramps; And
- (f) recreation facilities that are accessible to visitors with disabilities.

R650-303-6. Method and Formula for Determining Grant Amounts.

- (1) The Division shall use a weighted scoring system determined by the Division to enable the Advisory Committee to analyze and advise on a grant amounts. The scoring system shall:
- (a) Be made available in the application or program guide; and
 - (b) assess and value general categories.

- (2) The Division shall distribute the grant applications among the Advisory Committee members and ensure that each application shall be reviewed and scored by members of the Advisory Committee.
- (3) The Division shall use the average of the scores provided by the Advisory Committee members to create a prioritization matrix ranking the applications in descending order by grant amount.
- (4) The Division shall provide the Advisory Committee with a synopsis of each scored project.
- (5) In accordance with available funds, the Advisory Committee shall prioritize projects that:
- (a) the Advisory Committee considers to be high-demand outdoor recreation amenities or high-priority trails;
- (b) are for projects from qualified applicants within rural counties to ensure geographic parity of the awarded money; and
- (c) data demonstrate that the project area receives or has received high visitation.
- (6) The recommendations for grant awards shall be forwarded to the Executive Director for final approval and award.
- (7) The Division shall notify applicants of the funding decision within two weeks of the final decision and:
- (a) successful applicants shall be notified of expected contractual requirements; and
- (b) unsuccessful applicants shall be notified of the rejection.
- (8) Upon request, an applicant may receive a redacted copy of the reviewers' comments.
- (9) An Advisory Committee member shall recuse themselves from voting on a project in which they have a substantial interest.

Resporting and Reimbursement Cooperation Requirements.

- (1) Awarded entities shall be required to submit, at minimum, the following documentation upon reimbursement request:
- (a) a reimbursement request on a form provided by the Division;
- (b) copies of all invoices and evidence of payment (checks, bank statements, or receipts) as well as records of volunteer labor or other in-kind donations for work completed on the project;
 - (c) several photos that show the project is complete; and
- (d) a final report with the project description and data requested by the Division.
- (2) Partial reimbursement payment may be made pursuant to the terms of the grant agreement, but in no event shall exceed 75% of expenses incurred during the development of the project. The Division shall provide instructions in the application or program guide as to how the applicant can apply for upfront funding, up to 50% of the award.
- (3) Grant recipient shall provide a description and an itemized report detailing the expenditure of the grant funds or the intended expenditure of any grant funds that have not been spent.
- (4) Grant recipients shall provide project reports at least every six months and no later than 60 days after the grant agreement has expired. Each project report shall include assurances that all monies paid to the grant recipient were used for planning, construction, or improvements as described in the recipient's grant application and grant agreement.

(5) Grant recipients shall cooperate with reasonable requests for site visits by Division staff during and after the completion of the project.

R650-303-8. Modifications to the Original Agreement.

Modifications to an original grant agreement may be made only by subsequent, written amendment, approved by the program Director and Division Director, and signed by all parties to the original agreement.

KEY: economic development, recreation restoration, infrastructure grant, outdoor recreation

Date of Last Change: May 11, 2023

Authorizing, and Implemented or Interpreted Law: 79-8-202(3)

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **Proposed Rule**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at adminrules.utah.gov. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Rule Number:	R156-63a	Filing ID: 50292	
Effective Date:	05/02/2023		

Agency Information

1. Department:	Commerce		
Agency:	Professional Licensing		
Building:	Heber M	Wells Building	
Street address:	160 E 30	00 S	
City, state and zip:	Salt Lake City, UT 84111-2316		
Mailing address:	PO Box 146741		
City, state and zip:	Salt Lake City, UT 84114-6741		
Contact persons:			
Name:	Phone:	Email:	
Tracy Taylor	801- 530- 6628 trtaylor@utah.gov		

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule catchline:

R156-63a. Security Personnel Licensing Act Contract Security Rule

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 58, Chapter 63, provides for the licensure and regulation of contract security companies, armed private security officers and unarmed private security officers.

Subsection 58-1-106(1) provides that the Division of Professional Licensing (Division) may adopt and enforce rules to administer Title 58.

Subsection 58-1-202(1)(a) provides that the Security Services Licensing Board's duties, functions and responsibilities includes recommending to the director appropriate rules.

This rule was enacted to clarify the provisions of Title 58, Chapter 63, with respect to contract security companies, armed private security officers, and unarmed private security officers.

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:

Since this rule was last reviewed in May 2018, this rule has been amended one time in May 2019, see DAR File No. 43318.

In December 2018, the Division received numerous written comments/emails to the proposed rule filing amendments. Following a 12/13/2018 rule hearing and after reviewing the submitted comments, the Division and Security Services Licensing Board determined additional proposed amendments needed to be made to this rule.

On 03/07/2019, a change in proposed rule (CPR) filing was filed and an additional 04/11/2019 rule hearing was conducted. The Division received no additional written comments with regards to the CPR filing amendments and all amendments were made effective by the Division on 05/13/2019.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 63. This rule is also necessary as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession. Therefore, this rule should be continued.

Agency Authorization Information

	Mark B. Steinagel,	Date:	03/31/2023
or designee	Division Director		
and title:			

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R156-63b	Filing ID: 50291
Effective Date:	05/02/2023	

Agency Information

4			
1. Department:	Commerce		
Agency:	Professi	onal Licensing	
Building:	Heber M	l Wells Building	
Street address:	160 E 30	00 S	
City, state and zip:	Salt Lake City, UT 84111-2316		
Mailing address:	PO Box 146741		
City, state and zip:	Salt Lake City, UT 84114-6741		
Contact persons:			
Name:	Phone:	Email:	
Tracy Taylor	801- 530- 6628 trtaylor@utah.gov		

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule catchline:

R156-63b. Security Personnel Licensing Act Armored Car Rule

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 58, Chapter 63, provides for the licensure and regulation of armored car companies and armored car security officers.

Subsection 58-1-106(1) provides that the Division of Professional Licensing (Division) may adopt and enforce rules to administer Title 58.

Subsection 58-1-202(1)(a) provides that the Security Services Licensing Board's duties, functions, and responsibilities includes recommending to the director appropriate rules.

This rule was enacted to clarify the provisions of Title 58, Chapter 63, with respect to armored car companies and armored car security officers.

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:

Since this rule was last reviewed in May 2018, this rule has been amended one time in May 2019, see DAR File No. 43319.

In December 2018, the Division received numerous written comments/emails to the proposed rule filing amendments. Following a 12/13/2018 rule hearing and after reviewing the submitted comments, the Division and Security Services Licensing Board determined additional proposed amendments needed to be made to this rule.

On 03/07/2019, a change in proposed rule (CPR) filing was filed and an additional 04/11/2019 rule hearing was conducted. The Division received no additional written comments with regards to the CPR filing amendments and all amendments were made effective by the Division on 05/13/2019.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 63. This rule is also necessary as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession. Therefore, this rule should be continued.

Agency Authorization Information

Agency head	Mark B. Steinagel,	Date:	03/31/2023
or designee	Division Director		
and title:			

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION Rule Number: R305-4 Filing ID: 55036 Effective Date: 05/08/2023

Agency Information

1. Department:	Environmental Quality
i. Department.	Litvilorinental Quality
Agency:	Administration
Building:	MASOB
Street address:	195 N 1950 W
City, state and zip:	Salt Lake City, UT 84116
Mailing address:	PO BOX 144820
City, state and zip:	Salt Lake City, UT 84114-4820

Contact persons:

Name:	Phone:	Email:	
Erica Pryor	385- 499- 3416	epryor1@utah.gov	
Mat Carlile	385- 306- 6535	mcarlile@utah.gov	

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule catchline:

R305-4. Clean Fuels and Emission Reduction Technology Program

A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

The Clean Fuels and Vehicle Technology Grant and Loan Program is authorized under Sections 19-1-401 through 19-1-405. Section 19-1-403 creates the Clean Fuels and Emission Reduction Fund (previously the Clean Fuels and Vehicle Technology Program Fund).

This rule provides procedures of administering the Clean Fuels and Vehicle Technology Program Fund.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule provides loans and grants for purchase of clean fuel refueling equipment for private sector business vehicles, government vehicles, and energy-efficient for residential dwellings. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee	Kimberly Shelley, Executive	Date:	05/03/2023
and title:	Director		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Rule Number:	R392-102	Filing ID: 54030
Effective Date:	05/04/2023	

Agency Information

Agency informatio			
1. Department:	Health and Human Services		
Agency:	Disease Control and Prevention Environmental Services		
Room number:	Second	Floor	
Building:	Cannon	Health Building	
Street address:	288 N 14	160 W	
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 142102		
City, state and zip:	Salt Lake City, UT 84114-2102		
Contact persons:			
Name:	Phone: Email:		
Karl Hartman	801- khartman@utah.gov 538- 6191		
Disease adduses a			

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule catchline:

R392-102. Food Truck Sanitation

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Sections 26B-7-402 and 26B-1-202. Specifically, Subsection 26B-7-402(1) orders the Department of Health and Human Services (Department) to establish and adopt this rule.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule: The Department has not received comments 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:

In addition to being required in statute, this rule establishes uniform standards for the regulation of food trucks, including the permitting process, plan reviews, inspections, construction, sanitary operations, and equipment requirements, which provide for the prevention and control of health hazards associated with food trucks that are likely to affect public health.

This rule requires a food truck operator to adhere to uniform statewide standards for constructing, operating, and maintaining a food truck in a manner that safeguards public health, including risk factors contributing to injury, sickness, death, and disability, and ensures that food is safe, unadulterated, and honestly presented when offered to the consumer. Therefore, this rule should be continued.

Agency Authorization Information

Agency head	Tracy S. Gruber,	Date:	05/03/2023
or designee	Executive		
and title:	Director		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION Rule Number: R414-311 Filing ID: 52942 Effective Date: 05/04/2023

4 Departments Health and Human Candings

Agency Information

1. Department:	Health and Human Services			
Agency:	Health Care Financing, Coverage and Reimbursement Policy			
Building:	Cannon	Cannon Health Building		
Street address:	288 N 14	160 W		
City, state and zip:	Salt Lake City, UT 84116			
Mailing address:	PO Box	143102		
City, state and zip:	Salt Lake City, UT 84114-3102			
Contact persons:				
Name:	Phone:	Email:		
Craig Devashrayee	801- 538- 6641	cdevashrayee@utah.gov		
Jonah Shaw	385- jshaw@utah.gov 310- 2389			

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule catchline:

R414-311. Targeted Adult Medicaid

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 26B-1-213 grants the Department of Health and Human Services (Department) the power to adopt, amend, or rescind rules, and Section 26B-3-108 requires the Department to implement the Medicaid program through administrative rules.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department did not receive any written comments regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Department has determined that this rule is necessary because it establishes eligibility provisions and requirements for the Targeted Adult Medicaid program. Therefore, this rule should be continued.

The Department anticipates amending this rule following the recodification of the Department's statute.

Agency Authorization Information

Agency head or designee	Tracy S. Gruber, Executive	Date:	05/04/2023
and title:	Director		

FIVE-YEAR NOTIC CONTINUATION	E OF REVIEW AND	O STATEMENT OF	
Rule Number:	R430-50 Filing ID: 54347		
Effective Date: 05/04/2023			

Agency Information

1. Department:	Health and Human Services		
Agency:	Residential Child Care Licensing		
Building:	Multi-Agency State Office Building (MASOB)		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		

Contact persons:		
Name:	Email:	
Janice Weinman	385- 321- 5586	jweinman@utah.gov
Simon Bolivar	801- 803- 4618	sbolivar@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule catchline:

R430-50. Residential Certificate Child Care

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 26, Chapter 39, the Child Care Licensing Act, authorizes the Office of Residential Child Care Licensing to make and enforce rules as they pertain to child care licensing and certification.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary as it sets forth the standards for foundational standards necessary to protect the health and safety of children in residential child care facilities and defines the general procedures and requirements to get and maintain a residential certificate to provide child care. Therefore, this rule should be continued.

The Department of Health and Human Services (Department) anticipates an amendment to this rule following the consolidation and recodification of the Department's statute.

Agency Authorization Information

Agency head	Tracy S. Gruber,	Date:	05/04/2023
or designee	Executive		
and title:	Director		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R430-90	Filing ID: 54348		
Effective Date:	05/04/2023			

Agency Information

1. Department:	Health and Human Services		
Agency:	Residential Child Care Licensing		
Building:	Multi-Agency State Office Building (MASOB)		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		

Contact persons:

Name:	Phone:	Email:
Janice Weinman	385- 321- 5586	jweinman@utah.gov
Simon Bolivar	801- 803- 4618	sbolivar@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule catchline:

R430-90. Licensed Family Child Care

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 26B, Chapter 2, Part 4, Child Care Licensing, authorizes the Office of Residential Child Care Licensing to make and enforce rules as they pertain to child care licensing and certification.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary as it sets forth the standards for foundational standards necessary to protect the health and safety of children in residential child care facilities and defines the general procedures and requirements to get and maintain a residential certificate to provide child care. Therefore, this rule should be continued.

The Department of Health and Human Services (Department) anticipates an amendment to this rule following the consolidation and recodification of the Department's statute.

Agency Authorization Information

Agency head	Tracy S. Gruber,	Date:	05/04/2023
or designee	Executive		
and title:	Director		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION

Rule Number:	R527-303	Filing ID: 53905
Effective Date:	05/04/2023	

Agency Information

Agency Information			
1. Department:	Health and Human Services		
Agency:	Recovery Services		
Street address:	4315 S 2	2700 W, 1st Floor	
City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box	45033	
City, state and zip:	Salt Lake City, UT 84145-0033		
Contact persons:			
Name:	Phone:	Email:	
Scott Weight	801- 741- 7435	sweigh2@utah.gov	
Casey Cole	801- 741- 7523	cacole@utah.gov	
Jonah Shaw	385- 310- 2389	jshaw@utah.gov	
Please address questions regarding information on this notice to the persons listed above.			

General Information

2. Rule catchline:	
R527-303. Automatic Payment Withdrawal	

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Subsection 26B-9-112(6) which specifies how Office of Recovery Services (ORS) will determine the eligibility of an obligor to make child support payments via automatic payment withdrawal from a bank account in lieu of income withholding.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

This is the initial five-year review of this rule. No comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule should be continued because the statute under which this rule is enacted is still in effect. Section 26B-9-112 allows ORS to enter into an agreement with an obligor to automatically withdraw from an obligor's account at a financial institution a specified dollar amount, on a specified date(s) each month, via electronic funds transfer, for the payment of the obligor's child support obligation.

This rule specifies the eligibility requirements an obligor must meet in order to enter in to an automatic payment withdrawal agreement with ORS. Therefore, this rule should be continued.

Agency Authorization Information

Agency head	Tracy S. Gruber,	Date:	05/04/2023
or designee	Executive		
and title:	Director		

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **Proposed Rules** or **Changes in Proposed Rules** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **Changes in Proposed Rules** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **Notice of Effective Date** within 120 days from the publication of a **Proposed Rule** or a related **Change in Proposed Rule** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

Notices of Effective Date are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Agriculture and Food

Animal Industry

No. 55281 (Amendment) R58-2: Diseases, Inspections and

Quarantines

Published: 04/01/2023 Effective: 05/23/2023

No. 55284 (Amendment) R58-4: Use of Animal Drugs and

Biologicals

Published: 04/01/2023 Effective: 05/23/2023

No. 55285 (Amendment) R58-6: Poultry and Captive-

Raised Gamebirds Published: 04/01/2023 Effective: 05/23/2023

No. 55283 (Amendment) R58-14: Holding Live Raccoons

Or Coyotes in Captivity Published: 04/01/2023 Effective: 05/23/2023

Crime Victim Reparations

Administration

No. 55308 (Amendment) R270-1-23: Sexual Assault

Forensic Examinations Published: 04/15/2023 Effective: 05/22/2023

No. 55311 (Amendment) R270-1-25: Victim Services

Awards

Published: 04/15/2023 Effective: 05/23/2023

<u>Education</u>

Administration

No. 55288 (Amendment) R277-104: ADA Complaint

Procedure

Published: 04/15/2023 Effective: 05/23/2023 No. 55289 (New Rule) R277-329: Local School District Board Policies for Evaluation of Classified Employees

Published: 04/15/2023 Effective: 05/23/2023

No. 55290 (Repeal) R277-532: Local Board Policies for Evaluation of Non-Licensed Public Education Employees

(Classified Employees) Published: 04/15/2023 Effective: 05/23/2023

No. 55248 (Amendment) R277-552: Charter School

Timelines and Approval Processes

Published: 03/01/2023 Effective: 05/23/2023

No. 55248 (Change in Proposed Rule) R277-552: Charter

School Timelines and Approval Processes

Published: 04/15/2023 Effective: 05/23/2023

No. 55291 (Amendment) R277-751: Special Education

Extended School Year (ESY) Published: 04/15/2023 Effective: 05/23/2023

No. 55292 (Amendment) R277-927: Teacher and Student

Success Act (TSSA) Program Published: 04/15/2023 Effective: 05/23/2023

Environmental Quality

Drinking Water

No. 55217 (Amendment) R309-700: Financial Assistance: State Drinking Water State Revolving Fund (SRF) Loan

Program

Published: 03/01/2023 Effective: 05/22/2023

NOTICES OF RULE EFFECTIVE DATES

No. 55218 (Amendment) R309-705: Financial Assistance: Federal Drinking Water State Revolving Fund (SRF) Loan

Program

Published: 03/01/2023 Effective: 05/22/2023

No. 55219 (Repeal and Reenact) R309-800: Capacity

Development Program Published: 03/01/2023 Effective: 05/22/2023

Health and Human Services

Health Care Financing, Coverage and Reimbursement Policy No. 55021 (Amendment) R414-520: Admission Criteria for

Medically Complex Children's Waiver

Published: 11/15/2022 Effective: 05/05/2023

No. 55021 (Change in Proposed Rule) R414-520: Admission Criteria for Medically Complex Children's Waiver

Published: 03/15/2023 Effective: 05/05/2023

Health Care Facility Licensing

No. 55197 (Amendment) R432-9: Specialty Hospital -

Rehabilitation Construction Rule

Published: 03/01/2023 Effective: 05/05/2023

No. 55192 (Amendment) R432-14: Birthing Center

Construction Rule Published: 03/01/2023 Effective: 05/05/2023

No. 55269 (Amendment) R432-16: Hospice Inpatient

Facility Construction Published: 03/15/2023 Effective: 05/05/2023

No. 55268 (Repeal) R432-30: Adjudicative Procedure

Published: 03/15/2023 Effective: 05/05/2023

No. 55251 (Amendment) R432-40: Long-Term Care Facility

Immunizations

Published: 03/01/2023 Effective: 05/05/2023

No. 55270 (Amendment) R432-105: Specialty Hospital -

Orthopedics

Published: 04/01/2023 Effective: 05/9/2023

No. 55267 (Amendment) R432-106: Specialty Hospital -

Critical Access

Published: 03/15/2023 Effective: 05/05/2023 No. 55271 (Amendment) R432-300: Small Health Care

Facility - Type N Published: 04/01/2023 Effective: 05/9/2023

No. 55265 (Amendment) R432-750: Hospice Rule

Published: 03/15/2023 Effective: 05/05/2023

Insurance

Administration

No. 55275 (Amendment) R590-261: Health Benefit Plan

Adverse Benefit Determinations

Published: 04/01/2023 Effective: 05/09/2023

No. 55276 (Amendment) R590-268: Small Employer Stop-

Loss Insurance Published: 04/01/2023 Effective: 05/09/2023

No. 55277 (Amendment) R590-275: Qualified Health Plan

Alternate Enrollment Published: 04/01/2023 Effective: 05/09/2023

No. 55278 (Amendment) R590-284: Corporate

Governance Annual Disclosure Rule

Published: 04/01/2023 Effective: 05/09/2023

Natural Resources

Outdoor Recreation

No. 55260 (New Rule) R650-407: Off-Highway Vehicle

Advisory Council Published: 03/15/2023 Effective: 04/28/2023

State Parks

No. 55253 (Repeal) R651-407: Off-Highway Vehicle

Advisory Council Published: 03/15/2023 Effective: 05/05/2023

Public Safety

Highway Patrol

No. 55305 (Amendment) R714-158: Vehicle Safety

Inspection Program Requirements

Published: 04/15/2023 Effective: 05/23/2023

No. 55306 (Amendment) R714-570: Mental Health

Resources or First Responders Grant Funding

Published: 04/15/2023 Effective: 05/23/2023

End of the Notices of Rule Effective Dates Section