# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT Filed September 16, 2023, 12:00 a.m. through October 02, 2023, 11:59 p.m.

> Number 2023-20 October 15, 2023

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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- Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
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# TABLE OF CONTENTS

EDITOR'S NOTES	1
Notice of Draft Proposed Rules and Hearing Information for the Division of Professional Licensing	1
EXECUTIVE DOCUMENTS	5
PROCLAMATION 2023-04E	5
NOTICES OF PROPOSED RULES	7
GOVERNMENT OPERATIONS	
Finance	
R25-5. Payment of Meeting Compensation (Per Diem) to Boards Error! Bookmark no	t defined.
Agriculture and Food	
Conservation	
R64-4 Agricultural Water Optimization Program	10
Commerce	
Consumer Protection	
R152-63. Utah Social Media Regulation Act Rule	16
GOVERNOR	
Economic Opportunity	
R357-29. Rural County Grant Program Rule	
R357-46. Rural Communities Opportunity Grant Rule	22
HEALTH AND HUMAN SERVICES	
Administration	
R380-600. Licensing General Provisions - Enforcement	25
Family Health, Children with Special Health Care Needs	
R398-3. Children's Hearing Aid Program	32
Health Care Facility Licensing	
R432-1. General Health Care Facility Rules	
R432-2. General Licensing Provisions	43
R432-3. General Health Care Facility Rules Inspection	
and Enforcement	48
Administration (Human Services)	
R495-885. Employee Background Screenings	52
Human Services Program Licensing	
R501-1. General Provisions for Licensing	55

INSURANCE

Administration	
R590-206. Privacy of Consumer Financial and Health Information Rule	79
R590-210. Privacy of Consumer Information Exemption for Manufacturer	
Warranties and Service Contracts	101
R590-223. Rule to Recognize the 2001 CSO Mortality Table for Use in	
Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	104
R590-240. Procedure to Obtain Exemption of Student Health Programs	
From Title 31A, Insurance Code	107
R590-242. Military Sales Practices	111
R590-259. Dependent Coverage to Age 26	
NATURAL RESOURCES	
Wildlife Resources	
R657-13. Taking Fish and Crayfish	120
R657-59. Private Fish Ponds, Short Term Fishing Events, Private Fish	
Stocking, and Institutional Aquaculture	124
R657-59a. Private Fish Ponds	133
R657-59b. Short-Term Fishing Events	139
R657-59c. Aquaponics	143
R657-59d. Institutional Aquaculture	147
R657-59e. Stocking into Natural Lakes, Natural Flowing Streams,	
or Reservoirs on Natural Stream Channels	151
PUBLIC SAFETY	
Administration	
R698-12. Fallen Officer Memorial Scholarship Program	156
Driver License	
R708-7. Functional Ability in Driving: Guidelines for Physicians	158
R708-14. Adjudicative Proceedings For Driver License Actions	
Involving Alcohol and Drugs	
R708-31. Ignition Interlock Systems	167
R708-35. Adjudicative Proceedings For Driver License Offenses	
Not Involving Alcohol or Drug Actions	173
R708-41. Requirements for Acceptable Documentation, Storage	
and Maintenance	176
R708-46. Refugee, Asylee, or Covered Humanitarian Parolee	
Knowledge Test in Applicant's Native Language	
R708-48. Ignition Interlock System Program	

Highway Patrol	
R714-561. Suicide Deterrence Grant Program	
PUBLIC SERVICE COMMISSION	
Administration	
R746-8-301. Calculation and Application of UUSF Surcharge	197
TRANSPORTATION	
Administration	
R907-80-15. Sale or Exchange Involving a Large Public Transit District	201
Operations, Traffic and Safety	
R920-4. Special Road Use or Event	203
TRANSPORTATION COMMISSION	
Administration	
R940-4. Airports of Regional Significance	211
R940-10. Guidelines for Department Participation in Transportation	
Reinvestment Zones	212
NOTICES OF CHANGES IN PROPOSED RULES	217
HEALTH AND HUMAN SERVICES	
Health Care Facility Licensing	
R432-150. Nursing Care Facility	218
INSURANCE	
Administration	
R590-190. Unfair Property, Casualty, and Title Claims Settlement	
Practices Rule	233
NOTICES OF 120-DAY (EMERGENCY) RULES	239
HEALTH AND HUMAN SERVICES	
Administration	
R380-67. Code Blue Alert Protocols	239
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION	243
COMMERCE	
Professional Licensing	
R156-42a. Occupational Therapy Practice Act Rule	243
R156-46a. Hearing Instrument Specialist Licensing Act Rule	244
ENVIRONMENTAL QUALITY	
Air Quality	
R307-361. Architectural Coatings	245

ES
ES

Population Health, Emergency Medical Services	
R426-1. General Definitions	245
R426-2. Emergency Medical Services Provider Designations for	
Pre-Hospital Providers, Critical Incident Stress Management	
and Quality Assurance Reviews	246
R426-3. Licensure	246
R426-4. Operations	247
R426-9. Specialty Care Systems Facility Designations	248
R426-10. Air Ambulance Licensure and Operations	248
Child and Family Services	
R512-41. Qualifying Adoptive Families and Adoption Placement	249
R512-75. Rules Governing Adjudication of Consumer Complaints	249
R512-306. Out-of-Home Services, Transition to Adult Living Services,	
Education and Training Voucher Program	250
NATURAL RESOURCES	
Wildlife Resources	
R657-61. Valuation of Real Property Interests for Purposes of	
Acquisition or Disposal	250
R657-66. Military Installation Permit Program	251
TRANSPORTATION COMMISSION	
Administration	
R940-2. Approval of Tollway Development Agreements	252
R940-4. Airports of Regional Significance	252
NOTICES OF RULE EFFECTIVE DATES	255

Notice of Draft Proposed Rules and Hearing Information for the Division of Professional Licensing

The public, interest groups, and governmental agencies are invited to review and comment on the following DRAFT proposed rules for the Division of Professional Licensing (DOPL).

These DRAFT proposed rules are published only for review and comment purposes; they will not be made effective without subsequent filing and publication:

#### New Section R156-69-302#. Qualifications for Licensure by Endorsement for a Dentist.

(Dentist from another jurisdiction may apply to meet time-based endorsement requirements through certain methods demonstrating competency.)

### New Section R156-69-302#. Qualifications for Dentist Licensure by Endorsement for a Dental Hygienist.

(Dentist from another jurisdiction may apply to meet time-based dental hygienist endorsement requirements through certain methods demonstrating competency.)

Written comments on these proposed DRAFT rules will be accepted by the DOPL from the publication date through Friday, 11/03/2023. Comments may be directed to the contact person, Deborah Blackburn, Assistant Division Director, at deborahblackburn@utah.gov.

# DOPL will also hold a public hearing to receive verbal comments on these proposed DRAFT rules:

Tuesday, 10/24/2023, 9 a.m. in the North Conference Room, 1st Floor, Heber M. Wells Building, 160 E 300 S, Salt Lake City, Utah.

Virtual option: Google Meet joining information: Video call link: https://meet.google.com/kwf-rzjo-ojr Or dial: (US) +1 336-790-8803 PIN: 204 105 408# More phone numbers: https://tel.meet/kwf-rzjo-ojr?pin=7727666888398

Proposed text of the draft rules follows.

#### R156-69-302#. Qualifications for Licensure by Endorsement for a Dentist.

(1) Under Subsection 58-1-301(5), an applicant for licensure as a dentist qualifying under the endorsement provision of Subsection 58-1-302(3) may satisfy the specific time-based licensure by endorsement requirements in Subsections 58-69-302(2)(a) and (c) by providing satisfactory documentation of each of the competency-based licensing requirements in this section.

(2) The applicant shall provide satisfactory documentation of successful completion of a program of professional education preparing an individual to practice as a dentist in the endorsement jurisdiction, that the Division determines is substantially similar to the current education required for licensure as a dentist under Subsection 58-69-302(1)(c), as evidenced by an evaluation from one of the following:

(a) Education Credential Evaluators (ECE);

(b) Western Education Services (WES);

(c) Josef Silny and Associates, Inc.; or

(d) a credential evaluator approved by the Division;

(3) The applicant shall provide a written attestation in a form prescribed by the Division stating that the applicant has the necessary education and experience to practice dentistry as defined in Subsection 58-69-102(8), from an individual who is familiar with the applicant and who holds credentials or experience in the dental industry satisfactory to the Division, such as for example:

(a) a dentist who is licensed as defined in Subsection 58-1-302(1);

(b) an instructor in a program of professional education preparing an individual to practice as a dentist;

(c) the applicant's current dental employer; or

(d) the applicant's former dental employer.

(4) If the applicant has not been engaged in clinical practice as a licensed dentist for at least 6,000 hours in the five years immediately preceding the date of application for licensure, the applicant shall submit satisfactory documentation that the applicant has entered into a written collaborative practice arrangement with a licensed dentist that meets the following requirements:

(a) the term of the collaborative practice arrangement shall begin upon the date of the applicant dentist's licensure, and end on the date the applicant dentist has completed 6,000 hours of clinical practice as a dentist in accordance with the terms of the collaborative practice arrangement;

(b) if the collaborative practice arrangement is terminated for any reason before the applicant dentist has completed 6,000 hours of clinical practice as a dentist:

clinical practice as a dentist:
(i) the collaborating dentist and the applicant dentist shall each notify the Division of the termination of the collaborative practice
arrangement; and
(ii) the applicant dentist shall refrain from practice and shall refrain from renewing the applicant dentist's license until the applicant
dentist has entered into another collaborative practice arrangement that meets the requirements of this Subsection (4);
(c) the collaborative practice arrangement shall:
(i) specify the collaborating dentist's anesthesia permit class and specialty or board certifications, and the applicant dentist's anesthesia
permit class and certifications;
(ii) be consistent with the skill, training, and competence of the applicant dentist;
(iii) specify jointly agreed-upon protocols for the delivery of health care services by the applicant dentist;
(iv) specify the manner of collaboration between the collaborating dentist and the applicant dentist, including how they shall:
(A) engage in collaborative practice consistent with each professional's skill, training, education, and competence;
(B) maintain proximity; and
(C) provide oversight of the applicant dentist during the absence, incapacity, infirmity, or emergency of the collaborating dentist;
(v) specify the applicant's controlled substance prescriptive authority in collaboration with the collaborating dentist, if any, including
(A) a list of the controlled substances the applicant dentist may prescribe; and
(B) documentation that the authorization to prescribe the controlled substances is consistent with the education, knowledge, skill
and competence of the applicant dentist and the collaborating dentist;
(vi) list other written practice arrangements of the collaborating dentist and the applicant dentist; and
(vii) require each party to notify the Division of the following events within ten days of the event:
(A) the applicant dentist has an arrest, investigation, charge, or complaint, including a regulatory agency complaint;
(B) the applicant dentist receives a disciplinary notice from a regulatory agency, hospital, employer, or other third party;
(C) the applicant dentist has any adverse event affecting patient care, including a malpractice claim;
(D) violation by a party of the collaborative practice arrangement; or
(E) termination of the collaborative practice arrangement for any reason before the applicant dentist has completed 6,000 hours o
clinical practice as a dentist;
(d) A collaborating dentist overseeing an applicant dentist in a collaborative practice arrangement shall:
(i) be licensed in good standing under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
(ii) ensure that the collaborating dentist and applicant dentist both maintain current licensure in good standing and comply with DEA
registrations and requirements;
(iii) be available to the applicant dentist for advice, consultation, and direction consistent with the standards and ethics of the
profession, including consideration of the applicant dentist's level of skill, training, and competence; and
(iv) monitor the applicant dentist's performance for compliance with the laws, rules, standards, and ethics of the profession, and
promptly report violations to the Division in writing.
(e) A collaborating dentist may not enter a collaborative practice arrangement with more than two full-time equivalent applicant
dentists.
(f) An applicant dentist shall:
(i) comply with the collaborative practice arrangement;
(ii) maintain required licensure and any required DEA registration;
(iii) be professionally responsible for the acts and practices of the applicant dentist; and
(iv) comply with the laws, rules, standards, and ethics of the profession.
(g)(i) A collaborating dentist shall submit to the Division a written explanation outlining the collaborating dentist's concerns if the
collaborating dentist:
(A) terminates a collaborative practice arrangement for cause;
(B) does not support continuance of a license for an applicant dentist to practice; or
(C) has other concerns regarding the applicant dentist that the collaborating dentist believes requires input from the Division and
Board.
(ii) Upon receipt of written concerns from a collaborating dentist about an applicant dentist, the Division shall:
(A) provide the applicant dentist an opportunity to respond in writing to the Division regarding the collaborating dentist's concerns
(B) review with the Board the written statements from the collaborating dentist and applicant dentist; and
(C) in consultation with the Board, take any appropriate licensure action.
(h)(i) Before an applicant dentist may provide health care services under a collaborative practice arrangement, the parties shall obtain
the Division's written approval of the collaborative practice arrangement.
(ii) An applicant dentist and collaborating dentist may amend their collaborative practice arrangement, but an amendment to the
collaborative practice arrangement is not effective or binding until:
(A) the applicant dentist notifies the division in writing of the amendment;
(B) the Division approves the amendment.
(iii) In evaluating a collaborative practice arrangement, or an amendment to a collaborative practice arrangement, the Division shal
determine if the collaborative practice arrangement sufficiently complies with this section to adequately protect the public health, safety, and
determine if the conaborative practice arrangement sufficiently complies with this section to adequately protect the public health, safety, and

welfare.

#### R156-69-502. Unprofessional Conduct.

"Unprofessional Conduct" includes the following:

•••••

(16) for a collaborative practice arrangement under Subsection R156-69-302#(4):

(a) failure of the applicant dentist or collaborating dentist to comply with the collaborative practice arrangement;

(b) failure of the applicant dentist or collaborating dentist to comply with Subsection R156-69-302#(4), including failure to notify the Division of an event in accordance with Subsection R156-69-302#(4)(#);

(c) if the collaborative practice arrangement is terminated before the applicant dentist completes 6,000 hours of clinical practice as a dentist, and the applicant dentist has not entered into another collaborative practice arrangement:

(i) failure of the applicant dentist to refrain from practice; or

(ii) failure of the applicant dentist to refrain from renewing their license.

#### R156-69-302#. Qualifications for Dentist Licensure by Endorsement as a Dental Hygienist.

Under Subsection 58-1-301(5), an applicant for licensure as a dental hygienist qualifying under the endorsement provision of Subsection 58-1-302(3) may satisfy the time-based licensure by endorsement requirements in Subsections 58-69-302(4)(a) and (c) by completing the following competency-based licensing requirements:

(1)(a) pass the periodontics section of any of the regional dental clinical licensure examinations required for licensure as a dentist under Subsection 58-69-302(1)(e) and Section R156-69-302b; or

(b) pass the following examinations required for licensure as a dental hygienist:

(i) the National Board Dental Hygiene Examination under Subsection 58-69-302(3)(d); and

(ii) the practical examinations under Subsection 58-69-302(3)(e) and Section R156-69-302c; and

(2) provide one of the following:

(a) satisfactory documentation of the applicant's current licensure in good standing as a dental hygienist in another state, district, or territory of the United States, which the applicant obtained through the applicant's education and experience as a dentist;

(b) satisfactory documentation of the applicant's current licensure in good standing as a dentist in the endorsement jurisdiction;

(c) if the applicant was formerly licensed as a dentist in the endorsement jurisdiction, satisfactory documentation of:

(i) having obtained licensure as a dentist by meeting requirements that the Division determines were substantially similar to or exceeded current Utah licensure requirements for a dental hygienist; and

(ii) successful completion of not less than 2,000 hours of practice as a dentist, which may include clinical hours of practice as a dental student; or

(d) if the endorsement jurisdiction does not license dentists or the applicant cannot obtain proof of licensure, provide the following:

 (i) satisfactory documentation of successful completion of a program of professional education preparing an individual to practice as a dentist in the endorsement jurisdiction, that the Division determines is substantially similar to or exceeds the education required for licensure as a dental hygienist under Subsection 58-69-302(3)(c), as evidenced by an evaluation from one of the following:

(A) Education Credential Evaluators (ECE);

(B) Western Education Services (WES);

(C) Josef Silny & Associates, Inc.; or

(D) a credential evaluator approved by the Division;

(ii) satisfactory documentation of successful completion of not less than 2,000 hours of practice as a dentist, which may include clinical hours of practice as a dental student; and

(iii) a written attestation in a form prescribed by the Division stating that the applicant has the necessary education and experience to practice dental hygiene as defined in Subsection 58-69-102(7), from an individual who is familiar with the applicant and who holds credentials or experience in the dental industry satisfactory to the Division, such as:

(A) a dentist who is licensed as defined in Subsection 58-1-302(1);

(B) an instructor in a program of professional education preparing an individual to practice as a dentist or dental hygienist;

(C) the applicant's current dental employer; or

(D) the applicant's former dental employer.

#### End of the Editor's Notes Section

# **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.

# PROCLAMATION

WHEREAS, since the close of the 2023 General Session of the 65th 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 Senate into Extraordinary Session; and

**NOW, THEREFORE,** I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the state of Utah, do by this Proclamation call the Senate only of the 65th Legislature of the state of Utah into the Fourth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 11th day of October 2023, at 4:00 P.M., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the state of Utah since the close of the 2023 General Session of the Legislature of the State of Utah.

**IN TESTIMONY 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 10th day of October 2023.

(State Seal)

Spencer J. Cox Governor

ATTEST:

Deidre M. Henderson Lieutenant Governor

2023-04E

End of the Executive Documents Section

UTAH STATE BULLETIN, October 15, 2023, Vol. 2023, No. 20

# 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>September 16, 2023, 12:00 a.m.</u>, and <u>October 02, 2023, 11:59 p.m.</u> are included in this, the <u>October 15, 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 (<u>example</u>). Deletions made to existing rules are struck out with brackets surrounding them ([<del>example</del>]). 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>November 14, 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>February 12, 2024</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:	Amendment	
Rule or Section Number:		Filing ID: 55718

# Agency Information

Agonoy informatio	1011		
1. Department:	Government Operations		
Agency:	Finance		
Building:	TSOB		
Street address:	4315 S 2700 W		
City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box 141031		
City, state and zip:	Salt Lake City, UT 84114-1031		
Contact persons:			
Name:	Phone: Email:		
Van Christensen	801- 808-	vhchristensen@utah.gov	

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

# General Information

# 2. Rule or section catchline:

R25-5. Payment of Meeting Compensation (Per Diem) to Boards

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

The purpose of this filing is to increase per diem rates payable to board members.

# 4. Summary of the new rule or change:

0698

This amendment changes per diem rates in this rule from \$60 to \$135 for up to 4 hours and from \$90 to \$200 for greater than 4 hours.

# **Fiscal Information**

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

# A) State budget:

The only fiscal impact this change will have is at the discretion of the agencies.

Subsection R25-5-4(1)(a) states, "Each board member within state government shall receive per diem not to exceed...", so because this rule establishes a maximum per diem and not a minimum, an agency may elect to pay any amount less than the maximum established by this rule. Those agencies who have boards and choose to implement the increased rates will have an increase in the per diem costs paid to board members.

Using charge type 1133 (Meeting Pay) and class type 10875 (Board/Commission Member) tables (labor distribution and employee data) were linked and the total charges for FY 2023 were \$436,286.07.

All charges that were not a combination of \$60 and \$90 were removed as those likely contained non per diem charges.

Agency 400 (Utah State Board of Education (USBE)) charges that were \$285 or a combination thereof were removed since the USBE board has established \$285 as the daily amount to be paid for meetings, the total amount was \$150,870.

Since the proposed increase is about 125%, \$436,286.07 and \$150,870 were multiplied by 125%, which results in a potential cost increase between \$545,357.59 and \$188,587.50.

# B) Local governments:

This will result in a minimal increase in per diem amounts local governments pay board members. The Division of Finance (Division) is unable to determine exactly the cost that this will be due to limited access to local government financial data.

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

There are no costs or savings to small businesses because this change only affects government entities and boards related to those entities.

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

There are no costs or savings to non-small businesses because this change only affects government entities and boards related to those entities.

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 will result in a minimal increase in per diem amounts local governments pay board members.

The Division is unable to determine exactly the cost that this will be due to limited access to local government financial data.

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

Board members may decline to receive per diem, so if it is not paid for this reason there will not be non-compliance.

Board members were entitled to receive a lesser compensation in the past; so if an entity did not make it available to board members they would be out of compliance regardless of the lower or higher rate.

**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

Regulatory impact lable			
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 Government Operations, Marvin Dodge, 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:

NOTICES OF PROPOSED RULES

#### Public Notice Information

Subsection

63A-3-106(2)

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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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	Van Christensen,	Date:	09/08/2023
or designee	Director		
and title:			

#### **R25.** Government Operations, Finance.

# R25-5. Payment of Meeting Compensation (Per Diem) to Boards. R25-5-1. Purpose.

The purpose of this rule is to establish the procedures for payment of meeting per diem, and travel expenses to defray the costs for attendance at an official meeting of a board by an officer or employee who is <u>a board</u> member.

#### R25-5-2. Authority.

This rule is established pursuant to Section 63A-3-106, which authorizes the Director of Finance to make rules establishing per diem rates.

#### R25-5-3. Definitions.

Terms used in this rule are [as]defined in Subsection 63A-3-106(1).[, except] Additional terms are defined as follows:

(1) "Finance" means the Division of Finance.

(2) "Per diem" means the taxable compensation paid for attendance at an official meeting of a board by an officer or employee who is a <u>board</u> member.

(3) "Rate" means an amount of money.

(4) "Independent Corporation Board" means the board of directors of any independent corporation subject to Title 63E, Chapter 2, Independent Corporations Act that is subject to this rule by its authorizing statute.

#### R25-5-4. Rates.

(1)(a) Each <u>board</u> member [of a board] within state government shall receive per diem not to exceed  $[60]_{135}$  for each official meeting attended that lasts up to four hours and per diem not to exceed  $[90]_{200}$  [per diem] for each official meeting attended that is longer than four hours.

[<del>(a)</del>](b) [These]The per diem rates are applicable to:

(i) except as provided under Subsection (1)(b)(ii), an officer or employee of the executive branch; and[, except as provided under Subsection (1)(b);]

[(b)](ii) [These per diem rates are applicable to ]an officer or employee of higher education unless higher education pays the per diem.

(2) Travel expenses shall also be paid to <u>a</u> board member[s] in accordance with Rule R25-7.

(3) <u>A board [M]m</u>ember[s] may decline to receive per diem or travel expenses for [their] a board member's services.

(4) Upon approval by Finance, <u>a board member[s]</u> of an independent corporation board may receive per diem, at rates exceeding those established in Subsection R25-5-4(1):[-7]

(a) for each <u>official</u> meeting attended as part of their official duties; and

(b) for reasonable preparation associated with <u>official</u> meetings of the full board or the board's subcommittees.

# R25-5-5. Governmental Employees.

(1) A <u>board</u> member [of a board]may not receive the per diem in Subsection R25-5-4(1) or travel expenses if the <u>board</u> member is being compensated as an officer or employee of a governmental entity, including the state, while performing the member's service on the board.

(2) <u>A [G]governmental employee serving on a</u> board[ members attending official meetings held at a time other than their normal working hours, who receive no compensation or leave comp time) for the additional hours of the meetings] may receive the per diem in Subsection R25-5-4(1)[-] if the board member:

(a) attends an official meeting held at a time other than the board member's regular working hours; and

(b) receives no compensation or leave comp time for the additional hours of the meeting.

(3) <u>In accordance with Rule R25-7, a governmental</u> employee serving on a board may be paid [7]travel expenses <u>if:</u>

(a) the expenses are related to the attendance of an official board meeting[s]; and

(b) [for which a ]the governmental employee [serving on the board is not otherwise reimbursed may also be paid to the employee in accordance with Rule R25-7]does not receive reimbursement from other sources.

(4)  $\underline{A}[\underline{G}]\underline{g}$  overnmental employee[s] may decline to receive per diem and travel expenses for [their]a governmental employee's service[s] on the board.

#### R25-5-6. Payment of Meeting Compensation (Per Diem).

Each board member shall be paid the **[ir]** per diem through the payroll system to calculate and withhold the appropriate taxes.

#### KEY: per diem allowances, rates, state employees, boards Date of Last Change: [January 13,] 2023

Notice of Continuation: February 7, 2023

Authorizing, and Implemented or Interpreted Law: 63A-3-106

NOTICE OF PROPOSED RULE			
TYPE OF FILING: Repeal and Reenact			
Rule or Section Number:	R64-4	Filing ID: 55840	
Agency Informatio	n		
1. Department:	Agriculture and Food		
Agency:	Conservation		
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:			
Name:	Phone:	Email:	
Amber Brown	385- 245- 5222	Ambermbrown@utah.gov	
Kelly Pehrson			
Kelly Fellison	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:

R64-4 Agricultural Water Optimization Program

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

A repeal and reenact of this rule is necessary to implement legislative changes passed under S.B. 277, "Water Conservation and Augmentation Amendments" passed during the 2023 General Session. This legislation made significant changes to the water optimization program under new sections of Title 73, Chapter 10g, Part 2, and established new guidelines under which the program will be managed by a newly created Agricultural Water Optimization Committee.

# 4. Summary of the new rule or change:

The reenacted rule includes definitions consistent with current statute under Section R64-4-2.

In Section R64-4-3, this rule sets forth the purposes of the program, consistent with the definition of agricultural water optimization now in Subsection 73-10g-205(2).

Sections R64-4-4 and R64-4-5 set application requirements under the new program, as well as requirements that each applicant attend a pre-filing consultation with the state engineer prior to their application being ranked by the ranking committee that is established in Section R64-4-6.

In Section R64-4-7, requirements are established for ranking criteria to be adopted and utilized by the committee in ranking applications.

Sections R64-4-8 and R64-4-9 set contracting and reporting requirements for grantees under the program.

# **Fiscal Information**

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

# A) State budget:

Under S.B. 277 (2023), \$200,000,000 was appropriated to the agricultural water optimization account for grants under this program.

The Department of Agriculture and Food (Department) plans to award approximately \$40,000,000 in grants each year.

Under line 205 of S.B. 277 (2023), the Department, along with the Department of Natural Resources is able to use 1.5% of account funds for program administration. The Department has interpreted this language to allow account funds to be used equally.

Accordingly, the Department intends to use approximately \$300,000 of account funds each year (0.75% of \$40,000,000) to pay for the cost of program administration.

# B) Local governments:

This rule change does not impact local governments because the program targets agricultural water usage and local governments do not use agricultural water.

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

This rule change does not affect or impact small businesses.

Small businesses may apply for an agricultural water optimization grant but there is no cost to do so.

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

This rule change does not affect or impact non-small businesses.

Non-small businesses may apply for an agricultural water optimization grant but there is no cost to do so.

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 do not participate in the agricultural water optimization program and will not be impacted by the rule changes.

**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 this program because it is a grant program that agricultural water users may apply for at no cost to them.

**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

Regulatory in	ipact rable		
Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$300,000	\$300,000	\$300,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$300,000	\$300,000	\$300,000
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	\$(300,000)	\$(300,000)	\$(300,000)

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	Section	
73-10g-205(6)	73-10g-206	

#### **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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:	10/02/2023
and title:			

#### R64. Agriculture and Food, Conservation Commission. **R64-4.** Agricultural Water Optimization Program. [R64-4-1. Authority.

This rule is authorized by Subsection 4-18-108(4), that requires the Utah Conservation Commission to make rules to implement environmental grant programs authorized under Section 4-18-108 and Subsection 4-18-108(3)(b) that gives authority to establish rules related to the criteria for awarding the grants.

#### R64-4-2. Definitions.

(1) "Agricultural Water" means the same as the term is defined in Subsection 4-18-103(3).

(2) "Agricultural Water Optimization Priority Area" means an area prioritized and approved by the Commission based on a need to address water quality and quantity and their management.

(3) "Application" means a project proposal that is prepared by a person seeking Agricultural Water Optimization Program funds through the process established by the Commission and in accordance with Section 4-18-108.

(4) "Commission" means the Utah Conservation Commission created by Section 4-18-104, chaired by the Commissioner of the Utah Department of Agriculture and Food.

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

(6) "Division of Water Quality Impaired Watershed" means impaired waters that fail to meet water quality standards or are biologically impaired under Section 303(d) of the Clean Water Act, 33 U.S.C Sec. 125.

(7) "Drinking Water Source Protection Area" means an area governed by the Drinking Water Source Protection Program under Subsection R309-600-6(f), designed to protect drinking water source protection zones and management areas from contaminants that may have an adverse effect on the health of persons.

(8) "Grantee" means a person who has received funding through the Agricultural Water Optimization Program.

(9) "Program Manager" means a department employee assigned by the Commission to oversee the day-to-day activities of the Agricultural Water Optimization Program, or their staff.

(10) "Priority Water Body for Aquatic Species" means a blue-ribbon fishery or area that includes threatened and endangered species as defined in 50 CFR 17.11, October 1, 2017 edition.

(11) "Project" means a project that applies for or receives funding under the Agricultural Water Optimization Program.

(12) "Ranking Committee" means an advisory board appointed by the Commission pursuant to Subsection 4-18-108(5) with ranking applications for Agricultural Water charged **Optimization Program funding.** 

(13) "Water Right Groundwater Management Area" or "Critical Management Area" means a groundwater basin in which the groundwater withdrawals consistently exceed the safe yield, pursuant to Subsection 73-5-15(1)(a).

# R64-4-3. Purpose-Agricultural Water Optimization Program.

Under the Agricultural Water Optimization Program, grants may be awarded to fund projects that further the purposes of the program, which are to:

(1) improve agricultural water optimization by:

(a) maintaining or improving agriculture production and profitability; and

<del>(b)</del> providing increased operational flexibility for agricultural water users;

(2) improve agricultural water quantification by:

(a) showing accurate, real-time measurement of water diverted for funded projects; and

(b) documenting actual water savings in cubic feet per second and acre feet; and

(3) improve and protect surface and ground water quality.

#### R64-4-4. Eligible Entities.

- Any entity that works with agricultural water is eligible to receive grant funding under the Agricultural Water Optimization Program.

#### **R64-4-5.** Application Requirements.

(1) An application for a grant under the Agricultural Water **Optimization Program shall include:** 

(a) a detailed description how the project will meet the purposes listed in Section R64-4-2;

(b) a list who will benefit from the project and why;

(c) a description of the water that will be made available after implementation of the project and how that water is being used; (d) an in-depth description of the project and project

design; (e) the project designer and title;

(f) the project cost;

(g) funding amount requested;

(h) estimated completion date;

(i) a list of other funding sources and their contribution to the project;

(i) the water saved by implementing the project;

(k) the project cost per acre;

(1) crop production records;

(m) the current method of water measurement;

(n) the type of water measurement equipment to be installed;

(o) a map of the project area, which shall be located entirely within Utah:

(p) the county, irrigation season, and water right number associated with the project;

 (q) an in-depth description of what environmental benefits shall be gained by funding the project, including whether the project is in a:

(i) Division of Water Quality (DWQ) Impaired Watershed; (ii) Drinking Water Source Protection Area;

(iii) Water Right Groundwater Management Area or Critical Management Area; or

(iv) within a mile of a priority water body for aquatie species; and

(r) an in depth description of the water quality benefit to be gained by implementing the project.

(2) Incomplete applications will not be considered or ranked.

#### R64-4-6. Ranking Committee.

(1) Complete applications will be evaluated and ranked by an advisory board appointed by the Commission pursuant to Subsection 4-18-108(3) that will serve as a Ranking Committee.

(2) The Ranking Committee may consist of the following members:

(a) a member of the Commission;

(b) a member of the state legislature;

 (c) an agricultural producer appointed by the Utah Farm Bureau;

(d) a representative of the department;

(e) a representative of the Utah Division of Water Rights;
 (f) a representative of the DWQ; and

(g) a representative of Utah State University Extension.

(3) The Ranking Committee shall have at least four members.

 (4) Recommendations of the Ranking Committee shall be approved by the Commission before disbursement of Agricultural Water Optimization Program funds.

#### R64-4-7. Criteria for Awarding Grants.

(1) The Ranking Committee may consider the following factors when ranking applications for Agricultural Water Optimization Program grant funding:

(a) how closely the proposed project meets the Agricultural Water Optimization Program goals listed in Section R64-4-2;

(b) who will benefit from the project;

(c) the type of project;

(d) funding sources of the project;

(e) matching funds available for the project;

(f) the percentage of water saved;

(g) how the water savings will be determined;

(h) the project cost per acre;

(i) whether the project is in a DWQ impaired watershed;

(j) whether the project is in a Drinking Water Source Protection Area;

 (k) whether the project implements a total maximum daily load;

(1) whether the project is in a Water Right Ground Water Management Area;

(m) whether the applicant is ready to begin construction on the project;

(n) the proximity of the project to surface water; and

 (o) whether the project is located in an Agricultural Water Optimization Priority Area.

(2) Any scoring metrics or ranking criteria used by the Ranking Committee shall be approved by the Commission before their use.

#### R64-4-8. Project Requirements.

(1) Before project implementation, Agricultural Water Optimization Program grantees shall submit a Utah State Historical Preservation Office Cultural Resource Review report to the program manager, pursuant to Section 9 8-404.

 (2) No payments reimbursement will be processed until the program manager has received the report.

(3) Projects shall have real-time metering.

— (4) The program manager may conduct on site or virtual project "spot checks" at any time during the life of the project

(5) Projects will be evaluated through the U. S. Environmental Protection Agency's Spreadsheet Tool for Implementing Pollutant Loads module (STEPL), photo monitoring, or other monitoring depending on the type of project.

(6) The Commission may designate their duties under this section to a Commission subcommittee.

#### R64-4-9. Reporting Requirements.

(1) Grantees shall submit annual reports to the program manager for three years after their project is completed. Annual report requirements shall be set in policy adopted by the Commission.

(2) Failure to submit three years of reporting may result in a requirement to return Agricultural Water Optimization Program funds or ineligibility to receive Agricultural Water Optimization Program funds in the future.

 (3) Annually, the Agricultural Water Optimization Program shall gather data related to:

(a) water savings;

(b) crop production;

(c) the number of projects completed; and

(d) other relevant information.

(4) Program data shall be:

 (a) presented as aggregated data to protect the grantee's personal information; and

(b) shared with the:

(i) Natural Resources, Agriculture, and Environment Interim Committee;

(ii) other state agencies, as appropriate; and

(iii) the Agricultural Water Optimization Task Force Created in Section 73-10g 202.]

#### R64-4-1. Authority.

Subsection 73-10g-205(6) authorizes this rule, which requires the Agricultural Water Optimization Committee to establish eligibility requirements for grants issued under Section 73-10g-206, the process of applying for a grant issued under Section 73-10g-206, and preliminary screening criteria for be used by the department under Subsection 73-10g-206(2)(d).

#### R64-4-2. Definitions.

(1) "Agricultural Water" means water beneficially used pursuant to a water right established under Utah law to produce food, fiber, or fuel, or for other agricultural purposes.

(2) "Agricultural Water Optimization" means the implementation of agricultural and water management practices that maintain viable agriculture while reducing water depletion to enhance water availability and minimize impacts on water supply, water quality, and the environment.

(3) "Agricultural Water Optimization Committee" or "Committee" means the committee created in Section 73-10g-205.

(4) "Funding Application" means an application filed under Section 73-10g-206. (5) "Change application" means an application filed under Section 73-3-3, as further authorized by Section 73-10g-208.

(6) "Commission" means the Utah Conservation Commission created by Section 4-18-104, chaired by the Commissioner of the Utah Department of Agriculture and Food.

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

(8) "Depletion reduction" means a net decrease in water consumed accomplished by implementing water optimization practices during beneficial use of water under an approved water right.

(9) "Diversion reduction" means a decrease in net diversion amount from that allowed under a water right accomplished by implementation of water optimization practices.

(10) "Grantee" means a person who has received funding through the Agricultural Water Optimization Program.

(11) "Program Manager" means a department employee assigned to oversee the day-to-day activities of the Agricultural Water Optimization Program, or their staff.

(12) "Project" means an undertaking proposed in an application to meet the objectives of Title 73, Chapter 10g, Part 2, "Agricultural Water Optimization" and then implemented consistent with Part 2.

(13) "Saved water" means the same as stated in Subsection 73-10g-203.5(10) and as further defined in rules made by the state engineer.

(14) "Critical management area" means a groundwater basin meeting the definition stated in Subsection 73-5-15(1)(a).

#### R64-4-3. Purpose-Agricultural Water Optimization Program.

To increase agricultural water optimization, the Commission shall provide grants in accordance with Sections 73-10g-201 through 73-10g-208 that:

(1) maintain viable agriculture while reducing water depletion to enhance water availability and minimize impacts on water supply, water quality, and the environment;

(2) provide increased operational flexibility to agricultural water users;

(3) provide the opportunity for saved water to be considered a beneficial use if a change application is filed with the State Engineer;

(4) provide additional nonuse protection if a change application is filed; and

(5) improve water quantification through:

(a) showing accurate, real-time measurements of water use; and

(b) documenting actual water savings in cubic feet per second (CFS) or acre feet.

#### **R64-4-4.** Application Requirements.

(1) Any person who uses agricultural water is eligible to apply for funding under the Agricultural Water Optimization Program.

(2) An applicant shall include the following in an application for a grant under the Agricultural Water Optimization Program:

(a) a description of how the project will meet the purposes listed in Section R64-4-3;

(b) the anticipated use of the saved water, if identified, under the project;

(c) a description of the diversion reduction or depletion decrease that will be made available after the implementation of the project;

(d) an estimate of the cost per acre foot of saved water;

(e) a description of the project and project design, including the:

(i) project cost;

(ii) funding amount requested; and

(iii) estimated completion date;

(f) a list of other funding sources and amounts provided, including an estimate of force account labor and equipment;

(g) the project cost per acre for the places of use for water rights used in the project;

(h) the current method of water measurement used by the applicant;

(i) acknowledgment that the applicant will install and maintain water measurement equipment required for the project;

(j) a map of the project area, showing the county or counties in which, the proposed project will be located;

(k) acknowledgement that the proposed project complies with the applicants approved water rights associated with the project;

(1) a description of any environmental benefits to be gained by funding the project; and

(m) a description of any water quality benefit to be gained by implementing the project.

(3) Incomplete applications will not be considered or ranked.

#### R64-4-5. Preliminary Screening-Pre-filing Consultation.

(1) Department staff will receive and screen each funding application to determine if the application meets the following eligibility criteria:

(a) the project uses agricultural water;

(b) the project is located in Utah;

(c) the applicant has verified that they own or have the right to use the water rights that will be used for the project;

(d) the project is reasonably feasible;

(e) the project reasonably meets program goals;

(f) the applicant is willing to install and maintain water measurement that meets state policy and rules set by the Division of Water Rights (DWRi); and

(g) the project meets funding requirements.

(2) After preliminary approval, each applicant shall meet with the State Engineer or the State Engineer's designee for a prefiling consultation to determine if their project may benefit from a change application.

(3) Following the consultation with the State Engineer or the State Engineer's designee, pre-approved applications will be filed with the Agricultural Water Optimization Committee for ranking.

#### R64-4-6. Agricultural Water Optimization Committee.

(1) The Agricultural Water Optimization Committee shall consist of the members stated in Section 73-10g-205:

(2) The Committee shall have the following responsibilities:

(a) to establish funding application periods for the Agricultural Water Optimization Program:

(i) the Committee shall establish at least one application period per year; and

(ii) each funding period may have a unique application, eligibility criteria and description of what is required in the application, and ranking criteria used to evaluate the applications submitted;

(b) to review and rank pre-approved applications based on criteria set by the Committee under Section R64-4-7; and

 (c) to make funding recommendations to the Commission.
 (3) The Committee may designate different funding pools to ensure that similar projects are ranked against each other.

(4) The Commission may award grants based on the recommendations of the Committee.

(5) The Commission may delegate its duties under this rule to a Commission subcommittee.

#### R64-4-7. Criteria for Awarding Grants.

(1) The Committee shall adopt ranking criteria.

(2) The Committee may consider the following in adopting ranking criteria:

(a) how closely proposed projects meets the Agricultural Water Optimization Program goals listed in Section R64-4-3;

(b) who will benefit from the project;

(c) the type of project;

(d) funding sources of the project;

(e) matching funds available for the project;

(f) depletion reduction that will result from the project;

(g) diversion reduction that will result from the project;

(h) the quantity of water diversion and depletion reduction that will be accomplished with the project and the benefits derived from the reduction;

(i) how the water savings will be quantified;

(j) whether the project area has baseline water use data available;

(k) the projected project cost per acre;

(1) whether the project is located in a water right groundwater Critical Management Area;

(m) when the applicant will be ready to begin construction on the project; and

(n) the water quality benefits of the project.

(3) Ranking criteria adopted by the Committee may prioritize projects that lead to greater depletion reduction.

(4) If federal funding has been appropriated for the Agricultural Water Optimization Program, ranking criteria adopted by the Committee shall require that federal funding be awarded prior to state funding.

#### **R64-4-8.** Contracting and Project Requirements.

(1) Following a grant award by the Commission, the department shall work with each grantee to determine whether there are other funding sources available to fund the project and assist grantees in identifying sources and securing additional funding.

(2) Before receiving funds, grantees shall:

(a) enter into a contract with the department that includes the following:

(i) the expectations for the grantee;

(ii) the life expectancy of the project;

(iii) the process to certify completion of the project;

(iv) any applicable project design; and

(v) metering and reporting requirements consistent with rules established by DWRi, including specifications for the type of meter to be installed;

(b) file any necessary change application with DWRi;

(c) if applicable, obtain a final order from the State Engineer approving the change application; and (d) if applicable, demonstrate how they will comply with the requirements of the final order.

(3) Before project implementation, grantees shall submit a Utah State Historical Preservation Office Cultural Resource Review report to the program manager pursuant to Section 9-8a-404. No payment reimbursement will be processed until the program manager has received the report.

(4) The department may issue a notice to proceed to a grantee before project construction.

(5) During the life of the project, the department shall:

(a) monitor grant related activities; and

(b) certify project completion.

(6) The program manager may conduct on-site or virtual project "spot checks" at any time during the life of the project.

(7) Projects may be evaluated through the U.S. Environmental Protection Agency's Spreadsheet Tool for Implementing Pollutant Loads module (STEPL) or Pollutant Load Estimation Tool (PLET), photo monitoring, or other monitoring depending on the type of project.

# R64-4-9. Reporting Requirements.

(1) For three years after construction of a project is completed, grantees shall submit reports to the program manager at least annually, or more often if requested in writing by the program manager.

(2) Failure to submit the required reporting may result in a requirement to return Agricultural Water Optimization Program funds, or ineligibility to receive funds in the future.

#### KEY: agriculture, water optimization, grants

#### Date of Last Change: [July 31, 2023]2023

Authorizing, and Implemented or Interpreted Law: [4-18-105]73-10g-205; 73-10g-206

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: New

Rule or Section Number:	Filing ID: 55795

#### Agency Information

1. Department:	Commerce		
Agency:	Consumer Protection		
Building:	Heber Wells Bldg		
Street address:	160 E 30	00 S	
City, state and zip:	Salt Lake City, UT 84111		
Mailing address:	PO Box	146704	
City, state and zip:	Salt Lake City, UT 84114-6704		
Contact persons:			
Name:	Phone:	Email:	
Daniel Larsen	801-https://utconcierge.qualtrics.c530-om/jfe/form/SV_0PduJX8UW6601H2zbM?Source=RulesDoc		
Please address questions regarding information on			

this notice to the persons listed above.

# General Information

# 2. Rule or section catchline:

R152-63. Utah Social Media Regulation Act Rule

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

This rule is being enacted as required by S.B. 152, passed in the 2023 General Session, codified as Title 13, Chapter 63, Utah Social Media Regulation Act.

# 4. Summary of the new rule or change:

This rule:

 establishes the process or means by which a social media company may verify a person's age in accordance with Section 13-63-102;

 establishes the acceptable forms and methods of identification used to verify a person's age and a parent's or guardian's identity; establishes requirements for providing confirmation that information provided by a person seeking age verification has been received;

3) establishes processes and means by which a social media company may confirm a parent or guardian has provided consent for a minor to open or use an account; establishes requirements for retaining, protecting, and securely disposing any information obtained by a social media company or its agent as a result of compliance with Title 13, Chapter 63, Utah Social Media Regulation Act;

4) establishes requirements detailing acceptable use, retention, protection, and secure disposition of any information obtained by a social media company or its agent as a result of compliance with Title 13, Chapter 63, Utah Social Media Regulation Act; and

5) establishes geographical requirements applicable to an agent that processes information related to a verification requirement in accordance with Section 13-63-102.

# **Fiscal Information**

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

# A) State budget:

The proposed rule is not anticipated to have a fiscal impact on the state budget beyond those already described in the Fiscal Notes to S.B. 152 and H.B. 311, 2023 General Session.

# B) Local governments:

The proposed rule is not anticipated to have a fiscal impact on local governments beyond those already described in the Fiscal Notes to S.B. 152 and H.B. 311, 2023 General Session.

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

The proposed rule is not anticipated to have a fiscal impact on small businesses beyond those already described in the Fiscal Notes to S.B. 152 and H.B. 311, 2023 General Session. **D)** Non-small businesses ("non-small business" means a business employing 50 or more persons):

This rule will have a fiscal impact on non-small businesses that is inestimable because the number of non-small businesses to which this rule will apply is not readily available and is fluid.

Additionally, the costs will vary widely depending on the age of and parental consent verification methods chosen by a social media platform.

However, the Division of Consumer Protection (Division) anticipates that age verification costs for social media platforms that have more than 5,000,000 users will be approximately: \$0.30 per completed age verification per Utah user; \$0.30 per completed parental consent verification per prospective Utah minor account holder; and \$2,000, at minimum, per year per social media platform for geo location services.

Depending on the services used, there may be up-front and ongoing costs or fees but these costs or fees are inestimable, particularly if a social media platform already employs age verification or parental consent methods.

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 is not anticipated to have a fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities beyond those already described in the Fiscal Notes to S.B. 152 and H.B. 311, 2023 General Session.

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

Compliance costs for affected persons are inestimable because the number of affected persons to which this rule will apply is not readily available and is fluid.

Additionally, the costs will vary widely depending on the age and parental consent verification methods chosen by an affected person.

However, the Division anticipates that age verification costs for social media platforms that have more than 5,000,000 users will be approximately: \$0.30 per completed age verification per Utah user; \$0.30 per completed parental consent verification per prospective Utah minor account holder; \$2,000 per year per social media platform for geolocation services.

Depending on the services used, there may be up-front and ongoing costs or fees but these costs or fees are inestimable, particularly if a social media platform already employs age verification or parental consent methods. **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 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 Commerce, Margaret Busse, 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	Section 13-63-102	
13-2-5(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 until:	02/05/2024		
B) A public hearing (optional) will be held:			
Date:	Time:	Place (physical address or URL):	
11/01/2023	09:00 AM to 11:00 AM	Utah State Capitol Building, 350 N. State Street, Senate Room 220, Salt Lake City, UT	

**To the agency:** If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.

# 9. This rule change MAY 02/12/2024 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	Katherine S. Hass. Division	Date:	09/22/2023
and title:	Director		

#### **R152.** Commerce, Consumer Protection.

<u>R152-63. Utah Social Media Regulation Act Rule.</u> R152-63-1. <u>Purpose.</u>

The number of this

The purpose of this rule is to:

(1) establish the process or means by which a social media company may verify a person's age in accordance with Section 13-63-102;

(2) establish acceptable forms or methods of identification used to verify:

(a) a person's age; and

(b) a parent's or guardian's consent;

 (3) establish requirements for providing confirmation that information provided by a person seeking age verification has been received;

(4) establish processes or means by which a social media company may confirm a parent or guardian has provided consent for a minor to open or use an account;

(5) establish requirements detailing acceptable use, retention, protection, and secure disposition of any information obtained by a social media company or its agent as a result of compliance with Title 13, Chapter 63, Utah Social Media Regulation Act:

(6) establish geographical requirements applicable to an agent that processes information related to a verification requirement in accordance with Section 13-63-102; and

(7) aid the division's administration and enforcement of Title 13, Chapter 63, Utah Social Media Regulation Act.

#### R152-63-2. Authority.

This rule is promulgated in accordance with Subsections 13-2-5(1) and 13-63-102(4).

#### R152-63-3. Definitions.

(1) "Acceptable forms or methods of identification" include:

(a) validating and verifying mobile telephone subscriber information;

(b) using dynamic knowledge-based authentication consistent with the method approved by the Federal Trade Commission in accordance with 16 CFR 312.12(a);

(c) estimating a current account holder's age based on the date a Utah account holder created the account;

(d) checking a current or prospective account holder's social security number's last four digits against a third-party database of personal information;

(e) using a digital credential that has been established using a method described by Subsection R152-63-3(1)(f) or (g):

(f) estimating a current or prospective account holder's age using facial characterization or analysis; and

(g) matching a current or prospective account holder's verified government-issued identification:

(i) to a live webcam photo or video of the person; or

(ii) to the person who is physically present.

(2) "Age verification process" means using one or more of the acceptable forms or methods of identification described in Subsection R152-63-3(1).

(3) "Social media company" means the same as it is defined by Subsection 13-63-101(9), and includes the social media company's agent.

#### R152-63-4. Age Verification.

(1) A social media company shall use an age verification process that accurately identifies whether a current or prospective Utah account holder is not a minor.

(2) A social media company shall proactively identify any Utah minor account holder who the social media company's age verification process incorrectly determines is not a minor.

(3) A social media company that identifies a Utah minor account holder in accordance with Subsection R152-63-4(2) shall:

(a) suspend the Utah minor account holder's account until it obtains the Utah minor account holder's parent's or guardian's consent in accordance with Subsection 13-63-102(1) and Section R152-63-6; or

(b) terminate the Utah minor account holder's account.

# R152-63-5. Confirming Receipt of Age Verification Information.

(1) A social media company shall, within 72 hours of receiving age verification information from a person who seeks to verify age in accordance with Section 13-63-102, provide written confirmation to the person using electronic communication.

(2) A written confirmation provided in accordance with Subsection R152-63-5(1) shall include:

 (a) a description of the age verification information the social media company collected;

(b) the method the social media company used to verify the person's age;

(c) the date the age verification information was received; (d) whether age was verified by using the information; and

(e) the date when the company will delete the age verification information in accordance with Section R152-63-7.

#### R152-63-6. Confirming Parent or Guardian Consent.

(1) A social media company shall, taking into consideration available technology that is reasonably calculated to ensure that the person providing consent is the minor's parent or guardian, make reasonable efforts to confirm a parent's or guardian's consent for a minor to open or use a social media account by:

(a) using a method that complies with 16 CFR 312.5(b)(2) or (3), or has been approved by the Federal Trade Commission in accordance with 16 CFR 312.12(a); and

(b) obtaining a written attestation from the parent or guardian that they are the minor's legal guardian.

(2) A social media company shall provide a reasonable method by which a Utah minor account holder's parent or guardian may:

(a) revoke the parent's or guardian's prior consent allowing a minor to use a social media account; and

(b) report that a Utah minor account holder's account was obtained without a parent's or guardian's consent.

(3) Upon receiving a request described by Subsection R152-63-6(2)(a) or (b) from a Utah minor account holder's parent or guardian, a social media company shall promptly provide written confirmation to the parent or guardian using electronic communication that:

(a) the request was received; and

(b) describes any action taken by the social media company in response to the request.

#### <u>R152-63-7. Age and Identity Verification Data -- Permitted Use,</u> <u>Retention, Protection, and Disposal.</u>

(1) A social media company may not collect more than the least amount of data reasonably necessary to comply with Sections 13-63-102, R152-63-4, and R152-63-6.

(2) Data collected by a social media company to comply with Sections 13-63-102, R152-63-4, and R152-63-6 shall be:

(a) maintained in accordance with the security practices described by Subsection 13-61-302(2), and not transferred to a third party as defined by Subsection 13-61-101(35);

(b) segregated from all data the social media company maintains in its normal course of business;

(c) deleted by permanently and completely erasing the collected data as quickly as possible, but no more than 45 days after the social media company or its agent:

(i) completes the age verification process;

(ii) uses the data to verify parental consent;

(iii) determines a current or prospective Utah account holder failed to meet the verification requirements within the required time period; or

(iv) determines parental consent was denied; and

(d) used only to comply with Sections 13-63-102, R152-63-4, and R152-63-6, and for no other purpose.

(3) A social media company may extend the 45-day deadline identified in Subsection R152-63-7(2) by up to an additional 45 days:

(a) one time per verification;

(b) if the extension is reasonably necessary in accordance with Subsection 13-61-203(2)(b); and

(c) the social media complies with Subsection 13-61-203(2)(c).

(4) A social media company or its agent shall create a record related to each Utah account holder describing:

(a) the date it completed the age verification process and verified parental consent for the account if the account holder is a minor;

(b) the type of data collected to verify the Utah account holder's age and to verify parental consent; and

(c) the date it deleted data collected to comply with Sections 13-63-102, R152-63-4, and R152-63-6.

(5) A person who seeks to verify their account may, in accordance with Section 13-61-202, request that their data be deleted before the verification process is completed.

(6) A social media company shall comply with a consumer's request to delete in accordance with Section 13-61-203.

(7) Data collected by a social media company to comply with Sections 13-63-102, R152-63-4, or R152-63-6 may not be stored, maintained, transferred, or processed outside the United States of America.

R152-63-8. Geographical Requirement Applicable to Agent.

A third-party agent that processes verification requirements in accordance with Sections 13-63-102, R152-63-4, and R152-63-6 shall maintain its principal place of business in the United States of America.

# KEY: social media, age verification, parental consent Date of Last Change: 2024

Authorizing, and Implemented or Interpreted Law: 13-2-5(1); 13-63-102

NOTICE OF PROP	POSED RULE		
TYPE OF FILING: Amendment			
Rule or Section Number:	R357-29	Filing ID: 55838	

# Agency Information

1. Department:	Governor				
Agency:	Economic Opportunity				
Building:	World Tr	ade Center			
Street address:	60 E So	uth Temple			
City, state and zip:	Salt Lake City, UT 84111				
Mailing address:	60 E South Temple				
City, state and zip:	Salt Lake City, UT 84111				
Contact persons:	Contact persons:				
Name:	Phone: Email:				
Dane Ishihara	801- dishihara@utah.gov 792-				

8764 Please address questions regarding information on this notice to the persons listed above.

# General Information

2. Rule or section catchline:

R357-29. Rural County Grant Program Rule

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

The purpose of this rule filing is to amend the provisions under which a county may receive a rural county grant and to make technical changes.

# 4. Summary of the new rule or change:

This rule filing: 1) amends definitions; 2) amends application and documentation requirements; 3) clarifies reporting and administration requirements; 4) outlines funding distribution; and 5) makes technical changes.

# **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 cost or savings to the state budget.

This rule filing is merely updating the office's procedures for the second year of funding from the program.

# B) Local governments:

There is no new aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.

Participation in the program is optional.

**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.

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

The proposed rule changes do not have a fiscal impact on non-small businesses, nor will a service be required of them to implement the 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*):

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

Regulatory impact lable			
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:

Section	Section	
63N-4-802	63N-4-104	

### **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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:	10/02/2023
and title:			

# R357. Governor, Economic Opportunity.

R357-29. Rural County Grant [Program-]Rule. R357-29-101. Title.

This rule is known as the "Rural County Grant [Program]Rule."

#### R357-29-102. Definitions.

The following terms are defined as follows:

(1) "CE[D]O board" means a County Economic [Development]Opportunity Advisory Board defined under Section [17-54-102]63N-4-801.

(2)[---Competitive Application" means an application that is subject to review, seoring and comparing against other applicants to determine grant awardees against a limited pool of funding.

(3)] "GOEO[o Utah]" means the Governor's Office of Economic Opportunity.

[\_\_\_\_\_(4) "Part A: Annual Distribution" means the grant funding distributed evenly to each qualifying rural county in an amount up to and including \$200,000.

(5) "Part B: Competitive Award" means the grant funding, obtained by competitive application, which exceeds the \$200,000 annual distribution, not to exceed an overall amount of \$800,000 per year for a single county.]

#### R357-29-103. Authority.

This rule is adopted by the office under the authority of Section  $\left[\frac{17.54-103 \text{ and } 63N-4-104}{63N-4-802}\right]$  63N-4-802.

#### R357-29-104. Content of Applications[<u>Part A: Annual</u> <u>Distribution</u>].

(1) The following content shall, at a minimum, be included in each application[<u>for a Part A: Annual Distribution</u>]:

- (a) name of applying county;
- (b) tax ID;
- (c) name of fiscal agent;
- (d) amount of grant funding requested; and
- (e) responsible contact's:
- (i) name;
- (ii) full mailing address;
- (iii) telephone number; and

	No need of Thorosed Roles
(iv) email address[-];	(ii) the county's state vendor number if the county is
(f) a description of projects and activities for which funds	currently a state vendor;
will be used;	(b) an annual report from the previous year reporting the
(g) a description of expected deliverables and outcomes;	use of Part A: Annual Distribution and Part B: Competitive Award
and	the includes:
(h) any other information requested by the office.	(i) the use of funds:
(2) [The following documentation shall, at a minimum, be	(ii) the effectiveness of the award in improving economic
included in each first year application for a Part A: Annual	development in the county;
Distribution grant:	(iii) how much matching money has been utilized by the
(a) the entity's W9 form, or the county's state vendor	county; and
number if the county is currently a state vendor;	(iv) any other item requested by the office; and
(b) copy of resolution forming the CED board;	(c) for the current year request a:
(c) minutes from the legislative body council meeting	(i) description of projects and activities the funds will be
detailing the official establishment of a CED board;           (d) letter of support from the CED board; and	used for; ———— (ii) budget describing proposed uses of grant funds;
(a) list of CED board members including:	(ii) badget describing proposed uses of grant runds, (iii) description of matching funds;
(i) names;	(iv) description of expected deliverables and outcomes;
(i) titles;	and
(iii) organizations each member represents; and	(v) letters of support from:
(iii) organizations each memoer represents, and (iv) contact information.	(1) key stakeholders;
(1) After the first year, t]The following documentation	(b) project participants;
shall, at a minimum, be included in each application for a <u>Rural</u>	(C) local governments; and
County [Part A: Annual Distribution g]Grant:	(D) any other entity receiving sub-grant funding from Part
(a) [an annual report from the previous year reporting:	B: Competitive Award funds.]The application for the Rural County
(i) the use of funds:	Grant will become available to counties:
(ii) the effectiveness of the award in improving economic	(a) on July 1; and
development in the county;	(b) after approval of the previous year's annual report.
(iii) how much matching money has been utilized by the	(2) The application will close:
county; and	(a) at the discretion of the office; and
(iv) any other item requested by the office; and	(b) no later than October 1.
(b) for the current year request a:]the entity's W9 form, or	(3) Each grant recipient shall submit an annual report for
the county's state vendor number if the county is currently a state	the previous year containing:
vendor;	(a) a description of the projects for which the grant funding
(b) a letter of support from the CEO board; and (c) a list of CEO board members including:	was used or encumbered; (b) the effectiveness of the award in improving economic
(i) names;	development in the county;
(ii) titles;	(c) how much matching money was utilized by the county;
(iii) organization each member represents; and	(d) an explanation for why funding was not used or
(iv) contact information; and	encumbered;
(i) description of projects and activities the funds will be	(e) where unused funds are being held;
used for;]	(f) a letter from the CEO board attesting that:
([ii]d) <u>a budget describing proposed uses of grant funds[;].</u>	(i) it participated in advising the county's governing body
[	throughout the year;
— (iv) description of expected deliverables and outcomes.]	(ii) it approves of the content submitted in the annual
	report; and
R357-29-105. <u>Grant Administration and Reporting.</u> [Content of	(iii) it helped prepare the annual report;
Applications-Part B: Competitive Award.]	(g) minutes from each meeting of the CEO board where
(1) [The following content shall, at a minimum, be	the Rural County Grant was discussed; and
included in each application for a Part B: Competitive Award grant:	(h) any other information requested by the office.
(a) name of applying county;	(4) Failure to expend or encumber funding from this grant
$\frac{(b) \tan ID;}{(c) \operatorname{remum} of form 1 count}$	program during the fiscal year for which it was awarded may result
(c) name of fiscal agent; (d) amount of grant funding requested; and	in the withholding or denial of future funding.
(d) amount of grant funding requested; and     (e) responsible contacts:	<b>B357</b> -20-106 Funding Distribution
(c) responsible contacts:	<b>R357-29-106. Funding Distribution.</b> [(1)] After G[ <del>o Utah</del> ]OEO approval of a <u>Rural County</u>
(i) full mailing address;	[Part: A Annual Distribution g]Grant the county may receive up to
(iii) telephone number; and	100% of the total grant amount.
(iv) email address.	[
(1) the following documentation shall, at a minimum, be	grant funds will be distributed:
included in each application for a Part B: Competitive Award grant:	(a) 75% of grant funds disbursed to a county after:
(a)(i) the entity's W9 form: or	(i) application approval:

(i) application approval;

(a)(i) the entity's W9 form; or

UTAH STATE BULLETIN, October 15, 2023, Vol. 2023, No. 20

(ii) a contract between the county and the state is entered;

and (iii) the county invoices the office for 75% of the funds; and

(b) the remaining 25% of funds may be disbursed to a county upon satisfactory evidence of benchmark achievements toward completion of economic development projects and activities recorded in the grant contract.]

KEY: Rural County Grant, economic development Date of Last Change: [December 29, 2021]2023 Authorizing, and Implemented or Interpreted Law: 17-54-103; <u>63N-4-802;</u> 63N-4-104

#### NOTICE OF PROPOSED RULE

TYPE OF FILING:	New	
Rule or Section Number:	R357-46	Filing ID: 55839

#### Agency Information

rigeney memutati		
1. Department:	Governor	
Agency:	Economic Opportunity	
Building:	World Tr	ade Center
Street address:	60 E So	uth Temple
City, state and zip:	Salt Lak	e City, UT 84111
Mailing address:	60 E So	uth Temple
City, state and zip:	Salt Lak	e City, UT 84111
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:

R357-46. Rural Communities Opportunity Grant Rule

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

The purpose of this rule filing is to codify the provisions under which a rural community or association of government may receive a rural opportunity grant.

# 4. Summary of the new rule or change:

This rule filing codifies: 1) definitions; 2) application and documentation requirements; 3) reporting and administration requirements; and 4) the funding distribution.

#### **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 cost or savings to the state budget.

The changes simply add clarification to requirements under which a rural community or association of government may receive a rural opportunity grant.

#### B) Local governments:

There is no new aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.

Participation in the program is optional.

**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 rule does not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation.

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

The proposed rule does not have a fiscal impact on nonsmall businesses, nor will a service be required of them to implement this rule.

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

There is no new aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed rule 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 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	\$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:

0011 + 002	Section 63N-4-802	
	0311-4-002	

#### **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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 Ryan or designee Execution and title:	tarks, Date: 10/02/2023 ve Director
---	--

#### R357. Governor, Economic Opportunity.

R357-46. Rural Communities Opportunity Grant Rule. R357-46-101. <u>Title.</u>

<u>This rule is known as the Rural Communities Opportunity</u> Grant rule.

#### R357-46-102. Authority.

<u>This rule is adopted by the office under the authority of</u> Section 63N-4-802.

#### R357-46-103. Definitions.

(1) "Rural Communities Opportunity Grant" means the same as the additional use of grant money described under Subsection 63N-4-802(4)(b).

(2) "Rural Community" means a rural county, a rural municipality as defined in subsection 63N-4-801(10), or an association of governments as defined under Section 63N-4-801.

(3) "Competitive Application" means an application that is subject to review, scoring, and comparing against other applications to determine grant awardees against a limited pool of funding.

(4) "County Economic Opportunity Board" or "CEO Board" means the same as defined under Section 63N-4-801.

(5) "County of the third class" means the same as defined in Section 17-50-501.

(6) "County of the fourth class" means the same as defined in Section 17-50-501.

(7) "County of the fifth class" means the same as defined in Section 17-50-501.

(8) "County of the sixth class" means the same as defined in Section 17-50-501.

(9) "Municipality of the third class" means the same as defined in Section 10-2-301.

(10) "Municipality of the fourth class" means the same as defined in Section 10-2-301.

(11) "Municipality of the fifth class" means the same as defined in Section 10-2-301.

#### **R357-46-104.** Content of Application and Approval Process.

(1) The following content shall, at a minimum, be included in each application for a Rural Communities Opportunity Grant:

- (a) name of applying community;
- (b) tax ID;
- (c) name of fiscal agent;
- (d) amount of grant funding requested;
- (e) responsible contacts':
- (i) name;
- (ii) full mailing address;
- (iii) telephone number; and
- (iv) email address;

(f) a description of projects and activities the funds will be used for:
(g) a description of expected deliverables and outcomes;
(h) a description of matching funds:
(i) provided by any one or combination of:
(A) a community reinvestment agency;
(B) a redevelopment agency;
(C) a community development and renewal agency;
(D) a private sector entity;
(E) a nonprofit entity;
(F) a federal matching grant;
(G) county or municipality general fund match; and
(H) any other funding source approved by the office; and
(ii) total at least:
(A) a 10% match for a county of the sixth class;
(B) a 20% match for a county of the fifth class;
(C) a 30% match for a county of the fourth class;
(D) a 40% match for a county of the third class;
(E) a 10% for a town in any rural county classification;
(F) a 20% match for a municipality of the fifth class in any
ural county classification;
(G) a 30% match for a municipality of the fourth class in
any rural county classification;
(H) a 40% match for a municipality of the third class in
any rural county classification; and
(I) a 40% match for an association of governments; and
(i) any other information requested by the office.
(2) The following documentation shall, at a minimum, be
included in each application for a Rural Communities Opportunity
<u>Grant:</u>
(a)(i) the entity's W9 form; or
(ii) the county's state vendor number if the county is
currently a state vendor:
(b) budget describing proposed uses of grant funds;
(c) letters of support from:
(i) key stakeholders;
(ii) project participants;
(iii) local governments;
(iv)(A) the CEO Board for rural counties:
(B) the planning and zoning commission or municipal
economic opportunity advisory board or commission for rural
nunicipalities; or
(C) the General Board for associations of governments;
and
(v) any other entity receiving sub-grant funding from
Rural Communities Opportunity Grant funds; and
(d) any other documentation requested by the office.
(3) Associations of governments must also submit letters
of support from each of its counties indicating their support of the
ipplication.
(4) The office may choose not to fund applicants who have
not complied with the reporting requirements for all previous years
he community received a Rural County Grant or Rural Communities
Opportunity Grant.
D257 46 105 Funding Distribution and Demonting
R357-46-105. Funding Distribution and Reporting.
(1) After GOEO approval of a Rural Communities
Opportunity Grant:

(a) no more than 90% of grant funds will be disbursed to a community after:

(i) application approval;

levelopment projects and activities recorded in the grant contract.

(2) The maximum amount of funding a rural community can receive through this grant is \$600,000.

(3) Each grant recipient shall submit an annual report containing:

(a) a description of the project, or projects, for which the grant funding is being used or encumbered;

(b) the effectiveness of the award in improving economic development in the community;

(c) how much matching money is being utilized by the community;

(d) a letter from the CEO board or equivalent attesting that:

(i) it is participating in advising the rural community's governing body throughout the year;

(ii) it approves of the content submitted in the annual report;

(iii) it helped prepare the annual report; and

(iv) minutes from each meeting of the CEO board where he Rural County Grant was discussed; and

(e) any other information requested by the office.

(4) Grant recipients shall submit a final report and eimbursement request by the contract termination date including:

(a) a description of the completed project; (b) a report on whether the recipient met the goals and benchmarks detailed in the contract;

(c) a letter from the CEO board or equivalent attesting that:

(i) it participated in advising the county's governing body hroughout the year;

(ii) it approves of the content submitted in the annual report; and

(iii) it helped prepare the annual report;

(d) an invoice for the outstanding amount of awarded funding; and

(e) any other information requested by the office.

# R357-46-106. CEO Board Equivalents.

(1) Rural municipalities shall use a functioning planning and zoning commission or a organized municipal economic opportunity advisory board or commission to fulfill the same advisory requirements of a CEO board.

(2) Associations of governments shall use their Governing Board to fulfill the same advisory requirements of a CEO board.

# KEY: Rural Community Opportunity Grant, RCOG, economic development

Date of Last Change: 2023

Number:

Authorizing, and Implemented or Interpreted Law: 63N-4-802

NOTICE OF PROP	POSED RULE	
TYPE OF FILING:	New	
Rule or Section	R380-600	Filing ID:

55818

# Agency Information

1. Department:	Health a	nd Human Services
Agency:	Adminis	tration
Building:	MASOB	
Street address:	195 N 1	950 W
City, state and zip:	Salt Lak	e City, UT 84116
Contact persons:		
Name:	Phone:	Email:
Simon Bolivar	801- 803- 4618	sbolivar@utah.gov
Janice Weinman	385-	jweinman@utah.gov

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

321-5586

# **General Information**

# 2. Rule or section catchline:

R380-600. Licensing General Provisions - Enforcement

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

The purpose of this rule is to streamline the enforcement used by the different programs in the Administration Division (Division), and to have one single, more efficient process to address general provisions for Child Care, Health Facilities, and Human Services licensing.

# 4. Summary of the new rule or change:

This is a new rule that combines the general provisions from Human Services contained in the administrative Rule R501-1, from Health Facilities contained in Rules R432-2 and R432-3, and the general enforcement language from the different Child Care Licensing rules.

Both the Health Facility Committee and the Child Care Provider Licensing Committee unanimously supported implementation of this new rule.

(EDITOR'S NOTE: The proposed repeal of Rule R432-2 (ID 55816) and the repeal of Rule R432-3 (ID 55817) and the repeal and reenact of Rule R501-1 (ID 55820) are in this issue, October 15, 2023, of the Bulletin.)

# **Fiscal Information**

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

# A) State budget:

Although this new rule is created for efficiency purposes, the Division does not anticipate any cost or savings to the state budget as this rule only clarifies pre-existing requirements and combines them into one single rule.

	ernments:		
This new rule local governm			a fiscal impact on tures.
This new rule combines ther			requirements and
C) Small business emp			iness" means a
This new rule businesses requirements	because it	only clari	impact on small fies pre-existing ne single rule.
D) Non-smal a business em			business" means ıs):
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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 S. 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

#### 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 11/14/2023 until:

9.	This	rule	change	MAY	11/21/2023
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:	09/28/2023
or designee	Executive Director		
and title:			

R380. Health and Human Services, Administration. R380-600. Licensing General Provisions-Enforcement.

#### R380-600-1. Authority and Purpose.

This rule is enacted and enforced in accordance with Sections 26B-2-104, 26B-2-202, and 26B-2-402. The purpose of this rule is to provide consolidated procedures and enforcements for the licensing entities within the Division of Licensing and Background Checks.

#### R380-600-2. Definitions.

(1) "Abuse" means the same as the term is defined in Sections 26B-6-201, 80-1-102, and R512-80-2.

(2) "Action Review" means informal levels of discussion available to providers to engage the division administration to review an action taken on their license or certificate before requesting an appeal.

(3) "Applicant" means the legally responsible individual or individuals, or business seeking to obtain a valid new or renewal license or certificate from the Office.

(4) "Category" means the type of license or certificate needed for the services offered by the provider.

(5) "Certificate" means a residential child care certificate in accordance with Section 26B-2-404.

(6) "Certified" means an approval to operate in compliance with local or federal requirements or regulations completed by the office or on behalf of the office for another local or federal agency.

(7) "Citation" means a notice for serious or repeat rule noncompliance.

(8) "Client" means an individual receiving the services from the provider.

(9) "CMP" means civil money penalty issued by the office as a fine for repeat citations or when an initial instance of noncompliance results in, or is likely to result in, harm to clients.

(10) "Covered Individual" means any of the following: (a) an owner;

(b) a director;

(c) a member of the administration or governing body;

(d) an employee; (e) a caregiver;

(f) a volunteer who has unsupervised access to any client or any client's records, except a parent or legal guardian of a child or vulnerable adult enrolled in the program having access to their own child or vulnerable adult;

(g) an individual age 12 years or older who resides in the facility; and

(h) anyone who has unsupervised access to any client or any client's records.

(11) "Critical Incident" means an event out of the range of normal experience including any of the following:

(a) an allegation or confirmation of abuse, neglect, or exploitation;

(b) a loss or impairment of the function of a bodily member, organ, or mental faculty or significant disfigurement;

(c) a death related to an adverse event;

(d) a death of a minor;

(e) a medication error resulting in a telephone call to or a consultation with a poison control center, an emergency department visit, an urgent care visit, or hospitalization;

(f) an allegation or confirmation of waste, fraud or abuse of Medicaid funds;

(g) any medical emergency requiring treatment beyond basic first aid;

(h) a missing client;

(i) any significant criminal activity;

(j) any property damage or infestation that jeopardizes services; or

(k) any prohibited practice as described in Section 26B-2-123 including misuse or unauthorized use of restrictive interventions, seclusion, or body cavity search.

(12) "Department" means the Department of Health and Human Services.

(13) "Division" means the Division of Licensing and Background Checks in the Department of Health and Human Services.

(14) "Emotional Mistreatment" means verbal or nonverbal conduct that results in a client suffering significant mental anguish, emotional distress, fear, humiliation, or degradation. Emotional mistreatment includes demeaning, threatening, terrorizing, alienating, isolating, intimidating, or harassing a client.

(15) "Exploitation" includes:

(a) the use of a client's property, labor, or resources without the client's consent or in a manner that is contrary to the client's best interests, or for the gain of some person other than the client, including spending a client's funds for the benefit of another;

(b) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent nonmonetary compensation, where such use is inconsistent with therapeutic practices;

(c) engaging or involving a client in any sexual conduct; or

(d) sexual abuse of a minor as described in Section 76-5b-201 or vulnerable adult as described in Section 76-5b-202 and Subsection 76-5-111(2).

(16) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or for personal gain. Fraud also means any offenses identified as fraud in Title 76, Chapter 6, Offenses Against Property.

(17) "Harm" means financial, physical, or emotional pain, damage, injury, or fraud.

(18) "Inspection" means an announced or unannounced visit of the provider's site to monitor compliance.

(19) "Inspection Report" means the written official description of any rule, statute, or requirement where the provider may be found out of compliance, that may include facts supporting the noncompliance, risk levels, corrective actions, and corrective time frames the office, or an office approved agency sends the provider once an inspection, survey, or investigation has been completed.

(20) "Investigation" means an inspection to verify compliance with rule or statute.

(21) "Mistreatment" means conduct that results in emotional or physical harm.

(22) "Neglect" means abandonment or the failure to provide necessary care, including nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, or protection from harm. Neglect also means the same as the term is defined in Sections 26B-6-201; 76-5-110; and 80-1-102.

(23) "Office" means the Office of Licensing within the Department of Health and Human Services, Division of Licensing and Background Checks.

(24) "Owner" means any person, or entity that:

(a) is listed on a license or certificate as the license or certificate holder;

(b) possesses the right to hold, use benefit from, enjoy, convey, transfer, and otherwise dispose of a program or facility:

(c) retains the rights, participates in, or is ultimately responsible for operations and business decisions of a program or facility; or

(d) operates or has engaged the services of others to operate the program or facility.

(25) "Penalty" means an action taken by the office to fine a licensee or certificate holder deny a license, or place a condition on, suspend, or revoke a license due to the program or facility's noncompliance with statute or administrative rule.

(26) "Person" means an individual, agency, association, partnership, corporation, business entity, or governmental entity.

(27) "Physical mistreatment" means conduct that results in pain, injury, or death.

(28) "Plan of Correction" means, except for the Center for Medicare and Medicaid Services (CMS) plan of correction as defined in 42 CFR 488.401, a temporary process for the office and the provider to work toward improved provider compliance and preventing further noncompliance.

(29) "Program or facility" means the settings, activities, services, procedures, and premises used by the provider to operate their license or certificate.

(30) "Provider" means the license or certificate holder, or the legally responsible individual or individuals providing services regulated by the office.

(31) "Regular business hours" are the hours that the program or facility is available to the public or providing services to clients.

(32) "Risk Levels" means likelihood and severity of harm between low, moderate, high, and extreme that may result if a rule is out of compliance.

(33) "Seclusion" means, except for medically approved quarantine, the involuntary confinement of an individual in an area:

(a) away from the individual's peers; and

(b) in a manner that physically prevents the individual from leaving the room or area.

(34) "Significant criminal activity" means any unlawful activity by or against the program or facility's clients or on duty staff that poses a serious threat to the program or facility's clients or on duty staff's health, safety, or well-being including:

(a) any criminal activity that involves law enforcement;

(b) illegal physical or sexual misconduct or assault;

(c) riot;

(d) suspected fraud; or

(e) suspected exploitation.

(35) "Strip search" means requiring a client to undress down to undergarments or complete nudity in view of another person.

(36) "Unsupervised Access" means being out of sight and hearing from an individual who has successfully passed the required division background check.

(37) "Variance" means any deviation from administrative rule authorized in writing by the office.

(38) "Warning" means a licensing action that warns the provider that a rule noncompliance shall be corrected within a specified amount of time.

#### R380-600-3. New and Renewal Licensing Procedures.

(1) An applicant or provider may not accept any fee, enter into any agreement to provide a client service, or provide any client service until a license or certificate is approved by the office.

(2) Each applicant and provider shall comply with any applicable administrative rule, statute, zoning, fire, safety, sanitation,

building and licensing laws, regulations, ordinances, and codes of the city and county in that the facility or agency will be or is located.

(3) An applicant or a provider shall permit the office to have immediate, unrestricted access to:

(a) each site subject to licensing or certification;

(b) any unaltered on and off-site program or facility and client records; and

(c) each staff and client.

(4) An applicant shall notify the office in writing of any changes to the application, including withdrawal of the application.

(5) An applicant seeking an initial or renewal license or certificate to operate a program or facility shall submit:

(a) a complete application as provided by the office;

(b) any required fee for each category of program or facility application;

(c) except as described in Subsection 26B-2-120(12), a background clearance for each covered individual:

(d) any policy and procedure, or updates if already submitted, as required by the office;

(e) name and contact information for each responsible decision-maker, including any owner or program or facility director;

(f) documentation that verifies the applicant's compliance with, or exemption from, fire and business license requirement; and

(g) as applicable for healthcare facilities, architectural plans and a description of the functional program or facility.

(6) A provider may not implement a policy that requires office approval without that office approval.

(7) The provider shall submit:

(a) a renewal request and applicable fees at least 30 days before the expiration of their license or certificate;

(b) a renewal request and applicable late fees within 30 days after the expiration of their license or certificate; or

(c) a new application for a new license or certificate and applicable fees if the provider lets their license or certificate expire and 30 days have passed since their license or certificate expired.

(8) A residential treatment program or facility provider applying for an initial license shall submit proof that the program or facility served notice of intent to operate in accordance with Section 26B-2-117.

(9) A new applicant shall submit a new initial application and applicable fees if they have not successfully completed the application process six months from the date of the initial application.

(10) The office may deny the initial or renewal application, issue a CMP, or place conditions on a renewal license or certificate if:

(a) the provider failed to achieve or maintain compliance with any applicable statute, rule, or ordinance;

(b) the applicant or provider has a compliance history that shows a pattern of noncompliance with applicable statutes, rules, or ordinances;

(c) the applicant or provider gives false or misleading information to the office;

(d) the office reasonably determines that the applicant or provider is not likely to operate in compliance with any applicable statute, rule, or ordinance;

(e) the applicant or provider received a notice from the division that a covered individual in the program or facility is not eligible due to a division background check and that covered individual is still in the program or facility:

(f) the office finds a program or facility director, owner, or any individual involved in the program or facility's billing process on the office of Inspector General's List of Excluded Individuals and Entities; or

(g) the office finds that an applicant or provider maintains association with any individual with a license revoked by the office if the application is submitted within five years from the time of the revocation.

(11) The office may deny renewal of a license or certificate for an applicant or provider that is no longer providing the services that require them to have a license or certificate or if they have not provided any services for the past 24 months.

(12) A provider approved by the office to certify their own program or facility sites shall register each certified site using the licensing provider portal.

(13) A denied applicant may not reapply for a minimum of a three-month period beginning on the date of denial.

(14) The license or certificate holder shall adhere to any individualized parameter on a program or facility license or certificate to promote the health, safety, and welfare of any client. Parameters may include:

(a) an age restriction;

(b) an admission or placement restriction; or

(c) adequate square footage to determine capacity.

(15) The provider shall resolve any outstanding balances, conditions, or noncompliance status on any license or certificate before a license or certificate is granted by the office for any associated new site.

(16) A provider may apply for a two-year license if:

(a) the provider is not a residential or foster care program or facility;

(b) the program or facility is in good standing with the office for the two consecutive license periods issued by the office immediately before the date of application;

(c) the provider understands that required inspections will be conducted in the same manner as for annual licenses of the same license type;

(d) the office reasonably determines that the provider is likely to maintain good standing for a two-year period;

(e) the provider submits twice the annual fee required for each category of license sought; and

(f) there are no other statutory restrictions that will disqualify the license type for a two-year license; or

(g) the program or facility is a health care provider.

(17) Unless previously approved by the office to provide services before receiving a license or certificate for special circumstances, a provider shall submit an application, any required fees, and obtain a new or a renewed license or certificate before providing any services that require a license or certificate.

(18) A license or certificate expires at midnight on the last day of the same month the license or certificate was issued, one year after its effective date, except when the license or certificate has been: (a) revoked by the office before expiration;

(b) extended by the office beyond the date of expiration;

(c) relinquished by the provider;

(d) received a shortened expiration time frame as requested by the provider; or

(e) issued as a two-year license.

(19) A two-year license expires at midnight on the last day of the same month the license was issued, two years after the effective date on the license.

(20) A provider may request an extension of up to 90 days if: (a) any applicable fees are paid;

(b) any noncompliance issues are resolved to the satisfaction of the office;

(c) the provider submits a written request for an extension to the office; and

(d) the provider understands that an extended license will reduce the dates for the subsequent renewal license to start on the date compliance is achieved and end on the original license renewal date.

(21) A provider who voluntarily relinquishes a license or certificate shall:

(a) notify the office and the patients or their next of kin or legal guardian, as applicable, at least 30 days before the effective date of closure;

(b) ensure safe keeping of records; and

(c) as applicable, return any patients funds and valuables at the time of discharge.

(22) The provider may voluntarily relinquish their license or certificate except when the office has issued a notice of agency action revoking the license or certificate.

(23) Each license or certificate is not transferable.

(24) The provider shall post their current license or certificate, except in a foster home, on the premises in a place readily visible and accessible to the public.

(25) The office may deny renewal of a license or certificate for a program or facility who is no longer providing services.

#### R380-600-4. Program or Facility Changes.

(1) A license or certificate holder shall submit a complete program change application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of capacity, including any change to the amount of space used to provide services;

(b) a change in the name of the program or facility;

(c) the move of an administrative site where no clients are served; or

(d) a change that transfers less than 50% ownership or controlling interest to a new owner.

(2) A provider may proceed with any changes or make them public after approval by the office.

(3) A provider shall submit a complete office application for a new license and fees at least 30 days before any of the following changes:

(a) a change of location;

(b) a change in the population served;

(c) a change in the regulation type of the program or facility;

(d) an additional license category; or

(e) a change that transfers 50% or more ownership or controlling interest to a new owner.

(4) For a change that requires a new license or certificate, the provider shall adhere to the following conditions:

(a) no new clients may be served until a new license or certificate is issued;

(b) the status of the previous license or certificate will continue;

(c) the application fee for any additional license category will be prorated so that it expires on the same date as any other facility existing license; and

(d) if a foster child is placed in a foster home, the licensed foster parent shall ensure the health and safety of the foster child during the transition to licensure or certification at the new site. R380-600-5. Fees.

(1) Except for a foster home or division of the department, the applicant shall pay any required application fees before the office performs any on-site visit or document review.

(2) The applicant shall pay a new application fee if the applicant has not completed the application process 12 months after the date of initial application if the applicant desires to continue with the application process.

(3) The applicant shall pay an initial application fee for each category of program or facility offered at each program or facility site.

(4) The applicant shall pay an application fee for any program change request that requires the office to perform an onsite inspection and complete a comprehensive compliance review.

(5) The provider shall pay a renewal license or certificate fee for each license or certificate that is renewed at each program or facility site.

(6) The provider shall pay any applicable capacity fee based on the office approved client or bed capacity.

(7) The provider shall pay any fines and fees owed to the office before the office issues a new or renewal license or certificate.

(8) A provider with more than one building, unit, or suite located at a single site may choose between the following methods of assessing a fee and issuing a license:

(a) each category of license includes each on-site building, unit, or suite; or

(b) each category of license is issued separately for each individual on-site building, unit, or suite.

(9) The license or certificate holder shall pay the office fees for any monitoring inspection and, if required by the office for extreme noncompliance, the costs of placing a licensor to monitor provider's compliance or a temporary manager to ensure the health and safety of the population served.

(10) The provider shall pay the office an additional followup inspection fee each time the office has to conduct an additional follow-up inspection for lack of compliance with the same rule.

(11) The provider shall pay any applicable fees within the time frames prescribed by the division.

(12) The division may grant an account credit or deny a refund request.

#### R380-600-6. Variances.

(1) The office director, or the director's designee, may grant a variance after determining that a variance is not likely to:

(a) compromise client health and safety; or

(b) provide an opportunity for abuse, neglect, exploitation, harm, mistreatment, or fraud.

(2) The provider may not deviate from any administrative rule before receiving written approval signed by the office director or the director's designee.

(3) A license or certificate holder seeking a variance shall submit a written request to the office on an office approved variance request form.

(4) The license or certificate holder shall submit a variance request at least 30 days before the proposed start date unless the provider documents a need to expedite the request.

(5) The provider shall sign the approved variance and comply with the terms of the written variance, including any conditions or modifications contained within the approved written variance.

(6) If the variance is still needed, the provider shall request renewal for a variance 30 days before the variance expires.

#### **R380-600-7.** Inspection and Investigation Process.

(1) The office may schedule announced and unannounced inspections to follow statute, contract, and federal requirements according to each category.

(2) The office may adopt the findings from an inspection conducted by another local or federal agency, or by the department staff on behalf of another local or federal agency as part of the provider's compliance history.

(3) The provider shall cooperate with the office to monitor rule compliance and rule compliance maintenance anytime the program or facility is serving clients by giving to the office full access to:

(a) the building;

(b) clients;

(c) staff; and

(d) any program or facility records.

(4) The provider shall cooperate with the office by promptly responding to any request for information necessary to demonstrate rule compliance before, during, and after inspections.

(5) The provider shall make available and permit reproduction of program or facility records and documents by, or on behalf of, the department as necessary to ascertain compliance with applicable laws, rules, and federal regulations.

(6) The provider shall ensure that the integrity of the office's information gathering process is not compromised by withholding or manipulating information or influencing any specific response of staff or clients.

(7) The provider shall allow the office to access any program or facility record or staff at an administrative or certified location that is not located at the licensed site.

(8) Except for when an inspection is conducted by another local or federal agency, or by the department staff on behalf of another local or federal agency, the office shall serve a written inspection report to the provider once the inspection process is complete and approved by division management.

(9) If the provider is out of compliance with any applicable administrative rules, statute, or requirements, the provider shall:

(a) come into compliance within the required correction time frames as stated in the respective inspection report;

(b) pay any applicable penalties and inspection fees; and

(c) maintain compliance with each applicable administrative rules, statute, or requirements.

(10) The office may require immediate compliance with any administrative rule that is found out of compliance and that represents an imminent risk to any client.

(11) Once an inspection is completed and the inspection report is produced by the office, the office shall post any citations from any inspection and any substantiated noncompliance from a complaint investigation on the division website for no less than 36 months.

(12) The provider shall follow the office's directions when the office requires a plan of correction.

(13) Except for certified facilities following a CMS plan of correction, the office may allow the provider to have one plan of correction in a 36-month period.

(14) The office may require additional inspections as part of the plan of correction.

(15) The office may investigate any complaint or incident that suggest noncompliance with any rules or statute, except for:

(a) an anonymous complaint against a provider within Child Care Licensing; or (b) a complaint against a provider within Child Care Licensing that alleges an issue that happened six or more weeks before the complaint is received.

(16) When a critical incident occurs under the direct responsibility and supervision of the program or facility, the licensee or certificate holder shall:

(a) submit a report of the critical incident to the office in format required by the office within one business day of the critical incident occurrence;

(b) notify the legal guardian of each involved client within a 24-hour period from the time of the incident;

(c) if the critical incident involves any client in the custody of the department or under contract with the department, notify the involved department division immediately; and

(d) collect, maintain, and submit original witness statements and supporting documentation, including video footage if available, regarding each critical incident to the office upon request.

#### R380-600-8. Rule Compliance, Penalties, Agency Action Reviews, and Appeals.

(1) The provider shall:

(a) comply and maintain compliance with each applicable rule, statute, or requirement;

(b) ensure each staff member complies with each applicable rule, statute, or requirement; and

(c) comply with and ensure each staff member complies with the department Provider Code of Conduct as established in Rule R380-80.

(2) Based on the office findings or the findings of any office authorized agency, the office may:

(a) deny a new or renewal of a license or certificate;

(b) issue a warning;

(c) issue a citation;

(d) issue a CMP;

(e) require a plan of correction;

(f) suspend a license or certificate;

(g) set the conditions for and place the program or facility license or certificate on a conditional status;

(h) increase monitoring inspections;

(i) restrict or prohibit admissions; and

(j) revoke a license or certificate.

(3) When taking any agency action against a provider, the office may consider the provider's:

(a) compliance with applicable rules, statutes, or requirements;

(b) chronic, ongoing noncompliance with applicable rules, statutes, or requirements;

(c) unpaid fees or penalties;

(d) serious noncompliance that places any client's health and safety at immediate risk of harm;

(e) failure to meet the conditions while the program or facility is on a conditional status:

(f) false or misleading information submitted to the office; (g) actions to intentionally alter any document provided to or issued by the department;

(h) failure to allow authorized representatives from the department access to the program or facility to ensure compliance with the rules:

 (i) failure to submit or make available to the department any documentation or report required to ensure compliance with the rules; (j) actions to knowingly employ, be employed by, contract with or in any way relate to business with a person whose license has been revoked by the office within the previous five years;

(k) serious noncompliance with the rules that results in the death or serious harm to a client, or that places the client at risk of death or serious harm;

(1) commission of an illegal act that would exclude a person from having a license; or

(m) need to be investigated by the office as an emergency temporary measure, until compliance or noncompliance is properly substantiated by the office.

(4) Any official office action on any provider, except for a foster home, is considered public record, and the office shall make it available to the public including posting citations, substantiated complaint allegations, and other penalties on the division website for at least 36 months.

(5) The office may choose to amend any penalty or action taken against a provider at any point during the action process.

(6) If a rule noncompliance resulted in a CMP and there is a repeat instance of the same rule noncompliance within a 36-month period, the provider shall pay double the amount of the original CMP and, for each subsequent noncompliance of the same rule issued, double the amount of the previous CMP not to exceed \$10,000.

(7) The provider shall demonstrate compliance with each noncompliant rule according to the timelines established in the inspection report produced by the office to avoid any further penalties.

(8) If the office suspends the license of a foster parent, the foster parent may retain any current placements if the placing department entity approves to allow the foster child to remain in the current placement during the time of suspension.

(9) Except as authorized by the office in writing, a program or facility that has had its license or certificate suspended or revoked shall:

(a) not accept new clients;

(b) only provide any service necessary to maintain client health and safety during the client's transition out of the program or facility;

(c) develop and comply with a plan to transition each client out of the program or facility and into an equivalent, safe, currently licensed program or facility or into the custody of the client's legal guardian; and

(d) maintain program or facility staffing to maintain the health and safety needs of each client while an appeal of the suspension or revocation is pending or until each client is removed from the program.

(10) Unless otherwise stated on the conditions set by a conditional license, the office may conduct increased monitoring inspections for a facility on a conditional status until the facility demonstrates substantial compliance.

(11) Any owner identified in a license or certificate revocation action may not be approved for a license or certification of any other program or facility overseen by the office for five years from the date the revocation was made effective.

(12) If the office places a program or facility on a conditional license, issues a suspension or a revocation, the provider shall, within five days of receiving the notice:

(a) post the notice on-site where it is easily viewable by the public;

(b) notify each client, guardian, and prospective client of the notice;

(c) post a copy of the notice on the program or facility website, if the program or facility has a website; and

(d) keep the notice posted for as long as the office notice is in effect.

(13) If an appeal of a revocation, suspension or conditional status that restricts admissions is pending, a provider may not accept any new clients without prior written authorization from the office.

(14) The office may, in addition to any other actions, refer any noncompliance concerns to any other local and federal agency and seek criminal penalties.

(15) An applicant or provider may request:

(a) an action review of any office decision within ten working days of being informed in writing of the decision by submitting a request to the office through the licensing provider portal; or

(b) an appeal of any office decision within 15 working days of being informed in writing of the decision by following the department appeal process.

# R380-600-9. Unlicensed Program or Facilities.

A person who is providing services without a required license or certificate is subject to a civil money penalty, is guilty of a class A misdemeanor, and may be referred to the Attorney General and the County Attorney.

# KEY: licensing, human services, health care facility, child care Date of Last Change: 2023

<u>Authorizing, and Implemented or Interpreted Law: 26B-2-104;</u> 26B-2-202; 26B-2-402

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal					
Rule or Section Number:	R398-3	Filing ID: 55801			

# Agency Information

1. Department:	Health a	Health and Human Services		
Agency:	Family Health, Children with Special Health Care Needs			
Room number:	3032			
Building:	Multi-Agency State Office Buildi (MASOB)			
Street address:	195 N 19	950 W		
City, state and zip:	Salt Lake City, UT 84116			
Mailing address:	PO Box 144610			
City, state and zip:	Salt Lake City, UT 84114-4610			
Contact persons:				
Name:	Phone: Email:			
Alexis Weight	8014- 273- 2956	abweight@utah.gov		

Stephanie	801-	smcvicar@utah.gov
McVicar	273-	
	6600	

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

# **General Information**

2. Rule or section catchline:

R398-3. Children's Hearing Aid Program

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

Following the passing of S.B. 272 in the 2023 General Session, the Children's Hearing Aid Program no longer has rulemaking authority. Section 26-10-11 was repealed 07/01/2023.

# 4. Summary of the new rule or change:

This filing repeals the Children's Hearing Aid Program rule in its entirety.

# **Fiscal Information**

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

# A) State budget:

There are no anticipated costs or savings associated with this repeal. The state budget will not see a fiscal impact.

This program is now funded through the general fund and the Department of Health and Human Services (Department) will govern the program through policy.

# B) Local governments:

There are no anticipated costs or savings associated with this repeal. Local governments will not see a fiscal impact.

The Department will govern the program through policy.

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

There are no anticipated costs or savings associated with this repeal. Small businesses will not see a fiscal impact.

The Department will govern the program through policy.

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

There are no anticipated costs or savings associated with this repeal. Non-small businesses will not see a fiscal impact.

The Department will govern the program through policy.

E) Persons other than small businesses, non-small businesses, state, or local government entities

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There are no anticipated costs or savings associated with this repeal. Persons other than small businesses, nonsmall businesses, or state or local government entities will not see a fiscal impact.

The Department will govern the program through policy.

**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 associated with this repeal.

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

- . .

Regulatory	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
			<b>AA</b>
Total Fiscal Benefits	\$0	\$0	\$0

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this regulatory impact analysis.

# Citation Information

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

Section 26-10-11

# 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 11/14/2023 until:

9. This rule change MAY 11/21/2023 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:	09/14/2023
or designee	Executive Director		
and title:			

**R398.** Health, Family Health and Preparedness, Children with Special Health Care Needs.

[R398-3. Children's Hearing Aid Program.

R398-3-1. Authority and Purpose.

(1) This rule is authorized by Section 26-10-11.

(2) The purpose of this rule is to set forth the process to identify children who are financially eligible to receive services under the program and describe how the department will review and pay for services provided to a child under the program.

#### R398-3-2. Definitions.

(1) "CHAP" means the Children's Hearing Aid Program.

 (2) "CSHCN" means the Department's Bureau of Children with Special Health Care Needs.

(3) "Hearing aid" means any traditional nonsurgical device providing acoustic amplification.

(4) "L and D" means loss and damage, referring to warranty or insurance coverage for hearing aids.

(5) "Managing audiologist" means a non-Department licensed audiologist with expertise in pediatric audiology who is responsible for the provision of hearing aids and follow-up care to eligible children.

R398-3-3. Process to Identify Children Who Are Financially Eligible for Services.

(1) Participant financial eligibility:

(a) Children younger than six years old, with hearing loss who do not yet own a hearing aid or for whom current amplification is no longer appropriate may be eligible for hearing aids under this program.

(b) Participant must complete and submit CSHCN
 Financial Form (PFR) with application to the managing audiologist.
 (c) Upon request, the family must provide a copy of the most recent federal income tax filing to CHAP to verify family income as reported by the child's parents. If the federal income tax filing is unavailable, the parents may submit the prior three months' check stubs to extrapolate annual income.

(d) Family must be at or below 300% of Federal Poverty Level.

(e) This is a one-time per ear benefit per child.

R398-3-4. Process to Review and Pay for Services Provided to a Child.

(1) Applications:

(a) participant application:

(i) must be completed by parent or guardian.

 (ii) if a child is under three years of age, the child shall participate in an Early Intervention program specializing in services for children with hearing loss.

 (iii) application must be submitted to managing audiologist with:

 (A) proof of denial for Medicaid or evidence that family is ineligible for Medicaid; and

(B) evidence of noncoverage by current insurance provider.

 (I) family or guardian shall provide coverage for each out of warranty repair.

(II) if L and D is claimed during the warranty period, the family shall provide supplemental hearing aid insurance including L and D.

 (III) child will receive hearing aids directly from managing audiologist.

(b) audiologist qualifications and application:

(i) hearing aid must be fit by a licensed audiologist.

— (ii) a separate application must be submitted for each child.
 — (2) Review of applications:

(a) each application will be reviewed for completeness and eligibility by the CSHCN designee.

(b) eligibility shall be communicated to the managing audiologist.

(3) Payment process:

(a) within 30 days of hearing aid fitting, the managing audiologist will submit the Payment Request Cover Sheet with all supporting documentation.

(b) CSHCN will review documentation to assure that managing audiologist has submitted all items listed in payment request.

 (c) payments will go directly to the managing audiologist or their designee.

**KEY:** hearing aids

Date of Last Change: December 23, 2021

Notice of Continuation: September 14, 2018

Authorizing, and Implemented or Interpreted Law: 26-10-11]

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment					
Rule or Section Number:	R432-1	Filing ID: 55819			

# Agency Information

1. Department:	Health and Human Services	
Agency:	Health Care Facility Licensing	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and	Salt Lake City, UT 84116	

# zip:

Contact persons:				
Name:	Phone:	Email:		
Janice Weinman	385- 321- 5586	jweinman@utah.gov		
Jonah Shaw	385- 310- 2389	jshaw@utah.gov		

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

# **General Information**

2. Rule or section catchline:

R432-1. General Health Care Facility Rules

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

This rule consolidates and centralizes content and serves in conjunction with the new division-wide rule (R380-600) that authorizes actions of the Department of Health and Human Services (Department) under the Department rule title and addresses only provider requirements in the Title R432 rules.

It also introduces language to comply with H.B. 72, passed in the 2023 General Session, with definitions and a new section (R432-1-12) permitting certain health care facilities to act as designated medical cannabis caregivers for clients in their care.

It additionally adds Section R432-1-11, Visitation Policies, in compliance with H.B. 133, passed in the 2023 General Session.

The health care facility licensing committee unanimously approved making these revisions in the 09/13/2023 meeting.

# 4. Summary of the new rule or change:

This amendment changes the title of the rule from "General Health Care Facility Rules" to "General Licensing Provisions" to align with other general rule titles under the Division of Licensing and Background Checks (DLBC) purview.

It additionally adds content from the two repealed General Health Care Facility Rules (R432-2 and R432-3) to create a singular rule that applies to all health care facility licensees.

(EDITOR'S NOTE: The proposed repeal of Rule R432-2 (ID 55816) and the repeal of Rule R432-3 (ID 55817) and the proposed new Rule R380-600 (ID 55818) are in this issue, October 15, 2023, of the Bulletin.)

# **Fiscal Information**

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

# A) State budget:

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 consolidates existing content. Substantive changes will not have an impact on state budget, as both medical cannabis and visitation amendments will be new rule checklist items added to the existing checklists that licensors check on inspections.

The DLBC website is already under construction due to Department consolidation and will not incur an additional cost to add the visitation amendment content to it.

# B) Local governments:

This proposed rule amendment should not impact local governments' revenues or expenditures because these facilities 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.

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

The consolidated content will not result in any impact because it simply moves existing rules to one central location.

The medical cannabis content is a voluntary permission that small businesses can elect to participate in. Any costs incurred are not mandatory.

The visitation policy requires updating existing policies and procedures (already a requirement for annual or biennial renewals) and the only cost to small businesses would be updating their websites to comply with this legislation.

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

The consolidated content will not result in any impact because it simply moves existing rules to one central location.

The medical cannabis content is a voluntary permission that non-small businesses can elect to participate in. Any costs incurred are not mandatory.

The visitation policy requires updating existing policies and procedures (already a requirement for annual or biannual renewals) and the only cost to non-small businesses would be updating their websites to comply with this legislation.

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 consolidated content will not result in any impact because it simply moves existing rules to one central location.

The medical cannabis content is a voluntary permission that other persons can elect to participate in. Any costs incurred are not mandatory.

The visitation policy requires updating existing policies and procedures (already a requirement for annual or biannual renewals) and the only cost to other persons would be updating their websites to comply with this legislation.

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

Compliance with visitation policies, Section R432-1-11, requires an update to each provider's website.

The actual cost is inestimable because of the differences in size, governance, and how each health care facility manages their public websites.

The Division of Technology Services calculated the average amount it would take to update an Operational Unit or overall Department website as \$115 per hour, with an estimate that it could take only one or two hours.

The number of health care facilities that need to comply and apply this cost for compliance is 587 that range in size from a small residential care agency to a full hospital.

The Department estimated a cost of \$172.50 for 1.5 hours to update a website. This estimate is only listed in FY 2024, as it is a one-time compliance requirement.

**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.)

iscal Cost	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
₋ocal Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
lon-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Fotal Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
.ocal Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
lon-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
otal Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

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

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this 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	11/14/2023
unt	til:				

9.	This	rule	change	MAY	11/21/2023
bec	ome e				

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

0 3	Tracy S. Gruber, Executive Director	09/28/2023
and title:		

R432. Health and Human Services, Health Care Facility Licensing.

# R432-1. General <u>Licensing Provisions</u>[Health Care Facility Rules].

# R432-1-1. Legal Authority.

This rule is authorized by Section 26B-2-202.

# R432-1-2. Purpose.

The purpose of this rule is to define the standard terms for licensed health care facilities and agencies under Title R432<u>and</u> centralize general licensing requirements in a single rule.

## R432-1-3. Definitions.

(1) Terms used in [this rule]rules under Title R432 are defined in Section 26B-2-201 and Rule R380-600.[-In addition:]

(2) "AWOL" means elopement or absence without leave; an unauthorized departure from the facility.

(3) "Abortion" [is-]means the same as that term is defined in Subsection 76-7-301(1).

(4) "Abuse" [is]means the same as that term is defined in Section 26B-6-201\_[- and includes deprivation of life sustaining treatment, except as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act or when informed consent, as defined in Section 76-5-111, has been obtained.]

(5) "Active Treatment" means the habilitative program of care for an ICF-IID patient as outlined in <u>42 CFR Part 483 (1983)</u>[ the Code of Federal Regulations, Title 42, Chapter IV, Subchapter G, Part 483, Subpart 1, 1988 edition] that addresses:

(a) training in daily living;

- (b) self-help;
- (c) social skills;
- (d) activities;
- (e) recreation;
- (f) appropriate staffing levels;
- (g) special resident programs;
- (h) program evaluation;
- (i) nursing services;
- (j) documented resident surveys, and progress; and
- (k) social services.

(6) "Activities of Daily Living (ADL)" means personal functional activities required by an individual for continued wellbeing, to include eating, nutrition, mobility, dressing, bathing, toileting, and behavior management. ADLs are divided into the following levels:

(a) ["]independent["] means the resident can perform the ADL without help;

(b) ["]assistance["] means the resident can perform some part of an activity, but cannot do it entirely alone; or

(c) ["]dependent["] means the resident cannot perform any part of an activity; it must be done entirely by someone else.

(7) "Administer" means the direct application of a prescription drug or device to the body of a human patient or research subject by another person.

(8) "Affiliation" means a relationship, signified by a written agreement, between two organizations, under the terms that one organization agrees to provide specified services and personnel to meet the needs of the other.

(9) "Agency" means an entity that provides a health care service but does not house or serve patients at the licensed site.

(10) "Agency Action" means an action taken by the department.

(11) "Aftercare" means post-inpatient services designed to help a patient maintain or improve on the gains made during inpatient treatment.

(12) "Aide" includes attendant and means a person employed to assist in ADLs and in the direct personal care of a patient.

(13) "ADASAD" means the Americans with Disability Act Standards for Accessible Design as incorporated by reference in Rule R432-4 and enforced in accordance with the <u>28 CFR Appendix A to</u> <u>Part 36 (2010).[Code of Federal Regulations, Title 28, Part 36 and</u> <u>Title 28, Part 36, Appendix A, July 1993.</u>]

(14) "Ambulatory" means a person capable of achieving mobility sufficient to exit their residence without assistance of another person.

(15) "Annual Report" means a document containing annual statistical information from a licensee.

(16) "Assessment" means a process of observing, testing, and evaluating, a patient to obtain information.

(17) "Bathing Facility" means a bathtub or shower.

(18) "Bed Capacity" means the maximum number of beds that the health care facility is licensed to offer for patient care.

(19) "Behavior Management" means a planned, systematic application of methods and findings of behavioral science with the intent of reducing observable negative behaviors.

(20) "Birthing Room" means a room and environment designed, equipped and arranged to provide for the care of a woman and newborn and to accommodate any designated support person during the process of vaginal birth.

(21) "Branch Location" means a licensed home health, personal care, or hospice agency that is:

(a) administered by a parent agency within the scope of the parent agency's current license; and

(b) is approved by the department as an added location under the parent agency's license.

(2[4]2) "Certificate of Completion" means a document issued by the Utah Board of Education to a person that:

(a) completes an approved course of study not leading to a diploma;

(b) passes a challenge exam for that same course of study; or

(c) has out-of-state credentials and certificate that are acceptable to the board.

(2[2]3) "Certified" means [a licensee that holds a current license issued by the department, and meets the standards established for participation in federally funded programs, including Medicare.]a health care facility that meets the standards set by the Center for Medicare and Medicaid Services (CMS) as compliant through accreditation and the inspection requirements of licensing rule.

(2[3]4) "Certified Nurse Aide" means a nursing assistant that has completed a federally approved training program and proved

competency through testing, thereby [is entitled to]may be employed in a licensed health care facility.

(2[4]5) "Certified Nurse Midwife" means an individual currently licensed to practice by the Utah Department of Commerce under Title 58, Chapter 44a Nurse Midwife Practice Act.

(2[5]6) "Certified Registered Nurse Anesthetist" means a registered nurse currently licensed by the Utah Department of Commerce under Title 58 Chapter 31b Nurse Practice Act.

(2[6]7) "Certified Social Worker" means an individual currently licensed by the Utah Department Commerce under Title 58, Chapter 60 Mental Health Professional Practice Act.

(2[7]8) "Chronic Noncompliance" means a documented violation of the same licensing administrative rule in each of the last three inspections. Inspections may include:

(a) follow-up inspections if the violation is re-cited; or

(b) any inspection that is documented by the department, an accrediting organization or a federal agency.

 $(2[\underline{8}]\underline{9})$  "Clinical Note" means a dated, written notation by a member of the health team that indicates contact with a patient and describes any of the following:

(a) signs and symptoms of dysfunction;

(b) treatment given or medication administered;

(c) the patient's reaction;

(d) changes in physical or emotional condition; or

(e) services provided.

([<del>29</del>]<u>30</u>) "Clinical Staff" means the physicians and certified providers appointed by the governing authority to practice within the health care facility.

(3[0]1) "Consultant" means an individual that provides professional services either upon request, under contract services or on the basis of a prearranged schedule that is not a member of the employed staff of the health care facility and whose services are not provided within the terms of an affiliation agreement.

(3[4]2) "Continuous Noncompliance" means three or more violations of a single licensing rule requirement occurring within a 12-month time period.

 $(3[2]\underline{3})$  "Contract Services" means services purchased by a licensee under a contract with an individual or a provider whose personnel are not salaried employees of the licensee.

(3[3]4) "Control Station" means a nursing station or central office or area for charting, drug preparation, and other patient-care tasks.

(3[4]5) "Critical Care Unit" means a special physical and functional unit for the segregation, concentration and close or continuous nursing observation and care of a patient that is critically, seriously, or acutely ill.

(3[5]6) "Day Treatment" means training and habilitation services delivered outside the patient's place of residence that are intended to aid the vocational, pre-vocational, and self-sufficiency skill development of an ICF-ID patient. These services meet active treatment requirements and are coordinated and integrated with the active treatment program of the health care facility.

(3[6]Z) "Dentist" means a person registered and currently licensed by the Utah Department of Commerce under Title 58, Chapter 69 Dentist and Dental Hygienist Practice Act.

(3[7]8) "Department" means the Utah Department of Health and Human Services.

(39) "Designated Caregiver" means the same as the term is defined in Section 26B-4-201.

([38]40) "Developmental Disability" means a severe, chronic disability that meets each of the following conditions:

(a) is attributable to:

(i) cerebral palsy;

(ii) epilepsy;

(iii) autism; or

(iv) any other condition, other than mental illness, closely related to an intellectual disability that results in impairment of general intellectual functioning adaptive behavior, or requires treatment or services:[-]

(b) is manifested before the person reaches the age of 22;

(c) is likely to continue indefinitely; and

(d) results in substantial functional limitations in three or more of the following areas of major activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; or

(vi) capacity for independent living.

([39]41) "Developmental Period" means the period between conception and the 18th birthday.

([40]42) "Dietitian" means a person certified pursuant to Title 58, Chapter 49 Dietitian Certification Act.

(4[+]3) "Direct Services" means services provided by salaried employees of a health care facility, as opposed to services provided by contract.

 $(4[2]\underline{4})$  "Direct Supervision" means the critical observation and guidance by a qualified person of another person's activities or course of action.

(4[3]5) "Discharge" means the point at which the patient's involvement with a facility is terminated and the licensee no longer maintains active responsibility for the care of the patient.

(4[4]6) "Distinct Part" means a discrete, physically definable entity located within a structure constructed and equipped according to applicable codes that:

(a) provides within the structure, the necessary unique physical facility, equipment, staff, and supplies to deliver any basic service that is offered to and needed for the diagnosis, therapy, and treatment of a patient, and to comply with licensing standards;

(b) provides or arranges for necessary administrative and non-unique, non-clinical, ancillary services including dietary, laundry, housekeeping, business office and medical records; and

(c) protects the rights of a patient including freedom from unwanted intrusion from any [party]person outside the distinct part.

(4[5]7) "Documentation" means written supportive information, records, or references to verify information required by law or rule.

(4[6]8) "Drug History" means identifying all[of the] drugs used by a patient, including prescribed and unprescribed drugs.

(4[7]9) "Emergency" means any situation or event that threatens or poses a threat to the occupants of the health care facility. or prohibits one or more occupants from receiving services normally offered by the licensee, or requires action not normally performed by the staff.

([48]50) "Emotional or psychological abuse" means deliberate conduct that is directed at a person through verbal or nonverbal means and that causes the individual to suffer emotional distress or to fear bodily injury, harm, or restraint.

([49]51) "Environment" means the physical and emotional atmosphere including architectural design, furnishings, color, privacy, and safety, as well as other people.

([50]52) "Executive Director" means the Executive Director of the Utah Department of Health and Human Services.

([51]53) "Facility" means the licensed site where patients may reside and may receive treatment and the construction components under Title R432 apply to the site.

([52]54) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.

([53]55) "Free-standing Urgent Care Center," as distinguished from a private physician's office or emergency room setting, means a health care facility that provides outpatient health care service, on an as-needed basis, without appointment to the public for diagnosis and treatment of medical conditions that do not require hospitalization or emergency intervention for a life-threatening or potentially permanently disabling condition. Diagnostic and therapeutic services provided by a free-standing urgent care center include:

(a) a medical history physical examination;

(b) assessment of health status; and

(c) treatment for a variety of medical conditions offered in a physician's office.

([54]56) "Governing Authority" includes governing body and means the board of trustees, owner, person, or designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the health care facility.

([55]57) "Governmental Unit" means the state, or any county, municipality, or other political subdivision of any department, division, board or other agency of any of the foregoing.

([56]58) "Guardian" means a person legally responsible for the care and management of a person considered by law to be incompetent to manage their own affairs.

([57]59) "Habilitation" means techniques and treatment that actively build and develop new or alternative styles of independent functioning and promote new behavior, resulting in greater self-sufficiency and sense of well-being.

([<del>58</del>]<u>60</u>) "Health Care Facility" is defined in Subsection 26B-2-201(13).

([59]61) "Health Services Supervisor" means a person with a professional medical license or certificate, to include a nurse, social worker, physical therapist, or psychologist, responsible for the development, supervision, and implementation of a written health care plan for each resident.

([<del>60</del>]<u>62</u>) "Homemaker" means a person that cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

([<del>61</del>]<u>63</u>) "Hospitalization" means an inpatient stay of at least 24 hours, or an overnight stay or emergency care, except a stay at a freestanding ambulatory surgical center that meets the requirements of Rule R432-500.

([<del>62</del>]<u>64</u>) "ICD-[**9**]-CM" means the International Classification of Diseases.

([63]65) "ICF-IID" means intermediate care facility for individuals with intellectual disabilities.

([64]66) "Imminent Danger" means a situation or condition that presents a substantial likelihood of death or serious physical or mental harm to a patient or resident in the health care facility.

([65]67) "Inpatient Program" means treatment provided in a suitably equipped setting that provides services to a person that requires care that warrants 24-hour supervision.

([66]68) "Intake" means the administrative and assessment process for admission to a program.

([67]69) "Institute for Mental Disease" means the Medicaid term for any facility, whether or not licensed, of more than 16 beds primarily engaged in providing diagnosis, treatment or care of persons with mental diseases.

([<del>68</del>]<u>70</u>) "Intellectual Disability" means a condition characterized by significant limitations in both intellectual functioning and adaptive behavior that originates before the age of 22.

([<del>69</del>]<u>71</u>) "Interdisciplinary Team" means a group of staff members composed of representatives from different professions, disciplines, or services.

([70]72) "Involuntary Medication" means medication that is prescribed by the physician but not taken willingly by the patient, and is administered in accordance with the applicable categorical rule under Title R432.

([74]73) "Joint Commission (JCAHO)" means the Joint Commission on Accreditation of Healthcare Organizations.

([72]74) "License" means the certificate issued by the Department of Health and Human Services for the operation of the health care facility. This document constitutes the authority to receive patients and residents and to perform the services included within the scope of the rule and as specified on the license.

([73]75) "Licensed Practical Nurse (LPN)" means a person registered and currently licensed by the Utah Department of Commerce under Title 58, Chapter 31b Nurse Practice Act.

([74]<u>76</u>) "Licensed Practitioner" means a health professional currently licensed to diagnose, treat and prescribe within the scope of the license and established protocols.

([75]77) "Licensee" means the person or organization that is granted a license to operate a health care facility and has ultimate authority and responsibility for the operation, management, control, conduct, and functioning of the health care facility

([76]78) "Licensing Agency" means the [Bureau]Office of Licensing of the Utah Department of Health and Human Services.

([77]79) "Licensure" means the process of obtaining official or legal permission to operate a health care facility.

([78]80) "Living Unit" means the area or part of a health care facility where residents live and may include sleeping, dining and other resident activity areas.

([79]81) "Low Risk Maternal Mother" means a woman that is in good general health throughout pregnancy and birth and meets the criteria for low risk birth services as developed by the clinical staff and approved by the governing board and licensing agency for a birthing center.

([80]82) "Maladaptive Behavior" means negative behavior that demonstrates a reduction in, or lack of ability necessary to adjust to environmental demands and is self-injurious, dangerous to others, or environmentally destructive.

(83) "Medical Cannabis Cardholder" means the same as the term is defined in Section 26B-4-201.

([<del>81</del>]<u>84</u>) "Medical Equipment and Supplies" means items used for therapeutic or diagnostic purposes essential for patient care, such as dressings, catheters, or syringes.

([82]85) "Medical Staff" means, the organized body composed of all professional personnel, appointed by the governing body and granted privileges to practice in the health care facility.

([83]86) "Medication" means any drug, chemical compound, suspension, or preparation suitable for internal or external use by persons for the treatment or prevention of disease or injury.

([84]87) "Mental Disease" means any primary diagnosis of mental or substance use disorder listed in the Diagnostic and Statistical Manual (DSM) other than V Codes.

([85]88) "Mobile" means a person can take action for selfpreservation under emergency conditions with the assistance of supportive equipment such as crutches, braces, walkers, or wheelchairs, but without the assistance, except for verbal instructions, from other persons.

 $([\frac{86}{89}])$  "Neglect" means the same as that term is defined in S[ubs]ection 26B-6-201[(10)].

([<del>87</del>]<u>90</u>) "New Construction" means any of the following:
 (a) a new medical or health care facility licensed under [these rules]<u>Title R432;</u>

(b) addition to an existing building; or

(c) alteration or modification, other than strictly repair and maintenance, costing more than \$3,000 or that affects the structure, electrical or mechanical system of a health care facility.

([88]91) "Non-Ambulatory" means unable to walk without assistance of an-other person.

([<del>89</del>]<u>92</u>) "Notice of Agency Action [is]means [defined in Subsection R432-30-2(3)]a written notice meeting the requirements of Subsection 63G-4-201(2) that the department issues to provide notice of a departmental action on a license or begin an adjudicative proceeding.[-and refers to notice of a departmental action on a license.]

([90]93) "Nursing Care" means health care needs assistance provided to a sick or disabled individual, by or under the direction of licensed nursing personnel.

([91]94) "Nursing Home" means any health care facility licensed by the department to provide licensed nursing care and related services to residents that need continuous health care and supervision.

([92]95) "Occupational Therapist" means a person currently licensed by the Utah Department of Commerce under Title 58, Chapter 42a Occupational Therapy Practice Act.

([93]96) "Oral Surgeon" means a person that has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accrediting body approved by the U.S. Office of Education and is currently licensed by the Utah Department of Commerce to practice dentistry.

(97) "Owner" means any person or entity:

(a) responsible for operating a health care facility; or

(b) responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

([94]98) "PRN medication" means medication that is administered as needed. The time of medication administration is determined by the resident's need.

([95]99) "Parent Facility" means any free[-]standing health care facility under a single ownership, and licensed under Section 26B-2-201 except a home health agency. A parent facility includes:

(a) the main structure, wings, or detached buildings where a service within the scope of the license is offered and any detached building used for storage, heating or cooling equipment located on the main grounds and bounded by a city, county or a state street or road, or a property line; and

(b) any structure located outside the main facility grounds connected to the main facility by a heating or cooling system or by a covered walkway where a service is provided within the scope of the license.

([96]100) "Patient" means a resident, client or person receiving care and needed services in a health care facility.

([97]101) "Patient Care Plan" means an integrated plan of care developed for the patient in accordance with the applicable categorical rule under Title R432.

([<del>98</del>]<u>102</u>) "Pediatric Patients" means infants, children, adolescents, and young adults up to the age of 18.

([99]103) "Personal Care" means assistance provided to residents in ADLs.

 $(10[\theta]\underline{4})$  "Personal Care Aide" means a person that assists patients or residents in the activities of daily living and emergency first aid[ $\frac{1}{2}$ ] and may be supervised by a licensed nurse.

(10[+]5) "Personal Resource Funds" means funds received by a patient from a variety of sources, that the patient may spend as needed or desired.

(10[2]6) "Personnel" means any individual in training or employed by the health care facility.

(10[3]<u>7</u>) "Pharmacist" means a person currently licensed by the Utah Department of Commerce to practice pharmacology pursuant to Title 58, Chapter 17b Pharmacy Practice Act.

(10[4]<u>8</u>) "Physical Therapist" means a person currently licensed by the Utah Department of Commerce to practice under Title 58, Chapter 24b Physical Therapy Practice Act.

(10[5]2) "Physician" means a person currently licensed to practice medicine and surgery by the Utah Department of Commerce under Section 58-67-301, the Utah Medical Practice Act, or Section 58-68-301, Utah Osteopathic Medical Practice Act, or a physician in the employment of the government of the United States that is similarly qualified.

(1[06]10) "Place of Residence" means the place a patient makes their home. This may be a house, an apartment, a relative's home, housing for the elderly, a retirement home, an assisted living facility, or a place other than a health care facility that provides continuous nursing care.

(1[07]]11) "Plan of Care" is also considered a ["]plan of treatment and means a written plan based on assessment data or physician orders that:

(a) identifies the patient's needs;

(b) determines who shall provide needed services and how often;

(c) identifies treatment goals; and

(d) lists anticipated outcomes.

(1[<del>08</del>]<u>12</u>) "Podiatrist" means a person registered and currently licensed by the Utah Department of Commerce under Title 58, Chapter 5a Podiatric Physician Licensing Act.

(1[09]]13) "Policies and Procedures" means a set of rules adopted by the governing body to govern the licensee's operation.

(1[40]14) "Practitioner" means a registered nurse with advanced or specialized training and is licensed by Utah Department of Commerce, Title 58, Chapter 31b Nurse Practice Act.

(11[1]5) "Prognosis" means a statement given as:

(a) the likelihood of an individual achieving stated goals;

(b) the degree of independence likely to be achieved; or

(c) the length of time to achieve goals.

(11[2]6) "Program" means an organized system of services designed to address the treatment needs of the patient.

(117) "Program Narrative" means the levels of service to be offered and the specific patient population to be served.

(11[3]8) "Protected Living Arrangement" means providing food, shelter, sleeping accommodations, and supervision of ADLs for a person of any age that cannot independently maintain these basic needs and functions.

(11[4]9) "Provider" means a supplier of goods or services.

 $(1[\frac{1+5}{20}])$  "Public Agency" means an agency operated by a state or local government.

(1[46]21) "Public Health Center" means a publicly owned facility for providing public health services, including its laboratories, clinics, and administrative offices.

(1[47]22) "Qualified Intellectual Disabilities Professional (QIDP)" means a person that has specialized training or one year of experience in treating or working with individuals with intellectual disabilities including any of the following:

(a) psychologist with a master's degree from an accredited program;

(b) licensed physician;

(c) educator with a bachelor's degree in education from an accredited program;

(d) social worker with a bachelor's degree in social work from an accredited program or a field other than social work and at least three years of social work experience under the supervision of a qualified social worker;

(e) licensed physical or occupational therapist;

(f) licensed speech pathologist or audiologist;

(g) registered nurse;

(h) therapeutic recreation specialist that is a graduate of an accredited program and is licensed to perform recreational therapy under Title 58, Chapter 40 Recreational Therapy Practice Act; or

(i) rehabilitation counselor certified by the Committee on Rehabilitation Counselor Certification.

(1[48]23) "Quality of Care" means standard of patient treatment, including medical or nursing care as well as restorative therapies.

(1[49]24) "Quality of Life" means how a patient experiences the state of existing and functioning in the facility environment, and is related to the human and humane processes involved in normal human functioning, including rights and freedoms.

 $(12[\theta]5)$  "Recovery," for birthing centers, means that period[-of time] starting at birth and ending with the discharge of a client from the birthing center, or the period[-of time] between the birth and the time a mother leaves the premises of the birthing center.

(12[4]6) "Recreational Therapist" means any person currently licensed to perform recreational therapy under Title 58, Chapter 40 Recreational Therapy Practice Act.

 $(12[2]\underline{7})$  "Referred Outpatient" means a person that receives diagnostic tests or examinations by the hospital's legally authorized health care practitioner, but receives medical diagnosis, treatment or other health care services from outside the hospital based upon the hospital practitioner's reported findings and results.

(12[3]8) "Refurbish" means to clean or otherwise change the appearance without making significant changes in the existing physical structure of a facility.

(12[4]9) "Registered Nurse" means any person registered and currently licensed by the Utah Department of Commerce to practice as a registered nurse under Title 58, Chapter 31b Nurse Practice Act.

([25]130) "Rehabilitation" means a program of care designed to restore a patient to a former capacity.

(1[26]31) "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even if the marriage has been terminated by death or dissolution.

(1[27]32) "Remodel" means to reconstruct or to make significant changes in the existing physical structure of a facility.

(1[28]33) "Representative" means a person employed by the department.

(1[29]34) "Request for Agency Action" means[is defined in Subsection R432-30-2(4). A request for agency action may also be referred to as a request for hearing and additionally means] any clear expression in writing by a licensee requesting the department to take an action or requesting an opportunity to appeal a department action.

 $(13[\Theta]5)$  "Resident Living" means residential services provided by an ICF-ID health care facility.

(13[4]6) "Responsible Person" means an individual, relative, or close friend designated in writing by the resident, or a court-appointed guardian or person with durable power of attorney, that assists the resident and assumes responsibility for the resident's well-being and for any care not provided by the licensee.

(13[2]] "Restrictive Procedures" means a class of procedures designed to reduce or eliminate maladaptive behaviors including:

(a) restricting an individual's movement;

(b) restricting an individual's ability to obtain positive reinforcement; and

(c) restricting an individual's ability to participate in programs.

(13[3]8) "Safety Device" means a protective device used to offer protection from inadvertent acts, including falling out of bed as well as deliberate acts, including removing a nasogastric tube.

(139) "Satellite Operation" means a health care treatment service that:

(a) is administered by a parent facility licensee within the scope of the parent facility licensee's license:

(b) is located further than 250 yards from the licensed parent facility or other areas determined by the department to be a part of the licensee's campus;

(c) is identified as a remote services;

(d) does not qualify for licensing under Section 26B-2-201; and

(e) is approved by the department for inclusion under the parent facility's license.

(1[34]40) "Seclusion" means a procedure that isolates the patient in a specific room or designated area to temporarily remove the patient from the therapeutic community and reduce external stimuli.

(1[35]41) "Self Administration of Medication" means when a resident is[t] aware of the medication type, dosage and frequency of administration, they are permitted to independently remove an individual dose from a properly labeled container and take that medication.

(1[36]42) "Service Delivery Area" means any area in the health care facility <u>including the kitchen or patient care services</u> delivery area that includes patient rooms, corridors and adjacent areas where a specific service or group of services is organized, performed or carried out.[-For example the dietary services area includes the kitchen; patient care services delivery area includes patient rooms, corridors, and adjacent areas.]

(1[37]43) "Service Pattern" means a continuum of medical and psychological needs expressed as a type and used in evaluation for appropriate placement and treatment purposes.

(1[38]44) "Social Service Worker (SSW)" means a person currently licensed by the Utah Department of Commerce to function as a social service worker under Title 58, Chapter 60 Mental Health Professional Practice Act.

(1[39]45) "Specialty Hospital" means a hospital licensee that provides specialized diagnostic, therapeutic, or rehabilitative

services in the recognized specialty or specialties for which the hospital is licensed.

 $(14[\theta]6)$  "Speech-Language Pathologist" means a person currently licensed by the Utah Department of Commerce to practice speech-language pathology pursuant to Title 58, Chapter 41 Speech-Language Pathology and Audiology Licensing Act.

(14[4]<u>7</u>) "Substantial Noncompliance" means any occurrence of [a Class I violation, or the occurrence of one or more Class II violations, as defined in Rule R432.3, resulting in ]continuous noncompliance, or chronic noncompliance with one or more rule requirements in the administrative rules specific to the health care facility licensure category.

(14[2]8) "Summary Report" means a compilation of pertinent facts from the clinical notes regarding a patient, submitted to the patient's physician as part of a plan of treatment.

(14[3]9) "Supervision" means guidance of another person by a qualified person to assure that a service, function, or activity is provided within the scope of a license, certificate, job description, or instructions.

(1[44]50) "Support Person" means the individual selected or chosen by a mother to provide emotional support and to assist her during the process of labor and childbirth.

(1[45]51) "Surgeon General" means the surgeon general of the United States public health service.

(1[46]52) "Therapist" means a professionally trained, licensed or registered person including a physical therapist, occupational therapist, or speech therapist skilled in applying treatment techniques and procedures under the general direction of a physician.

(1[47]53) "Training and Habilitation Services" means services intended to improve or aid the intellectual, sensorimotor, and emotional development of a patient or resident.

# R432-1-4. Identification Badges.

(1) A licensee shall ensure that the following individuals wear an identification badge:

(a) any employee who provides direct care to a patient; and(b) any volunteer.

(2) The identification badge shall include the following information:

(a) the person's first or last name; and

(b) the person's title or position, in terms generally understood by the public.

# R432-1-5. Distinct Part.

(1) A licensee that seeks to offer services outside the scope of their license, except for federally recognized swing bed units, shall submit a program narrative defining the levels of service to be offered and the specific patient population to be served.

(2) If the program meets the definition of a distinct part entity the program shall obtain a separate license.

# **R432-1-6.** Requirements for a Satellite Service Operation.

(1) A licensee that seeks to offer a satellite operation shall submit a program narrative and one set of construction documents that outline the following:

(a) street address of the remote facility;

(b) capacity of the remote facility;

(c) license category of the parent facility;

(d) service authorized under the parent facility license that will be provided at the remote facility;

(e) ancillary administrative and support services to be provided at the remote facility; and

(f) international building code occupancy classification of the remote facility physical structure.

(2) Upon receipt of the satellite service program narrative and construction drawings, the department shall determine the applicable licensing requirements including the need for licensing the service.

(3) The licensee shall prove the following through the narrative and construction documents for department verification:

(a) there is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;

(b) the remote facility physical structure is compliant with all construction codes appropriate for the service provided; and

(c) any necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to ensure the health, safety, and welfare of the clients.

(3)(a) The department shall issue a separate license to a satellite service center of a licensed parent facility if it qualifies as a single satellite service treatment center.

(b) The satellite service licensee shall comply with this rule and Rule R380-600.

(4) A parent facility that seeks to offer more than one health care service at the same remote site shall either:

(a) obtain a satellite service license for each service offered; or

(b) obtain a license for the remote complex as a freestanding health care facility.

(5) A licensed hospital is limited to one emergency department satellite location.

(6) If a healthcare corporation owns and operates more than one hospital in the state, it:

(a) may have up to two emergency department satellite locations associated with a licensed hospital; and

(b) the health care corporation's total number of emergency department satellite locations may not exceed the total number of licensed hospitals it owns and operates in the state.

# **R432-1-7.** Requirements for a Branch Location.

(1) An applicant for a branch location license shall submit a program narrative for department review that includes:

(a) street address of the parent agency and branch location; (b) license category of the parent facility;

(c) service authorized under the parent agency license that will be provided at the branch location; and

(d) ancillary administrative and support services to be provided at the branch location.

(2) Upon receipt of the branch location program narrative, the department shall determine the applicable licensing requirements including the need for licensing the service based on the following:

(a) the service provided at the remote site falls within the scope of the parent agency license; and

(b) all necessary administrative and support services are available, on a continuous basis during the hours of operation, to ensure the health, safety, and welfare of the clients.

(3)(a) The department shall issue a separate license identifying the agency as a branch location of the licensed parent agency if a location qualifies as a branch location.

(b) The licensee is subject to the requirements outlined in this rule.

# **R432-1-8.** Applications for License Actions.

(1) An applicant for a license shall file a request for agency review or license application with the department on a form, or format furnished by the department.

(2) An applicant shall comply with any zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located.

(3) An applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) a certificate of fire clearance from the state fire marshal or designated local fire authority certifying compliance with local and state fire codes for:

(i) initial application;

(ii) renewal application;

(iii) change of ownership; and

(iv) any time new construction or remodeling has occurred; (b) a food services sanitation clearance report by a local health department providing food service at;

(c) initial application;

(d) upon a change of ownership; and

(e) certificate of occupancy from the local building official for:

(i) initial application;

(ii) change of location; and

(iii) at the time of any new construction or substantial remodeling.

(4) An applicant shall submit contact information for the ownership of the legal entity including the names, phone numbers, email addresses and mailing addresses and the following written assurances that none of the listed individuals have:

(a) been convicted of a felony;

(b) been found in violation of any local, state, or federal law that arises from or is otherwise related to the individual's relationship to a health care facility;

(c) been convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse; and

(d) currently, or within the five years before the date of application, had financial interest in a licensed health care facility that has been:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation; or

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs.

# R432-1-9. Certified Status.

(1) The department may accept certification of a health care facility that is accredited by a federally approved accreditation agency to meet the licensing inspection requirements.

(2) A certified health care facility licensee in good standing with department and federal accreditation rules and standards may be exempt from the department annual licensing inspection process.

(3) The department may attend any accrediting agency exit conference.

(4) Regardless of certified status, the department may:

(a) perform inspections;

(b) conduct complaint investigations; and

(c) verify compliance with state laws, rules, or standards identified in a department or accrediting body survey including:

(i) monitoring any correction any health care facility licensee granted a provisional or conditional accreditation by the accreditation agencies until a full accreditation status is achieved;

(ii) any licensee that does not have a current, valid accreditation certificate;

(iii) monitoring any plan of correction not completed within the specified time frames; and

(iv) any construction, expansion, or remodeling projects required to comply with standards for construction in rules under Title R432.

(5) The department may conduct an annual validation inspection of an accredited health care facility to determine compliance with state licensing requirements. If a validation survey discloses a failure to comply with licensing rules, the exemption listed in Subsection R432-1-10(2) shall no longer apply.

# R432-1-10. Visitation Policies.

(1) A licensee shall post visitation policies and procedures on the facility website.

(2) A licensee shall submit the visitation policies and procedures to the department with content compliant with Section 26B-2-242.

(3) The department enforces the requirements of Section 26B-2-242 and accepts concerns regarding compliance with any licensing requirement on the Division of Licensing and Background Processing website: www.dlbc.utah.gov.

# R432-1-11. Medical Cannabis Designated Caregiver.

(1) An assisted living facility, nursing care facility or general acute hospital employee may become a designated caregiver for a patient or resident in accordance with Section 26B-4-214.

(2) If a licensee listed in Subsection R432-1-12(1) designates one or more individuals as a patient or resident designated caregiver, the licensee shall develop and enforce policies and procedures that outline:

(a) rules for patient or resident medical cannabis use in the facility;

(b) responsibilities of the designated employee regarding receipt, documentation and administration of the medical cannabis; and

(c) storage and access to medical cannabis.

(3) A licensee that employs a designated caregiver shall maintain a current list of the designation assignments to provide to the department upon request.

(4) A licensee shall notify prospective patients or residents and their responsible person regarding the facility's designated caregiver policy for any patient or resident who requests:

(a) to possess medical cannabis;

(b) to have medical cannabis administered; or

(c) for the facility to receive medical cannabis in a shipment.

# R432-1-12. Penalties.

Any person found in noncompliance with any provision of this rule may be subject to the penalties enumerated in Section 26B-2-208 and Rule R380-600.

KEY: health care facilities

Date of Last Change: [July 6,] 2023

Notice of Continuation: January 26, 2023

Authorizing, and Implemented or Interpreted Law: 26B-2-202

\$0

\$0

FY2026

\$0

\$0

FY2025

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal			
Rule or Section Number:	R432-2	Filing ID: 55816	

# **Agency Information**

J				
1. Department:	Health a	Health and Human Services		
Agency:	Health Care Facility Licensing			
Building:	MASOB			
Street address:	195 N 1950 W			
City, state and zip:	Salt Lake City, UT 84116			
Contact persons:	Contact persons:			
Name:	Phone:	Email:		
Janice Weinman	385- 321- 5586	jweinman@utah.gov		

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

# **General Information**

# 2. Rule or section catchline:

R432-2. General Licensing Provisions

# 3. Purpose of the new rule or reason for the

This repeal is being filed because the general p content that applies to rules under Title R432 added to Rules R380-600 and R432-1.

Rule R380-600 will govern all the Division of Licer Background Checks (DLBC) processes and licen Rule R432-1 will be the new Health Care Facility Provisions.

# 4. Summary of the new rule or change:

This rule is repealed in its entirety and will eli duplicative rule and redistribute into centraliz reflective of DLBC's processes.

(EDITOR'S NOTE: The proposed amendment R432-1 (ID 55819) and the proposed new Rule F (ID 55818) are in this issue, October 15, 202 Bulletin.)

# **Fiscal Information**

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

# A) State budget:

This repeal will have no impact on state budget, as it is redistributed into other rules more reflective of DLBC's processes.

		B) Local gov	ernments:			
				act on local go lles more reflec	vernments, as tive of DLBC's	
			b <b>usinesses</b> ( loying 1-49 per	"small busine rsons):	ss" means a	
					sinesses, as it tive of DLBC's	
				("non-small bu more persons):	siness" means	
			ributed into of	act on non-sma ther rules mor	all businesses, e reflective of	
on		<b>businesses,</b> ("person" mea association, g	<b>state, or l</b> o ans any individ governmental	nall business ocal governn ual, partnershi entity, or pub r other than an	nent entities p, corporation, lic or private	
					r persons, as it tive of DLBC's	
ange:       F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):						
peing g and		This repeal will have no impact on affected persons, as it is redistributed into other rules more reflective of DLBC's processes.				
s and neral		includes fiscal are inestimabl	impacts that e fiscal impact nestimable im	could be meas s, they will not	This table only sured. If there be included in included in	
ate a rules		Regulatory In				
		Fiscal Cost	FY2024	FY2025	FY2026	
Rule -600 f the		State Government	\$0	\$0	\$0	
		Local Governments	\$0	\$0	\$0	
		Small Businesses	\$0	\$0	\$0	
<b>;</b>		Non-Small Businesses	\$0	\$0	\$0	
		011	<b>AO</b>	0	<b>AO</b>	

Other

Cost

Fiscal

Benefits

Persons

Total Fiscal \$0

\$0

FY2024

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

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

The Executive Director of the Department of Health and Human Services, Tracy S. Gruber, has reviewed and approved this 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 11/14/2023 until:

9. This rule change MAY 11/21/2023 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:	09/27/2023
or designee	Executive Director		
and title:			

R432. Health and Human Services, Health Care Facility Licensing.

[R432-2. General Licensing Provisions.

R432-2-1. Legal Authority.

This rule is authorized by Section 26B-2-202.

## R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies shall follow to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the department in accordance with Section 26B-2-206.

#### R432-2-3. Definitions.

The definitions of this section supplement the definitions listed in Rule R432-1.

(1) "Branch Location" means a licensed home health, personal care or hospice agency location which is:

(a) administered by a parent agency within the scope of the parent agency's current license; and

(b) is approved by the department as a branch location under the parent agency's license.

(2) "Conditional License" means a remedial license issued to a licensee if there is a determination by the department of:

(a) substandard quality of care;

(b) immediate jeopardy;

(c) a pattern of violations which would result in a ban on admissions at the facility; or

(d) if the licensee is found to have:

(i) a class I violation or a class II violation, as outlined in Rule R432-3, that remains uncorrected after the specified time for correction:

 (ii) more than three cited repeat class I or II violations from the previous survey; or

(iii) fails to fully comply with administrative requirements for licensing.

(3) "Owner" means any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(4) "Provisional License" means an initial license issued to an applicant for a probationary period of six months upon the department's determination that the facility has the potential to provide services and be in full compliance with licensing rules during the six-month period.

(5) "Remote" means the location of a prospective satellite or branch service before gaining approval from the department to operate.

(6) "Satellite Operation" means a health care treatment service that:

(a) is administered by a parent facility licensee within the scope of the parent facility licensee's current license;

 (b) is located further than 250 yards from the licensed parent facility or other areas determined by the department to be a part of the provider's campus;

 (c) does not qualify for licensing under Section 26B-2-201; and

(d) is approved by the department for inclusion under the parent facility's license and identified as a remote service.

(7) "Standard License" means a license issued to a licensee if:

(a) the licensee meets the conditions attached to a provisional or conditional license;

(b) the licensee corrects any identified rule violations; or
 (c) the licensee completes each licensing renewal requirement as outlined in Rule R432-2.

# R432-2-4. Exempt Facilities.

Entities identified in Section 26B-2-205 are exempt from licensure.

#### R432-2-5. Distinct Part.

A licensee that seeks to offer services outside the scope of their license, with the exception of federally recognized swing bed units, shall submit a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined, by the department to require a license, the licensee shall meet the definition of a distinct part entity, as defined in Rule R432-1, and all applicable codes and standards and obtain a separate license.

#### R432-2-6. Requirements for a Satellite Service Operation.

(1) A licensee that seeks to offer a satellite operation shall submit a program narrative and one set of construction drawings for department review. The licensee shall ensure that the program narrative defines the following:

(a) street address of the remote facility;

(b) capacity of the remote facility;

(c) license category of the parent facility;

 (d) service authorized under the parent facility license that will be provided at the remote facility;

(e) ancillary administrative and support services to be provided at the remote facility; and

(f) international building code occupancy classification of the remote facility physical structure.

(2) Upon receipt of the satellite service program narrative and construction drawings, the department shall make a determination of the applicable licensing requirements including the need for licensing the service. The following items are required for department verification:

 (a) there is only a single health care treatment service provided at the remotesite and that it falls within the scope of the parent facility license;

(b) the remote facility physical structure is compliant with all construction codes appropriate for the service provided; and

(c) all necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to ensure the health, safety, and welfare of the clients.

(3) If a licensee qualifies as a single satellite service treatment center, the department shall issue a separate license identifying the facility as a satellite service of the licensed parent facility. This license shall be subject to all requirements set forth in this rule.

(4) A parent facility that seeks to offer more than one health eare service at the same remote site shall either:

(a) obtain a satellite service license for each service offered; or

 (b) obtain a license for the remote complex as a freestanding health care facility.

(5) A licensed hospital is limited to one emergency department satellite location. If a healthcare corporation owns and operates more than one hospital in the state:

 (a) it may have up to two emergency department satellite locations associated with a licensed hospital; and (b) the health care corporation's total number of emergency department satellite locations may not exceed the total number of licensed hospitals it owns and operates in the state.

#### R432-2-7. Requirements for a Branch Location.

(1) An applicant for a branch location license shall submit a narrative of the program for department review. The applicant shall include the following in the program narrative:

(a) street address of the parent agency and branch location; (b) license category of the parent facility;

(c) service authorized under the parent agency license that will be provided at the branch location; and

(d) ancillary administrative and support services to be provided at the branch location.

(2) Upon receipt of the branch location program narrative, the department shall make a determination of the applicable licensing requirements including the need for licensing the service. The following items are required for department verification:

(a) the service provided at the remote site falls within the scope of the parent agency license; and

(b) all necessary administrative and support services are available, on a continuous basis during the hours of operation, to ensure the health, safety, and welfare of the clients.

(3) If a location qualifies as a branch location the department shall issue a separate license identifying the agency as a branch location of the licensed parent agency. This license shall be subject to all requirements set forth in this rule.

#### R432-2-8. Applications for License Actions.

(1) An applicant for a license shall file a request for agency action or license application with the department on a form, or format furnished by the department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

 (a) A certificate of fire clearance from the state fire marshal or designated local fire authority certifying compliance with local and state fire codes for:

(i) initial application;

(ii) renewal application;

(iii) change of ownership; and

 (iv) any time new construction or remodeling has occurred;
 (b) A satisfactory food services sanitation clearance report by a local health department is required for each applicant providing food service at initial application and upon a change of ownership; and

 (c) certificate of occupancy from the local building official for:

(i) initial application;

(ii) change of location; or

(iii) at the time of any new construction or substantial remodeling.

(3) The applicant shall submit contact information for the ownership of the legal entity including the names, phone numbers, email addresses and mailing addresses and the following written assurances regarding each of the listed individuals:

(a) none have been convicted of a felony;

(b) none have been found in violation of any local, state, or federal law that arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) none have currently, or within the five years before the date of application, had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

 (iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

#### R432-2-9. License Fee.

In accordance with Section 26B-2-202, the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the department upon request.

# R432-2-10. Additional Information.

 (1) The licensee may be required to submit additional information to the department upon request.

(2) Information the department may require includes:

(a) architectural plans and a description of the functional program;

(b) policy and procedure manuals;

(c) verification of individual licenses, registrations or certification required by the Utah Department of Commerce;

 (d) data reports including the submission of the annual report at the departments request; and

 (e) documentation that enough assets are available to provide services, staff, utilities, food supplies, and laundry for at least a two-month period.

#### R432-2-11. Initial License Issuance or Denial.

(1) The department shall issue a decision on an initial license application within 60 days of receipt of a completed application packet.

(2) Upon verification of compliance with licensing requirements the department shall issue a provisional license.

(3) The department shall issue a written notice of agency decision under the procedures for adjudicative proceedings, in accordance with Rule R432-30, denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in Section R432-2-8.

(5) The department shall assess an administrative fee on any denied license application. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

# R432-2-12. License Contents and Provisions.

(1) The license shall document the following:

(a) the name of the health facility;

(b) licensee;

(c) type of facility;

 (d) approved licensed capacity including identification of operational and secure unit beds;

(e) street address of the facility;

tate, (f) issue and expiration date of license;

(g) construction variance information; and

(h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the department.

(4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

#### R432-2-13. Expiration and Renewal.

(1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under Subsection (2) or (4) of this section.

(2) If a licensee is operating under a conditional license for a period extending beyond the expiration date of the current license, the licensee shall adhere to any new expiration date established by the office.

(3) The licensee shall submit the following items 15 days before the current license expires:

(a) a request for agency action or license application form;
 (b) applicable fees;

(c) applicable clearances; and

(d) the annual report for the previous calendar year, if required by the department under Section R432-2-10.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the department.

(5) The department shall renew a standard license upon verification that the licensee and facility are compliant with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

#### R432-2-14. New License Required.

(1) A prospective licensee shall submit a request for agency action or license application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

(a) occupancy of a new facility;

(b) change of ownership; or

(c) change in license category.

(2) Before the department may issue a change of ownership license, the applicant shall provide documentation that:

 (a) any patient care records; personnel records, staffing schedules, quality assurance committee minutes, in service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee;

 (b) the existing policy and procedures manual or a new manual has been adopted by the facility governing body before change of ownership occurs;

 (c) any new contract for professional or other services not provided directly by the licensee have been secured;

(d) new transfer agreements have been drafted and signed;
 (e) written documentation exists of clear ownership or lease of the facility by the new owner;

(f) the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner; and (g) nursing care and small health care licensees shall provide a certificate from the Division of Medicaid and Health Financing's Bureau of Financial Services noting the current owner has no outstanding payments owed to the division.

(3) The applicant is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the department, is submitted by the prospective licensee before the change of ownership becomes effective.

(4) If a license is issued to the new owner, the previous licensee shall return their license to the department within five days of the new owner's receipt of the license.

#### R432-2-15. Change in Licensing Status.

 (1) A licensee shall submit a request for agency action or license application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

 (a) increase or decrease of licensed capacity;

(b) change in name of facility;

(c) occupancy of a replacement facility;

(d) change of license classification; or

(e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed eapacity according to the license fee schedule.

#### R432-2-16. Facility Ceases Operation.

 (1) A licensee that voluntarily ceases operation shall complete the following:

(a) notify the department and the patients or their next of kin or legal guardian, as applicable, at least 30 days before the effective date of closure:

(b) ensure safe keeping of records:

 (c) return all patients funds and valuables at the time of discharge; and

 (d) return the license to the department within five days after the facility ceases operation.

(2) If the department revokes a license or if it issues an emergency closure order, the licensee shall document the following:

 (a) the location and date of discharge for each resident;

(b) the date that notice and assistance with placement was provided to each resident and responsible party; and

(c) the date and time that the licensee complied with the elosure order.

#### R432-2-17. Provisional License.

(1) A provisional license is nonrenewable.

(2) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

#### R432-2-18. Conditional License.

 (1) A standard license is revoked by the issuance of a conditional license.

(2) The department may not issue a conditional license after the expiration of a provisional license.

(3) In granting a conditional license, the licensee shall provide assurance to the department that the lack of full compliance does not harm the health, safety, and welfare of the patients. (4) The department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(5) The department shall set conditions whereby the licensee shall comply with an accepted plan of correction.

(6) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

# R432-2-19. Variances.

 (1) A licensee may submit a request for agency action to obtain a variance from state rules.

 (a) An applicant requesting a variance shall file a request for agency action or license application with the department on forms or format furnished by the department.

 (b) The department may require additional information from the facility before acting on the request.

(c) The department may take up to 60 days to issue a determination on a variance request.

(2) A variance may be renewable or non-renewable, as indicated by the department on the variance form. The licensee shall provide a copy of the approved variance to any interested party upon request.

(a) Only upon agreement between the department and the facility, the terms of a variance request may be modified.

(b) The department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(c) The department may limit the duration of any variance.
 (3) The department shall issue a written notice of the reason for an agency decision denying a variance upon determination that the variance is not justified or adversely affects the health, safety, or welfare of the residents.

(4) The department may revoke a variance if:

 (a) the variance adversely affects the health, safety, or welfare of the residents;

(b) the licensee fails to comply with the conditions of the variance as granted;

 (c) the licensee notifies the department in writing that they wish to relinquish the variance and be subject to the rule previously varied; or

(d) there is a change in the statute, regulations, or rules.

#### R432-2-20. Change in Ownership.

(1) The owner of the health care facility is not required to own the real property or building where the facility operates.

(2) A property owner is is considered an owner if they:

 (a) retain the right or participate in the operation or business decisions of the enterprise;

 (b) have engaged the services of a management company to operate the facility; or

(c) take over the operation of the facility.

(3) A licensed provider whose ownership or controlling ownership interest has changed shall submit a request for agency action or license application and fees to the department 30 days before the proposed change.

(1) A change in ownership that requires action includes any arrangement that:

 (a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;
 (b) removes, adds, or substitutes an owner or part owner; (c) in the case of an incorporated owner:

(i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20% or more from the board of the original licensee; or

(ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20% or more from the board of the original licensee.

(5) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.

(6) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

# **KEY: health care facilities**

Date of Last Change: July 26, 2023

Notice of Continuation: January 23, 2023

Authorizing, and Implemented or Interpreted Law: 26B-2-202]

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal			
Rule or Section Number:	R432-3	Filing ID: 55817	

# Agency Information

1. Department:	Health and Human Services			
Agency:	Health C	Health Care Facility Licensing		
Building:	MASOB	MASOB		
Street address:	195 N 1	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		

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

# **General Information**

# 2. Rule or section catchline:

R432-3. General Health Care Facility Rules Inspection and Enforcement

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

This repeal is being filed because the general provisions content that applies to rules under Title R432 is being added to Rules R380-600 and R432-1.

Rule R380-600 will govern all the Division of Licensing and Background Checks (DLBC) processes and licensees and Rule R432-1 will be the new Health Care Facility General Provisions. Additional content governing nursing facilities is being moved to Rule R432-150.

# 4. Summary of the new rule or change:

This rule is repealed in its entirety and will eliminate a duplicative rule and redistribute into centralized rules reflective of DLBC's processes.

(EDITOR'S NOTE: The proposed amendment to Rule R432-1 (ID 55819) and the proposed new Rule R380-600 (ID 55818) are in this issue, October 15, 2023, of the Bulletin.)

# **Fiscal Information**

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

# A) State budget:

This repeal will have no impact on state budget, as it is redistributed into other rules more reflective of DLBC's processes.

# B) Local governments:

This repeal will have no impact on local governments, as it is redistributed into other rules more reflective of DLBC's processes.

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

This repeal will have no impact on small businesses, as it is redistributed into other rules more reflective of DLBC's processes.

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

This repeal will have no impact on non-small businesses, as it is redistributed into other rules more reflective of DLBC's processes.

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 repeal will have no impact on any other persons, as it is redistributed into other rules more reflective of DLBC's processes.

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

This repeal will have no impact on affected persons, as it is redistributed into other rules more reflective of DLBC's processes. **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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1.4.....

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 S. 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	11/14/2023
unti	l:				

# 9. This rule change MAY 11/21/2023 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:	09/27/2023
or designee	Executive Director		
and title:			

R432. Health and Human Services, Family Health and Preparedness, Licensing.

[R432-3. General Health Care Facility Rules Inspection and Enforcement.

R432-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

# R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and the licensing agency in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities and agencies regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

#### R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by Federally approved accreditation agencies in licu of the licensing inspection by the Department upon completion of the following by the facility or agency:

 (1) As part of the license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

 (a) initiate deemed status,

(b) continue deemed status, or

(c) relinquish deemed status during the licensing year of application.

(2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

(a) accreditation certificate;

(b) survey reports and recommendations;

 (c) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

(a) inspections,

(b) complaint investigations,

(c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including: (i) facilities or agencies granted a provisional or conditional accreditation by the accreditation agencies until a full accreditation status is achieved,

(ii) any facility or agency that does not have a current, valid accreditation certificate, or

(iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular inspections shall apply.

#### R432-3-4. Access for Inspections.

(1) The Department or its designee may, upon presentation of proper identification, inspect each licensed health care facility or agency as necessary to determine compliance with applicable laws, rules and federal regulations.

(2) Each licensed health care facility or agency must:

 (a) allow authorized representatives of the Department immediate access to the facility or agency, including access to all staff and patients; and

(b) make available and permit photocopying of facility records and documents by, or on behalf of, the Department as necessary to ascertain compliance with applicable laws, rules and federal regulations. Copies become the responsibility and property of the Department.

#### R432-3-5. Statement of Findings.

(1) Whenever the Department has reason to believe that a health facility or agency is in violation of Title 26, Chapter 21 or any of the rules promulgated by the Health Facility Committee, the Department shall serve a written Statement of Findings to the licensee or his designee within the following timeframe.

(a) Statements for Class I are served immediately.

 (b) Statements for Class II violations are served within ten working days.

(2) Violations shall be classified as Class I or Class II violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(3) The Department may cite a facility or agency with one or more rule or statute violations. If the Department finds that there are no violations, a letter shall be sent to the facility acknowledging the inspection findings.

(4) The Statement of Findings shall include:

(a) the statute or rule violated;

(b) a description of the violation;

(c) the facts which constitute the violation; and

(d) the classification of the violation.

#### R432-3-6. Plan of Correction.

(1) A health facility or agency shall submit within 14 calendar days of receipt of a Statement of Findings a Plan of Correction outlining the following:

(a) how the required corrections shall be accomplished;
 (b) who is the responsible person to monitor the correction

is accomplished; and

(c) the date the facility or agency will correct the violation.
 (2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the Plan of Correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility or agency of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. If the Department requests a revised Plan of Correction, the facility or agency shall submit the revised Plan of Correction within 14 days of receipt of the Department request.

(4) If the facility or agency corrects the violation prior to submitting the Plan of Correction, the facility or agency shall submit a report of correction.

(5) If violations remain uncorrected after the time specified for completion in the Plan of Correction or if the facility or agency fails to submit a Plan of Correction as specified, the Department shall notify the facility or agency.

 (6) Any person aggrieved by the agency action shall have the right to seek review under the provisions outlined in Rule R432-30, Adjudicative Proceedings.

(7) If a licensed health facility or agency is served with a Statement of Findings citing a Class I violation, the facility or agency shall correct the situation, condition, or practice constituting the Class I violation immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(a) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed-upon correction period to determine correction of Class I violations.

(b) If a health facility or agency fails to correct a Class I violation as outlined in the accepted Plan of Correction, the Department may issue sanctions or penalties.

(8) A facility or agency served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time frame approved by the Department which does not exceed 60 days unless justification is provided in the accepted Plan of Correction.

(9) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility or agency if a facility or agency is cited with a Class II violation and fails to take required corrective action as outlined in Rule R432-30.

(10) The Department shall determine which sanction to impose by considering the following:

(a) the gravity of the violation;

(b) the effort exhibited by the licensee to correct violations;

(c) previous facility or agency violations; and

(d) other relevant facts.

#### R432-3-7. Sanction Action on License.

(1) The Department may initiate an action against a health facility or agency pursuant to Section 26-21-11. That action may include the following sanctions:

 (a) denial or revocation of a license if the facility or agency fails to comply with the rules established by the Committee, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state;

(b) restriction or prohibition on admissions to a health facility or agency for:

(i) any Class I deficiency,

 — (ii) Class II deficiencies that have resulted in the substandard quality of care of patients,

(iii) repeat Class I or II deficiencies that demonstrate continuous noncompliance or chronic noncompliance with the rules, or

 (iv) permitting, aiding, or abetting the commission of any illegal act in the facility or agency;

(c) distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensing rules or illegal conduct permitted by the facility or agency and the Department action taken;

 (d) placement of Department employees or Departmentapproved individuals as monitors in the facility or agency until such time as corrective action is completed or the facility or agency is elosed;

(e) assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility or agency;

(f) during the correction period, placement of a temporary manager to ensure the health and safety of the patients;

(g) issuance of a civil money penalty pursuant to UCA 26-23-6, not to exceed the sum of \$10,000 per violation; or

(h) issuance of a conditional license.

(2) If the Department imposes a restriction or prohibition on admissions to a health care facility or agency, the Department shall send a written notice to the licensee.

(a) The licensee shall post the copies of the notice on all public entry doors to the licensed health care facility or agency.

(b) The Department may impose the restriction or prohibition if:

 (i) the health care facility or agency has previously received a restriction or prohibition on admissions within the previous 24 month period; or

(ii) the health care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

 (iii) circumstances in the facility or agency indicate actual harm, a pattern of harm, or a serious and immediate threat to patients.

#### R432-3-8. Immediate Closure of Facility.

(1) The Department may order the immediate closure of any licensed or unlicensed health facility or agency when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in section 63G 4-502 shall be followed.

(3) If the Department determines to close a facility or agency, it shall serve an order that the facility or agency is ordered closed as of a given date. The order shall:

(a) state the reasons the facility is ordered closed;

(b) cite the statute or rule violated; and

 (c) advise as to the commencement of a formal adjudicative proceeding in accordance with this rule. (4) The Department may maintain an action in the name of the state for injunction or other process against the health facility or agency which disobeys a closure order as provided in section 26-21-15.

(5) The Department may assist in relocating patients or residents to another licensed facility or agency.

(6) The Department may pursue other lesser sanctions in lieu of the closure order.

 (7) The Department may, in addition to emergency closure, seek criminal penalties.

#### R432-3-11. Alternative Remedies for Nursing Facilities.

(1) The department conducts on site inspections of nursing facilities to determine compliance with state and federal nursing home requirements. When the department finds that a nursing facility is out of compliance with requirements of participation, the department may recommend to CMS or the state Medicaid agency the imposition of remedies, including Federal civil money penalties (CMP) to compel the facility to implement corrective measures to achieve compliance.

(2) For Medicare and/or Medicaid certified nursing facilities the authority to apply the remedies described in this section is defined in the federal Omnibus Budget Reconciliation Act (OBRA) of 1987 (P.L. 100-203), which mandates compliance with requirements for participation in the program. Section 1819(h) and 1919(h) of the Social Security Act specifies remedies available to CMS or the state Medicaid agency when a skilled nursing facility (SNF) or nursing facility (NF) is out of compliance with the participation requirements. The available remedies are intended to compel facilities to prompt compliance with participation requirements or be subject to termination from the Medicare or Medicaid program.

(3) This rule establishes criteria for the imposition of remedies authorized by statute.

(4) The department adopts and incorporates by reference the regulations in 42 CFR, Part 488-Survey, Certification, and Enforcement Procedures, as amended in the Federal Register for October 4, 2016, 81 FR 68688. Remedies available for noncompliance with one or more participation requirements may include:

(a) temporary management;

(b) denial of payment for new admissions;

(c) transfer of residents;

(d) closure of the facility and transfer of residents;

(e) directed plan of correction;

(f) directed inservice training;

(g) state monitoring; and

(h) Civil Money Penalties. Civil Money Penalties may be imposed for either:

 (i) the number of days a facility is out of compliance with one or more participation requirements; or

(ii) for each instance that a facility is not in substantial compliance.

(5) Interest shall be assessed on the unpaid balance of the Federal CMP, beginning on the due date. The interest rate charged shall be the average of the bond equivalent of the weekly 90-day U.S. Treasury bill auction rates during the period for which interest will be charged.

(6) Federal CMP collected by the department must be applied in accordance with Section 1819 and 1919 of the act for the protection of the health and property of residents.

#### R432-3-11. Annual Reporting Requirements.

(1) A nursing care facility approved for a health facility license under Section 26-21-23(2)(c) shall submit an annual financial report within 90 days of the end of each calendar year.

(2) the financial report shall contain:

 (c) total of all Medicare Advantage revenue received within the calendar year; and

(d) Percentage of Medicare inpatient revenue including Medicare Advantage revenue in relation to the total of all revenues received within the calendar year.

(3) The department shall review the submitted reports for compliance with 26-21-23(7)(a). The Department may perform financial audits as part of the review. If the department determines a facility is not in compliance with 26-21-23(7)(a)a CMP of \$50,000 will be issued for the facility's failure to comply.

## **KEY: health care facilities**

Date of Last Change: August 27, 2018 Notice of Continuation: January 23, 2023 Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-14 through 26-21-16]

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal			
Rule or Section Number:	R495-885	Filing ID: 55663	

# **Agency Information**

1. Department:	Health and Human Services
Agency:	Administration (Human Services)
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	
Daphne Lynch	385- 239- 5317	dlynch@utah.gov	

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

# General Information

# 2. Rule or section catchline:

R495-885. Employee Background Screenings

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

Following the consolidation and recodification of the Department of Health and Human Services' (Department)

statute, the Department is proceeding with a repeal of Rule R495-885, Employee Background Screenings.

The Department will utilize Rule R380-300, Employee Background Screenings, to implement and carry out employee background screenings.

(EDITOR'S NOTE: The proposed new Rule R380-600 (ID 55818) is in this issue, October 15, 2023, of the Bulletin.)

# 4. Summary of the new rule or change:

This filing repeals the rule in its entirety.

# **Fiscal Information**

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

# A) State budget:

There are no changes to state budget as a result of this rule repeal because the fiscal arrangements set forth in the 2022 General Session will remain unchanged with this filing.

# B) Local governments:

Local governments city business licensing requirements were considered.

This proposed rule repeal will not impact local governments' revenues or expenditures because this amendment applies only to Department employee clearances.

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C) Small businesses ("small business" means a business employing 1-49 persons):
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This proposed rule repeal will not impact small businesses' revenues or expenditures because this amendment applies only to Department employee clearances.

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

This proposed rule repeal will not impact non-small businesses' revenues or expenditures because this amendment applies only to Department employee clearances.

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

This proposed rule repeal will not impact persons other than small businesses, non-small businesses, state, or local government entities revenues or expenditures because this amendment applies only to Department employee clearances. F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

This proposed rule repeal will not impact any other entity's revenues or expenditures because this amendment applies only to Department employee clearances.

**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

Regulatory impact l'able				
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-1-211

#### **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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

0 3	Tracy S. Gruber, Executive Director	Date:	08/14/2023
and title:			

R495. Human Services, Administration.

[R495-885. Employee Background Screenings.

R495-885-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-1-118 and 62A-2-120.

(2) This Rule clarifies the standards for Department of Human Services' employee and volunteer background screening.

(3) This Rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

(4) This rule does not apply to Department of Human Services Employees and Volunteers whose clearances are performed and maintained by the Department of Health for the Utah State Hospital and the Utah State Developmental Center.

# R495-885-2. Definitions.

(1) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(2) "Child" is defined in Section 62A-2-101.

(3) "Department" or "DHS" means the Department of Human Services.

(4) "Direct Access" is defined in Section 62A-2-101.

(5) "Director" means the Director of each DHS Office or Division, and includes the Director's designee.

(6) "Directly Supervised" is defined in 62A-2-101.

(7) "Employee" means a prospective employee who has received a job offer from DHS or a current employee of DHS, and includes paid interns.

(8) "Executive Director" means the Executive Director of DHS or the Deputy Director designated by the Executive Director.

(9) "FBI Rap Back" is defined in Section 53-10-108.

(10) "Fingerprints" means an individual's fingerprints as eopied electronically through a live scan fingerprinting device or on two ten print fingerprint cards.

 (11) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

 (12) "Vulnerable Adult" is defined in Section 62A-2-101.
 (13) "Youth Residential Program" also known as "congregate care program" means a 24-hour living environment serving 4 or more youth.

#### R495-885-3. Employees and Volunteers with Direct Access.

(1) The Department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to an individual's employment or volunteer activities within DHS.

(2) All Department employees and volunteers who may have direct access and who are not directly supervised at all times must have an annual background screening clearance in accordance with Sections 62A-1-118 and 62A-2-120, which shall include retention of fingerprints by BCI for FBI Rap Back.

(3) Department employees and volunteers who may have direct access and are not directly supervised at all times shall:

 (a) submit a background screening application to their respective Division or Office on a form created by the Department; and

 (b) submit fingerprints to the Department via a DHSoperated live-scan machine or

 two ten-print fingerprint cards produced by a law enforcement agency, an agency approved by the BCI, or another entity pre-approved by the Department; or

 (c) not be required to submit fingerprints to DHS if they have submitted fingerprints for retention to:

 (i) BCI for an Office or Division clearance, and the Office or Division ensures that the minimum standards set forth in Section 62A-2-120 are enforced; or

(ii) to the Department of Health for employees and volunteers of the Utah State Developmental Center per code; or

(iii) to the Office of Licensing as an individual associated with a license as long as the fingerprints are retained by BCI for FBI Rap Back.

(d) in accordance with R501-14-3(4) submit out of state child abuse and neglect registry records for each state resided in during the 5 years immediately preceding the date of the screening application if applying to work in a youth residential program.

 (i) instructions for obtaining out of state child abuse and neglect registry records from each state may be found on the OL website: https://hslic.utah.gov/Out-of-state-registries

(ii) DHS employees and contracted employees currently working in a youth residential program at the time this rule goes into effect are responsible for submitting child abuse and neglect registry records for all states resided in during the 5 years immediately preceding the effective date of this rule. They may continue working under their DHS background screening clearance unless the out of state child abuse and neglect registry records contain information that eonstitutes denial under R501-14 or 62A-2-120.

 (4) The DHS Office of Licensing shall access information to perform the background checks described in Sections 62A-1-118 and 62A-2-120:

(a) the DHS Office of Licensing will not duplicate fingerprint based criminal background checks on Department employees or volunteers who have a current fingerprint-based criminal background clearance pursuant to R495-885-3(3);

(b) the fingerprints submitted by DHS employees who are required to obtain a background screening pursuant to Section 62A-2-120 as an individual associated with a licensee shall be utilized to perform the screening required by this R495-885. (5) Screening results shall be reviewed in accordance with both the standards outlined by Section 62A-2-120 and this R495-885.
 (6) Except as described in R495-885.5, Department employees and volunteers who would automatically be denied a background screening approval as described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(7) Except as described in R495-885-5, Department employees and volunteers who have any offense or finding described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

#### R495-885-4. Employees and Volunteers with No Direct Access.

(1) The Department finds that a criminal history is directly relevant to an individual's employment activities within DHS.

 (2) The Department is not authorized to perform the checks described in Sections 62A-1-118 and 62A-2-120 for employees with no direct access.

(3) Each Division and Office will identify which of their positions includes no potential for direct access that is not directly supervised.

(4) Each employee who does not potentially have direct access shall submit an "Authorization and Waiver for Criminal History Check" form to a Department of Human Resources Management, DHS Field Office authorizing DHRM to perform name based background checks.

(5) Except as described in R495-885-5, Department employees who would automatically be denied a background screening approval based upon the offenses described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees who have any offense described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Volunteers who do not have a background screening elearance pursuant to R495-885-3 will be directly supervised.

#### R495-885-5. Background Screening Review.

(1) The Office of Licensing or the Department of Human Resources Management, DHS Field Office shall notify the Director of the employment eligibility status of each prospective employee, employee, and volunteer.

(2) The Director shall review the background screening results of each prospective employee, employee, and volunteer when there are any offenses present as outlined in 62A-2-120.

 (3) Review process for prospective or probationary employees and volunteers:

(a) Following a review of the background screening results for a prospective or probationary employee or volunteer, the Director may deny or terminate the employment of the prospective or probationary employee or refuse acceptance of the volunteer; or

(b) the Director may request further review of the background screening results by the Comprehensive Review Committee established under 62A-2-120. Review of background screening results for prospective or probationary employees or volunteers by the Comprehensive Review Committee is strictly related to the employment or volunteer eligibility of that person with DHS and is not related to the licensure of that individual by DHS, nor does it entitle any party to any of the rights granted to an applicant for licensure as defined in 62A-2-120.

(i) the Director shall notify the prospective or probationary employee that further review by the Comprehensive Review Committee has been requested. (ii) the review for prospective employees and volunteers by the Comprehensive Review Committee shall follow the criteria outlined in 62A-2-120 and R501-14 as it relates to the process for review, the items or methods of consideration and the process and criteria used in making determinations.

(iii) Following the review, the Comprehensive Review Committee shall make one of the following findings:

(A) A determination to deny the background screening which will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse the acceptance of the volunteer; or

 (B) A determination of employment eligibility or to permit acceptance of the volunteer.

(iv) the determination of the Comprehensive Review Committee to deny the background screening will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse acceptance of the volunteer and is final.

 (v) Upon receiving the Comprehensive Review Committee determination of employment eligibility or to accept a volunteer A Director, in their sole discretion may;

(A) approve the employment or continued employment of the prospective or probationary employee or approve the acceptance of the volunteer; or

 (B) deny or terminate the employment of the prospective or probationary employee or refuse the acceptance of the volunteer.

(vi) the determinations of the Director and the DHS Employee and Volunteer Comprehensive Review Committee are final, and a prospective or probationary employee or volunteer has no right to appeal.

(4) Review process for non-probationary employees:

(a) the following background screening findings shall be submitted to the Director:

(i) automatic denial offenses outlined in 62A-2-120(5)(a); (ii) all other circumstances outlined in 62A-2-120(6)(a); and

(iii) any MIS supported or substantiated findings;

(b) the Director may consult with the Office of Licensing and shall consult with the Executive Director to evaluate whether the non-probationary employee may present a risk of harm to a child or vulnerable adult, or does not meet DHS high standards of conduct or promote public trust; the Director, Executive Director and Office of Licensing, if consulted, shall consider the factors and information outlined in 62A-2-120(6) (b).

(c) the Executive Director may, in his/her sole discretion, approve the non-probationary employee for continued employment, including defining permissible and impermissible DHS wide workrelated activities, or consult the Department of Human Resource Management regarding termination of employment. The determination of the Executive Director is final.

#### R495-885-6. Division/Office Responsibilities.

(1) The Department shall notify the DHS Office of Licensing within five months of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120 to enable the Office of Licensing to notify BCI and ensure the destruction of fingerprints.

(2) Each Division and Office shall ensure that an employee or volunteer who previously was screened based upon having no direct access shall, prior to having any direct access, be screened and approved in accordance with R495-885.

#### R495-885-7. Compliance.

The Department will be required to initiate steps toward compliance with this rule immediately upon the effective date.

KEY: background, employees, human services, screenings Date of Last Change: July 18, 2019 Notice of Continuation: May 3, 2021

Authorizing, and Implemented or Interpreted Law: 62A-1-118; 62A-2-120]

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal and Reenact			
Rule or Section Number:	R501-1	Filing ID: 55820	

## Agency Information

1. Department:	Health and Human Services			
Agency:	Human Services Program Licensing			
Building:	MASOB			
Street address:	195 N 1950 W			
City, state and zip:	Salt Lake City, UT 84116			
Contact persons:				
Name:	Phone:	Email:		
Janice Weinman	385- 321- 5586	jweinman@utah.gov		

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

#### **General Information**

2. Rule or section catchline:

R501-1. General Provisions for Licensing

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

The purpose of this repeal and reenact is to remove content governing the Human Services Program Licensing office processes as it is being moved to a new divisionwide rule.

The remaining content is updated to reflect division-wide enforcement processes.

#### 4. Summary of the new rule or change:

The changes:

- 1) reflect updated monitoring processes;
- 2) add and define terms to support the new processes;

3) address transportation company registrations as required in Section 26B-2-125;

4) eliminate burdensome policy requirements; and

5) create safe practices rules in their place.

# **Fiscal Information**

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

# A) State budget:

This repeal and reenact is not anticipated to impact state budget, as it re-assigns content to an administrative rule governing the entire division, not just human services licensing.

The remaining substantive changes do not introduce any new processes or requirements that would have an impact on the state budget.

# B) Local governments:

Local governments city business licensing requirements were considered.

This proposed repeal and reenact should not impact local governments' revenues or expenditures because Human Services Programs are regulated by the Department of Health and Human Services (Department) and not local governments.

There will be no change in local business licensing or any other items with which local government is involved.

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

This repeal and reenact is not anticipated to have any impact on small businesses because it re-assigns content to an administrative rule governing the entire division, not just human services licensing.

The remaining substantive changes do not introduce any new processes or requirements that would have an impact on small businesses.

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

This repeal and reenact is not anticipated to have any impact on non-small businesses because it re-assigns content to an administrative rule governing the entire division, not just human services licensing.

The remaining substantive changes do not introduce any new processes or requirements that would have an impact on non-small businesses.

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

This repeal and reenact is not anticipated to have any impact other persons because it re-assigns content to an administrative rule governing the entire division, not just human services licensing. The remaining substantive changes do not introduce any new processes or requirements that would have an impact on other persons.

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

This repeal and reenact is not anticipated to have any impact on affected persons because it re-assigns content to an administrative rule governing the entire division, not just human services licensing.

The remaining substantive changes do not introduce any new processes or requirements that would have an impact on 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.)

Y2025       FY2026         \$0       \$0         \$0       \$0         \$0       \$0         \$0       \$0         \$0       \$0         \$0       \$0         \$2025       FY2026         \$0       \$0
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The Executive Director of the Department of Health and Human Services, Tracy S. 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-2-125 Section 26B-2-124

#### 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 11/14/2023 until:

9. This rule change MAY 11/21/2023 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:	09/28/2023
or designee	Executive Director		
and title:			

[<del>R501. Health and Human Services, Administration,</del> Administrative Services, Licensing.

**R501-1.** General Provisions for Licensing.

**R501-1-1.** Authority and Purpose.

(1) This rule is authorized by Title 62A, Chapter 2, Licensure of Programs and Facilities.

(2) This rule clarifies the standard for:

 (a) rules applicable to programs licensed under Title R501; and

 (b) licensing procedures to be followed by the office in the enforcement of rules under Title R501.

(3) This rule provides definitions for Title R501.

#### R501-1-2. Scope.

 (1) Except as specifically stated in categorical rule, Rule R501-1 applies to any program subject to licensure.

(2) Each licensee and person associated with the licensee shall comply with:

(a) Rule R501-14;

(b) any applicable categorical rule in Title R501; and (c) any federal, state, or local law, rule, or ordinance.

R501-1-3. Definitions.

The terms used in this rule are defined in Section 62A-2-101. In addition, the following terms are defined:

(1) "Abuse" means the same as defined in Sections 62A-3-301, 62A-4a-101, 80-1-102, and R512-80-2. (2) "Body cavity search" means a visual or manual inspection of the body cavity in search of prohibited material. An inspection of a client's mouth after taking medication is not eonsidered a body cavity search.

(3) "Category" means the type of human service license described in Section 62A-2-101.

(4) "Chemical Restraint" means any drug that is used to restrict an individual's freedom of movement for discipline, eonvenience, or imminent safety and not required to treat the individual's medical symptoms.

(5) "Clinical" means treatment or services delivered by a mental health or medical professional that is licensed by the Division of Professional Licensing.

(6) "Compliant" means adherence to governing rule and statute or only minor violations that do not rise to the level of a plan of correction or penalty.

(7) "Confidential communication" means communication between only the individuals referenced in Subsection 62A-2-123(6). Confidential communication does not allow for outside entities to have access to information contained in the confidential exchange.

(8) "Conflict of Interest" means a situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.

(9) "Critical Incident" means an incident that occurs while the program is providing a service or treatment and involves:

(a) abuse or suspected abuse;

(b) neglect or suspected neglect;

(c) exploitation or suspected exploitation;

(d) unexpected death;

(e) any client injury, including self harm, requiring medical attention beyond basic first aid;

 (f) any client injury that is a result of staff or client assault, restraint, or intervention;

(g) any prohibited practice as described in Section 62A-2-123:

(h) any restraint in a congregate care setting;

(i) any seclusion in a congregate care setting;

(j) any body cavity search;

(k) any strip search;

(1) except for a minor infraction, any illegal activity including significant criminal activity as defined in this section

(m) significant medical emergency as defined in this section, or any other protective service intervention;

(n) the unlawful or unauthorized presence or use of alcohol, substances, or harmful contraband items;

 (o) the unauthorized presence or misuse of dangerous weapons;

(p) attempted self-directed violence;

(q) any on duty or client-involved staff sexual misconduct, any client unlawful sexual misconduct, or any consensual client sexual conduct between clients under the age of 16;

(r) client rights violations;

(s) department code of conduct violations;

(t) medication errors impacting client well-being, medical status, or functioning;

(u) the unauthorized departure of a client from a program;
 (v) a contagious illness or situation requiring notification of or consultation with the local health department;

(w) any change to a client's environment compromising the immediate health or safety of the client including roof collapse, fire, flood, weather events, natural disasters, and infestations; or

 (x) any other incident that compromises a client's immediate health or safety.

(10) "Direct Care Staff" means staff working directly with clients.

(11) "Direct Supervision" means in close physical proximity and actively supervising clients with the ability to immediately respond as necessary.

(12) "Director" means the same as defined in Section 62A-2-101 and does not mean a program director.

(13) "Emotional Mistreatment" means verbal or nonverbal conduct that results in a client suffering significant mental anguish, emotional distress, fear, humiliation, or degradation. Emotional mistreatment includes demeaning, threatening, terrorizing, alienating, isolating, intimidating, or harassing a client. (14) "Exploitation" includes:

(a) the use of a client's property, labor, or resources without the client's consent or in a manner that is contrary to the client's best interests, or for the gain of some person other than the client; such as expending a client's funds for the benefit of another;

(b) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent nonmonetary compensation, where such use is inconsistent with therapeutic practices;

(c) engaging or involving a client in any sexual conduct;
 or

(d) sexual abuse of a minor or vulnerable adult as described in Sections 76-5b-201, 76-5b-202 and Subsection 76-5-111(4).

(15) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or for personal or licensee gain. Fraud includes the offenses identified as fraud in Title 76, Chapter 6, Offenses Against Property.

—\_\_\_\_\_\_(16) "Harm" means financial, physical, or emotional pain, damage, or injury.

(17) "Initial license" means the license issued to operate a human services program during the licensee's first year of licensure. This license is considered provisional and allows for the licensee to demonstrate sustained compliance with licensing rules before renewal. An initial license following a lapse in license is not considered provisional.

(18) "Inspection" means an announced or unannounced visit of the licensed site as described in Section 62A-2-118.

(19) "Medication Assisted Treatment" means the use of medications with counseling and behavioral therapies to treat substance use disorders or prevent opioid overdose.

<u>(20)</u> "Mistreatment" means emotional or physical mistreatment.

(21) "Neglect" means abandonment or the failure to provide necessary care, including nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, or protection from harm. Neglect also means the same as defined in Sections 62A-3-301; 62A-4a-101; 76-5-110; and 80-1-102.

(22) "Office" means the Office of Licensing within the Department of Health and Human Services Division of Licensing and Background Checks.

(23) "On duty" means individuals counted in supervision ratios and charged with supervising clients as a primary job requirement.

(24) "Owner" means any licensee, person, or entity that:
 (a) is defined as a member in Section 62A-2-108;

(b) is listed on a foster home license;

 (c) possesses the exclusive right to hold, use benefit from, enjoy, convey, transfer, and otherwise dispose of a program;

 (d) retains the rights, participates in, or is ultimately responsible for operations and business decisions of a program; or

(e) operates or has engaged the services of others to operate the program.

(25) "Parent program" means an applicant or licensee owning or directing multiple sites under the same general administrative organization.

(26) "Penalty" means an action taken by the office to deny, place a condition on, suspend, or revoke a human services license due to the licensee's non-compliance with statute or administrative rule. Penalty includes penalties as described in Section 62A-2-112. A penalty does not include plans of correction.

(27) "Person" means an individual, agency, association, partnership, corporation, business entity, or governmental entity.

 (28) "Physical mistreatment" means conduct that results in pain, injury, or death.

(29) "Program" means a human services program as defined in Section 62A-2-101 and may also be referred to as "Provider" in rules under this title.

(30) "Program director" means an individual responsible for day to day operations of a program.

(31) "Regular business hours" are the hours that the program is available to the public or providing services to clients.

(32) "Renewal license" means a license issued to a continuing program based upon the program's compliance with administrative rule and statute.

(33) "Residential program" means a program providing overnight care and includes the following license categories:

(a) recovery residence;

(b) residential support;

(c) residential treatment;

(d) outdoor youth;

(e) therapeutic school; and

(f) social detoxification.

(34) "Restraint" means physically restricting a person's freedom of movement, physical activity, or normal access to their body; and includes passive, chemical and mechanical restraint used as a last resort as a means to prevent harm to self or others. Restraint does not mean an escort used to lead, guide, or direct a client.

(35) "Seclusion" means the same as defined in Section 62A-2-101 and includes social isolation. Seclusion is not a voluntary time-out or medical quarantine and isolation when approved by a medical professional.

(36) "Significant criminal activity" means any unlawful activity by or against one of the program's clients or by or against an on duty staff member that poses a serious threat to client or staff health, safety, or well-being that includes:

(a) possession of an illegal substance or weapon;

(b) illegal physical or sexual misconduct or assault;

------(c) riot;

(d) suspected fraud;

(e) suspected exploitation; and

(f) any significant criminal activity relevant to a program's population as described in the program's policy and procedure manual.

(37) "Significant medical emergency" means an acute injury or illness posing an immediate risk to a person's life or health or requires emergency medical care. (38) "Site" means a human services program identified by a single geographic location and must be linked to the parent program, if one exists.

(39) "Staff" means an individual who is associated with a licensee.

(40) "Strip search" means requiring a client to undress down to undergarments or complete nudity in view of another person.

(41) "Telehealth" means the use of digital information and communication technologies, such as computers and mobile devices, to remotely access behavioral or health care services.

— (42) "Trauma informed" means overall practices that promote environments of healing and recovery rather than practices and services that may inadvertently re-traumatize.

— (43) "Variance" means any authorized deviation from administrative rule as described in Section R501–1–8.

(44) "Violation" means an act or omission by a licensee, or any person associated with the licensee that is contrary to any administrative regulation, local, state, or federal law applicable to the program.

#### **R501-1-4.** Licensing Application Procedures.

(1) Initial and Renewal Application

(a) An applicant may not accept any fee, enter into any agreement to provide a client service, or provide any client service until licensed by the office.

(b) The office shall issue a license for a program only after verifying compliance with any applicable administrative rule or statute.

 (c) An applicant or a licensee shall permit the office to have immediate, unrestricted access to:

(i) each site subject to licensing;

(ii) any on and off site program and client records; and (iii) each staff and client.

 (d) An applicant may withdraw an application for a license at any time during the application process. The applicant must notify the office in writing.

(e) An applicant seeking an initial or renewal license to operate a human services program shall submit:

(i) an application as provided by the office;

 (ii) except as described in Subsection R501-1-7(2), the fee required for each category of human service program license applied for;

(iii) except as described in Subsection 62A-2-120(13), a background clearance for each person associated with the licensee as described in Section 62A-2-120 and Rule R501-14;

(iv) any required policy and procedure;

 (v) for renewal purposes, rather than submitting each program policy and procedure, the applicant may choose to only submit each policy and procedure that has been modified;

(vi) name and contact information for each responsible decision maker, including any owner or program director; and

(vii) documentation that verifies the applicant's compliance with, or exemption from, any local government zoning, health, fire, safety, and business license requirement.

(f) A program may not change an approved policy without a new office approval as described in Section R501-1-9.

(g) If a program fails to submit a renewal application at least 30 days before the expiration date of the current license, the license may expire.

(h) A residential treatment program applying for an initial license shall submit proof that the program served notice of intent to operate as described in Section 62A-2-108.2. (2) Application Expiration

 (a) Except for a foster home application, an initial application that remains incomplete shall expire one year from the date of application.

(b) An initial application for a foster home that remains incomplete shall expire 90 days after the date of application unless extended by the office.

(c) An expired initial application is void. The program must submit a new initial application and applicable fees for each category of license requested.

(3) The office may deny the initial application or place a penalty on a renewal license if:

(a) the program failed to achieve or maintain compliance with each statue, rule, or ordinance related to the program;

 (b) the office reasonably determines that the program is not likely to operate in compliance with any statute, rule, or ordinance;

(c) the office finds a program director, owner, or any individual involved in the program's billing process on the office of Inspector General's List of Excluded Individuals and Entities; or

(d) the office finds that a program maintains association with any individual with a license revoked by the office within the five year period before to the date on the program's application.

 (4) The office shall consider rule violation history when determining whether a program is likely to comply with any statute, rule, or ordinance.

(5) The office shall consider misleading information that has been presented by the program to the office, program clients, prospective clients, or public when determining whether a program is likely to comply with statute, rule, or ordinance.

(6) A denied applicant may not reapply for a minimum of a three month period beginning on the date of denial.

#### **R501-1-5.** Licensing Determinations.

(1) The office may place an individualized parameter on a program license to promote the health, safety, and welfare of any elient. Such parameters may include:

(a) an age restriction;

(b) an admission or placement restriction; or

(c) any other parameter specific to an individual site or program.

(2) A license certificate shall state the name, the site address, the license category, the maximum client capacity, any specific parameter, and the effective date of the license.

(3) The office may not issue an initial license to a site associated with a parent program if any other license associated with the parent program is under penalty or has a pending appeal.

(4) A program may apply for a two-year license if:

(a) the program is not a residential or foster care program;

(b) the program is in good standing with the office for the two consecutive licenses issued by the office immediately before the date of application;

 (c) the office reasonably determines that the program is likely to maintain good standing for a two-year period; and

 (d) the program submits twice the annual fee required for each category of license sought.

(5) License Expiration

(a) An expired license is void and may not be renewed unless an application and fees are submitted for an initial license. The program must be granted an initial license before providing any services, except as allowed in Subsection R501-1-5(5)(c). (b) A license expires at midnight on the last day of the same month the license was issued, one year after the effective date on the license, except when:

(i) the office revokes the license before expiration;

(ii) the office extends the license beyond the date of expiration;

(iii) the licensee relinquished the license;

(iv) the licensee requested a shortened license expiration time frame; or

(v) the license is issued as a two year license. A two year license expires at midnight on the last day of the same month the license was issued, two years after the effective date on the license.

(c) Except for an action necessary to maintain the health and safety of a client while transitioning out of the program or obtaining a new license to operate, a program with an expired license may not accept any client, fee, enter any agreement to provide a client service, or provide any client service.

(6) Except as described in Subsection R501-1-5(6)(c), the office may extend a current license for a maximum 90 day period after the license expiration date.

 (a) A program must submit a renewal application and applicable fee before the expiration date on the license.

 (b) Except as noted in Subsection R501-1-5(6)(c) the office may extend a license only once.

 (c) The office may extend a current or extended license that is not in good standing with a penalty.

(d) The office shall grant a renewal license if the program remedies any non-compliance to the satisfaction of the office.

(e) The office shall reduce the license period for any renewal license granted immediately after an extension equal to the time period of the extension.

(7) A licensee wishing to voluntarily relinquish a license shall submit a written notice to the office. Voluntary relinquishment of a license may not be accepted by the office if a notice of agency action revoking the license has been initiated.

#### R501-1-6. Program Changes.

(1) Name Change

(a) A licensee may not change the name of a program or site without a renewal application submitted to the office. A name change with no impact on clients, programming or daily operations will not require a renewal fee.

(b) The licensee shall submit updated program documentation reflecting the new name to the office before making the name change public.

(c) The office may link the former name of the program to the new name on the licensing database, on each license certificate, and public website, for a two-year period after the name change.

(2) Relocation

(a) A licensee may change the location of a program.

(b) The licensee may not serve a client at any new program location without a license.

(c) Before moving any program to a new location, the licensee shall submit a renewal application as described in Subsection R501-1-4(1) at least 30 days before moving and an updated license for the new site must be issued. The application shall also include proof of:

(i) a business license at the new site; and

(ii) insurance coverage at the new site.

(d) A foster home may transfer a current license a new site only after: (i) submitting a request to relocate to the office at least 30 days before moving to the new site; and

(ii) the office inspects and approves licensure at the new site; which approval shall occur within two weeks if a foster child is placed in a foster home or within 30 days if there are no current foster placements.

(c) A program moving only an administrative site that does not serve clients shall only be required to submit a renewal application with no fees unless the office finds they meet requirements outlined in Subsection R501-1-6(7).

(f) If a foster child is placed in a foster home, it is the responsibility of the licensed foster parent to ensure the health and safety of the foster child during the transfer to the new site.

(g) Except as described in Subsection R501-1-6(2), moving from a licensed site voids that site's license.

(3) Capacity Change

(a) A licensee seeking to increase the maximum client capacity of a program shall submit a renewal application requesting the new capacity.

(b) The program may not serve additional clients until the program pays renewal fee any additional capacity based fees as outlined on the renewal application for a license renewal as required by the rules of the human service program category and the office issues an updated license.

(4) Add New License Category

(a) A program may request to add a new license category to an existing licensed site by submitting an initial application for the additional license and fees for an initial license.

(b) Each requirement for initial licensure must be verified.
 (5) Add New Location

(a) A program may add an additional site of service by submitting an application and fees and receiving an initial license.

(b) Each requirement for initial licensure must be verified.
 (6) Ownership Changes

 (a) A program anticipating, or undergoing a change of ownership, shall submit in writing, before the change:

(i) any change to programming or service;

(ii) a declaration regarding responsibility for records and records retention to include an agreement, signed by both current and prospective owners and program directors, detailing how records will be retained and remain available to the office in accordance with licensing rules regardless of whether the program remains licensed;

(iii) names and contact information of any new directors or owners;

(iv) documentation of continuous insurance coverage; and (v) an updated business license.

(b) The status of a license at the time of a change of ownership shall continue.

(7) The office may require a new initial application and fees for each license category for any substantial change under this section, which may include:

(a) a substantial change resulting in direct client impact;
 (b) any change to programming;

(c) any change in the population served;

(d) any severed tie with a previous owner;

(e) any disruption in the continuity of record retention; or

(f) requirement of the office to perform an onsite

inspection and complete a comprehensive compliance review.

#### R501-1-7. License Fees.

 (1) The office shall collect licensing fees as described in Section 62A-2-106, and Title 63J, Chapter 5, Federal Funds Procedures Act.

(2) No licensing fee shall be required from a foster home or a division or office of the department.

(3) The office is not required to perform any on-site visit or document review until the person applying for a license pays the licensing fee.

(4) If a license is not granted by the office, a license application fee expires 12 months after the date of application.

(5) A fee paid by a licensee may not be transferred, prorated, reduced, waived, or refunded. Any cost incurred by the applicant in preparation for, or maintenance of licensure is the sole responsibility of the applicant.

(6) An applicant must pay an initial license fee for each category of human services program offered at each program site.

(7) An applicant must pay a renewal license fee and any capacity fee for each license that is renewed at each program site.

(8) A capacity fee is calculated based on the maximum licensed client capacity of the human service program.

(9) A license with more than one building, unit, or suite located at a single site may choose between the following methods of assessing a fee and issuing a license:

 (a) each category of license includes each on site building, unit, or suite; or

 (b) each category of license is issued separately for each individual on site building, unit, or suite.

#### R501-1-8. Variances.

 (1) A licensee may not deviate from any administrative rule before receiving written approval signed by the director, or the director's designee.

(2) The director, or the director's designee, may grant a variance after determining that a variance is not likely:

(a) to compromise client health and safety; or

 (b) provide an opportunity for abuse, neglect, exploitation, harm, mistreatment, or fraud.

(3) A licensee seeking a variance must submit a written request to their licensing specialist that includes:

(a) the rule for which the variance is requested;

(b) the reason for the request;

 (c) how the variance provides for the best interest of the client;

(d) any procedures that will be implemented to ensure the health and safety of each client; and

(e) the proposed start date and end date of the variance.

(4) The written request described in Subsection R501-1-8(3) must be submitted at least 30 days before the proposed start date unless the licensee documents a need to expedite the request.

(5) The office shall review the variance and notify the licensee of the approval, approval with conditions, or denial of the variance, in writing, within 30 days from receipt of the request.

(6) The licensee shall comply with the terms of a written variance, including any conditions or modifications contained within the approved written variance.

(7) A variance expires on the end date specified in the approval notice. Terms of the variance are no longer permitted by the office after the end date.

(8) The office may renew a variance if the program justifies the request and ensures the ongoing health and safety of each client.

#### R501-1-9. Required Approvals.

(1) As described in Subsection 62A-2-106(1), the office shall review and approve the following policies and procedures before program implementation by each licensee:

(a) any sex and gender discrimination policy as described in Section 62A-2-124; and

(b) any behavior management, suicide prevention, restraint, or seclusion policy or procedure used in a congregate care program as described in Section 62A-2-123 and Rule R501-1.

 (2)
 Each sex and gender discrimination policy must include the required content and language as described in Subsection R501-1-24(3)(s) as it pertains to both staff and client protections.

 (3)
 The office shall:

 (a) provide written approval or denial of any policy and curriculum within 30 days of the date of submission;

(b) provide written feedback on any denied policy;

(c) re-review any denied policy or curriculum within 14 days of re-submission; and

 (d) issue a written approval for any policy requiring approval by this section.

(4) The licensee shall submit any change to a policy or curriculum that has been approved by the office to the office for approval before implementing the proposed change.

(5) The office may withdraw approval and deny any previously approved policy or curriculum at any time or by providing written feedback to the program as described in Subsection R501-1-9(3).

#### R501-1-10. Monitoring.

(1) Except as described in Section 62A-2-123 for a congregate care program, the office shall conduct at least one annual on site inspection in each program.

(2) The office may conduct as many inspections, announced or unannounced, as necessary to monitor compliance, investigate alleged violations, monitor plans of correction or penalty compliance, or to gather information for license renewal.

 (3) An on-site inspection shall take place during regular business hours.

 (4) An applicant or licensee may not restrict the office's access to the site, client, staff, or any program records.

(5) A licensee and licensee's staff may not compromise the integrity of the office's information gathering process by withholding or manipulating information or influencing any specific response of staff or clients.

(6) The office shall consider each on-site inspection during the renewal or denial of the license application at the end of the license period.

(a) Pursuant to Subsection 62A-2-118(1), the office may accept another government entity's inspection results completed for a program during the effective license period or within the preceding quarter to the current license period to identify compliance or noncompliance with relevant rules.

(b) The office may review and consider any report from an accreditation agency or any other entity for each inspection conducted during or before the effective license period to determine compliance or violation of licensing rule.

(c) If a conflict arises between an oversight entity's requirement and rule, the program shall request a rule variance from the office.

(7) Except for a foster home, the licensee shall make a copy of any inspection report available to the public upon request as described in Subsection 62A-2-118(5). (8) The office may adopt a written inspection report from a local government, certifying entity, contracting entity, or accrediting entity if the report offers information about the licensee's compliance with a licensing requirement.

(9) The licensee shall allow the office to access any program record or staff at an administrative location that is not located at the licensed site.

#### **R501-1-11. Investigations of Alleged Violations.**

(1) Unlicensed Programs

 (a) The office shall investigate each report of an unlicensed human service program.

(b) Investigation of an unlicensed human service program may include interviewing any individual or neighbor at the site or gathering information from any source that will aid the office in determining whether the site should be licensed.

(c) If an unlicensed human services program that requires licensure fails to become licensed within 30 days or other office approved time-frame and continues to operate, the office shall refer the program to the office of the Attorney General, and the County Attorney for further action.

(d) The office may penalize each site operated by a licensed program if the program adds or operates an unlicensed site that requires licensure.

(2) Licensed Program Complaints and Critical Incidents

 (a) The office may investigate any critical incident or complaint that alleges a licensing violation regarding a licensed human services program.

(b) The office accepts a complaint about a licensee from any source, including the office website or complaint email address.

(c) The office may decline to investigate a complaint that is anonymous; unrelated to a current condition of the program; or not an alleged violation of a rule or statute.

(d) A critical incident that involves a client or on duty staff that occurs in a licensed setting or under the direct responsibility and supervision of the program shall be reported by the licensee as follows:

(i) a report shall be made to the office within one business day;

(ii) a notification shall be made to legal guardian of the involved client within a 24 hour period that begins at the time of the incident; and

(iii) if the critical incident involves a client or service to a youth currently in the custody of the department, the licensee shall make an immediate live person verbal notification to the involved division.

(e) An initial critical incident report shall be made in writing and include the following:

(i) name of provider and names or unique initials of each involved staff, witnesses and clients with the ability to identify each set of unique initials upon request by the office;

(ii) date, time, and location of the incident, and date and time of incident discovery, if different from time of incident;

(iii) descriptive summary of incident;

(iv) any action taken;

 (v) any action that the program plans to take at the time of the report; and

(vi) identification of department contract status.

(f) Upon request by the office, the licensee shall collect, maintain, and submit original witness statements and supporting documentation, including video footage if available, regarding each eritical incident. (a) An in-person or electronic investigation may include:
 (i) a review of any on or off site record;

(ii) interview of each licensee, witness, client, or staff;

 (iii) gathering information from any collateral party; and (iv) a site inspection.

(b) The office shall prioritize an unlicensed program, a complaint regarding a licensed program, and a critical incident following an assessment of risk to client health and safety as follows:

(i) an allegation identified by the office as a potential imminent risk to the health and safety of a client requires an initial on site contact by the office within three business days of the report date; or

(ii) any other allegations that require the office initiate an investigation within ten business days of the report date.

(c) The office may use law enforcement, Child or Adult Protective services, or any other protection agency to meet a priority on site response.

(d) A licensee and staff shall cooperate in any investigation.

(e) The office may report any allegation or evidence of abuse, neglect, exploitation, mistreatment, illegal activity or fraud to a client, clients' legal guardian, or any entity determined necessary by the office.

(f) If a program sells or arranges for client insurance eoverage, the program must:

 (i) inform the client in writing of the program's role and responsibility;

 (ii) provide the insurer with any program provider record;
 (iii) contact and cooperate with the insurance department during any dispute regarding a service or supply billed; and

(iv) not provide unlawful substance abuse patient brokering as described in Subsection 62A-2-116(5).

#### R501-1-12. License Violations.

(1) When the office finds evidence of a violation of statute or rule, the office shall do one of the following:

(a) provide written notification of each violation requiring the licensee to correct each violation with a dated request for remediation, if applicable;

(b) provide written notification of each violation and request a licensee to submit a plan of correction in response to a written notification of a violation or pattern of similar violations over time; or

(c) issue a penalty if the office determines that a violation is serious enough to merit a penalty without first issuing a request for a plan of correction.

(2) The office may consider the chronicity, severity, and pervasiveness of a violation when determining one of the following agency actions:

(a) notification of a violation;

(b) request for a plan of correction; or

(c) issue a formal penalty.

(3) A repeated violation of rule or statute or failure to comply with a condition of a notice of agency action may elevate the penalty level assessed.

(4) When the office issues a request for a plan of correction, a licensee shall submit a written plan of correction to the office within ten business days from the date of the request and the plan of correction shall include:

(a) a statement of each violation identified by the office;

(b) a detailed description of how the licensee will correct each violation and prevent an additional violation;

 (c) the date by which the licensee will achieve compliance with administrative rule and statute; and

 (d) describe the involvement of each program owner and director, including each foster parent, if involving a licensed or certified foster home.

(5) The office shall review plans of correction submitted to the office and either inform the licensee that the plan of correction is approved or inform the licensee that the plan of correction is not approved and provide explanation.

(6) If a plan of correction is not approved, the office may permit a licensee to amend and resubmit its plan of correction within five additional business days.

(7) A notification of violation or a request for a plan of correction is not a penalty.

(8) A program may choose to refuse the notification of violation or plan of correction process and preserve the program's appeal rights by instead requesting a penalty.

(9) The office may issue a penalty for a violation if the licensee fails to submit and comply with an approved plan of correction.

(10) The office may provide a written notice of agency action issuing the following penalties:

(a) a conditional license;

(b) a suspended license for up to a three-year period; or

(c) a revoked license.

(11) A conditional license allows a program that is in the process of correcting a violation to continue operation, subject to each condition established by the office. Failure to meet each term, condition, and time frame outlined in the notice may result in further penalty action or denial of the renewal license application.

(12) When a license has been suspended, Subsection R501-1-12(14) applies, except as described in Subsection R501-1-12(13).

(13) If the placing department entity approves and elects to allow the foster child to remain in the placement, a suspended foster care provider may continue caring for a foster child currently placed at the time of suspension.

(a) not accept new clients;

 (b) only provide any service necessary to maintain client health and safety during the client's transition out of the program;

(c) subject to Subsection R501-1-12(13), develop and comply with a plan to transition each client out of the program and into an equivalent, safe, currently licensed programs or into the custody of the client's legal guardian; and

 (d) maintain program staffing and health and safety needs of each client while an appeal of the suspension or revocation is pending.

(15) The office shall maintain a record of each licensee with a revoked license for a five year period. An individual identified in the record may not associate with any other department licensed program during that five year period.

(16) When a child placing agency's license is suspended or revoked, care and control of placed children shall be arranged in accordance with Subsection 62A-4a-602(2)(b).

(17) A licensee shallmay not employ, contract with, or in any way associate with a person identified on the record created in Subsection R501-1-12(15). A program in violation of this provision shall be subject to immediate penalty. (18) The office may place a condition in the notice of agency action to protect the health and safety of clients. A condition included in the notice of agency action takes effect on the date of notice.

(19) Except when instructed by the office, a licensee shall post the notice of agency action on site, and on the home page of each of each program website, where it can be easily reviewed by each elient, guardian of a client, and visitor within five business days, and shall remain posted until the resolution of the penalty.

(20) A licensee shallmay notify each client, guardian, and prospective client of a notice of agency action issued by the office within five business days of receiving notice. Any prospective client must be notified for as long as the notice of agency action is in effect. (21) If an appeal of a revocation, suspension or conditional license that restricts admission is pending, a licensee may not accept any new client as outlined on the notice of agency action without prior written authorization from the office.

# R501-1-13. Program Administrative and Direct Service Requirements.

(1) A program shall transparently identify services to the office, public, potential client, parent, or guardian regarding:

(a) current and accurate contact information;

(b) the complaint reporting and resolution process;

(c) a description of each service provided;

(e) each program requirement and expectation;

(f) eligibility criteria outlining behavior, diagnosis, situation, population, and age that can be safely served, including:

(i) an outline of which behaviors and presenting issues would be reason for discharge or exclusion from the program; and

 (ii) the program may not take placement of a child whose needs exceed the scope or ability of the program to reasonably manage;

 (g) each cost, fee, and expense for a service and refund policy; and

 (h) identification of each non-clinical, extracurricular, or supplemental service offered or referred.

(2) The following shall be posted in conspicuous places where each visitor, staff, and client may view:

(a) abuse reporting laws as described in Sections 62A-4a-403 and 62A-3-305;

(b) civil rights notice;

(c) Americans with Disabilities Act notice;

(d) the program license;

(e) any office notice of agency action; and

(f) a client rights poster.

 (3) Program administration shall maintain compliance with or documentation of an exemption from any of the following requirements:

(a) a food handler permits for any person preparing meals for any other person;

(b) business licenses;

 (c) capacity determinations, which capacity shall include each staff and client on premises and may not exceed the capacity limits placed by local authorities;

 (d) fire clearance, if conducted separately from a business license;

(e) licensure and registration of any vehicles used to transport elients.

 (4) The office may not issue a license in good standing to a program whose local clearances are under dispute. (5) Program administration shall maintain:

(a) proof of financial viability of the program as verified by a financial professional;

(b) general liability insurance;

(c) professional liability insurance;

(d) vehicle insurance;

(e) fire insurance; and

 (f) additional insurance as required to cover each program activity.

(6) Program administration shall ensure:

(a) each entity associated with the licensee read, understand, sign, and follow the current department code of conduct; (b) current staff and client lists are available at each licensed site;

(c) the organizational and governance structure of the program, this includes:

(i) line of authority and responsibility;

 (ii) a job description, including each duty and qualification for each job title; and

(iii) notification to the office of any program changes as described in Section R501-1-6;

(d) the program implements and follows a quality improvement plan that incorporates, at a minimum, client and staff grievances, feedback, and trends in licensing violations and incident reports;

 (e) the program provides an interpreter or refers each client to appropriate resources as necessary to communicate with the client;
 (f) at least one CPR and First Aid trained or certified staff member is available when staff and clients are present together;

(g) the program maintains an opioid overdose reversal kit on site with on duty staff trained in its use if the program is serving, or is likely to serve, a client with a substance use disorder; and

 (h) the program provides trainings and monitors staff to ensure compliance regarding program policy and procedures including:

(i) the needs of each client;

(ii) licensing rule;

(iii) client rights as described in Section R501-1-27;

(iv) department code of conduct;

(v) incident reporting;

(vi) program emergency response plan; and

(vii) CPR and first aid.

(7) A program serving education entitled children, as that term is defined in Section 62A-2-108.1, shall comply with Section 62A-2-108.1 regarding coordination of educational services to include completion of youth education forms at initial and renewal licensure.

(8) A program providing school on-site shall:

(a) maintain the established staff to client ratio with behavioral intervention trained staff in the school setting;

(b) be recognized as in good standing by an educational accreditation organization such as the State Board of Education or the National School Accreditation Board; and

(c) ensure each youth is taught at grade level.

(9) Clinical and medical staff are licensed or certified in good standing and any unlicensed staff are appropriately supervised as described in Title 58, Occupations and Professions.

(10) A program that utilizes telehealth for treatment shall do so within the scope of their professional licensure in accordance with Title 2 Chapter 60 for health and Title 58, Chapter 60 and 60a for mental health and comply with each applicable rule. (11) A non-residential program offering community-based services shall comply with each applicable rule, as determined by the office.

# R501-1-14. Residential Program Additional Administration and Direct Services Requirements.

(1) A program providing residential service shall:

(a) demonstrate compliance with Section 62A-2-125;

(b) ensure each staff shift list remains current and available to the office upon request;

(c) ensure access to a medical clinic or a medical professional familiar with the program and population served; and (d) provide a separate space for clients who are sick.

(2) A program providing residential service to youth who have been placed in Utah from outside of Utah shall demonstrate compliance with Title 62A, Chapter 4a, Part 7, Interstate Compact on Placement of Children.

(3) A congregate care program serving youth may allow an individual turning 18 to remain in the program as described in Subsection 62A-2-106(1) if:

 (a) the individual remains in the custody of a State entity or the individual was admitted and continuously resided in the program for at least 30 days before the individual's 18th birthday;

(b) the program has a documented need for the individual to remain in the program;

 (c) the program maintains responsibility for discharge to an appropriate setting when clinically appropriate and no later than the day an individual reaches 19 years of age;

(d) the program outlines a policy regarding the protection of younger clients by supervising or separating 18 year old individuals from youth who are more than two years younger; and

(e) the individual signs a consent document outlining:

(i) the individual is consenting to remain in the program voluntarily and understands the individual is not required to remain against their will;

 (ii) that any criminal offenses committed may result in being charged as an adult; and

(iii) that if the individual is involved in any critical incidents posing a risk to the health and safety of other program residents they may be discharged from the program.

 (4) A congregate care program shall ensure weekly confidential communication with family in accordance with Section 62A-2-123.

(a) A congregate care program may only modify the frequency or form of the confidential communication requirement if the program submits a modification request that demonstrates the following to the office:

(i) the program operates in an area of limited or unreliable phone accessibility or coverage;

(ii) there is significant risk of harm or danger to client safety by providing youth with unsupervised telephone access;

(iii) the program offers an alternative that satisfies the requirement of weekly confidential two way communication; or

(vi) extenuating circumstances exist outside the individual treatment plans that are prohibitive to offering voice to voice communication.

(b) A parent or guardian authorization shall be obtained to receive alternate means of confidential communication when voice to voice is unavailable.

(c) Voice to voice confidential communication will be offered as soon as can be safely offered.

(d) A modification to voice to voice communication is a program license specific approval. Individual modifications may only be made in accordance with Section 62A-2-123 and require individualized documentation, or individualized client treatment plan. Individualized documentation is not permissible if it is a blanket statement or practice applied to all treatment plans.

(e) A modification plan for confidential communication is only permitted with written approval from the director of the office.

(f) If any of the provisions of the approved modification change, this modification must be re-approved.

(5) Before allowing a direct care staff to work unsupervised they must have an approved background clearance and be trained in the following:

 (a) behavior management policy and curriculum including crisis intervention, appropriate use of restraint and seclusion, and deescalation techniques;

(b) which practices are prohibited for congregate care programs by Section 62A-2-123;

(c) the clinical needs of each of the clientele;

(d) client rights;

(e) department code of conduct; and

(f) incident reporting.

(6) Direct care staff must be trained in the following within six months of hire:

(a) CPR: and

(b) first aid.

#### R501-1-15. Program Physical Facilities and Safety.

(1) Each program shall ensure the appearance and cleanliness of the building and grounds are maintained and free from health and fire hazards.

(2) Each program shall ensure that all appliances, plumbing, electrical, HVAC, and furnishings are maintained in operating order and in a clean and safe condition.

— (3) Each program shall accommodate clients with disabilities as needed or appropriately refer to comparable services.

(4) Each program shall ensure that fire drills in nonoutpatient programs shall be conducted and documented at least quarterly and program administration shall provide and document feedback regarding response time and process.

(5) Each program shall ensure that a 911 recognizable phone is always on-site with clients.

(6) Each program shall ensure that bathroom facilities for staff and clients allow for individual privacy and afford reasonable accommodation based on gender identity.

(7) Each program shall ensure that each bathroom shall be properly equipped with toilet paper, paper towels or a dryer, and soap.
 (8) Each program shall ensure that each bathroom is ventilated by mechanical means or equipped with a window that opens.

(9) Each program shall maintain medications and potentially hazardous items on site lawfully, responsibly, and with consideration of the safety and risk level of the population served. This shall include locked storage for each medication and hazardous chemical.

(10) Each program shall ensure that non-prescription medications, if stored on site, are stored in original manufacturer's packaging together with the manufacturer's directions and warnings. (11) Each program shall ensure that prescription medications, if stored on site, are stored in original pharmacy packaging or individual pharmacy bubble pack together with the pharmacy label, directions, and warnings. (12) Each program shall maintain a fully supplied first aid kit as recommended by the American Red Cross.

# R501-1-16. Residential Program Additional Facilities and Safety Requirements.

 (1) Each residential program shall ensure designated space is available for records, administrative work, and confidential phone calls for clients.

(2) Each residential program shall ensure bedroom assignments shall be made in accordance with each agency policy and individualized assessment described in Section 62A-2-124.

(3) Each residential program shall ensure that live in staff have separate living spaces with a bathroom that is separate from elient bathrooms.

(4) Each residential program shall ensure that each bedroom designated for clients shall be comparable to other similarly utilized bedrooms with similar access, location, space, finishings, and furnishings.

(5) Dormitory space is only allowed in an emergency homeless shelter or a program serving only adults.

 (6) Each residential program shall ensure that each client is not locked in a bedroom.

 (7) Each residential program shall ensure that each mirror or safety mirror is secured to the bathroom wall at a convenient height.

(8) Each residential program shall ensure that each bathroom is placed to allow access to each client without disturbing any other client during sleeping hours.

 (9) Each residential program shall ensure that each bath or shower allows for individual privacy.

 (10) Each residential program shall ensure that each client is supplied with hygiene supplies.

(11) Each residential program shall ensure that each sleeping area has a source of natural light and is ventilated by mechanical means or is equipped with a window that opens.

 — (12) Each residential program shall ensure that each bed is solidly constructed and non-portable.

(13) Each residential program shall ensure that each elient is permitted to decorate and personalize the elient's bedroom, while maintaining respect for each other resident and property.

(14) Each residential program that provides common laundry for towels, bedding, or clothing shall provide separate containers for soiled and clean laundry.

(15) Each residential program shall ensure that bedding and towels shall be laundered weekly and after each client is discharged.

— (16) Each residential program permitting clients to do the client's own laundry shall provide equipment and supplies for washing and drying.

(17) Each residential program shall ensure that each individual is provided with at least 60 square feet in a multiple occupant bedroom and 80 square feet in a single occupant bedroom. (18) Each residential program serving individuals with

disabilities shall house no more than two persons in each bedroom. (19) Each program utilizing seclusion rooms shall ensure

the following:

 (a) seclusion rooms measure a minimum of 75 square feet and have a minimum ceiling height of seven feet with no equipment, hardware or furnishings that obstruct staff's view of the client or present a hazard;

 (b) seclusion rooms shall have either natural or mechanical ventilation with break resistant windows and either a break resistant two-way mirror or camera that allows for observation of the entire room;

(c) seclusion rooms may not have locking capability and may not be located in closets, bathrooms, unfurnished areas or other areas not designated as part of residential living space; and

(d) bedrooms may not be utilized as a seclusion room and a seclusion room may not be utilized as a bedroom.

#### R501-1-17. Food Service Requirements.

(1) Each residential program that provides meals for four or more, but less than 16, elients shall comply with a local health inspection as described in Rule R392-110, Food Service and Sanitation in Residential Facilities.

(2) Each program that provides meals shall ensure that meals are not used as incentive or punishment.

(3) Each program that provides meals shall provide nutritional counseling to staff and clients and designate staff responsible for food service. As part of these responsibilities, each program shall ensure that designated staff:

(a) maintain a current list of each client with special nutritional needs;

 (b) ensure that each client with special nutritional needs has food storage and a preparation area that is not exposed to any identified allergen or contaminant; and

(c) except in a day treatment program serving clients for less than ten hours a day, or outpatient programs serving clients for less than six consecutive hours a day, provide a variety of three nutritious meals a day that is:

 (i) served from dietitian or nutritionist approved menus; or
 (ii) for programs serving individuals experiencing homelessness, serve meals as required by USDA standard homeless settings.

 (4) Each program that provides meals shall establish and post kitchen rules and privileges in a kitchen according to client needs and safe food handling practices.

(5) Each program that provides meals shall provide adequate dining space for each client that is maintained in a clean and safe condition.

(6) Each program that provides self-serve meals shall ensure that self-serve kitchen users are supervised, directed, and trained by a staff that has a Department of Health food handler's permit or is trained by Serv-Safe, USDA, or a comparable program.

#### R501-1-18. Program Staffing.

(1) Each program shall ensure adequate staffing such that the current population can be safely supervised including, where necessary, more staff than required by the usual staffing ratio.

(2) Each program shall identify a manager or qualified designee who shall be immediately available when the program is in operation or there shall be a qualified and trained substitute when the manager is absent or unavailable.

(3) Each program that offers clinical services shall employ or consult with licensed professional staff that include an individual who is familiar with the program and the needs of each client.

 (4) Each program serving substance use disorder shall ensure each staff and client is screened for tuberculosis.

(5) Each program managing, storing, or administering elient medication shall identify a medical professional to be responsible for the medication management policy, medication oversight, and staff training regarding medication management.

 (6) Each program or person involved with the prescription, administration, or dispensing of controlled substances shall maintain appropriate medical or pharmacy licenses and DEA registration numbers as described in 21 CFR 1301.21.

#### R501-1-19. Program Personnel Record Requirements.

(1) Each program shall create and maintain personnel information for each staff member, contracted employee, and volunteer.

(2) Personnel information shall include:

(a) any applicable qualification, experience, certification, or license;

 (b) any approved and current office background clearance, except as excluded in Section R501-14-17;

(c) a department code of conduct that is signed by the staff member, contracted employee, or volunteer;

(d) any training records with the date completed, topic, and the individual's signed acknowledgment of training completion to include:

(i) current CPR and First Aid certification;

(ii) current policy and procedure training; and

(iii) proof of annual department code of conduct and behavior management training;

(e) any grievances or complaints made by or against the individual and actions taken by the program; and

(f) each crisis intervention or critical incident report involving the individual.

#### R501-1-20. Program Client Record Requirements.

 (1) A program shall maintain client information to include the following:

(a) client name, address, email address, phone numbers, date of birth and identified gender;

(b) emergency contact names, including legal guardian where applicable, and at minimum, the emergency contact's physical address, current email address or current phone numbers;

(c) a program serving substance use disorder clients shall maintain compliance with an initial and annual client tuberculosis screening results in each client record;

(d) any information that could affect health safety or wellbeing of the client including each medication, allergy, chronic condition or communicable disease;

(e) intake screening and assessment;

(f) discharge documentation;

(g) treatment or service plan;

 (h) progress notes and services provided with date and signature of staff completing each entry;

 (i) individualized assessment for restriction of access to on site items that could be used as weapons for self-directed violence or as an intoxicant;

(j) any referral arrangements made by the program;

 (k) client or guardian signed consent or court order of commitment to services in lieu of signed consent for each treatment and non-clinical service;

(1) summary of attendance and absences;

(m) any grievances or complaints made by or against the client and actions taken by the program;

(n) each crisis intervention or critical incident report involving the client; and

(o) any signed agreements and consent forms.

(2) A program shall document a plan detailing how each program staff and client file shall be maintained and remain available to the office and other agencies legally authorized to access the files for seven years regardless of whether the program remains licensed.

### R501-1-21. Program Intake and Discharge Requirements.

(1) A program shall complete an intake screening before accepting a client into the program. Intake screening shall assess at minimum:

 (a) verification that the client meets the eligibility requirements of the program;

(b) verification that the client does not meet any of the exclusionary criteria that the program identified in policy as unable to serve:

(c) description of presenting needs;

(d) suicide risk screening;

(e) a program serving substance use disorder clients may not admit anyone who is unresponsive or unable to consent to care because the individual is experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious; and

 (2) A program serving incarcerated or court mandated justice involved clients shall:

(a) conduct a criminogenic risk assessment;

(b) comply with Justice Reinvestment Initiative certification requirements in accordance with Title R523; and

(c) separate high and low criminogenic risk populations.

(3) Following determination of eligibility, the elient or parent or guardian shall sign and receive copies of the following agreements to be maintained as elient records:

(a) fee agreement outlining costs of services including program, client, parent, or guardian responsibility for payment; and

(b) signed consent for treatment that outlines:

(i) rules of the program;

(ii) expectations of clients, parents, and guardians;

(iii) services to be provided;

(iv) Medicaid number, insurance information, and identification of any other entities that are billed for the client's services;

(v) client rights; and

(vi) licensing contact information.

 (4) A discharge plan shall identify resources available to a client and include:

(a) reason for discharge or transfer;

(b) aftercare plan;

(c) summary of services provided; and

(d) progress evaluation.

R501-1-22. Residential Additional Program Intake and Discharge Requirements.

(1) An intake assessment shall be completed following an approved intake screening and no later than seven days from the admission date. The assessment shall consider and contain:

(a) gender identity and individualized assessment for bedroom and bathroom assignments;

(b) cultural background;

(c) dominant language and mode of communication;

(d) family history and dynamics;

(e) current and past health and medical history;

(f) social, psychological, developmental, vocational, and, as appropriate, educational factors;

(g) suicide risk screening; and

(h) authorization to serve and obtain emergency care.

(2) A residential program serving children shall inform the parent or guardian and obtain signed verification of understanding that their child may be interviewed by a licensing representative in accordance with Subsection 62A-2-106-1(k). (3) A program may not serve youth from out of state without a disruption plan as described in Section 62A-2-125 and, as applicable, Title 62A, Chapter 4a, Part 7, Interstate Compact Placement of Children.

(4) Each congregate care disruption plan must contain the following:

(a) program must retain jurisdiction and responsibility for the youth while the youth remains in Utah;

(b) a program must complete an individualized disruption plan at the time of intake for each out of state client to include:

 (i) who is responsible for the child's return if placement at the facility disrupts;

 (ii) current emergency contact information to include the name, address, phone and email address of the parent or responsible party;

(iii) a signed statement from parent or responsible party outlining the plan for the youth in the event of an unplanned disruption in care; and

(iv) a plan for safe transportation either to the state of origin, the responsible party identified in Subsection R501-1-22(3)(a) or to another licensed congregate care program.

(5) Each congregate care program may demonstrate compliance with Subsections R501-1-22(2) and R501-1-22(3) by producing the 100A and 100B forms and disruption plan as required by the Interstate Compact for the Placement of Children (ICPC).

(6) Each congregate Care program shall report private placements to the office as described in Section 62A-2-125 by completing the congregate care out of state placement survey on the office website no later than the fifth business day of each month.

 (7) Each congregate care program shall report each critical and non-critical restraint or seclusion to the office within one business day.

(8) Each congregate care program that fails to comply with Section 62A 2-125 shall be fined the actual cost of care incurred by entities maintaining the youth for purposes of locating, housing, and transporting the youth.

### R501-1-23. Program Clinical Services.

 (1) Each program providing clinical treatment shall assign a clinical director to ensure that assessment, treatment, and service planning practices are:

(a) regularly reviewed and updated;

(b) individualized; and

(c) designed to involve the participation of each client or each client's parent or guardian.

(2) Each program providing clinical treatment shall ensure that each person working directly with a client shall be informed of the client's individual treatment needs and advised of the best approach to working with that client.

(3) Each program providing clinical treatment shall ensure that client treatment plans are developed and signed by a licensed clinical professional within 30 days of admission.

(4) Each program providing clinical treatment shall ensure that discharge goals are identified in the initial treatment plan and treatment goals are structured around the identified discharge goals and objectives.

(5) Each program providing clinical treatment shall ensure that each client identified for treatment receives individual treatment at least weekly. A non-residential program providing clinical treatment may alter the weekly therapy requirement as designated in the client treatment plan. (6) Each program providing group counseling, family counseling, skills development, or other treatment shall ensure the treatment is offered and documented as prescribed in the treatment plan.

### R501-1-24. Program Policy and Procedure Requirements.

(1) A program shall develop, implement, and comply with policies and procedures sufficient to ensure client health and safety and meet the needs of the client population served.

(2) Before initial licensure and as updates are made, policies and procedures shall be:

(a) submitted electronically to the office;

(b) approved by the office as required; and

(c) trained to each staff.

(3) Policy and procedures shall address:

(a) client eligibility as outlined in Subsection R501-1-13(1)(f);

(b) intake and discharge processes;

(c) client rights as outlined in Rule R495-876 to include client responsibilities;

(d) staff and client grievance procedures;

(e) behavior management, addressing:

(i) appropriate and inappropriate behaviors of clients;

(ii) appropriate and inappropriate staff responses to elient behaviors; and

 — (iii) staff response to a client leaving a program without permission:

(f) if applicable, seclusion policy;

 (g) if applicable, restraint policy outlining that restraint is:

 (i) only used as a temporary means to prevent harm to the elient or in protection of others;

(ii) only to be completed by an individual with documented training in nonviolent crisis intervention and de-escalation techniques; and

(iii) is a last resort emergency safety measure only;

 (h) instructions to staff regarding how to report and respond to significant criminal activity and significant medical emergencies;

 (i) program plan for the prevention or control of infectious and communicable disease to include coordination with and following any guidance of the state or local health authorities, Center for Disease Control, and the department;

 (j) critical incident reporting in accordance with Subsection R501-1-11(2);

(k) emergency procedures to instruct staff how to address incident reporting, continuity of care, transport, relocation, and client health and safety during natural disasters, extreme weather events, fire, utility or structural failures, or other unexpected disruptions to the program service:

 (1) if transportation of clients is provided, the program shall meet the following requirements:

(i) insurance;

(ii) valid driver license;

(iii) adherence to Title 41, Motor Vehicles;

(iv) the driver to have a cell phone for immediate contact;
 (v) vehicle maintenance;

 (vi) emergency contact postings in the vehicle to include program name, address, and phone number to be called by first responders if needed;

(vii) vehicles to be equipped with a first aid kit as recommended by the American Red Cross; and

(viii) a policy to ensure that all clients exit the vehicle upon arriving at the destination unless directly supervised by a staff member;

(m) firearm policy that does not restrict constitutional or statutory rights regarding concealed weapons permits as described in Title 53, Chapter 5, Part 7, Concealed Firearms Act;

 (n) smoking policy in accordance with Title 26, Chapter 38, Utah Indoor Clean Air Act;

(o) policies and procedures if clients are present in the program for six or more consecutive hours to address:

(i) provision of client meals and whether meals will be program prepared, catered, or self provided; and

(ii) administration of required medication if a program manages, stores or administers medication;

(p) description of any supplemental or contracted services that may be provided unrelated to the treatment or service plan or outside the scope of the license to include:

(i) summer camp;

(ii) wilderness excursion;

(iii) transportation;

(iv) extended outing;

(v) travel out of the state or country;

(vi) any supplemental machines or equipment, including training on their utilization and maintenance;

 (vii) gaining informed consent from each client or client's parent or guardian for voluntary participation in these supplemental services; and

 (viii) securing each necessary license, certification, or state and local permission before offering these services or operating with clients in a temporary or satellite location;

(q) unplanned discharge policy;

 (r) suicide prevention policy addressing how to manage clients who screen with elevated risk levels;

(s) non-discrimination policy that includes:

(i) a prohibition of abuse, discrimination, and harassment based on sex, gender identity, or sexual orientation;

(ii) policy and procedure described in Section 62a-2-124;
 (iii) a program requiring uniforms shall only permit gender neutral selection;

(iv) assurance that treatment practices and staff training are trauma informed to identify and eliminate triggers for retraumatization;

 (v) outline the consequences for staff or client abuse, or harassment, of staff or clients on the basis of gender identification or sexual orientation; and

 (t) consequences for staff acting outside their training or policy and procedure; and

(u) record retention.

 (4) Program specific policies shall address any unique circumstances regarding physical facility, supervision, community safety and mixing populations.

(5) Record retention policy shall describe the program's plan and responsibility for retaining each client record for seven years or until a client turns 21 years of age, whichever comes later.

 (6) Record retention policy shall describe the program's plan and responsibility for retaining each staff records for seven years.

(7) In accordance with Section 63G-2-309, a program may submit a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality for records the program submits to the office that the program believes should be protected under Subsection 63G-2-305(1) or 63G-2-305(2), including program policies and procedures.

## R501-1-25. Additional Policy and Procedure Requirements for Residential Programs.

(1) A program that provides meals for clients shall have and follow a food service policy. The food service policy must include:

(a) staff and client training on the policy;

 (b) procedures for identifying and accommodating clients with special dietary needs;

 (c) allowances for nutritious snacks to be available during restricted hours if the program restricts access to food and kitchen equipment;

 (d) if serving parents and their children, requirements for consenting adult clients to maintain full responsibility for their, and their children's', special dietary needs;

(e) a written policy for when meals are prepared by clients to include the following:

(i) rules and privileges of kitchen use;

(ii) menu planning and procedures;

(iii) sharing self-prepared food;

(iv) nutrition and sanitation requirements;

(v) schedule of responsibilities; and

(vi) shopping and storage responsibilities;

(f) a residential program, excluding residential treatment program, may allow for client independence and responsibility for their own supplies, food, laundry or transportation with policies that outline resources and responsibility for the provision of these items; a program shall assist clients on a limited basis if they are temporarily unable to provide these items or services for themselves.

(2) A program managing, storing, or administering client medications shall have and follow a medication management policy to require:

(a) program and client responsibility for medication including storage and administration of medications on-site and, as applicable, when staff and clients are off site in program related activities;

(b) if applicable, medication self-administration policy;

 (c) if storing and administering medications, training required to administer medication and the process to be followed; (d) recording medication dosages according to

prescriptions;

(e) monitoring and recording effects and side effects of medications; and

(f) logging doses and recording and reporting medication errors.

(3) Policy to train staff to identify and address:

(a) clients who pose a risk of violence;

(b) clients in possession of contraband;

(c) clients who are at risk for suicide;

(d) managing clients with mental health concerns;

(e) identifying the signs and symptoms of clients presenting under the influence of substances or alcohol; and

 (f) prescribed staff responses to any of the circumstances listed in Subsection R501-1-25(3), including ongoing monitoring and assessment for remaining in the program.

(4) Policy regarding the care, vaccination, licensure, and maintenance of any animals on site to include:

 (a) assessment of pet allergies for any clients interacting with animals in the program; (b) maintenance of required examinations, registrations, and vaccinations; and

(c) supervision of clients in the presence of animals.

(5) Client belongings policy that addresses:

(a) initial and updated inventory signed by the client;

(b) storage and return of each client belonging to the client or client's guardian at the time of discharge; and

 (c) program shall replace any lost or stolen items for which the program is responsible.

(6) A program managing funds for client allowances must document each expense.

(7) A residential program shall develop and follow a policy for providing separate space for sick clients

(8) A ratio of one staff to one client during transports is only permissible when the program has conducted a safety assessment that indicates that client and staff safety is reasonably assured.

## R501-1-26. Congregate Care Program Additional Policy and Procedure Requirement.

(1) A Congregate Care Program may not utilize any behavior management technique, restraint, seclusion or curriculum unless it has been approved by the office.

(2) The program's licensed clinical professional shall conduct regular reviews of client restraints, seclusions, behavioral interventions, and time outs to inform processing discussions with clients and training for direct care staff.

(3) A congregate care program shall have a contraband policy including what constitutes contraband and how the program ensures restriction of client access to contraband and dangerous weapons or materials.

 (a) Strip searches and body cavity searches are prohibited by Section 62A-2-123 without documented, individualized justification for protection of an individual's health and safety.

(b) Strip search and body cavity search policies may not allow for strip searches to be performed as a universal practice and may only allow these searches to be conducted with individualized justification, documentation, and in accordance with a detailed policy approved by the office.

(c) Strip searches and body cavity searches may only be performed in congregate care by a medical professional outside of the line of sight of direct care staff.

(4) A congregate care suicide prevention policy may only be approved by the office if it complies with Subsection 62A-2-123(5). A suicide prevention policy may not allow a blanket practice of placing beds in hallways or common areas for staff convenience, client dignity must be preserved and therapist or client authorization is required for displacing a child from normal sleeping arrangements.

(5) A congregate care behavior management policy may only be approved by the office if, in addition to complying with Section 62A 2-123, the policy reflects the following:

(a) each program staff shall use behavior management techniques that are trauma informed and appropriate for the client's age, behavior, needs, developmental level, and past experiences and shall defer to the least restrictive method of behavior management available to control a situation;

(b) each program staff shall only use behavior management techniques that emphasize de escalation and promote self control, self esteem, and independence; and

(c) each program shall identify a behavior management curriculum that emphasizes de escalation and is compliant with Section 62A-2-123;  (d) only direct care staff familiar with the child and the ehild's needs shall conduct passive physical restraint;

(e) restraint will only be used if it will not cause undue physical discomfort, harm, or pain to the client;

(f) interventions that use painful stimuli are prohibited as a general practice;

(g) passive physical restraint shall be used only as an emergency, temporary means of physical containment to protect the consumer, other persons, or property from immediate harm;

 (h) restraint may only continue as long as the client presents an immediate danger to self or others;

(i) passive physical restraint may not be used as a convenience to staff, a substitute for programming or associated with punishment in any way;

 (j) clients, non direct care staff, or other unauthorized individuals may not use any form of restraint;

 (k) staff may not use physical work assignments or activities that inflict pain as behavior management techniques;

 (1) appropriate de-escalation techniques and alternatives to restraint or seclusion;

(m) thresholds for restraints;

(n) the physiological and psychological impact of restraint;
 (o) appropriate monitoring;

 (p) staff training to recognize the physical signs of distress, positional asphyxia, and obtaining medical assistance;

(q) staff training on how to intervene if another staff
 member fails to follow correct procedures when using a restraint;
 (r) staff training on time limits for restraints;

(s) the process for obtaining clinical approval for continued restraints;

(t) the procedure for documenting and reporting restraints;
 (u) the procedure for processing restraints with clients;
 (v) the procedure for following up with staff after a

restraint; (w) how staff shall address injuries and complaints;

(w) now staff shall address injuries and complain

(x) department code of conduct; and

(y) client rights listed in the provider code of conduct.

(6) A congregate care seclusion policy may only be approved by the office if it reflects the following:

(a) seclusion is only used to ensure the immediate safety of the child or others and must be terminated as soon as the risks have been mitigated, not to exceed four hours without clinical justification;
 (b) staff who are familiar to the child must directly supervise the child during the seclusion;

(c) staff supervising seclusion shall ensure that any potentially harmful items or objects are removed from the seclusion environment;

(d) seclusion rooms shall measure a minimum of 75 square feet and have a minimum ceiling height of seven feet with no equipment, hardware or furnishings that obstruct staff's view of the elient or present a hazard;

 (e) seclusion rooms shall have either natural or mechanical ventilation with break resistant windows and either a break resistant two-way mirror or camera that allows for observation of the entire room;

 (f) seclusion rooms may not have locking capability and may not be located in closets, bathrooms, unfurnished areas or other areas not designated as part of residential living space;

 — (g) bedrooms may not be utilized as a seclusion room and seclusion rooms may not be utilized as bedrooms;

 (h) seclusion shall be documented in detail by the staff involved in initiating and supervising the seclusion episode;  (i) seclusion episodes of more than two in a 24-hour period require clinical review and documentation regarding client suitability for remaining in the program; and

(j) client time-out may be used when addressing behavioral issues if:

 (i) a client in time-out is never physically prevented from leaving the time-out area;

(ii) it takes place away from the area of activity or from other clients, such as in the client's bedroom;

(iii) staff monitors the client while in time-out; and

(iv) the reason for and duration of time-out is documented by staff on duty when it occurs.

(7) Before a congregate care program may accept a client or send a discharging client who is transported by a youth transportation company as defined in Subsection 62A-2-101(50), the program must:

(a) ensure that the transport company is registered with the office;

(b) ensure that the transporter has an office approved background clearance; and

(c) identify all out of state means of transport in the congregate care out of state monthly placement survey outlined in Subsection R501-1-22(5).

### R501-1-27. Compliance.

A licensee that is in operation on the effective date of this rule shall be immediately compliant with this rule.]

R501. Health and Human Services, Human Services Program Licensing.

**R501-1.** General Provisions for Licensing.

**R501-1-1.** Authority and Purpose.

(1) This rule is authorized by Section 26B-2-104.

(2) This rule clarifies the general compliance standards for programs licensed under Title R501.

(3) This rule provides definitions for Title R501.

### R501-1-2. Scope.

(1) Rules R501-1 and R380-600 apply to any program subject to human services program licensure.

(2) Each licensee and person associated with the licensee shall comply with:

(a) Rule R501-14;

(b) any applicable categorical rule in Title R501; and

(c) any federal, state, or local law, rule, or ordinance.

### R501-1-3. Definitions.

(1) In addition to the definitions outlined in Section 26B-2-101 and Rule R380-600, the following definitions apply to each rule under Title R501.

(2)(a) "Body Cavity Search" means a visual or manual inspection of the body cavity in search of prohibited material.

(b) "Body Cavity Search" does not mean an inspection of a client's mouth after taking medication.

(3) "Category" means the type of human service license described in Section 26B-2-101.

(4) "Chemical Restraint" means any drug that is used to restrict an individual's freedom of movement for discipline, convenience, or immediate safety and not required to treat the individual's medical symptoms.

(5) "Clinical" means treatment or services delivered by a mental health or medical professional that is licensed by the Division of Professional Licensing.

(6) "Compliant" means adherence to governing rule and statute.

(7) "Confidential communication" means communication between only the individuals referenced in Subsection 26B-2-123(6) that does not allow for outside entities to have access to information contained in the confidential exchange.

(8) "Conflict of Interest" means a situation where a person is in a position to derive personal benefit from actions or decisions made in their official capacity.

(9)(a) "Congregate Care Program" means the same as the term defined in Section 26B-2-101.

(b) "Congregate Care Program" does not mean a residential program licensed to serve adults that is approved by the office to serve a child for a limited time.

(10) "Direct Care Staff" means staff working directly with clients.

(11) "Direct Supervision" means in close physical proximity and actively supervising clients with the ability to immediately respond as necessary.

(12) "Education Entitled Children" means the same as the term is defined in Section 26B-2-116.

(13) "Licensee" means an individual or a human services program licensed by the office.

(14) "Mechanical Restraint" means the use of a device, material or equipment attached to or adjacent to a person's body that restricts freedom of movement and normal access to the body.

(15) "Medication-Assisted Treatment" means the use of medications with counseling and behavioral therapies to treat substance use disorders or prevent opioid overdose.

(16) "On duty" means individuals counted in supervision ratios and charged with supervising clients as a primary job requirement.

(17) "Parent program" means an applicant or licensee owning or directing multiple sites under the same general administrative organization.

(18) "Person" means:

(a) an individual;

(b) an association;

(c) an institution;

(d) a corporation; (e) a company;

(f) a trust;

(g) a limited liability company;

(h) a partnership;

(i) a political subdivision;

(j) a government office, department, division, bureau, or other body of government; and

(k) any other organization or entity.

(19) "Program director" means an individual responsible for day-to-day operations of a program.

(20) "Residential program" means a program providing overnight care and includes the following license categories:

(a) recovery residence;

(b) residential support;

(c) residential treatment;

(d) outdoor youth;

(e) therapeutic school; and

(f) social detoxification.

(21)(a) "Restraint" means physically restricting a client's freedom of movement, physical activity, or normal access to their body; and includes passive, chemical and mechanical restraint used as a last resort as a means to prevent harm to self or others.

(b) "Restraint" does not mean an escort used to lead, guide, or direct a client.

(22) "Seclusion" means, except for medically approved quarantine, the involuntary confinement of an individual in an area: (a) away from the individual's peers; and

(b) in a manner that physically prevents the individual from leaving the room or area.

(23) "Settings Final Rule" means 42 CFR Parts 430, 431, 435, 436, 440, 441, and 447 that impacts Medicaid funding in residential settings that serve elderly and disabled populations.

(24) "Significant criminal activity" means any unlawful activity by or against any of the licensee's clients or on duty staff members that poses a serious threat to their health, safety, or well-being including:

(a) any criminal activity that involves law enforcement;

(b) illegal physical or sexual misconduct or assault;

(c) riot;

(d) suspected fraud; and

(e) suspected exploitation.

(25) "Significant medical emergency" means an acute injury or illness posing an immediate risk to a person's life or health or requires emergency medical care.

(26) "Site" means a human services program identified by a single geographic location and linked to the parent program, if one exists.

(27) "Staff" means an individual who is associated with a licensee.

(28) "Strip search" means requiring a client to undress down to undergarments or complete nudity in view of another person.

(29) "Telehealth" means the use of digital information and communication technologies, such as computers and mobile devices, to remotely access behavioral or health care services.

(30) "Trauma-informed" means overall practices that promote environments of healing and recovery rather than practices and services that may inadvertently re-traumatize.

## R501-1-4. Program Policies, Procedures, and Safe Practices.

(1) The licensee shall submit to the office, before program implementation, policies and procedures that include:

(a) a description of what constitutes sex and gender abuse, discrimination, and harassment;

(b) procedures for preventing and reporting abuse, discrimination, and harassment; and

(c) procedures for teaching effective and professional communication with individuals of any sexual orientations and genders.

(2) The licensee shall develop, implement, and comply with safe practices that:

(a) ensure client health and safety;

(b) ensure the needs of the client population served are met;

(c) ensure that none of the program practices conflict with any administrative rule or statute before implementation; and

(d) inform staff of how to manage any unique circumstances regarding the specific site's physical facility, supervision, community safety, and mixing populations.

(3) The licensee shall submit any change to an officeapproved policy or curriculum to the office for approval before implementing the proposed change.

(4) A congregate care program licensee shall submit to the office any policies and procedures that describe behavior

management, suicide prevention, restraint, or seclusion used in the program as described in Section 26B-2-123, before implementation.

(5) In addition to complying with Section 26B-2-123, a congregate care program licensee shall ensure that the congregate care behavior management policy and practices reflect the following:

(a) a congregate care program licensee uses behavior management techniques that are trauma-informed and appropriate for the client's age, behavior, needs, developmental level, and past experiences and defer to the least restrictive method of behavior management available to control a situation;

(b) a congregate care program licensee only uses behavior management techniques that emphasize de-escalation and promote self-control, self-esteem, and independence;

(c) a congregate care program licensee identifies a behavior management curriculum that emphasizes de-escalation and is compliant with Section 26B-2-123:

(d) only direct care staff familiar with the child and the child's needs conduct passive physical restraint;

(e) restraint is only used if it does not cause undue physical discomfort, harm, or pain to the client;

(f) interventions that use painful stimuli are prohibited as a general practice;

(g) passive physical restraint is used only as an emergency, temporary means of physical containment to protect the consumer, other persons, or property from immediate harm;

(h) restraint only continues as long as the client presents an immediate danger to self or others;

(i) passive physical restraint is not used as a convenience to staff, a substitute for programming or associated with punishment in any way;

(j) a client, non-direct care staff member, or other unauthorized individual does not use any form of restraint;

(k) staff do not use physical work assignments or activities that inflict pain as behavior management techniques; and

(1) staff are trained to ensure the following safe practices:
 (i) appropriate de-escalation techniques and alternatives to

restraint or seclusion;

(ii) thresholds for restraints;

(iii) the physiological and psychological impact of restraint;

(iv) appropriate monitoring of restraint episodes;

(v) how to recognize the physical signs of distress, positional asphyxia, and obtaining medical assistance;

(vi) how to intervene if another staff member fails to follow correct procedures when using a restraint;

(vii) time limits for restraints;

(viii) the process for obtaining clinical approval for continued restraints;

(ix) the procedure for documenting and reporting restraints;

(x) the procedure for processing restraints with clients;

(xi) the procedure for following up with staff after a restraint;

(xii) how staff address injuries and complaints;

(xiii) department code of conduct; and

(xiv) client rights.

(6) A congregate care program licensee shall ensure that congregate care seclusion policy and practices reflect the following:

 (a) seclusion is only used to ensure the immediate safety of the child or others and is terminated as soon as the risks have been mitigated, not to exceed four hours without clinical justification;

(b) staff who are familiar to the child directly supervise the child during the seclusion;

(c) staff supervising seclusion ensure that any potentially harmful items or objects are removed from the seclusion environment;

(d) seclusion rooms measure a minimum of 75 square feet and have a minimum ceiling height of seven feet with no equipment, hardware or furnishings that obstruct staff's view of the client or present a hazard;

(e) seclusion rooms have either natural or mechanical ventilation with break resistant windows and either a break resistant two-way mirror or camera that allows for observation of the entire room;

(f) seclusion rooms do not have locking capability and are not located in closets, bathrooms, unfurnished areas or other areas not designated as part of residential living space;

(g) bedrooms are not utilized as a seclusion room and seclusion rooms may not be utilized as bedrooms;

(h) seclusion episodes are documented in detail by the staff involved in initiating and supervising the seclusion episode;

(i) seclusion episodes of more than two in a 24-hour period are supported by clinical review and documentation regarding client suitability for remaining in the program; and

(j) client time-out is used when addressing behavioral issues only if:

(i) a client in time-out is never physically prevented from leaving the time-out area;

(ii) it takes place away from the area of activity or from other clients, such as in the client's bedroom;

(iii) staff monitors the client while in time-out; and

(iv) the reason for and duration of time-out is documented by staff on duty when it occurs.

(7) A congregate care program licensee shall develop and follow a suicide prevention policy that complies with Subsection 26B-2-123(5).

(8) A congregate care program licensee shall ensure that the program's licensed clinical professional conducts regular reviews of client restraints, seclusions, behavioral interventions, and time outs to inform processing discussions with clients and training for direct care staff.

(9)(a) Before a congregate care program licensee may accept a client or send a discharging client who is transported by a youth transportation company as defined in Section 26B-2-101, the licensee shall ensure that the transport company is registered with the office.

(b) A congregate care program licensee shall report private placements to the office as described in Section 26B-2-124 by completing the congregate care out of state placement survey on the office website no later than the fifth business day of each month.

### **R501-1-5.** Residential Program Additional Safe Practices.

(1) A licensee that manages, stores, or administers client medications shall develop and ensure compliance with the following medication management safe practices:

(a) inform staff and clients of program and client responsibility for medication including storage and administration of medications on-site and, as applicable, when staff and clients are offsite in program related activities;

(b) if applicable, inform staff and clients of the medication self-administration process;

(c) if storing and administering medications, train staff to administer medication and the process to be followed;

(d) how staff record medication dosages according to prescriptions;

(e) how staff monitor for and record effects and side effects of medications; and

(f) how staff log doses and record and report medication errors.

(2) The licensee shall ensure the care, vaccination, licensure, and maintenance of any animals on-site to include:

(a) assessment of pet allergies for any clients interacting with animals in the program;

(b) maintenance of required examinations, registrations, and vaccinations; and

(c) supervision of clients in the presence of animals.

(3) The licensee shall have separate space for clients who are showing symptoms of an infectious disease.

(4) The licensee shall ensure that a ratio of one staff to one client during transports is only utilized when the program has conducted a safety assessment that indicates that client and staff safety is reasonably assured.

## <u>R501-1-6. Program Administrative and Direct Service</u> <u>Requirements.</u>

(1) The licensee shall clearly identify services to the office, public, potential client, parent, or guardian regarding:

(a) current and accurate contact information;

(b) the complaint reporting and resolution process;

(c) a description of each service provided;

(d) each program requirement and expectation;

(e) eligibility criteria outlining behavior, diagnosis, situation, population, and age that can be safely served, including:

(i) an outline of the behaviors and presenting issues that would be reason for discharge or exclusion from the program; and

(ii) a statement that the program may not take placement of a child whose needs exceed the scope or ability of the program to reasonably manage;

(f) each cost, fee, and expense for a service and refund policy; and

(g) identification of each non-clinical, extracurricular, or supplemental service offered or referred.

(2) The licensee shall post the following in conspicuous places where each visitor, staff, and client may view:

(a) abuse reporting laws as described in Sections 80-2-609 and 26B-6-205;

(b) civil rights notice;

(c) Americans with Disabilities Act notice;

(d) the program license;

(e) any office notice of agency action;

(f) a client rights poster in a residential setting except in a foster home or where prohibited by Settings Final Rule; and

(g) department code of conduct poster.

(3) The licensee shall maintain compliance with or documentation of an exemption from any of the following requirements:

(a) a food handler permit for any person preparing meals for any other person;

(b) capacity determinations that include each staff and client on premises and may not exceed the capacity limits placed by local authorities;

(c) fire clearance, if conducted separately from a business license; and

(d) licensure and registration of any vehicles used to transport clients.

(4) The licensee whose local clearances are under dispute shall resolve any dispute before the office issues a license in good standing.

(5) The licensee shall maintain and make the following available to the department upon request:

(a) proof of financial viability of the program as verified by a financial professional;

(b) general liability insurance;

(c) professional liability insurance;

(d) vehicle insurance;

(e) fire insurance; and

(f) additional insurance as required to cover each program activity.

(6) The licensee shall ensure:

(a) each entity associated with the licensee reads, understands, signs, and follows the current provider code of conduct before working with clients;

(b) current staff and client lists are available at each licensed site;

(c) the organizational and governance structure of the program is available to the department upon request and includes:

(i) line of authority and responsibility;

(ii) a job description, including each duty and qualification for each job title; and

(iii) notification to the office of any program changes as described in Section R380-600-3;

(d) a quality improvement plan that is implemented and followed and that incorporates, at a minimum, client and staff grievances, feedback, trends in licensing noncompliance and incident reports;

(e) the licensee provides an interpreter or refers each client to appropriate resources as necessary to communicate with the client; and

(f) the licensee maintains an opioid overdose reversal kit on-site with on duty staff trained in its use if the licensee is serving, or is likely to serve, a client with a substance use disorder.

(7) A licensee serving education entitled children shall comply with Section 26B-2-116 regarding coordination of educational services to include completion of youth education forms at initial and renewal licensure.

(8) A licensee offering school on-site shall:

(a) maintain the established staff to client ratio with behavioral intervention trained staff in the school setting;

(b) ensure recognition in good standing by an educational accreditation organization such as the State Board of Education or the National School Accreditation Board; and

(c) ensure each client is taught at their appropriate grade level.

(9) The licensee shall ensure clinical and medical staff are licensed or certified in good standing and any unlicensed staff are appropriately supervised as described in Title 58, Occupations and Professions.

(10) A licensee that utilizes telehealth for treatment shall do so within the scope of their professional licensure in accordance with Section 26B-4-704 and Title 58, Chapters 60 Mental Health Professional Practice Act and 60a Counseling Compact and comply with each applicable rule.

(11) A non-residential licensee offering community-based services shall comply with each applicable rule, as determined by the office.

(12) A licensee that provides behavior interventions to people with disabilities shall comply with Rule R539-4, which

supersedes any conflicting rule under Title R501, for the disabled populations served.

(13) The licensee shall maintain a record retention process that retains each client record for seven years or until a client turns 21 years of age, whichever comes later.

(14) If a licensee sells or arranges for client insurance coverage, the licensee shall:

(a) inform the client in writing of the licensee's role and responsibility:

(b) provide the insurer with any program licensee record;

(c) contact and cooperate with the insurance department during any dispute regarding a service or supply billed; and

(d) not provide unlawful substance abuse patient brokering as described in Subsection 26B-2-113(5).

# **R501-1-7.** Residential Program Additional Administration and Direct Services Requirements.

(1) A residential program licensee shall additionally:

(a) ensure each staff shift list remains current and available to the office upon request:

(b) ensure that each shift documents any illness, injury or critical incident and passes it on to the next shift and administration;

(c) ensure at least two on-duty staff are present at all times; (d) ensure access to a medical clinic or a medical professional familiar with the program and population served; and

(e) provide a separate space for clients who are showing symptoms of an infectious disease.

(2) A congregate care program licensee serving youth who have been placed in Utah from outside of Utah shall demonstrate compliance with Section 80-2-9, Interstate Compact on Placement of Children.

(3) A congregate care program licensee may allow an individual turning 18 to remain in the program as described in Subsection 26B-2-104(1)(a)(iii) if:

(a) the individual remains in the custody of a state entity or the individual was admitted and continuously resided in the program for at least 30 days before the individual's 18th birthday;

(b) the licensee has a documented need for the individual to remain in the program;

(c) the licensee maintains responsibility for discharge to an appropriate setting when clinically appropriate and no later than the day an individual reaches 19 years of age:

(d) the licensee outlines a plan for the protection of younger clients by supervising and separating 18-year-old individuals from youth who are more than two years younger; and

(e) the individual signs a consent document outlining:

(i) the individual is consenting to remain in the program voluntarily and understands the individual is not required to remain against their will;

(ii) that any criminal offenses committed may result in being charged as an adult; and

(iii) that if the individual is involved in any critical incidents posing a risk to the health and safety of other program residents they may be discharged from the program.

(4) A congregate care program licensee shall ensure weekly confidential communication with family in accordance with Section 26B-2-123 and shall ensure that:

(a) the frequency or form of the confidential communication requirement is only modified if the program submits a modification request that demonstrates the following to the office:

(i) the program operates in an area of limited or unreliable phone accessibility or coverage;

(ii) there is significant risk of harm or danger to client safety by providing youth with unsupervised telephone access;

(iii) the licensee offers an alternative that satisfies the requirement of weekly confidential two-way communication; or

(vi) extenuating circumstances exist outside the individual treatment plans that are prohibitive to offering voice to voice communication;

(b) a parent or guardian authorizes in writing an alternate means of confidential communication when voice to voice is unavailable; and

(c) the licensee offers voice to voice confidential communication as soon as it can be safely offered.

(5)(a) A modification to voice to voice communication is a program license-specific approval.

(b) An individual modification may only be made in accordance with Section 26B-2-123 and requires individualized documentation, or an individualized client treatment plan.

(c) A blanket statement or practice applied to every treatment plan may not be used to satisfy the requirement of individualized documentation.

(d) A modification plan for confidential communication may not be implemented without written approval from the office.

(6)(a) A residential program licensee, excluding a residential treatment program, may allow for client independence and responsibility for their own supplies, food, laundry, or transportation by outlining in writing resources and responsibility for the provision of these items.

(b) Each residential program licensee shall assist clients on a limited basis if they are temporarily unable to provide the items or services listed in Subsection R501-1-7(6)(a) for themselves.

## **R501-1-8.** Program Physical Facilities and Safety.

(1) The licensee shall ensure:

(a) the appearance and cleanliness of the building and grounds are maintained and free from health and fire hazards;

(b) any appliances, plumbing, electrical, HVAC, and furnishings are maintained in operating order and in a clean and safe condition;

(c) fire drills in non-outpatient programs are conducted at least quarterly and documented, including feedback regarding response time and process;

(d) a phone that can be used to call 911 is always available on-site when clients are present;

(e) bathroom facilities for staff and clients allow for individual privacy and afford reasonable accommodation based on gender identity;

(f) each bathroom is properly equipped with toilet paper, paper towels or a dryer, and soap;

(g) each bathroom is ventilated by mechanical means or equipped with a window that opens:

(h) non-prescription medication, if stored on-site, is stored in original manufacturer's packaging together with the manufacturer's directions and warnings; and

(i) prescription medication, if stored on-site, is stored in original pharmacy packaging or individual pharmacy bubble pack together with the pharmacy label, directions, and warnings.

(2) The licensee shall accommodate a client with physical disabilities as needed or appropriately refer to comparable services.

(3) The licensee shall maintain medication and potentially hazardous items on-site lawfully, responsibly, and with consideration of the safety and risk level of the population served to include locked storage for each medication and hazardous chemical that is not in active use.

(4) The licensee shall maintain a first aid kit that contains at least:

(a) bandages of different sizes;
(b) tweezers;
(c) antiseptic; and
(d) disposable sterile gloves.

### **R501-1-9.** Residential Program Additional Facilities and Safety <u>Requirements.</u>

(1) A residential licensee shall ensure:

(a) designated space is available for records, administrative work, and confidential phone calls for clients;

(b) bedroom assignments are made in accordance with agency policy and individualized assessment described in Section 26B-2-109;

(c) live-in staff have dedicated bedrooms and bathrooms separate from client use:

(d) each bedroom designated for a client is comparable to other similarly utilized bedrooms with similar access, location, space, finishings, and furnishings;

(e) clients are not locked in bedrooms;

(f) a mirror or safety mirror is secured to each bathroom wall at a convenient height:

(g) each bathroom is placed to allow access to each client without disturbing any other client during sleeping hours;

(h) each bath or shower allows for individual privacy;

(i) each client is supplied with hygiene supplies;

(j) each sleeping area has a source of natural light and is ventilated by mechanical means or is equipped with a window that opens;

(k) each client has a similar solid type of bed or sleeping equipment to any other client in the program;

(1) each client is allowed to decorate and personalize their bedroom, while maintaining respect for other residents and property;

(m) there are separate containers for soiled and clean laundry, if the program provides common laundry for towels, bedding or clothing;

(n) bedding and towels are laundered weekly and after each client is discharged;

(o) equipment and supplies for washing and drying laundry are provided, if the program permits clients to do their own laundry; and

(p) there is at least 60 square feet per person in a multipleoccupancy bedroom and 80 square feet in a single occupant bedroom. (2) A residential program licensee serving individuals with

disabilities shall house no more than two clients in each bedroom.

(3) The licensee utilizing seclusion rooms shall ensure the following:

(a) seclusion rooms measure a minimum of 75 square feet and have a minimum ceiling height of seven feet with no equipment, hardware or furnishings that obstruct staff's view of the client or present a hazard;

(b) a seclusion room shall have either natural or mechanical ventilation with break resistant windows and either a break resistant two-way mirror or camera that allows for observation of the entire room;

(c) a seclusion room may not have locking capability and may not be located in closets, bathrooms, unfurnished areas or other areas not designated as part of residential living space; and (d) a bedroom may not be utilized as a seclusion room and a seclusion room may not be utilized as a bedroom.

(4) The licensee shall ensure that dormitory space is only permitted in an emergency homeless shelter or a program serving only adults.

(5) The licensee shall train staff and ensure that the use of any alternate sleeping arrangements other than the client's assigned bedroom is only done on an individualized, short-term basis with ongoing clinical or medical justification that:

(a) preserves client dignity and confidentiality;

(b) is not done as a standard, practice, or policy;

(c) is not utilized due to staffing shortages or for staff convenience; and

(d) is not used as behavior management or consequence.

## **R501-1-10.** Food Service Requirements.

(1)(a) A residential program licensee that provides meals for four to 15 clients shall comply with a local health inspection as described in Rule R392-110, Food Service and Sanitation in Residential Facilities.

(b) A residential program licensee that provides meals for more than 16 clients shall comply with Rule 392-100.

(c) A residential program licensee serving only adults or adults and children together shall comply with a general health inspection as required by the local health authority.

(2) A licensee that provides meals shall:

(a) ensure that meals are not used as incentive or punishment;

(b) provide nutritional counseling to staff and clients;

(c) designate staff responsible for food service who:

(i) maintain a current list of each client with special nutritional needs; and

(ii) ensure that each client with special nutritional needs has food storage and a preparation area that is not exposed to any identified allergen or contaminant;

(d) except in a day treatment program serving clients for less than ten hours a day, or outpatient programs serving clients for less than six consecutive hours a day, provide a variety of three nutritious meals a day that are:

(i) served from dietitian or nutritionist approved menus; or (ii) for programs serving individuals experiencing homelessness, serve meals as required by USDA standard homeless settings;

(e) establish and post kitchen rules and privileges in a kitchen according to client needs and safe food handling practices; and

(f) provide adequate dining space for clients that is maintained in a clean and safe condition.

(3) A licensee that allows self-serve meals shall ensure that self-serve kitchen users are supervised, directed, and trained by a staff that has a food handler's permit or is trained by Serv-Safe, USDA, or a comparable program.

(4) A licensee that serves parents and their children may allow a consenting adult client to maintain full responsibility for their, and their child's, special dietary needs, if consent is maintained in writing in the client record.

(5) A licensee that offers meals for clients shall ensure there is documented training confirming staff are trained to and adhere to the following safe practices:

(a) how to identify and accommodate clients with special dietary needs; and

(b) allowances for nutritious snacks to be available during restricted hours if the program restricts access to food and kitchen equipment.

(6) If meals are prepared by clients, the licensee shall inform staff and clients in writing of the following:

(a) rules and privileges of kitchen use;

- (b) menu planning and procedures;
- (c) sharing self-prepared food;
- (d) nutrition and sanitation requirements;
- (e) schedule of responsibilities; and

(f) shopping and storage responsibilities.

### R501-1-11. Program Client Record Requirements.

(1) The licensee shall maintain client information to include the following:

(a) client name, address, email address, phone number, date of birth and identified gender:

(b) emergency contact names, including legal guardian where applicable, and at minimum, the emergency contact's physical address, current email address or current phone numbers;

(c) a program serving substance use disorder clients shall maintain compliance with an initial and annual client tuberculosis screening results in each client record;

(d) any information that could affect health safety or wellbeing of the client including each medication, allergy, chronic condition or communicable disease:

(e) intake screening and assessment;

(f) discharge documentation;

(g) treatment or service plan;

(h) progress notes and services provided with date and signature of staff completing each entry;

(i) individualized assessment for restriction of access to on-site items that could be used as weapons, for self-directed violence, or as an intoxicant;

(j) any referral arrangements made by the program;

(k) client or guardian signed consent or court order of commitment to services in lieu of signed consent for each treatment and non-clinical service:

(1) summary of attendance and absences in treatment services;

(m) any grievance or complaint made by or against the client and actions taken by the program;

(n) each crisis intervention or critical incident report involving the client; and

(o) any signed agreement and consent form.

(2) The licensee shall document a plan detailing how each program staff and client file is maintained and remains available to the office and other agencies legally authorized to access the files for seven years regardless of whether the program remains licensed.

### **R501-1-12.** Program Intake and Discharge Requirements.

(1) The licensee shall complete an intake screening before accepting a client into the program that includes at least:

(a) verification that the client meets the eligibility requirements of the program;

(b) verification that the client does not meet any of the exclusionary criteria that the program identified in policy as unable to serve:

(c) description of presenting needs; and

(d) suicide risk screening.

(2) A licensee serving substance use disorder clients may not admit anyone who is unresponsive or unable to consent to care because the individual is experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.

(3) A licensee serving incarcerated or court-mandated justice involved clients shall:

(a) conduct a criminogenic risk assessment;

(b) comply with Justice Reinvestment Initiative certification requirements in accordance with Title R523; and

(c) separate high and low criminogenic risk populations.

(4) The licensee shall ensure that , the client, parent, or guardian signs and receives copies of the following agreements to be maintained as client records:

(a) determination of eligibility;

(b) fee agreement outlining costs of services including program, client, parent, or guardian responsibility for payment; and (c) signed consent for treatment that outlines:

(i) rules of the program;

(ii) expectations of clients, parents, and guardians;

(iii) services to be provided;

(iv) Medicaid number, insurance information, and identification of any other entities that are billed for the client's services;

(v) client rights; and

(vi) licensing contact information.

(5) The licensee shall ensure that a discharge plan identifies resources available to a client and includes:

(a) reason for discharge or transfer;

(b) aftercare plan;

(c) summary of services provided; and

(d) progress evaluation.

# **R501-1-13.** Residential Additional Program Intake and Discharge Requirements.

(1) A residential program licensee shall ensure an intake assessment is completed following an approved intake screening, no later than seven days from the admission date, and that the assessment considers and contains:

(a) gender identity and individualized assessment for bedroom and bathroom assignments;

(b) cultural background;

(c) dominant language and mode of communication;

(d) family history and dynamics;

(e) current and past health and medical history;

(f) social, psychological, developmental, vocational, and, as appropriate, educational factors;

(g) suicide risk screening; and

(h) authorization to serve and obtain emergency care.

(2) A residential program licensee may not serve youth from out of state without a disruption plan as described in Section 26B-2-124 and, as applicable, Section 80-2-905, Interstate Compact Placement of Children (ICPC).

(3) A congregate care program licensee shall ensure that each congregate care disruption plan complies with the following:

(a) the program retains jurisdiction and responsibility for the youth while the youth remains in Utah; and

(b) the program completes an individualized disruption plan at the time of intake for each out of state client to include:

(i) who is responsible for the child's return if placement at the facility disrupts;

(ii) current emergency contact information to include the name, address, phone and email address of the parent or responsible person;

(iii) a signed statement from parent or responsible person outlining the plan for the youth in the event of an unplanned disruption in care; and

(iv) a plan for safe transportation either to the state of origin, the responsible person as identified in Subsection R501-1-13(3)(b)(i) or to another licensed congregate care program or higher level of care, as needed.

(4) A congregate care program licensee may demonstrate compliance with Subsections R501-1-13(2) and R501-1-13(3) by producing the 100A and 100B forms and disruption plan as required by the ICPC.

(5)(a) A congregate care program licensee shall report private placements to the office as described in Section 26B-2-124 by completing the congregate care out of state placement survey on the office website no later than the fifth business day of each month.

(b) A congregate care program licensee that does not comply with the disruption plan requirements stated in Section 26B-2-124 shall pay for the cost of care incurred by entities maintaining the youth for purposes of locating, housing, or transporting the youth.

## R501-1-14. Program Clinical Services.

(1) A licensee that offers clinical treatment shall:

(a) assign a clinical director to ensure that assessment, treatment, and service planning practices are:

(i) regularly reviewed and updated;

(ii) individualized; and

(iii) designed to involve the participation of each client or each client's parent or guardian;

(b) ensure each person working directly with a client is informed of the client's individual treatment needs and advised of the best approach to working with that client;

(c) ensure client treatment plans are developed and signed by a licensed clinical professional within 30 days of admission;

(d) ensure discharge goals are identified in the initial treatment plan and treatment goals are structured around the identified discharge goals and objectives;

(e) ensure that each client identified for treatment receives individual treatment at least weekly; and

(f) ensure any missing individual weekly treatment is justified, approved, and documented by the clinical director.

(2)(a) A residential program licensee shall ensure that in addition to the required weekly individual therapy, frequency and need for family and group therapy and other clinical services are addressed in the individual's treatment plan.

(b) A non-residential program licensee who offers clinical treatment may alter the weekly therapy requirement as designated in the individual's treatment plan.

(4) A licensee who offers group counseling, family counseling, skills development, or other treatment shall offer and document these treatment services as prescribed in the treatment plan.

(5) The licensee shall make any records available to the department for review upon request.

## R501-1-15. Program Staffing.

(1) The licensee shall ensure adequate staffing to safely supervise the current population, including adding more staff than required by the usual staffing ratio as needed to manage behaviors, dynamics, and individual client treatment and supervision needs.

(2) The licensee shall identify a manager or qualified designee who is immediately available when the program is in

operation or there is a qualified and trained substitute when the manager is absent or unavailable.

(3) A licensee that offers clinical services shall employ or consult with licensed professional staff that include an individual who is familiar with the program and the needs of each client.

(4) The licensee shall ensure that before allowing a direct care staff to work unsupervised they have an approved background clearance except as excluded in Section R501-14-17;

(5) A licensee who serves clients with substance use disorder shall ensure each staff is screened for tuberculosis.

(6) A licensee who serves a client with substance use disorder may not offer, entice, refer, or recommend medical cannabis as treatment for substance use disorder.

(7) A licensee who manages, stores, or administers client medication shall identify a medical professional to oversee the medication management, medication oversight, and staff training regarding medication management and administration.

(8) The licensee shall ensure that each person involved with the prescription, administration, or dispensing of controlled substances maintains appropriate medical or pharmacy licenses and DEA registration numbers as described in the 21 CFR Part 1301.

(9) The licensee shall create and maintain personnel information for each staff member, contracted employee, and volunteer.

(10) The licensee shall ensure that personnel information includes:

(a) any applicable qualification, experience, certification, or license;

(b) any approved and current office background clearance, except as excluded in Rule R501-14;

(c) a provider code of conduct that is signed by the staff member, contracted employee, or volunteer;

(d) any pre-service and annual training records with the date completed, topic, and the individual's signed acknowledgment of training completion;

(e) any grievances or complaints made by or against the individual and actions taken by the program; and

(f) each crisis intervention or critical incident report involving the individual.

(11) The licensee shall ensure that at least one CPR and First Aid-certified staff member is available when staff and clients are present unless a currently licensed healthcare professional is present.

### R501-1-16. Personnel Training Requirements.

(1) The licensee shall ensure that each staff receives preserving training on the following topics before being left unsupervised and within 30-days of hire:

(a) program policies, procedures and safe practices as outlined in Section R501-1-5;

(b) program emergency preparedness, response, and recovery plan, including at least:

(i) emergency procedures to instruct staff how to address incident reporting, continuity of care, transport, relocation, and client health and safety during natural disasters, extreme weather events, fire, utility or structural failures, or other unexpected disruptions to the program service; and

(ii) instructions to staff regarding how to report and respond to significant criminal activity and significant medical emergencies;

(c) CPR and First Aid;

(d) client eligibility, emphasizing the behaviors and circumstances the program can safely manage;

(e) staff involvement and responsibility in the intake, discharge, and unplanned discharge processes;

(f) client rights;

(g) supervision and ratios;

(h) as applicable, medications management, storing, and administration;

(i) as applicable, food handling as outlined in Subsection R501-1-10(3);

(j) background checks;

(k) prevention, signs and symptoms of abuse and neglect, including sexual abuse, and legal reporting requirements;

provider code of conduct as outlined in Rule 380-80;

(m) non-discrimination policy in accordance with Section 26B-2-109 that includes a prohibition of abuse, discrimination, and harassment based on sex, gender identity, or sexual orientation; (n) staff and client grievance procedures;

(o) crisis intervention;

(p) appropriate use of restraint and seclusion;

(q) de-escalation techniques;

(r) appropriate searches;

(s) appropriate and inappropriate behaviors of clients;

(t) appropriate and inappropriate staff responses to client behaviors; and

(u) if applicable, staff response to a client leaving a program without permission.

(2) The licensee shall ensure each staff completes the following training topics each year, based on the program's license date:

(a) program policies, procedures and safe practices as outlined in Section R501-1-4;

(b) general provisions and applicable categorical licensing rule;

(c) client eligibility, as outlined in Subsection R501-1-6(1)(e), emphasizing the behaviors and circumstances the program can safely manage;

(d) staff involvement and responsibility in the intake, discharge, and unplanned discharge processes;

(e) provider code of conduct as outlined in Rule R380-80; (f) program plan for the prevention or control of infectious and communicable disease to include coordination with and following any guidance of the state or local health authorities, Center for Disease Control, and the department;

(g) emergency procedures to instruct staff how to address incident reporting, continuity of care, transport, relocation, and client health and safety during natural disasters, extreme weather events, fire, utility or structural failures, or other unexpected disruptions to the program service;

(h) program rules regarding firearms that does not conflict with constitutional or statutory rights regarding concealed weapons permits as described in Title 53, Chapter 5, Part 7, Concealed Firearms Act;

(i) smoking rules in accordance with Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products;

(j) how to manage clients who screen with elevated suicide risk levels;

(k) general incident reporting;

(1) prevention, signs, and symptoms of abuse and neglect, including sexual abuse, and legal reporting requirements;

(m) CPR and first aid;

(n) if storing and administering medications, training required to administer medication and the process to be followed;

(o) training to identify and address in a residential or congregate care program:

(i) clients who pose a risk of violence;

(ii) what constitutes contraband, possession of contraband, and how the program ensures restriction of client access to contraband and dangerous weapons or materials;

(iii) clients who are at risk for suicide;

(iv) managing clients with mental health concerns; and

(v) identifying the signs and symptoms of clients presenting under the influence of substances or alcohol;

(p) if the licensee manages funds for client allowances, training to document each expense; and

(q) appropriate use of any alternate sleeping arrangements in a residential or congregate care program.

## R501-1-17. Compliance.

(1) A human services program licensee that is in operation on the effective date of this rule shall immediately comply with this rule.

(2) In accordance with Subsection 26B-2-113(2), the office may assess a civil money penalty for noncompliance with any rule under Title R501.

**KEY:** licensing, human services

Date of Last Change: [March 2,] 2023

Notice of Continuation: October 3, 2022

Authorizing, and Implemented or Interpreted Law: [62A-2-101 et seq.]26B-2-104

## NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal and Reenact				
Rule or Section Number:	R590-206	Filing ID: 55805		

## Agency Information

1. Department:	Insuranc	۵			
•					
Agency:	Administ	ration			
Room number:	Suite 23	00			
Building:	Taylorsville State Office Building				
Street address:	4315 S 2700 W				
City, state and zip:	Taylorsville, UT 84129				
Mailing address:	PO Box 146901				
City, state and zip:	Salt Lake City, UT 84114-6901				
Contact persons:					
Name:	Phone:	Email:			
Steve Gooch	801- sgooch@utah.gov 957- 9322				
Please address	question	s regarding information on			

this notice to the persons listed above.

## General Information

## 2. Rule or section catchline:

R590-206. Privacy of Consumer Financial and Health Information Rule

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

This rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

## 4. Summary of the new rule or change:

The most significant change is the incorporation of language from Rule R590-210 into this rule. The language is being incorporated to create a single rule that regulates privacy information related to insurance.

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Rulewriting Manual for Utah standards.

Other changes make the language of this rule more clear, remove the Violations (the old R590-206-25) section, and update the Severability (the new R590-206-25) section to use the Department's current language.

(EDITOR'S NOTE: The proposed repeal of Rule R590-210 is under ID 55806 in this issue, October 15, 2023, of the Bulletin.)

## Fiscal Information

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

## A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

## B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses. E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an *agency*):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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

## Regulatory Impact Table

Fiscal Cost	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	\$0	\$0	\$0

approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

## **Citation Information**

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

Section 31A-2-201	Section	15 U.S.C. Sec.
	31A-23a-417	6801 through
		6820

### **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 11/14/2023 until:

9. Th	is rule cha	ange MAY	11/21/2023
becom	e 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	Steve Gooch,	Date:	09/28/2023
or designee	Public Information		
and title:	Officer		

### **R590.** Insurance, Administration.

**R590-206.** Privacy of Consumer Financial and Health Information Rule.

### [R590-206-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm Leach Bliley Act of 1999 (15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b)of the federal act. The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

## R590-206-2. Purpose and Scope.

(1) Purpose. This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. This rule:

 (a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and (c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) Scope. This rule applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This rule does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

(b) All nonpublic personal health information.

(3) Compliance. A licensee domiciled in this state that is in compliance with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

(4) This rule does not apply to a financial institution, securities broker or dealer, or a credit union that engages in activities or functions that do not require a license from the Utah insurance commissioner.

### R590-206-3. Rule of Construction.

(1)(a) The examples in this rule, the sample clauses in Appendix A, and the Federal Model Privacy Form in Appendix B are not exclusive.

(b) Appendix A – Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," and Appendix B – Federal Model Privacy Form, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted April 11, 2017, by the National Association of Insurance Commissioners, are incorporated by reference and available for inspection at the Insurance Department and the Office of Administrative Rules.

(c) Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

(2)(a) Licensees may rely on use of the Federal Privacy Form in Appendix B, consistent with the form's instructions, as a safe harbor of compliance with the privacy notice content requirements of this rule.

(b) Use of the Federal Model Privacy Form in Appendix B is not required. Licensees may continue to use other types of privacy notices, including notices that contain the examples in this regulation and/or the sample clauses in Appendix A, provided that such notices accurately describe the licensee's privacy practices and otherwise meet the notice content requirements of this rule.

(3)(a) Subjection to Subsection (b), licensees may continue to use privacy notices that contain the examples in this rule and the sample clauses in Appendix A.

(b) Licensees may not rely on the use of privacy notices with the sample clauses in Appendix A as a safe harbor of compliance with the notice content requirements of this regulation after July 1, 2019.

### R590-206-4. Definitions.

As used in this rule, unless the context requires otherwise: (1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.  (i) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

 (A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

 (E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

 (ii) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(iii) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensures that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(4) "Commissioner" means the Utah insurance commissioner.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(6)(a) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service, from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

(b) Examples.

(i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(ii) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is

acting as agent for, or provides processing or other services to, that financial institution.

(iv) An individual is a licensee's consumer if:

(A)(I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;

 (II) the individual is a claimant under an insurance policy issued by the licensee;

(III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

 (IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(B) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 15, 16 and 17 of this rule.

(v) Provided that the licensee provides the initial, annual and revised notices under Section 10 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, or workers' compensation policyholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual described in (A), (B), or (C), other than as permitted under Sections 15, 16 and 17 of this rule, such an individual is not the consumer of the licensee solely because he or she is:

(A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(B) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(C) A claimant covered by a workers' compensation plan.

(vi)(A) The individuals described in Subsection R590-206-4(6)(b)(v)(A) through (C) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subsection R590-206-4(6)(b)(v).

(B) In no event shall the individuals, solely by virtue of the status described in Subsection R590 206 4(6)(b)(v)(A) through (C) above, be deemed to be customers for purposes of this rule.

(vii) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(viii) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means:

 (a) Ownership, control or power to vote 25% or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee.

(10)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes. <del>(b) Examples.</del>

(i) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(B) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(ii) A consumer does not have a continuing relationship with a licensee if:

 (A) The consumer applies for insurance but does not purchase the insurance;

(B) The licensee sells the consumer airline travel insurance in an isolated transaction;

(C) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(D) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

 (E) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(F) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials;

(G) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(H) For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11)(a) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(12)(a) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section (4)(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health care" means:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(i) Relates to the physical, mental or behavioral condition of an individual; or

 (ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

 (b) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(15) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(16)(a) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(b) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

(17)(a) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of this state.

 (ii) The licensee does not disclose any non-public personal information to any person other than the principal or its affiliates in a manner permitted by this rule.

(c)(i) Subject to Subsection R590-206-4(17)(c)(ii), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Section 31A-15-103 of this state's laws.

(ii) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule provided:

 $(\Lambda)$  The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 15 of this rule, except as permitted by Section 16 or 17 of this rule; and (B) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

(18)(a) "Nonaffiliated third party" means any person except:

(i) A licensee's affiliate; or

(ii) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(b) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

 — (19) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(20)(a) "Nonpublic personal financial information" means:
 (i) Personally identifiable financial information; and

 (ii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information does not include:

#### (i) Health information;

(ii) Publicly available information, except as included on a list described in Subsection R590-206-4(20)(a)(ii); or

(iii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.

(c) Examples of lists.

(i) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(21) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(22)(a) "Personally identifiable financial information" means any information:

 (i) A consumer provides to a licensee to obtain an insurance product or service from the licensee; (ii) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(iii) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(b) Examples.

(i) Information included. Personally identifiable financial information includes:

 (A) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(B) Account balance information and payment history; (C) The fact that an individual is or has been one of the

licensee's customers or has obtained an insurance product or service from the licensee;

(D) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

 (E) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

 (F) Any information the licensee collects through an Internet cookie, an information collecting device from a web server; and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) Health information;

(B) A list of names and addresses of customers of an entity that is not a financial institution; and

(C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(23)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

(b) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(c) Examples.

 (i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) Reasonable basis.

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

### R590-206-5. Initial Privacy Notice to Consumers Required.

 (1) Initial notice requirement. A licensee shall provide a elear and conspicuous notice that accurately reflects its privacy policies and practices to:

 (a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection R590-206-5(5); and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 16 and 17.

(2) When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection R590-206-5(1)(b) if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 16 and 17, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship.
 (a) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

 (b) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

 (ii) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(4) Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection R590-206-5(1) as follows:

 (a) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection R590-206-5(1).

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by Subsection R590 206 5(1)(a) within a reasonable time after the licensee establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions.

(i) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(ii) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(iii) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 11. If the licensee uses a short form initial notice for non-customers according to Subsection R590-206-7(4) the licensee may deliver its privacy notice according to Subsection R590-206-7(4)(c).

## R590-206-6. Annual Privacy Notice to Customers Required.

(1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12 consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) Example. A licensee provides a notice annually if it defines the 12 consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year two.

(2) Exception to General Rule. A licensee that provides nonpublic personal information to nonaffiliated third parties only in accordance with Sections 15, 16, or 17 and has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section or Section 5 shall not be required to provide an annual disclosure under this section until such time as the licensee fails to comply with any criteria described in this paragraph.

(3)(a) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(b) Examples.

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee. (ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve 12 consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(iii) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a eurrent valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(4) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 11.

R590-206-7. Information to be Included in Privacy Notices.

(1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice: (a) The categories of nonpublic personal financial information that the licensee collects;

 (b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 16 and 17;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 16 and 17;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14, and no other exception in Sections 16 and 17 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Subsection R590-206-12(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);  (h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under Subsection R590-206-7(2).

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 16 and 17, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with the licensee or its affiliates:

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

 (b) Categories of nonpublic personal financial information a licensee discloses.

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Subsection R590-206-7(3)(a), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

 (A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal financial information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.
 (ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial

products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage. (iii) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed eategories.

(d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection R590-206-7(1)(e) of this section if it:

 (i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection R590-206-7(1)(b) of this section, as applicable; and

(ii) States whether the third party is:

 (A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution: or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(e) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 16 and 17, the licensee may simply state that fact, in addition to the information it shall provide under Subsections R590-206-7(1)(a), 7(1)(h), 7(1)(i), and 7(2).

(f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information; and

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

 (4) Short form initial notice with opt out notice for noncustomers.

(a) A licensee may satisfy the initial notice requirements in Subsections R590-206-5(1)(b) and Subsection R590-206-8(3) for a consumer who is not a customer by providing a short form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(b) A short-form initial notice shall:

(i) Be clear and conspicuous;

 (ii) State that the licensee's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 11. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

 (d) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice; or (ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(5) Future disclosures. The licensee's notice may include:
 (a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses and the Federal Model Privacy Form. Sample clauses illustrating some of the notice content required by this section and the Federal Model Privacy Form are included in Appendix A and Appendix B, respectively, of this rule.

## R590-206-8. Form of Opt Out Notice to Consumers and Opt Out Methods.

(1)(a) Form of opt out notice. If a licensee is required to provide an opt out notice under Subsection R590 206 12(1), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

 (i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(b) Examples.

 (i) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7(1)(b) and R590-206-7(1)(c), and states that the consumer can opt out of the disclosure of that information; and

(B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(ii) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

 (B) Includes a reply form together with the opt out notice;
 (C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check off box that the

licensee provided with the initial notice but did not include with the subsequent notice.

 (iv) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

(3) Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer, as explained in Subsection R590-206-8(4)(e).

 (b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

 (i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

 (d) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(e) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

 (iii) Permit John and Mary to make different opt out directions. If the licensee does so:

(A) It shall permit John and Mary to opt out for each other;
 (B) If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and

(C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt out direction.

 (a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the eustomer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

### R590-206-9. Revised Privacy Notices.

(1) General rule. Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Examples.

(a) Except as otherwise permitted by Sections 15, 16 and 17, a licensee shall provide a revised notice before it:

(i) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(ii) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(iii) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 11.

### R590-206-10. Privacy Notices to Group Policyholders.

Unless a licensee is providing privacy notices directly to eovered individuals described in Subsection R590-206-4(6)(b)(v)(A), (B) or (C), a licensee shall provide initial, annual and revised notices to the plan sponsor, group, or blanket insurance policyholder or group annuity contractholder, or workers' compensation policyholder, in the manner described in Sections 5 through 9 of this rule, describing the licensee's privacy practices with respect to nonpublic personal information about individuals covered under the policies, contracts, or plans.

#### R590-206-11. Delivery.

(1) How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand-delivers a printed copy of the notice to the consumer;

 (ii) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

 (i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

 (ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Subsection R590-206-5(1)(a), the annual notice required by Subsection R590-206-6(1), and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(i) Hand-delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last known address of the customer; or

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Subsections R590 206-5(1), 6(1) and 9(1), respectively, by providing one notice to those consumers jointly.

### R590-206-12. Limitations on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(1)(a) Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) The licensee has provided to the consumer an initial notice as required under Section 5;

(ii) The licensee has provided to the consumer an opt out notice as required in Section 8;

 (iii) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(b) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 15, 16 and 17.

(c) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(i) By mail. The licensee mails the notices required in Subsection R590 206 12(1)(a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

(ii) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Subsection R590-206-12(1)(a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Subsection R590-206-12(1)(a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

 (a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer. (3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

## R590-206-13. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.

(1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 16 and 17 of this rule, the licensee's disclosure and use of that information is limited as follows:

(i) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(ii) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(iii) The licensee may disclose and use the information pursuant to an exception in Sections 16 and 17 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 16 and 17 of this rule, the licensee may disclose the information only:

(i) To the affiliates of the financial institution from which the licensee received the information;

(ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

 (b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 16 and 17:

(i) The licensee may use that list for its own purposes; and (ii) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 16 and 17, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 16 and 17 of this rule, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Sections 16 and 17 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an

exception in Sections 16 and 17 of this rule, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

## R590-206-14. Limits on Sharing Account Number Information for Marketing Purposes.

(1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. R590 206 14(1) does not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

## R590-206-15. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.

(1) General rule.

(a) The opt out requirements in Sections 8 and 12 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

 (i) Provides the initial notice in accordance with Section 5; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 16 and 17 in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Subsection R590-206-15(1)(a)(ii) if it prohibits the institution from disclosing or using the nonpublic personal financial information

except as necessary to carry out the joint marketing or under an exception in Sections 16 and 17 in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection R590-206-15(1) may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(3) Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

### R590-206-16. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in Subsection R590-206-5(1)(b), the opt out in Sections 8 and 12, and service providers and joint marketing provisions in Section 15 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

 (a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

 (b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop loss or excess loss insurance.

(2) "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

 (a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate or acceptable method:

 (i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

 (ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 (iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's producer;

 (iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits, including utilization review activities, participating in research projects or as otherwise required or specifically permitted by federal or state law; or (vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

### R590-206-17. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

(1) Exceptions to opt out requirements. The requirements for initial notice to consumers in Subsection R590-206-5(1)(b), the opt out in Sections 8 and 12, and service providers and joint marketing in Section 15 do not apply when a licensee discloses nonpublic personal financial information:

 (a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
 (b)(i) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction:

 — (ii) To protect against or prevent actual or potential fraud or unauthorized transactions;

 (iii) For required institutional risk control or for resolving eonsumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors:

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21, Financial Record keeping, a state insurance authority, and the Federal Trade Commission), selfregulatory organizations or for an investigation on a matter related to public safety;

(e)(i) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(ii) From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

 (g)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

 (ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;  (iii) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or
 (h) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation policy.

(2) A licensed or admitted insurer that is the subject of a formal delinquency proceeding under Sections 31A 27a 207, 31A 27a 301 and 31A 27a 401, is not subject to the requirements of R590 206-5(1)(b), the opt out in Sections (8) and (12), and other notice requirements of this rule.

(3) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Subsection R590-206-8(6).

## R590-206-18. When Authorization Required for Disclosure of Nonpublic Personal Health Information.

(1) General Rule. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

(2) Exceptions. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

### R590-206-19. Authorizations.

(1) A valid authorization to disclose nonpublic personal health information pursuant to Sections 18 through 22 shall be in written or electronic form and shall contain all of the following: (a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;  (b) A general description of the types of nonpublic personal health information to be disclosed;

(c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to Sections 18 through 22 at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

#### R590-206-20. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 11, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Subsection R590-206-18(1).

### R590-206-21. Relationship to Federal Rules.

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services, as published in the Federal Register November 3, 1999 (64 Fed. Reg. 59918-60065), the "federal rule", if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to Sections 18 through 22.

### R590-206-22. Relationship to State Laws.

 Nothing in Sections 18 through 22 shall preempt or supersede existing state law related to medical records, health or insurance information privacy.

### R590-206-23. Protection of Fair Credit Reporting Act.

Nothing in this rule shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

### R590-206-24. Nondiscrimination.

(1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this rule.

(2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not

granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this rule.

### R590-206-25. Violation.

Pursuant to Section 31A-23a-402, the commissioner finds that the failure to observe the requirements of this rule is misleading to the public and individuals transacting business with licensees of the department or any person or individual who should be licensed by the department. The failure to observe the requirements of this rule is also an unreasonable restraint on competition.

Violation of any provisions of the rule will result in appropriate enforcement action by the department which may include forfeiture, penalties, and revocation of license.

## R590-206-26. Severability.

If any provision of this rule or its application to any person or shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.] **R590-206-1.** Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-23a-417, and the Gramm-Leach-Bliley Act, 15 U.S.C. Sec. 6801 through 6820.

### R590-206-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) govern a licensee's treatment of an individual's nonpublic personal health information and nonpublic personal financial information;

(b) require a licensee to provide notice to an individual about the licensee's privacy policies and practices;

(c) describe the conditions under which a licensee may disclose an individual's nonpublic personal health information and nonpublic personal financial information to an affiliate or nonaffiliated third party; and

(d) provide means by which an individual may prevent a licensee from disclosing the individual's nonpublic information.

(2) This rule applies to a licensee who obtains nonpublic personal financial information or nonpublic personal health information regarding a customer or consumer of a product or service primarily for a personal, family, or household purpose.

(3) This rule does not apply to:

(a) a licensee with information about a person who obtains a product or service for a business, commercial, or agricultural purpose;

(b) a person selling or providing:

(i) a manufacturer warranty;

(ii) a manufacturer service contract paid for with consideration, in addition to the consideration paid for the product; or

(iii) a service contract for the repair or maintenance of goods, including motor vehicles, that is paid for with consideration in addition to consideration paid for the product;

(c) a financial institution;

(d) a securities broker or dealer; or

(e) a credit union that engages in an activity or function that does not require a license from the commissioner.

### R590-206-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows: (1)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(b) "Clear and conspicuous" includes:

(i) presenting the information in the notice in clear, concise sentences, paragraphs, and sections:

(ii) using short explanatory sentences or bulleted lists whenever possible;

(iii) using definite, concrete, everyday words and active voice whenever possible;

(iv) avoiding multiple negatives;

(v) avoiding legal and highly technical business terminology;

(vi) avoiding explanations that are imprecise and readily subject to different interpretations;

(vii) using a plain-language heading to call attention to the notice;

(viii) using a typeface and type size that are easy to read;

(ix) providing wide margins and ample line spacing;

(x) using boldface or italics for key words; and

(xi) using distinctive type size, style, and graphic devices, such as shading or sidebars.

(c) "Clear and conspicuous" also includes, if a licensee provides a notice on a web page, the following:

(i) calling attention to the nature and significance of the information in the notice by using text or visual cues to encourage scrolling down the web page, if necessary, to view the entire notice and ensure that other elements on the web page, such as text, graphics, hyperlinks, or sound, do not distract attention from the notice;

(ii) placing the notice on a screen that consumers frequently access, such as a page where transactions are conducted; or

(iii) placing a link that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(2) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(3) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.

(4)(a) "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is used primarily for a personal, family, or household purpose, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

(b) "Consumer" includes:

(i) an individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service;

(ii) an applicant for insurance before the start of insurance coverage;

(iii) an individual who is a beneficiary of a life insurance policy underwritten by the licensee;

(iv) an individual who is a claimant under an insurance policy issued by a licensee:

(v) an individual who is an insured or an annuitant under an insurance policy or an annuity; and (vi) an individual who is a mortgagor under a mortgage insurance policy.

(c) "Consumer" does not include:

(i) an individual who is a consumer of another financial institution, solely because the licensee acts as agent for, or provides processing or other services to, that financial institution;

(ii) a participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary;

(iii) a person covered under a group or blanket insurance policy or group annuity contract;

(iv) a claimant covered by a workers' compensation plan;

(v) an individual, solely because the individual is a beneficiary of a trust for which the licensee is a trustee; or

(vi) an individual, solely because the individual designates the licensee as trustee for a trust.

(5) "Consumer reporting agency" has the same meaning as in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f).

(6) "Control," for purposes of this rule, means:

(a) ownership, control, or power to vote 25% or more of the outstanding shares of a class of voting security of a company, directly or indirectly, or acting through one or more other persons;

(b) control over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of a company; or

(c) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a company, as the commissioner determines.

(7) "Customer" means a consumer who has a customer relationship with a licensee.

(8)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for a personal, family, or household purpose.

(b) "Customer relationship" includes a consumer having a continuing relationship with a licensee if:

(i) the consumer is a current policyholder of an insurance product issued by or through the licensee; or

(ii) the consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee.

(c) "Customer relationship" does not exist if:

(i) a consumer applies for insurance but does not purchase the insurance;

(ii) a licensee sells a consumer airline travel insurance in an isolated transaction:

(iii) an individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(iv) a consumer is a beneficiary or a claimant under a policy and submitted a claim under the policy choosing a settlement option involving an ongoing relationship with the licensee;

(v) a consumer is a beneficiary or a claimant under a policy and submitted a claim under the policy choosing a lump sum settlement option;

(vi) a customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for 12 consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials; (vii) an individual is an insured or an annuitant under an insurance policy or annuity but is not the policyholder or owner of the insurance policy or annuity; or

(viii) mail sent to an individual's last known address according to the licensee's records is returned by the postal authorities as undeliverable, and subsequent attempts by the licensee to obtain a current valid address for the individual are unsuccessful.

(9)(a) "Financial institution" means an institution that engages in activities that are financial in nature or incidental to financial activities described in Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k).

(b) "Financial institution" does not mean:

(i) a person or entity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. 1 et seq.;

(ii) the Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971, 12 U.S.C. 2001 et seq.; or

(iii) an institution chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights, or a similar transaction related to a transaction of a consumer, if the institution does not sell or transfer nonpublic personal information to a nonaffiliated third party.

(10)(a) "Financial product or service" means a product or service that a financial holding company offers by engaging in an activity that is financial in nature or incidental to a financial activity under Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k).

(b) "Financial product or service" includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(11) "Health care," for purposes of this rule, means:

(a) any preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, service, procedure, test, or counseling that:

(i) relates to the physical, mental, or behavioral condition of an individual; or

(ii) affects the structure or function of the human body or any part of the human body, including banking of blood, sperm, organs, or any other tissue; or

(b) prescribing, dispensing, or furnishing to an individual: (i) drugs or biologicals;

(ii) medical devices; or

(iii) health care equipment and supplies.

(12) "Health care provider," for purposes of this rule, means:

(a) a physician or other health care practitioner who is licensed, accredited, or certified to perform specified health services consistent with state law; or

(b) a health care facility.

(13) "Health information" means information or data, except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or a consumer, that relates to:

(a) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(b) the provision of health care to an individual; or

(c) payment for the provision of health care to an individual.

(14)(a) "Insurance product or service" means a product or service offered by a licensee.

(b) "Insurance product or service" includes a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(15) "Joint agreement" means a written contract where a licensee and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

(16)(a) "Licensee" means a licensed insurer, producer, or other person licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered, in this state.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information in Sections R590-206-4 through R590-206-17 if the licensee is an employee, agent, or other representative of another licensee, the principal, and:

(i) the principal complies with and provides the notice required by this rule; and

(ii) the licensee does not disclose nonpublic personal information to a person other than the principal or its affiliates in a manner permitted by this rule.

(c)(i) Subject to Subsection R590-206-3(16)(c)(ii), "licensee" includes an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Section 31A-15-103.

(ii) A surplus lines broker or surplus lines insurer is compliant with the notice and opt out requirements for nonpublic personal financial information under Sections R590-206-4 through R590-206-17 provided:

(A) the broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to a nonaffiliated third party for any purpose, including joint servicing or marketing under Section R590-206-15, except as permitted by Section R590-206-16 or R590-206-17; and

(B) the broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW."

(17)(a) "Nonaffiliated third party" means a company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities or insurance company investment activities under the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(H) and (I).

(b) "Nonaffiliated third party" does not include:

(i) an affiliate; or

(ii) a person employed jointly by a licensee and a company that is not an affiliate, but nonaffiliated third party includes the other company that jointly employs the person.

(18) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(19)(a) "Nonpublic personal financial information" means: (i) personally identifiable financial information; and (ii) any list, description, or other grouping of consumer information and publicly available information pertaining to the consumer, that is derived using any personally identifiable financial information that is not publicly available.

(b) "Nonpublic personal financial information" includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as an account number.

(c) "Nonpublic personal financial information" does not include:

(i) health information;

(ii) publicly available information;

(iii) a list, description, or other grouping of consumer information;

(iv) publicly available information pertaining to a consumer that is derived without using personally identifiable financial information that is not publicly available; or

(v) a list of names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(20) "Nonpublic personal health information" means health information:

(a) that identifies an individual who is the subject of the information; or

(b) that could reasonably be used to identify an individual. (21)(a) "Personally identifiable financial information" means any information:

(i) a consumer provides to a licensee to obtain an insurance product or service:

(ii) about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(iii) obtained by a licensee about a consumer in connection with providing an insurance product or service to that consumer.

(b) "Personally identifiable financial information" includes:

(i) information a consumer provides to a licensee on an application to obtain an insurance product or service;

(ii) account balance information and payment history;

(iii) information that an individual is or has been a customer or has obtained an insurance product or service from the licensee;

(iv) information about a consumer if it is disclosed in a manner that indicates that the individual is or has been a consumer of the licensee;

(v) information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(vi) information the licensee collects through the internet, cookies, or an information-collecting device from a web server; and (vii) information from a consumer report.

(c) "Personally identifiable financial information" does not include:

(i) health information;

(ii) a list of names and addresses of customers of an entity that is not a financial institution; and

(iii) information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(22)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(i) federal, state, or local government records;

(ii) widely distributed media;

(iii) disclosures to the public that are required to be made by federal, state, or local law;

(iv) information that is available to the public;

(v) information that an individual can direct to not be made available to the public, and the individual has not done so;

(vi) government real estate records and security interest filings; and

(vii) widely distributed media including information from: (A) a telephone book;

(B) television;

(C) a radio program;

(D) a newspaper; or

(E) a website that is available to the general public.

## R590-206-4. Rules of Construction.

(1)(a) The examples in this rule, the sample clauses in Appendix A, and the Federal Model Privacy Form in Appendix B are not exclusive.

(b) Appendix A, "Privacy of Consumer Financial and Health Information Regulation," and Appendix B, "Privacy of Consumer Financial and Health Information Regulation," adopted April 11, 2017, by the NAIC shall be used to comply with this rule, and are available on the department's website, https://insurance.utah.gov.

(c) Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

(d) A licensee domiciled in this state that complies with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) is compliant with Title V of the Gramm-Leach-Bliley Act in the other state.

(2)(a) A licensee may rely on use of the Federal Privacy Form in Appendix B, consistent with the form's instructions, as a safe harbor of compliance with the privacy notice content requirements of this rule.

(b) A licensee may continue to use a privacy notice, including a notice that contains the examples in this rule, provided that the notice accurately describes the licensee's privacy practices and complies with this rule.

(3) A licensee may not rely on a privacy notice with the sample clauses in Appendix A as a safe harbor of compliance with the notice content requirements of this rule.

## R590-206-5. Required Initial Privacy Notice to Consumers.

(1) A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(a) a customer, no later than when the licensee establishes a customer relationship, except as provided in Subsection (5); and

(b) a consumer, before a licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party if the licensee makes a disclosure other than as authorized by Sections R590-206-16 and R590-206-17.

(2) A licensee is not required to provide an initial notice to a consumer if:

(a) the licensee does not disclose any nonpublic personal financial information about the consumer to a nonaffiliated third

party, other than as authorized by Sections R590-206-16 and R590-206-17, and the licensee does not have a customer relationship with the consumer; or

(b) a notice has been provided by an affiliated licensee, and the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions. (3) A licensee establishes a customer relationship:

(a) at the time the licensee and the consumer enter into a

(a) at the time the needsee and the constant enter more a continuing relationship; (b) when the consumer becomes a policyholder following

delivery of an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(c) when the consumer agrees to obtain financial, economic, or investment advisory services relating to an insurance product or service for a fee.

(4)(a) When an existing customer obtains a new insurance product or service from a licensee that is used primarily for personal, family, or household purposes, the licensee satisfies the initial notice requirements if the licensee provides a revised policy notice, under Section R590-206-9, that covers the customer's new insurance product or service.

(b) If the initial, revised, or annual notice most recently provided to the customer was accurate with respect to the new insurance product or service, a new privacy notice is not required.

(5) A licensee may provide the initial notice required by Subsection (1)(a) within a reasonable time after the licensee establishes a customer relationship if:

(a) establishing the customer relationship is not at the customer's election, such as if a licensee acquires or is assigned a customer's policy from another person and the customer does not have a choice about the acquisition or assignment; or

(b) providing notice no later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice later.

(6)(a) When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section R590-206-11.

(b) If a licensee uses a short-form initial notice for a consumer according to Subsection R590-206-7(4), the licensee may deliver its privacy notice according to Subsection R590-206-7(4)(c).

### R590-206-6. Required Annual Privacy Notice to Consumers.

(1) A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than once in a 12 consecutive month period during the continuation of the customer relationship.

(2) A licensee that provides nonpublic personal information to a nonaffiliated third party under Sections R590-206-15 through R590-206-17 and has not changed its policies and practices regarding its disclosure of nonpublic personal information from the policies and practices disclosed in the most recent notice sent to a consumer under Section R590-206-5 or R590-206-6 is not required to provide an annual disclosure until the licensee fails to comply with this Subsection (2).

(3) A licensee is not required to provide an annual notice to a former customer.

(4) When delivery of an annual privacy notice is required, a licensee shall deliver it according to Section R590-206-11.

### R590-206-7. Information to be Included in a Privacy Notice.

(1) An initial, annual, or revised privacy notice that a licensee provides under Section R590-206-5, R590-206-6, or R590-206-9 shall include the following:

(a) the categories of nonpublic personal financial information that the licensee collects;

(b) the categories of nonpublic personal financial information that the licensee discloses:

(c) the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Section R590-206-16 or R590-206-17;

(d) the categories of nonpublic personal financial information about former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about former customers, other than those parties to whom the licensee discloses information under Section R590-206-16 or R590-206-17;

(e) if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section R590-206-14, and no other exception in Section R590-206-16 or R590-206-17 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has a contract;

(f) an explanation of the consumer's right under Subsection R590-206-12(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods the consumer may exercise at that time;

(g) a disclosure that the licensee makes under Section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d)(2)(A)(iii);

(h) the licensee's policies and practices regarding protecting the confidentiality and security of nonpublic personal information;

(i) any disclosure that the licensee makes under Subsection (2); and

(j) any other information the licensee chooses to provide that applies to the licensee and to the consumer to whom the licensee sends its privacy notice.

(2)(a) If a licensee discloses nonpublic personal financial information under Section R590-206-16 or R590-206-17, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections R590-206-5 and R590-206-6.

(b) When describing the categories of parties to whom disclosure is made, a licensee shall state that it makes disclosures to other affiliated or nonaffiliated third parties, as permitted by law.

(c) A licensee shall categorize the nonpublic personal financial information it collects according to the source of the information, as follows:

(i) information from the consumer;

(ii) information about the consumer's transactions with the licensee or its affiliates;

(iii) information about the consumer's transactions with a nonaffiliated third party; and

(iv) information from a consumer reporting agency.

(d)(i) A licensee shall categorize nonpublic personal financial information it discloses according to the source of the information, as described in Subsection (2)(c), and provide examples to illustrate the types of information in each category, including:

(A) information from the consumer, including application information, such as assets and income, and identifying information, such as name, address, and social security number; (B) transaction information, such as information about balances, payment history, and parties to the transaction; and

(C) information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) The information that a licensee discloses is not adequately categorized if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose any nonpublic personal financial information about a consumer that it collects, the licensee may state that fact without describing the categories or examples of nonpublic personal financial information.

(e)(i) A licensee shall categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described in general terms only if a licensee uses illustrative examples of significant lines of business.

(iii) A licensee may use more detailed categories to categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers.

(f) If a licensee discloses nonpublic personal financial information under the exception in Section R590-206-14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee shall:

(i) list the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used under Subsection (1)(b); and

(ii) state whether the third party is:

(A) a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) a financial institution with whom the licensee has a joint marketing agreement.

(g) If a licensee does not disclose, and does not reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Section R590-206-16 or R590-206-17, the licensee may state that fact, in addition to the information under Subsections (1)(a), (1)(h), (1)(i), and (2).

(h)(i) A licensee shall describe its policies and practices regarding protecting the confidentiality and security of nonpublic personal financial information as follows:

(A) describe, in general terms, who is authorized to have access to the information; and

(B) state whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy.

(ii) A licensee is not required to describe technical information about the safeguards it uses.

(3)(a) A licensee satisfies the initial notice requirements in Subsections R590-206-5(1)(b) and R590-206-8(3) for a consumer who is not a customer by providing a short-form initial notice at the time the licensee delivers an opt out notice under Section R590-206-8.

(b) A short-form notice shall:

(i) be clear and conspicuous;

(ii) state that the licensee's privacy notice is available upon request; and

(	iii	) ex	plain	where	the	consumer	may	v obtain	the notice.	

(c)(i) A licensee shall deliver its short-form initial notice according to Section R590-206-11.

(ii) A licensee is not required to deliver its privacy notice with its short-form initial notice.

(iii) A licensee may provide the consumer a reasonable means to obtain its privacy notice.

(iv) If a consumer requests the privacy notice, the licensee shall deliver it according to Section R590-206-10.

(4) A licensee's notice may include:

(a) categories of nonpublic personal financial information that a licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) categories of affiliates or nonaffiliated third parties to whom a licensee reserves the right, in the future, to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(5) Sample clauses illustrating notice content required by this section are included in Appendix A and Appendix B.

# **<u>R590-206-8.</u>** Form of Opt Out Notice to Consumers and Opt Out <u>Methods.</u>

(1)(a) If a licensee is required to provide an opt out notice under Subsection R590-206-12(1), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out and that states:

(i) that the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(ii) that the consumer has the right to opt out of that disclosure; and

(iii) that the consumer may exercise the right to opt out.

(b) A licensee provides an adequate opt out notice of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(i) identifies each category of nonpublic personal financial information that it discloses or reserves the right to disclose, and each category of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7(1)(b) and R590-206-7(1)(c), and states that the consumer can opt out of the disclosure of that information; and

(ii) identifies the insurance product or service that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction applies.

(c) A licensee provides a reasonable means to exercise an opt out right if it:

(i) designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(ii) includes a reply form with the opt out notice;

(iii) provides an electronic means to opt out, such as a form that can be sent via email or a process on the licensee's website, if the consumer agrees to the electronic delivery of information; or

(iv) provides a toll-free telephone number that consumers may call to opt out.

(d) A licensee does not provide a reasonable means of opting out if:

(i) the only means of opting out is for the consumer to write a letter to exercise that opt out right; or

(ii) the only means of opting out is using a check-off box that the licensee provided with an initial notice but did not include with any subsequent notice.

(e) A licensee may require each consumer to opt out through a specific means if that means is reasonable for the consumer.

(2) A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section R590-206-5.

(3) If a licensee provides an opt out notice later than required for the initial notice under Section R590-206-5, the licensee shall include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4)(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice.

(b) The opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer under this Subsection (4).

(c) Any joint consumer may exercise the right to opt out. (d) A licensee may:

(i) treat an opt out direction by a joint consumer as applying to all joint consumers; or

(ii) permit each joint consumer to opt out separately.

(e) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all joint consumers.

(f) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(6) A consumer may exercise the right to opt out at any time.

(7)(a) A consumer's direction to opt out is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information the licensee collected during or related to that relationship.

(c) If the individual establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(8) When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section R590-206-10.

### R590-206-9. Revised Privacy Notices.

(1) Except as otherwise permitted, a licensee may not, directly or through an affiliate, disclose nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice under Section R590-206-5, unless:

(a) the licensee provides the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) the licensee provides the consumer a new opt out notice;

(c) the licensee gives the consumer a reasonable opportunity to opt out of the disclosure before the licensee discloses the information to the nonaffiliated third party; and

(d) the consumer does not opt out.

(2)(a) Except as otherwise permitted by Sections R590-206-15 through R590-206-17, a licensee shall provide a revised notice before it discloses:

(i) a new category of nonpublic personal financial information to any nonaffiliated third party;

(ii) nonpublic personal financial information to a new category of nonaffiliated third party; or

(iii) nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(3) When a licensee is required to deliver a revised privacy notice, the licensee shall deliver it according to Section R590-206-11.

## **R590-206-10.** Privacy Notices to Group Policyholders.

Unless a licensee is providing a privacy notice directly to a covered individual described in Subsection R590-206-3(4), a licensee shall provide initial, annual, and revised notices to the plan sponsor, group, or blanket insurance policyholder or group annuity contract holder, or workers' compensation policyholder, in the manner described in Sections R590-206-5 through R590-206-9 of this rule, describing the licensee's privacy practice with respect to nonpublic personal information about an individual covered under the policy, contract, or plan.

## R590-206-11. Delivery.

(1) A licensee shall provide a notice under this rule to ensure that each consumer will receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) A consumer will receive actual notice if the licensee: (i) hand delivers a printed copy of the notice to the consumer;

(ii) mails a printed copy of the notice to the last known address of the consumer separately, in a policy, in a billing statement, or other written communication;

(iii) for a consumer who conducts transactions electronically, posts the notice on the licensee's website and requires the consumer to acknowledge receipt of the notice as a necessary step to obtain a particular insurance product or service; or

(iv) for an isolated transaction with a consumer, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtain the particular insurance product or service.

(b) A consumer does not receive actual notice if the licensee:

(i) posts a sign in its office or generally publishes an advertisement of its privacy policies and practices; or

(ii) sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) the customer uses the licensee's website to access an insurance product or service electronically and agrees to receive notices at the website and the licensee posts its current privacy notice continuously, in a clear and conspicuous manner, on the website; or

(b) the customer requests that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(5) A licensee shall provide the initial notice required by Subsection R590-206-5(1)(a), the annual notice required by Subsection R590-206-6(1), and the revised notice required by Subsection R590-206-9(1) upon request, in writing or, if the customer agrees, electronically.

(6)(a) A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions identified in the notice, if the notice is accurate.

(b) A licensee may provide a notice on behalf of another financial institution.

(7) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements of Subsections R590-206-5(1), R590-206-6(1), and R590-206-9(1) by providing one notice to the consumers jointly.

# **R590-206-12.** Limitations on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(1)(a) Except as otherwise provided, a licensee may not, directly or through any affiliate, disclose nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) the licensee provides the consumer an initial notice required under Section R590-206-5:

(ii) the licensee provides the consumer an opt out notice required under Section R590-206-8;

(iii) the licensee provides the consumer a reasonable opportunity to opt out of the disclosure before it discloses the information to the nonaffiliated third party; and

(iv) the consumer does not opt out.

(b) Opt out occurs when a consumer directs the licensee to not disclose the consumer's nonpublic personal financial information to a nonaffiliated third party, except as permitted under Sections R590-206-15 through R590-206-17.

(2)(a) This Section R590-206-12 applies regardless of whether the licensee and the consumer have a customer relationship.

(b) A licensee may not, directly or through any affiliate, disclose nonpublic personal financial information about a consumer regardless of whether the licensee collected it before or after receiving the direction to opt out.

(3) A consumer may select certain nonpublic personal financial information or certain nonaffiliated third parties that the consumer wishes to opt out.

# <u>R590-206-13. Limits on Reusing Nonpublic Personal Financial Information.</u>

(1)(a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Section R590-206-16 or R590-206-17, disclosure and use of that information is limited as follows:

(i) a licensee may disclose the information to an affiliate of the financial institution from which the licensee received the information;

(ii) a licensee may disclose the information to its affiliate, but the affiliate may disclose and use the information only to the extent that the licensee may disclose and use the information; and

(iii) a licensee may disclose and use the information in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena.

(c) A licensee may not disclose information to a third party for marketing purposes or use the information for its own marketing purposes.

(2)(a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Section R590-206-16 or R590-206-17, the licensee may disclose the information:

(i) to an affiliate of the financial institution from which the licensee received the information;

(ii) to its affiliate, but its affiliate may disclose the information only to the extent the licensee may disclose the information; and

(iii) to any other person, if the disclosure is lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections R590-206-16 and R590-206-17, a licensee may:

(i) use the list for its own purposes; and

(ii) disclose the list to a nonaffiliated third party if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party.

(3) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Section R590-206-16 or R590-206-17, the third party may disclose and use the information as follows:

(a) to an affiliate of the licensee;

(b) to its affiliate, but its affiliate may disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Section R590-206-16 or R590-206-17, the third party may disclose the information:

(a) to an affiliate of the licensee;

(b) to its affiliate, but its affiliate may disclose the information only to the extent the third party may disclose the information; and

(c) to any other person, if the disclosure would be lawful if the licensee made it directly to that person.

## <u>R590-206-14. Limits on Sharing Account Number Information</u> for Marketing Purposes.

(1) A licensee may not, directly or through an affiliate, disclose a consumer's policy number or similar access number or access code to a nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail.

(2) Subsection (1) does not apply if a licensee discloses a policy number or similar access number or access code to:

(a) a service provider to perform marketing for a licensee's product or service, if the service provider is not authorized to directly initiate charges to the account:

(b) a producer to perform marketing for a licensee's product or service; or

(c) a participant in an affinity or similar program if the participant in the program is identified to the customer when the customer enters into the program.

### **R590-206-15.** Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for a Service Provider and Joint Marketing.

(1)(a) The opt out requirements under Sections R590-206-8 and R590-206-12 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform a service for the licensee or a function on the licensee's behalf, if the licensee:

(i) provides the initial notice under Section R590-206-5; and

(ii) enters into a contractual agreement with a third party that prohibits the third party from disclosing or using the information other than to carry out the purpose for which the licensee disclosed the information, including use under an exception in Section R590-206-16 or R590-206-17.

(b) If a licensee discloses nonpublic personal financial information to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with the institution meets the requirements of Subsection (1)(a)(ii) if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or an exception under Section R590-206-16 or R590-206-17.

(2) The service a nonaffiliated third party performs for a licensee under Subsection (1) may include marketing of the licensee's product or service or marketing of a financial product or service offered pursuant to a joint agreement between a licensee and a financial institution.

## **R590-206-16.** Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(1) The initial notice requirements under Subsection R590-206-5(1)(b), the opt out requirements under Sections R590-206-8 and R590-206-12, and the service provider and joint marketing requirements under Section R590-206-15 do not apply if a licensee discloses nonpublic personal financial information necessary to cause, administer, or enforce a transaction that a consumer requests or authorizes, or is in connection with:

(a) servicing or processing an insurance product or service requested or authorized by a consumer;

(b) maintaining or servicing a consumer's account with a licensee or with another entity as part of a private label credit card program or other extension of credit;

(c) a proposed or actual securitization, secondary market sale, including sales of servicing rights, or a similar transaction; or (d) reinsurance or stop loss insurance.

(2) A notice that is necessary to cause, administer, or enforce a transaction includes a disclosure that:

(a) is lawful or appropriate to enforce a licensee's rights or the rights of another person engaged in carrying out the financial transaction or providing the product or service; or

(b) is a usual, appropriate, or acceptable method:

(i) to carry out a transaction or a product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) to administer or service benefits or claims relating to a transaction or a product or service business;

(iii) to provide a confirmation, a statement, or other record of a transaction, or information on the status or value of an insurance product or service to the consumer or the licensee; (iv) to accrue or recognize an incentive or bonus associated with a transaction that is provided by a licensee or any other party;

(v) to underwrite insurance at the consumer's request or the following purposes:

(A) account administration;

(B) reporting;

(C) investigating or preventing fraud or material misrepresentation;

(D) processing premium payments;

(E) processing insurance claims;

(F) administering insurance benefits, including utilization review activities; and

(G) participating in research projects; or

(vi) in connection with:

(A) authorizing, settling, billing, processing, clearing, transferring, reconciling, or collecting amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, account number, or by other payment means;

(B) transferring receivables, accounts, or interest; or

(C) auditing debit, credit, or other payment information.

### **R590-206-17.** Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

(1) The initial notice requirements under Subsection R590-206-5(1)(b), the opt out requirements under Sections R590-206-8 and R590-206-12, and the service provider and joint marketing requirements under Section R590-206-15 do not apply when a licensee discloses nonpublic personal financial information:

(a) with the consent, or at the direction of, a consumer, provided the consumer has not revoked the consent or direction;

(b) to protect:

(i) the confidentiality or security of a licensee's records pertaining to a consumer, service, product, or transaction;

(ii) against, or prevent, actual or potential fraud or an unauthorized transaction;

(iii) against institutional risk control or resolving a consumer dispute or inquiry:

(iv) a person holding a legal or beneficial interest relating to the consumer; or

(v) a person acting in a fiduciary or representative capacity on behalf of the consumer;

(c) to provide information to an insurance rate advisory organization, a guaranty fund, an agency, an agency that rates a licensee, a person that assesses the licensee's compliance with industry standards, and the licensee's attorney, accountant, and auditor;

(d) to the extent permitted under the Right to Financial Privacy Act of 1978, U.S.C. 3401 et seq., to a law enforcement agency, a state insurance department, the Federal Trade Commission, a self-regulatory organization, or for an investigation on a matter related to public safety;

(e)(i) to a consumer reporting agency under the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.; or

(ii) from a consumer report from a consumer reporting agency;

(f) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely a consumer of the business or unit;

(g)(i) to comply with a federal, state, or local law, rule, or other legal requirement;

(ii) to comply with a civil, criminal, or regulatory investigation, or a subpoena or summons by a federal, state, or local authority; or

(iii) to respond to a judicial process or government regulatory authority having jurisdiction over a licensee for examination, compliance, or another purpose, as authorized by law; or

(h) for purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation policy.

(2) An insurer subject to a formal delinquency proceeding under Section 31A-27a-207, 31A-27a-301, or 31A-27a-401 is not subject to the requirements of Subsection R590-206-5(1)(b) or the opt out requirements of this rule.

(3) A consumer may revoke consent by exercising the right to opt out of future disclosures of nonpublic personal information under Subsection R590-206-8(6).

# **R590-206-18.** Required Authorization for Disclosure of Nonpublic Personal Health Information.

(1) A licensee may not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer before the disclosure.

(2) This Section R590-206-18 does not prohibit, restrict, or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following: (a) claims administration, adjustment, or management;

(b) detecting, investigating, or reporting fraud,

misrepresentation, or criminal activity; (c) underwriting;

(d) policy placement or issuance;

(e) loss control;

(f) ratemaking or guaranty fund functions;

(g) reinsurance or excess loss insurance;

(h) risk management;

(i) case management;

(j) disease management;

(k) quality assurance or quality improvement;

(1) performance evaluation;

(m) provider credentialing verification;

(n) utilization review;

(o) peer review activities;

(p) actuarial, scientific, medical, or public policy research;

(q) grievance procedures;

(r) internal administration of compliance, managerial, or information systems;

(s) policyholder service functions;

(t) auditing;

(u) reporting;

(v) database security;

(w) administration of consumer disputes and inquiries;

(x) external accreditation standards;

(y) replacement of a group benefit plan or workers compensation policy or program;

(z) activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit;

(aa) an activity that permits disclosure without authorization pursuant to the Health Insurance Portability and Accountability Act;

(bb) disclosure that is required to enforce a licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and

(cc) an activity permitted by law, required by a governmental reporting authority, or to comply with legal process.

### R590-206-19. Authorization.

(1) A valid authorization to disclose nonpublic personal health information pursuant to Sections R590-206-18 through R590-206-22 shall be in written or electronic form and contain the following:

(a) the identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) a general description of the type of nonpublic personal health information to be disclosed;

(c) a general description of the party to whom the licensee discloses nonpublic personal health information, including the purpose of the disclosure and how the information will be used:

(d) the signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally authorized to grant authority, and the date signed; and (e) notice of:

(i) the length of time the authorization is valid;

(ii) that the consumer or customer may revoke the authorization at any time; and

(iii) the procedure to revoke the authorization.

(2) An authorization under Sections R590-206-18 through R590-206-22 shall specify the length of time the authorization will remain valid, but may not be valid for more than 24 months.

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization under Sections R590-206-18 through R590-206-22 at any time, subject to the rights of the individual who acted in reliance on the authorization before revocation.

(4) A licensee shall retain the authorization, or a copy thereof, in the record of the individual who is the subject of nonpublic personal health information.

### R590-206-20. Authorization Request Delivery.

(1) A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt out notice under Section R590-206-11 if the request and the authorization form are clear and conspicuous.

(2) An authorization form is not required to be delivered to a consumer or customer, or included in any other notice, unless the licensee intends to disclose protected health information under Subsection R590-206-18(1).

### R590-206-21. Relationship to Federal Rules.

Except for its effective date provision, if a licensee complies with all requirements of the Health Insurance Portability and Accountability Act, a licensee is not subject to Sections R590-206-18 through R590-206-22.

### R590-206-22. Relationship to State Laws.

Sections R590-206-18 through R590-206-22 do not preempt or supersede existing state law related to medical records, health, or insurance information privacy.

### R590-206-23. Protection of Fair Credit Reporting Act.

Nothing in this rule may be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., and no interference may be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

### R590-206-24. Nondiscrimination.

(1) A licensee may not discriminate against a consumer or customer because the consumer or customer opted out from the disclosure of their nonpublic personal financial information.

(2) A licensee may not discriminate against a consumer or customer because the consumer or customer did not authorize the disclosure of their nonpublic personal health information.

## R590-206-25. Severability.

If any provision of this rule, Rule R590-206, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

## **KEY:** insurance law

Date of Last Change: <u>2023</u>[July 11, 2017] Notice of Continuation: June 8, 2021

Authorizing, and Implemented or Interpreted Law: 31A-2-201; [31A-2-202; 31A-25-317; 15 U.S.C. 6805]31A-23a-417; 15 U.S.C. 6801-6820

## NOTICE OF PROPOSED RULE

TYPE OF FILING:	Repeal	
Rule or Section Number:	R590-210	Filing ID: 55806

### Agency Information

1. Department:	Insurance			
Agency:	Adminis	tration		
Room number:	Suite 23	00		
Building:	Taylorsville State Office Building			
Street address:	4315 S 2700 W			
City, state and zip:	Taylorsville, UT 84129			
Mailing address:	PO Box 146901			
City, state and zip:	Salt Lake City, UT 84114-6901			
Contact persons:				
Name:	Phone:	Email:		
Steve Gooch	801- sgooch@utah.gov 957-			

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

9322

### **General Information**

## 2. Rule or section catchline:

R590-210. Privacy of Consumer Information Exemption for Manufacturer Warranties and Service Contracts

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

This rule is being repealed to create a single rule that regulates privacy information related to insurance.

The relevant language from this rule is being incorporated into a repeal and reenact of Rule R590-206, which has been filed alongside this repeal.

(EDITOR'S NOTE: The proposed repeal and reenact of Rule R590-206 is under ID 55805 in this issue, October 15, 2023, of the Bulletin.)

## 4. Summary of the new rule or change:

This filing repeals this rule 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 cost or savings to the state budget.

The relevant language from this rule is being incorporated into Rule R590-206 and will remain in force.

## B) Local governments:

There is no anticipated cost or savings to local governments.

The relevant language from this rule is being incorporated into Rule R590-206 and will remain in force.

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

There is no anticipated cost or savings to small businesses.

The relevant language from this rule is being incorporated into Rule R590-206 and will remain in force.

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

There is no anticipated cost or savings to non-small businesses.

The relevant language from this rule is being incorporated into Rule R590-206 and will remain in force.

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

There is no anticipated cost or savings to any other persons.

The relevant language from this rule is being incorporated into Rule R590-206 and will remain in force.

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

There are no compliance costs for any affected persons.

**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 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	\$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 Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

## **Citation Information**

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

Section 31A-2-201	Section 31A-2-202	Section 31A-23a-417
15 U.S.C. 6801 through 6807		

#### 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	11/14/2023
unti	l:				

9.	This	rule	change	MAY	11/21/2023
bec	come e	effect	ive 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	Steve Gooch,	Date:	09/28/2023
or designee	Public Information		
and title:	Officer		

#### **R590.** Insurance, Administration.

#### [R590-210. Privacy of Consumer Information Exemption for Manufacturer Warrantics and Service Contracts. R590-210-1. Authority.

This rule is promulgated pursuant to Subsections 31A 2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm Leach Bliley Act of 1999 (15 U.S.C. 6801 through 6820). The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Sections 501 to 505 of the federal act (15 U.S.C 6801 through 6807).

### R590-210-2. Purpose.

The purpose of this rule is to exempt any person that is licensed or registered by the department that sells or provides the following from the requirements of the department's rule, R590-206: (1) manufacturer warranties;

(2) manufacturer service contracts paid for with consideration that is in addition to the consideration paid for the product; and

(3) service contracts paid for with consideration in addition to the consideration paid for the product and the service contract is for the repair or maintenance of goods, including motor vehicles.

#### R590-210-3. Applicability and Scope.

 manufacturer service contracts paid for with consideration that is in addition to the consideration paid for the product, and service contracts paid for with consideration in addition to the consideration paid for the product and the service contract is for the repair or maintenance of goods, including motor vehicles.

#### R590-210-4. Enforcement.

Persons licensed or registered by the department that sell or provide manufacturer warranties, manufacturer service contracts paid for with consideration that is in addition to the consideration paid for the product, and service contracts paid for with consideration in addition to the consideration paid for the product and the service contract is for the repair or maintenance of goods, including motor vehicles are hereby exempted from the requirements of the department's rule, R590-206.

#### R590-210-5. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

#### **KEY:** insurance law privacy

Date of Last Change: October 12, 2001 Notice of Continuation: August 12, 2021 Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202; 31A-23a-417; 15 U.S.C. 6801-6807]

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment			
Rule or Section Number:	R590-223	Filing ID: 55807	

#### Agency Information

1 Demontracente	1	-	
1. Department:	Insurance		
Agency:	Adminis	tration	
Room number:	Suite 23	00	
Building:	Taylorsv	ille State Office Building	
Street address:	4315 S 2	2700 W	
City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box	146901	
City, state and zip:	Salt Lake City, UT 84114-6901		
Contact persons:			
Name:	Phone:	Email:	
Steve Gooch	801- sgooch@utah.gov 957- 9322		
Please address questions regarding information on this notice to the persons listed above			

this notice to the persons listed above.

# General Information

# 2. Rule or section catchline:

R590-223. Rule to Recognize the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits

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

The rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

# 4. Summary of the new rule or change:

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Rulewriting Manual for Utah standards.

Other changes make the language of this rule more clear, and update the Separability (R590-223-8) section to use the Department's current language.

The changes do not add, remove, or change any regulations or requirements.

### **Fiscal Information**

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

#### A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

# B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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

Regulatory 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	\$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 Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

#### Citation Information

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

Section 31A-2-201	Section	Section
	31A-17-402	31A-22-408

#### **Public Notice Information**

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

A) Comments will be accepted 11/14/2023 until:

9.	This	rule	change	MAY	11/21/2023
bec	ome e	effect	ive 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	Steve Gooch,	Date:	09/28/2023
or designee	Public Information		
and title:	Officer		

#### **R590.** Insurance, Administration.

R590-223. Rule to Recognize the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits.

# R590-223-1. Authority.

This rule is promulgated by the [insurance-]commissioner pursuant to [Subsections 31A-2-201(3), 31A-17-402(1) and 31A-22-408(11)]Sections 31A-2-201, 31A-17-402, and 31A-22-408.

#### R590-223-2. Purpose and Scope.

(1) The purpose of this rule is to recognize, permit, and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with Sections 31A-17-504[-] and 31A-22-408, and Section R590-198-[5]4.

(2) This rule applies to a life insurance policy.

#### R590-223-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-17-501. Additional terms are defined as follows:

[A-](1) "2001 CSO Mortality Table" means <u>a</u> mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC, 2nd Quarter 2002. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.  $[\underline{B},\underline{](2)}$  "2001 CSO Mortality Table (F)" means <u>a</u> mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

 $[\underline{C},\underline{](3)}$  "2001 CSO Mortality Table (M)" means <u>a</u> mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

 $[\underline{D}-\underline{](4)}$  "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

 $[\underline{E},\underline{](5)}$  "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

#### R590-223-4. Incorporation by Reference.

[F.\_]The tables identified in Subsections R590-223-3[.A through E](1) through (5) are [hereby\_]incorporated by reference [within this rule\_]and are available [for public inspection at the Insurance Department during normal business hours]on\_the department's website, https://insurance.utah.gov.

# R590-223-[4]5. 2001 CSO Mortality Table.

[A-](1)(a) At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this rule, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after July 1, 2003 and before [the date specified in Subsection R590-223-4.B-]January 1, 2009. to which Subsections 31A-17-504(1)(c)[-] and 31A-22-408(6)(d)[(viii)(VI)](x), and Subsections R590-198-[5-A]4(1) and R590-198-[5-B]4(2) are applicable.

(b) If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

 $[\underline{B},\underline{](2)}$  Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which Subsections 31A-17-504(1)(c)[ $_{7}$ ] and 31A-22-408(6)(d)[ $(\underline{viii})(VI)$ ](x), and Subsections R590-198-[ $\underline{S},\underline{A}$ ]4(1) and R590-198-[ $\underline{S},\underline{B}$ ]4(2) are applicable.

#### R590-223-[5]6. Conditions.

[A, ](1) For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

[(1)](a) composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

[(2)](b) smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Section 31A-17-511 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

[(3)](c) smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

[B-](2) For plans of insurance without separate rates for smokers and nonsmokers, the composite mortality tables shall be used.

[C.](3) [For the purpose of determining]To determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of Section R590-223-[6]7 and [Valuation of Life Insurance Policies-]Rule R590-198 relative to use of the select and ultimate form.

 $[\underline{D}-\underline{](4)(a)}$  When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis in conformance with the requirements of Section R590-162-[ $\underline{8}$ ]<u>6</u>.

(b) The commissioner may exempt a company from this requirement if it only does business in this state and in no other state.

# R590-223-[6]7. Applicability of the 2001 CSO Mortality Table to Rule R590-198.

[A,-](1) The 2001 CSO Mortality Table may be used in applying <u>Rule</u> R590-198 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in Section R590-223-[4]5:

[(4)](a) Subsection R590-198-[3.A.(2)(b): The ]2(4)(c)(ii), the net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

[(2)](b) Subsection R590-198-[4.B: All -]3(3), all calculations are made using the 2001 CSO Mortality Table, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Subsection R590-223-[6.A.(4)]7(1)(d). The value of " $q_{x+k+t-1}$ " is the valuation mortality rate for deficiency reserves in policy year k+t, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

[(3)](c) Subsection R590-198-[5.A: The-]4(1), the 2001 CSO Mortality Table is the minimum standard for basic reserves.

[(4)](d) Subsection R590-198-[5.B: The ]4(2), the 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in Subsections R590-198-[5.B.(3)(a) through (i)]4(2)(c)(i) through (vii). In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by rule or necessary to be in compliance with relevant Actuarial Standards of Practice.

[(5)](c) Subsection R590-198-[6.C: The ]5(3), the valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

[(6)](f) Subsection R590-198-[6.E.(4): The ]5(5)(d), the calculations specified in Subsection R590-198-[6.E.]5(5) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

[(7)](g) Subsection R590-198-[6.F.(4): The ]5(6)(d), the calculations specified in Subsection R590-198-[6.F.]5(6) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

[(8)](h) Subsection R590-198-[6.G.(2): The-]5(7)(b), the calculations specified in Subsection R590-198-[6.G.]5(7) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

[(9)](i) Subsection R590-198-[7.A.(1)(b): The ]6(1)(b), the one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

 $[\underline{B}.](\underline{2})$  Nothing in this section shall be construed to expand the applicability of <u>Rule</u> R590-198 to include life insurance policies exempted under Subsection R590-198-[ $\underline{3.A}$ ]2(4).

#### R590-223-[7]8. Gender-Blended Tables.

[A-](1)(a) For  $[any-]an_ordinary$  life insurance policy delivered or issued for delivery in this state [on and after July 1]after June 30, 2003, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(b) No change in minimum valuation standards is implied by this  $[\$]_{\underline{\$}}$  ection of the rule.

 $[\underline{B},\underline{](2)}$  The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

[<del>C.</del>](3) It [shall]may not, in and of itself, be a violation of Subsection [ $31A \cdot 23 \cdot 302(3)$ -] $31A \cdot 23a \cdot 402(3)$  for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

#### R590-223-8. Separability.

[If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.]If any provision of this rule, Rule R590-223, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

#### **KEY:** insurance reserves and nonforfeitures

Date of Last Change: 2023[June 13, 2003]

Notice of Continuation: May 1, 2023

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-17-402; 31A-22-408

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Amendment				
Rule or Section Number:	R590-240	Filing ID: 55808		

#### Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room number:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	

Contact persons:		
Phone:	Email:	
801- 957- 9322	sgooch@utah.gov	
	<b>Phone:</b> 801- 957-	

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

# General Information

# 2. Rule or section catchline:

R590-240. Procedure to Obtain Exemption of Student Health Programs From Title 31A, Insurance Code

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

This rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

# 4. Summary of the new rule or change:

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Rulewriting Manual for Utah standards.

Other changes make the language of this rule more clear, remove the Effective Date (old R590-240-8) section, redistribute provisions from the Review and Findings (old R590-240-7, new R590-240-4) section to more relevant locations in this rule, and update the Severability (new R590-240-9) section to use the Department's current language.

The changes do not add, remove, or change any regulations or requirements.

# **Fiscal Information**

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

# A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

# B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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

Regu	latory	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 Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

### Citation Information

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

Section 31A-1-103 Section 31A-2-201

#### Public Notice Information

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

A) Comments will be accepted 11/14/2023 until:

9. This rule change MAY 11/21/2023 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	Steve Gooch,	Date:	09/28/2023
or designee	Public Information		
and title:	Officer		

#### **R590.** Insurance, Administration.

R590-240. Procedure to Obtain Exemption of Student Health Programs From Title 31A, Insurance Code. R590-240-1. Authority.

This rule is promulgated [and adopted ]by the commissioner pursuant to [Subsection 31A-1-103(3)(d) and Section Sections 31A-1-103 and 31A-2-201.

#### R590-240-2. Purpose and Scope.

(1) The purpose of this rule is to [exempt\_]create a procedure for a student health [programs-]program\_established by [institutions\_]an institution\_of higher education to obtain an exemption from regulation under [the Utah-]Title 31A, Insurance Code.

(2) Health insurance from an insurer made available by an [institution to its students is not exempt from provisions of the Utah Insurance Code under this rule, even if:]

(2)(a) This rule applies to a student health program established by an institution of higher education.

(b) This rule does not exempt from Title 31A, Insurance Code, health insurance from an insurer made available by an institution to its students, even if:

(i) the insurer's policy is integrated into the overall student health program offered by the institution to its students; or

(ii) use of the institution's student health center is an integral, or mandatory, part of health care coverage under the insurer's policy.

#### R590-240-3. Definitions.

[(1) All definitions in Section 31A-1-301 are incorporated by reference.]Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

[(2)](1) "Board" means the [State Board of Regents-]Utah Board of Higher Education established in Section 53B-1-[103]402. [(3)](2) "Eligible member" means:

(a) an eligible student;

(b) a spouse of an eligible student; or

(c) a child of, dependent of, or child placed for adoption with, an eligible student.

[(4)](3) "Eligible recipient" means:

(a) an eligible member;

(b) an officer of the institution['s officers], a faculty member, [and employees]or an employee; or

(c) upon application by the institution or the institution's student health center, [other persons-]a person approved by written order of the commissioner.

[(5)](4) "Eligible student" is as defined by each institution, but shall, at a minimum, require that the student be enrolled with the institution.

(6) "Health care provider" means a person who provides health care services.

(7) "Health care services" means "health care" as defined in Section 31A-1-301.]

[(8)](5) "Institution" means an institution of higher education or postsecondary educational institute that consists of the following:

(a) an institution described in Section 53B-1-102; or

(b) an institution of higher education that has been accredited by the Northwest Commission on Colleges and Universities.

[(9)](6) "Student health center" means a facility that:

(a) is operated to provide health care services to an eligible [recipients:

(a) by that ]recipient by an institution or pursuant to a contract with that institution;

(b) [that-]employs a health care [providers]provider, or contracts with a health care [providers]provider, which may make [referrals\_]a referral to [other\_]another health care [providers]provider;

(c) is funded, at least in part, by payment from one of the following sources, which payment grants access to the student health center during the period [of time for which ]the eligible student is registered:

(i) a fee assessed to and paid by each eligible student at registration; or

(ii) the tuition paid by the eligible student;

(d) may accept insurance payments, or assist [users-]a user in completing [elaims forms-]a claim form for an insurance [claims]claim; and

(e) may require <u>an eligible [recipients-]recipient</u> to pay[<del>;</del>] <u>an additional fee for:</u>

(i) [an additional fee for ]each time the student health center is visited;

(ii) [an additional fee for ]a specialty [services]service;

(iii) [an additional fee for ]medical equipment; or

(iv) [an additional fee for ]medication received at the student health center.

[(10)](7)(a) "Student health program" means a plan organized, established, or adopted[7] by an institution to provide or arrange for health care services for eligible members.

(b) [A "student-]"Student\_health program" may include[ providing] coverage for:

(i) [coverage for]limited health care services;

(ii) [<del>coverage for</del>]health care services on an emergency basis; or

(iii) [eoverage for]health care services by <u>an</u> out-of-area health care [provider\_lprovider\_under the following situations:

(A) on an emergency basis, where a prudent layperson would expect the absence of immediate medical attention to result in placing the eligible member's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

(B) during [periods-]a period when the individual is not enrolled in any classes at the institution[5] but is still matriculated with the institution[-. Such periods may include ], including time between semesters or quarters, traditional breaks for the summer, or time away from the institution while attending another higher education institution under a plan approved by the institution; and

(C) during [periods\_]a period when the individual is enrolled in classes at the institution[-] but is not living within commuting distance of the institution, such as while participating in an internship program.

 $[(11)](\underline{8})(a)$  "Supplemental health care services" means health care services provided by the student health program in addition to those available at a student health center.

(b) "Supplemental health care services" includes health care services provided by contract between:

(i) the institution[,]; and

(ii) any of the following or any combination of the following:

(A) a healthcare provider;

(B) a clinic or other association of health[-]care providers;

(C) a network plan; or

(D) an insurer authorized to provide health insurance.

# R590-240-4. [Supporting Facts]Findings.

Pursuant to Subsection 31A-1-103(3)(d), the commissioner makes the following findings:

(1) <u>A student health program is an insurer as defined in</u> Section 31A-1-301 and shall comply with the requirements of Title <u>31A</u>, Insurance Code, unless it is exempted from regulation by statute or this rule.

(2) [Student health programs are offered-]An institution may offer a student health program only to an eligible [members] member at [institutions]the institution.[-These institutions have-]

(a) An institution has an interest in providing affordable health care coverage to [their\_]its\_students [in order\_]to enable the students to receive limited health care to ensure that progress toward a degree or certificate is not impeded by unattended medical needs.

(b) In some instances, an institution may also offer a student health [programs may also be offered to the spouses of students and other dependents of students, as well]program to a spouse or dependent of a student.

[(2) Student health programs are ](3) A student health program is not established to enable [the institutions ]an institution to make a profit from providing health care coverage.

(a) Providing or arranging for health care services for [students-]a student is not the primary purpose of [institutions; it is only-]an institution, but rather incidental to the institutions' primary purpose, which is to educate those that matriculate with the institution.[In addition, the-]

(b) The economic impact on <u>a</u> health care [providers] <u>provider</u> directly, and the public indirectly, from students receiving medical services and then not being able to pay for those services, is mitigated by <u>an institution</u> providing <u>its</u> students [at institutions] with access to affordable health care coverage through <u>a</u> student health [programs]program.

[(3)](4) An institution is either a state institution under the direct control of, and supervised by, the Board, or it [must be]is accredited by the Northwest Commission on Colleges and Universities.[In order to]

(a) To be accredited, an institution [must-]shall meet strict accounting standards[,] and be able to demonstrate it is financially solid.

(b) An institution [must therefore ]shall comply with the strict accounting and financial requirements of the Board or the Northwest Commission on Colleges and Universities, which [would ]include the need to reflect on the financial statements of the institution any liability for risks the institution assumes, or costs the institutions may incur, for its student health program.

(c) Any shortfall in providing health care services at the student health center [would\_become\_]is\_the obligation of the institution.

(5) A student health program that operates under Section R590-240-5 and obtains an order of exemption under Section R590-240-6 does not require regulation for the protection of the interests of the residents of this state, and is exempt from Title 31A, Insurance Code.

(6) If an institution assumes any risk of a student health program, the institution shall:

(a) apply for a certificate of authority to conduct the business of an insurer; or

(b) apply to the commissioner for an exemption under this rule.

(7) Health insurance from an insurer made available by an institution to its eligible members is not exempt from Title 31A, Insurance Code, under this rule even if the health insurance from a health insurer is integrated into the overall student health program offered by the institution, or use of the institution's student health center is an integral or required part of the health care coverage under the insurer's policy.

# R590-240-5. Exemption Requirements for a Student Health Program.

[<u>A student health program may be exempted from the</u> provisions of the Utah Insurance Code if it meets all of the requirements of this Section 5, applies for exemption under Section 6, and the exemption is granted.]

(1) The commissioner may exempt an institution's student health program from Title 31A, Insurance Code, if:

(a) the student health program meets the requirements of this section;

(b) the institution applies for an exemption under Section R590-240-6; and

(c) the commissioner notifies the institution that the exemption is granted.

[(1)](2) A student health program [must]shall:

(a) be established by an institution;

(b) have assets that are owned by:

(i) an institution;

(ii) a trust; or

 $(\mbox{iii})$  the trustees, in their fiduciary capacities, of a trust established by an institution; and

(c) be operated by:

(i) an institution; or

(ii) the institution's authorized agent or affiliate.

 $[\frac{(2)}{3}]$  The primary purpose of the institution  $[\frac{\text{must ]shall}}{\text{providing of ]not providing a student health program.}$ 

 $[\frac{(3)}{(4)}]$  Payment of covered claims of the student health program [must-]shall be secured by adequate assets:

(a) that are:

(i) secured by being:

(A) pledged;

(B) guaranteed;

(C) contributed;

(D) placed in trust; or

(E) [using ]a combination of Subsections [ $\frac{5(3)(a)(i)(A)}{5(3)(a)(i)(B)}$ ,  $\frac{5(3)(a)(i)(C)}{5(3)(a)(i)(C)}$ , and  $\frac{5(3)(a)(i)(D)}{5(3)(a)(i)(D)}$ ; and

(ii) secured under Subsection [5(3)](4)(a)(i) by:

(A) the student health program;

(B) the institution that organizes, adopts, or establishes the student health program;

(C) the owner of the institution described in Subsection  $\frac{5(3)}{4}(a)(ii)(B);$ 

(D) an affiliate of the entity described in Subsection  $\frac{5(3)}{4}(a)(ii)(C)$ ; or

(E) a combination of the entities described in Subsections [5(3)(a)(ii)(A), 5(3)(a)(ii)(B), 5(3)(a)(ii)(C), and 5(3)(a)(ii)(D)](4)(a)(ii)(A) through (4)(a)(ii)(D); and

(b)(i) in an amount and type [that would be]required under <u>Title 31A</u>, Chapter 17[-of the Utah Insurance Code], Determination of Financial Condition; or

(ii) as approved by the commissioner by written order; and(c) under such terms and conditions as the commissioner determines by written order.

[(4) The ](5) An institution may not offer a student health program [may not be offered ]to or enroll anyone other than an eligible member.

 $[\frac{(5) \text{ The }}{](6) \text{ A}}$  student health program  $[\frac{\text{must }}{\text{shall }}$  have a comprehensive legal structure that demonstrates that:

(a) the assets described in Subsection  $[\frac{5(3)}{5(3)}$  will be ](4) are administered in a fiduciary manner to  $[\frac{assure}{3}]$  guarantee that assets are available to provide eligible health care services and to provide payments to health care providers $[\frac{1}{3}]$  as outlined in any contracts between the student health program and health care providers;

(b) the student health program  $[\underline{\text{will be }}]\underline{is}$  administered by an experienced administrator; and

(c) the student health program [shall be-]is\_administered according to contracts between:

(i)(A)(I) the student health program;[-or]

(II) the institution; or

(III) both the student health program and the institution;

(B) the enrollees; and

and

and

(ii)(A)(I) the student health program;[-or]

(II) the institution; or

(III) both the student health program and the institution;

(B) health care providers.

 $[\frac{(6)}{2}]$  Except for <u>an</u> emergency health care [services,]service or <u>an</u> out-of-area or <u>an</u> out-of-country health care [providers]provider, <u>a</u> health care [services for those enrolled in the student health program must\_]service for an enrollee shall be provided:

(a) at a student health center; or

(b) pursuant to a contract with <u>a</u> health care service [providers]provider, by which [those-]the health care [providers will provide ]provide provides a health care [services-]service upon a referral from the student health center.

[<del>(7) Any ](8) A</del> supplemental health care [services ]service provided by the student health program [must]shall:

(a) be obtained from an insurer authorized to provide health insurance;

(b) be backed by assets [under the conditions set forth in Subsection 5(3)]described in Subsection (4); or

(c) use a combination of Subsections [5(7)(a) and 5(7)(b)](8)(a) and (8)(b).

[(8) The ](9) A student health program [must ]shall provide review procedures substantially similar, and materially equal, to those presently in effect for insurers, health maintenance organizations, and limited health programs.

[(9) The ](10) A student health program or [the]an institution, or both, shall annually provide the department an informational copy of all current policies, booklets, and advertising.

[(10) The\_](11) A student health program or [the\_]an institution, or both[-must], shall state in a prominent and appropriate place in all policies, contracts, booklets, explanatory material, advertising or other promotional material, and any presentations relating to solicitations of the student health program, that the student health program is not insurance[, and the student health program has been exempted from regulation under the Utah\_] and is exempt from <u>Title 31A</u>, Insurance Code, and [must\_]shall\_cite the date, docket number, and title of the docket by which the exemption was granted.

[(11) The-](12) A student health program [must-]shall reduce any applicable preexisting condition provisions for any individual covered by the student health program by the amount of previous creditable coverage.

[(12) The ](13) A student health program  $[\frac{\text{must }]\text{shall}}{\text{provide a certificate of creditable coverage upon request by an individual who was covered by the student health program.$ 

# R590-240-6. Procedure for Obtaining Exemption.

(1)(a) An institution [desiring-]seeking to have its student health program exempted from [the provisions of the Utah-]Title <u>31A</u>, Insurance Code<sub>a</sub> shall file with the [Utah Insurance Department ]department an application in a form prescribed by the commissioner for an order exempting the student health program, and shall provide verifiable documentation in support of its application, including documentation to support that the exemption requirements in Section <u>R590-240-5</u> have been met.

(b) The application [must-]shall provide assurance that the institution has sufficient assets placed in trust, or otherwise pledged

or guaranteed under Section  $[\frac{3}{3},]R590-240-5$  under conditions acceptable to the commissioner, to meet any liability the institution [may have ]has for its student health program.

(2) [The ]When considering an institution's request for exemption, the commissioner may require the following:

(a) additional evidence or information[<del>, to be provided by</del> ]<u>from</u> the institution;

(b) an examination of the <u>institution's</u> student health program by the department, [the costs of which shall be borne by the <u>institution]at the institution's expense</u>; or

(c) a hearing on the application.

(3)(a) Upon <u>a</u> finding that [the ]a student health program complies with [the provisions of ]this rule, the commissioner may issue an order exempting the student health program from [the provisions of the Utah ]Title 31A, Insurance Code.

(b) The commissioner may place any restrictions or conditions upon the exemption the commissioner believes to be necessary to protect the interests of the residents of this state.

(4) A student health program is not exempt from [the Utah] <u>Title 31A</u>, Insurance Code, unless the commissioner has issued a written order explicitly stating the student health program is <u>so</u> exempt[<u>from the Utah Insurance Code</u>].

(5) The department shall retain continuing jurisdiction over [the ]an institution's student health program to assure compliance with the terms and conditions in Section <u>R590-240-5</u>, including any changes in the law or the facts upon which the exemption is granted.

(6) Any inconsistencies between this rule and any order previously issued exempting a student health program from Title 31A, Insurance Code, are resolved by incorporating this rule.

#### [R590-240-7. Rule and Findings.

(1) A student health program is an insurer as defined in Section 31A-1-301, and must comply with the requirements of the Utah Insurance Code unless it is exempted from regulation by statute or by this rule.

(2) Pursuant to Subsection 31A-1-103(3)(d)(i), the commissioner finds that a student health program which operates in accordance with the provisions of Section 5, and obtains an order of exemption under Section 6, does not require regulation for the protection of the interests of the residents of this state, and that such student health program is exempt from regulation under the Utah Insurance Code.

(3) If the institution assumes any risk of the student health program, the institution must:

(i) apply for authority to conduct the business of an insurer, or

(ii) apply to the commissioner for an exemption under this rule.

(4) Health insurance from an insurer made available by an institution to its eligible members is not exempt from the Utah Insurance Code under this rule, even if the health insurance from a health insurer is integrated into the overall student health program offered by the institution, or use of the institution's student health center is an integral or required part of the health care coverage under the insurer's policy.

(5) Any inconsistencies between the provisions of this rule and any order previously issued exempting a student health program from regulation under the Utah Insurance Code are resolved by incorporating the provisions of this rule.

#### R590-240-8. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

#### R590-240-[9]7. Severability.

[If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.]If any provision of this rule, Rule R590-240, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

#### **KEY:** health insurance exemptions

Date of Last Change: 2023[August 8, 2007]

Notice of Continuation: June 3, 2022

Authorizing, and Implemented or Interpreted Law: 31A-1-103; 31A-2-201

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment		
Rule or Section Number:	R590-242	Filing ID: 55809

#### **Agency Information**

geney mermanen			
1. Department:	Insurance		
Agency:	Administration		
Room number:	Suite 2300		
Building:	Taylorsv	ille State Office Building	
Street address:	4315 S 2	2700 W	
City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box 146901		
City, state and zip:	Salt Lake City, UT 84114-6901		
Contact persons:			
Name:	Phone: Email:		
Steve Gooch	801- 957- 9322	sgooch@utah.gov	
Please address questions regarding information or			

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

### **General Information**

2. Rule or section catchline:

R590-242. Military Sales Practices

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

This rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

# 4. Summary of the new rule or change:

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Rulewriting Manual for Utah standards.

Other changes make the language of this rule more clear, combine sections, remove the Penalties and Enforcement Date (old R590-242-9 and old R590-242-10) sections, and update the Severability (new R590-242-6) section to use the Department's current language.

The changes do not add, remove, or change any regulations or requirements.

# **Fiscal Information**

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

# A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

# B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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

narratives abo	we.)		
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 Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

# **Citation Information**

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

Section 31A-2-201	Section	
	31A-23a-402	

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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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	Steve Gooch,	Date:	09/28/2023	
or designee	Public Information			
and title:	Officer			

#### R590. Insurance, Administration. R590-242. Military Sales Practices.

#### R590-242-1. Authority.

This rule is promulgated <u>by the commissioner pursuant</u> to [Subsection 31A-23a-402(8)(a) and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A]Sections 31A-2-201 and 31A-23a-402.

#### [R590-242-2. Purpose.

(1) The purpose of this rule is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

### R590-242-3. Scope.

This rule shall apply only to the solicitation, negotiation, or sale of any life insurance product, including annuities, by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

#### R590-242-4. Findings.

The commissioner finds that the acts prohibited by this rule are misleading, deceptive, unfairly discriminatory, and provide an unfair inducement.

#### R590-242-5. Exemptions. | R590-242-2. Purpose and Scope.

(1)(a) The purpose of this rule is to set forth standards to protect an active duty service member of the United States Armed Forces from dishonest and predatory insurance sales practices.

(b) Nothing in this rule creates or implies a private cause of action for a violation of this rule.

(2)(a) This rule applies to the solicitation, negotiation, or sale of a life insurance product, including an annuity, by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

[(1) This rules shall not apply to solicitations, negotiations, or sales involving:](b) This rule does not apply to a solicitation, negotiation, or sale involving:

[(a)](i) credit insurance;

[(b)](ii) group life insurance or <u>a group [annuities ]annuity</u> where there is no in-person, face-to-face solicitation of individuals by an insurance producer<u>,</u> or where the <u>policy</u> contract<u>,</u> or certificate does not include a side fund;

[(c)](iii) an application to the existing insurer that issued the existing policy or contract when:

(A) a contractual change or a conversion privilege is being exercised;[-or, when-]

(B) the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or[<del>, when</del>]

(C) a term conversion privilege is exercised among corporate affiliates;

[<del>(d)</del>]<u>(iv)</u>individual stand-alone health [<del>policies</del>]<u>insurance</u>, including [<del>disability</del>]income [<del>policies</del>]<u>insurance</u>;

[(e) contracts](v) a contract offered by [Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.]SGLI or VGLI;

[(f)-](vi)\_life insurance [contracts]offered through or by a non[-]profit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code[-(IRC)], and [which are ]that is not underwritten by an insurer; or

[(g) contracts ](vii) a contract used to fund:

[(i)](A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act[ (ERISA)];

[(ii)](B) a plan described by Section[s] 401(a), 401(k), 403(b), 408(k), or 408(p) of the [IRC]Internal Revenue Code, as amended, if established or maintained by an employer;

[(iii)](C) a government or church plan defined in Section 414 of the [HC]Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the [HC]Internal Revenue Code;

[(iv)](D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

[(v) settlements of or assumptions ](E) a settlement of or assumption of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

[(vi)-](F) a prearranged funeral [contracts]contract.

[(2) Nothing herein shall be construed to nullify the ability of nonprofit organizations to educate members ](c) This rule does not prohibit a nonprofit organization from educating a member of the United States Armed Forces in accordance with [Department of Defense DoD\_]the DOD\_Instruction 1344.07 - [PERSONAL COMMERCIAL\_SOLICITATION\_ON\_DOD\_INSTALLATIONS ]Personal Commercial Solicitation on DOD Installations\_or a successor directive.

[<u>(3)</u> For purposes of this rule, general advertisements, direct mail and internet marketing shall not constitute "solicitation". Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this rule in any in person, face to face meeting established as a result of the "solicitation" exemptions identified in this subsection.]

#### R590-242-[6]3. Definitions.

[In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:]Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1)(a) "Active [Duty]duty" means full-time duty in the active military service of the United States [and includes]including members of the [reserve component,]National Guard and Reserve, while serving under published orders for active duty or full-time training.[The term]

(b) "Active duty" does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(2) "Department of Defense [(DoD) Personnel]personnel" and "DOD personnel" mean[s] all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the [Department of Defense]DOD.

(3) <u>"DOD" means the U.S. Department of Defense.</u>

<u>(4)</u> "Door to [Door]door" means a solicitation or sales method [whereby-]where an insurance producer proceeds randomly or selectively from household to household without [prior]a specific appointment.

[(4)](5) "General [Advertisement]advertisement" means an advertisement [having as its sole\_]with its purpose being the promotion of the reader's or viewer's interest in the concept of insurance, [ $\overline{\text{or}}$ ]the promotion of the insurer, or the promotion of an insurance producer.

(5) "Known" or [Knowingly]"knowingly" means, depending on its [use herein]usage, [the-]an insurance producer or insurer [had-]having actual awareness, or in the exercise of ordinary care should have known[, at the time of the act or practice complained of;] that the person solicited:

(a) is a service member; or

(b) is a service member with a pay grade of E-4 or below.

(7) "Insurable needs" means the risks associated with premature death, taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors or dependents.

[<del>(6)</del>](<u>8</u>) "Military [<u>Installation</u>]installation" means [<u>any-]a</u> federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

[(7)](9) "MyPay" [is a ]means the Defense Finance and Accounting Service [(DFAS)]web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(10) "Other military survivor benefits" includes the following benefits:

(a) the death gratuity;

(b) funeral reimbursement;

(c) transition assistance;

(d) survivor and dependents' educational assistance;

(e) dependency and indemnity compensation;

(f) TRICARE healthcare benefits;

(g) survivor housing benefits and allowance;

(h) federal income tax forgiveness; and

(i) Social Security survivor benefits.

(11) "SGLI" means Servicemembers' Group Life Insurance as authorized by 38 U.S.C. Section 1965 et seq. [<del>(8)</del>]<u>(12)</u> "Service [<u>Member</u>]member" means [<u>any ]an</u> active duty officer, commissioned and warrant, or enlisted member of the United States Armed Forces.

 $[\underbrace{(9)}](\underline{13})(\underline{a})$ "Side [Fund]fund" means a fund or reserve that is part of, or otherwise attached to, a life insurance policy, [excluding\_]except for individually issued annuities, by rider, endorsement, or other mechanism [which\_]that accumulates premium or deposits with interest or by other means.[-The term-]

(b) "Side fund" does not include:

[<del>(a)</del>]<u>(i)</u> accumulated value[-or], cash value, or secondary guarantees provided by a universal life policy;

[<del>(b)</del>]<u>(ii)</u> cash [<u>values</u>]<u>value</u> provided by a whole life policy [<del>which are</del>]subject to standard nonforfeiture law for life insurance; or

[(c)](iii) a premium deposit fund [which]that:

[<del>(i)</del>](<u>A</u>) contains only premiums paid in advance [<del>which</del>] <u>[that</u> accumulate [<del>at</del>]interest;

[(ii)](B) imposes no penalty for withdrawal;

[(iii)](C) does not permit funding beyond future required premiums;

 $[\frac{(iv)}{D}]$  is not marketed or intended as an investment; and  $[\frac{(v)}{D}]$  does not carry a commission, either paid or

calculated.

(14)(a) "Solicitation" means an offer to a person in this state, either directly or through a third party, to effect insurance.

(b) "Solicitation" does not mean:

(i) a general advertisement;

(ii) a direct mailing;

(iii) internet marketing; or

(iv) telephone marketing, provided the caller explicitly and conspicuously discloses that the product that is the subject of the call is life insurance.

[(10)](15) "Specific [Appointment]appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

[(11)](16) "United States Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(17) "VGLI" means Veterans' Group Life Insurance as authorized by 38 U.S.C. Section 1965 et seq.

# R590-242-[7]<u>4</u>. [Practices Declared ]False, Misleading, Deceptive, or Unfair <u>Practices</u> on a Military Installation.

(1) The [following ]acts or practices in this Subsection (1), when committed on a military installation by an insurer or insurance producer [with respect to the ]during an in-person, face-to-face solicitation, negotiation, or sale of life insurance, are [declared to be ]false, misleading, deceptive, or unfair[÷].

(a) Knowingly soliciting the purchase of  $[any_]a_l$  life insurance product  $[\_]$  door to door $[\_]$ , or without first establishing a specific appointment [for each meeting with the ]with a prospective purchaser.

(b) Soliciting service members in a group[<u>or "mass"</u> audience or in a "captive"], mass, or captive audience where attendance is not voluntary.

(c) Knowingly making [appointments\_]an appointment with or soliciting <u>a</u> service [members\_]member\_during [their\_]the service member's normally scheduled duty hours.

(d) Making [appointments ]an appointment with or soliciting a service [members ]member in barracks, day rooms, unit areas, [or ]transient personnel housing or other areas where the installation commander [has prohibited ]prohibits solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) [Posting unauthorized bulletins, notices or advertisements]Posting an unauthorized bulletin, notice, or advertisement on a military installation.

(g) Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to <u>a solicited</u> service [members solicited\_]member\_or encouraging <u>a solicited</u>\_service [members solicited\_]member\_not to complete or submit [a]DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a [policy of ]life insurance <u>policy</u> on the life of an enlisted member of the United States Armed Forces without first obtaining [for the insurer's files ]a completed copy of any required form [which confirms ]confirming that the applicant [has-]received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the [DoD-]DOD or any branch of the <u>United States</u> Armed Forces.

(2) [The following acts or practices]An act or practice in this Subsection (2), when committed on a military installation by an insurer or insurance producer[-constitute corrupt practices, improper influences or inducements and are declared to be ] is a corrupt practice, improper influence, or inducement that is false, misleading, deceptive, or unfair[+].

(a) Using [DoD]DOD personnel, directly or indirectly, as a representative or agent in [any]an official or business capacity with or without compensation[with respect to], regarding the solicitation or sale of life insurance to any service [members]member.

(b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

# R590-242-[8]<u>5</u>. [<del>Practices Declared</del>]False, Misleading, Deceptive, or Unfair <u>Practices</u> Regardless of Location.

(1) The [following\_]acts or practices by an insurer or insurance producer [constitute\_]in this Subsection (1) are corrupt practices, improper influences, or inducements [and are declared to be]that are false, misleading, deceptive, or unfair[+].

(a)(<u>i</u>) Submitting, processing<u></u>, or assisting in the submission or processing of [<del>any</del>]<u>an</u> allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance[<del>. The foregoing includes</del>, but is not limited to, ], including using or assisting [<del>in using</del>]<u>with</u> a service member's [<u>"</u>]MyPay[<u>"</u>] account or other similar internet or electronic medium for such purposes.[<u>This subsection does not prohibit</u>]

(ii) Subsection (1)(a)(i) does not prohibit assisting a service member by providing insurer or premium information necessary to complete  $\left[\frac{any}{an}\right]an$  allotment form.

(b)(i) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship.[—For purposes of this section, a.]

(ii) A formal banking relationship is established when [the ]a depository institution:

[(i)](A) provides the service member with a deposit agreement and periodic statements, and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. Section 4301 et seq. and the rules promulgated thereunder; and

[(ii)](B) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) [Employing any device or method or entering]Entering into [any\_]an\_agreement [whereby\_]where funds received from a service member by allotment, for the payment of insurance premiums, are identified on the service member's Leave and Earnings Statement, or equivalent, or successor form as ["Savings" or "Checking" and where\_]savings or checking when the service member has no formal banking relationship[-as defined in subsection 7(1)(b)].

(d) Entering into [any\_]an\_agreement with a depository institution [for the purpose of receiving\_]to receive\_funds from a service member [whereby\_]where the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(c) Using [DoD-]DOD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity, with or without compensation, [with respect to ]regarding the solicitation or sale of life insurance to any service [members who are ]member who is junior in rank or grade, or to [the ]any family [members-]member of such personnel.

(f) Offering or giving anything of value, directly or indirectly, to [<del>DoD</del>]<u>DOD</u> personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation, negotiation, or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for [his or her\_]the service member's attendance to any event where an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change [his or her ]the service member's income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(2) The [following\_]acts or practices by an insurer or insurance producer [lead to confusion\_]in this Subsection (2) regarding source, sponsorship, approval, or affiliation are confusing and are [declared to be\_]false, misleading, deceptive, or unfair[+].

(a) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the [U.S.]United States Government, the United States Armed Forces, or any state or federal agency or government entity.

(i) [Examples of prohibited ]Prohibited insurance producer titles include[, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor".] the following:

(A) Battalion Insurance Counselor;

(B) Unit Insurance Advisor;

(C) Servicemen's Group Life Insurance Conversion Consultant;

(D) Veteran's Benefits Counselor; or

(E) a similar title.

menaamg
(A) Chartered Life Underwriter[(CLU)], CLU;
(B) Chartered Financial Consultant[(ChFC)], ChFC;
(C) Certified Financial Planner[(CFP)], CFP;

<u>(D)</u> Master of Science in Financial Services[-(MSFS)], MSFS: or

(E) Masters of Science Financial Planning[-(MS)], MS.

(b) Soliciting the purchase of [any]a life insurance product through the use of or in conjunction with [any\_]a third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that [has the tendeney or capacity to]may confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the [U.S.]United States Government, or the United States Armed Forces.

(3) The [following\_]acts or practices by an insurer or insurance producer [lead to confusion\_]in this Subsection (3) are <u>confusing</u> regarding premiums, costs, or investment returns and are [declared to be]false, misleading, deceptive, or unfair[±].

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(b) [Excluding\_]Except for individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free".

(4) The [following\_]acts or practices by an insurer or insurance producer in this Subsection (4) regarding SGLI or VGLI are [declared to be\_]false, misleading, deceptive, or unfair[+].

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations [to-]of\_coverage provided to a service member or <u>a service member's</u> dependents by SGLI or VGLI[, which is false, misleading or deceptive].

(b) Making any representation regarding conversion requirements, including the costs of coverage, [or-]exclusions or limitations to coverage of SGLI or VGLI to private insurers[<del>, which is false, misleading or deceptive</del>].

(c) Suggesting, recommending, or encouraging a service member to cancel or terminate [his or her ]a\_SGLI policy or issuing a life insurance policy [which ]that replaces an existing SGLI policy unless the replacement [shall take ]takes effect upon or after the service member's separation from the United States Armed Forces.

(5) The [following-]acts or practices by an insurer [and-]or insurance producer in this Subsection (5) regarding disclosure are [declared to be ]false, misleading, deceptive, or unfair[+].

(a) Deploying, using, or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the [recipient\_]service member will be contacted by an insurance producer, if that is the case, [for the purpose of soliciting]to solicit the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when [establishing\_]making\_a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

(c) [Excluding ]Except for an individually issued [annuities]annuity, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

(d) [Failing-]Knowingly failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures [required by ]under\_Section 10 of the ["]Military Personnel Financial Services Protection Act,["] Pub. L. No. 109-290[<del>, p.16</del>].

[<del>(e) Excluding</del>](e)(i) Except for an individually issued [annuities]annuity, when [the-]a sale is conducted <u>during an</u> in-

person, face-to-face <u>meeting</u> with [an individual known to be\_]a <u>known</u> service member, failing to provide the applicant, [at the time]when the application is taken:

 $[(i)](\underline{A})$  an explanation of any free look period with instructions on how to cancel if a policy is issued; and

[(ii) either ](B) a copy of the application or a written disclosure.

(ii) The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for, and its expected first year cost.

(iii) A basic illustration that meets the requirements of <u>Rule</u> R590-177[<del>, Life Insurance Illustrations Rule, shall be deemed</del> sufficient to meet.] meets this requirement for a written disclosure.

(6) The [following-]acts or practices by an insurer or insurance producer [with respect to ]in this Subsection (6) regarding the sale of certain life insurance products are [declared to be-]false, misleading, deceptive, or unfair[ $\frac{1}{2}$ ].

(a) [Excluding\_]Except for an individually issued [annuities]annuity, recommending the purchase of [any\_]a\_life insurance product [which\_]that\_includes a side fund to a service member in a pay [grades\_]grade E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance product [which]that includes a side fund to a service member in a pay [grades]grade E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings, [and]investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(ii) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.]

(c) [Excluding\_]Except for an individually issued [annuities]annuity, offering for sale or selling [any\_]a\_life insurance [contract which\_]policy that includes a side fund:

(i) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(ii) unless the applicant [has been\_]is\_provided with a schedule of effective rates of return based upon cash flows of the combined product[. For this disclosure, ], wherein the effective rate of return [will consider\_]considers\_all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage[. This schedule will be], and is provided for at least each policy year from one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

(iii) [which]that, by default, diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due.

(d) [Excluding ]Except for an individually issued [annuities]annuity, offering for sale or selling [any-]a life insurance

[contract which ]policy that, after considering all policy benefits[7] including [but not limited to ]an endowment, a return of premium, or persistency, does not comply with Section 31A-22-408[, Standard Nonforfeiture Law for Life Insurance].

(c) Selling [any\_]to a known service member a life insurance [product to an individual known to be a service member ]policy that excludes coverage if the insured's death is related to war, declared or undeclared, or [any\_]an\_act related to military service except for an accidental death coverage[which may be excluded].

#### [R590-242-9. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

#### R590-242-10. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule on January 1, 2008.

# R590-242-[11]6. Severability.

[If any provision or portion of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.]If any provision of this rule, Rule R590-242, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

#### KEY: insurance, military sales practices

Date of Last Change: 2023[November 16, 2007]

Notice of Continuation: October 31, 2022

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402

NOTICE OF PROP	POSED RULE
TYPE OF FILING	Amendment

TIFE OF TIEING.	Amenument	
Rule or Section Number:	R590-259	Filing ID: 55810

# **Agency Information**

1. Department:	Insurance
Agency:	Administration
Room number:	Suite 2300
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901

Name:	Phone:	Email:
Steve Gooch	801- 957- 9322	sgooch@utah.gov

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

#### **General Information**

2. Rule or section catchline:

R590-259. Dependent Coverage to Age 26

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

This rule is being changed in compliance with Executive Order No. 2021-12.

During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

#### 4. Summary of the new rule or change:

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Rulewriting Manual for Utah standards.

Other changes make the language of this rule more clear, remove certain definitions that are defined elsewhere, remove a provision about special enrollments that are already provided for in federal law, remove the Penalties (old R590-259-6) section, and update the Severability (new R590-259-5) section to use the Department's current language.

The changes do not add, remove, or change any regulations or requirements.

#### **Fiscal Information**

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

#### A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

# B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

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

# Regulatory Impact Table

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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 Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

#### **Citation Information**

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

Section 31A-2-201 Section 31A-2-212 Section 31A-22-605

### **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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	Steve Gooch,	Date:	09/28/2023
or designee	Public Information		
and title:	Officer		

#### R590. Insurance, Administration.

R590-259. Dependent Coverage to Age 26.

#### R590-259-1. Authority.

This rule is promulgated by the [insurance-]commissioner pursuant to [Subsections 31A 2 201(3), 31A 2 212(5)(b) and 31A-22-605(4)]Sections 31A-2-201, 31A-2-212, and 31A-22-605.

#### R590-259-2. Purpose and Scope.

(1) The purpose of this rule is to clarify [rules-]standards relating to [the]dependent coverage of [ehildren in the individual and group health benefit plan markets]a child in a health benefit plan.

(2) This rule applies to [any health insurer that provides individual or group ]an insurer providing a health benefit plan[ coverage].

### R590-259-3. Definitions.

[ In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule.

(1) "Grandfathered plan coverage" means coverage provided by a health insurer in which an individual was enrolled on March 23, 2010 for as long as it maintains that status in accordance with federal regulations.

(2) "Group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(3) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974, ERISA, to the extent that the plan provides medical care, as defined in R590-259-3(9), and including items and services paid for as medical care to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(4)(a) "Health benefit plan" means a policy, contract, certificate or agreement offered by an insurer to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

"Health benefit plan" includes short-term and (h)catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

(c) "Health benefit plan" does not include:

(i) coverage only for accident, or disability income insurance, or any combination thereof;

(ii) coverage issued as a supplement to liability insurance; (iii) liability insurance, including general liability insurance and automobile liability insurance;

(iv) workers' compensation or similar insurance;

(v) automobile medical payment insurance;

(vi) credit-only insurance;

(vii) coverage for on-site medical clinics; and

(viii) other similar insurance coverage, specified in federal regulations issued pursuant to Pub. L. No. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

(d) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan: (i) limited scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

(iii) other similar, limited benefits specified in federal regulations issued pursuant to Pub. L. No. 104-191.

(e) "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance. (f) "Health benefit plan" does not include the following if offered as a separate policy, certificate or contract of insurance:

(i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(ii) coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, TRICARE; or

(iii) similar supplemental coverage added to coverage under a group health plan.

(5) "Health insurer" means an insurer that offers a health benefit plan.

(6)(a) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, which includes a health benefit plan provided to individuals through a trust arrangement, association or other discretionary group that is not an employer plan, but does not include short-term limited duration insurance.

(b) For purposes of this subsection, a health insurer offering health insurance coverage in connection with a group health plan shall not be deemed to be a health insurer offering individual health insurance coverage solely because the insurer offers a conversion policy.

(7) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(8) "Medical care" means amounts paid for:

(a) the diagnosis, care, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in R590-259-3(8)(a); and

(c) insurance covering medical care referred to in R590-259-3(8)(a) and (b).

(9) "Participant" adopts the meaning given under section 3(7) of ERISA.

(10) "Subscriber" means, in the case of individual health insurance contract, the person in whose name the contract is issued.]

Terms used in this rule are defined in Sections 31A-1-301, 31A-22-611, and 31A-30-103. Additional terms are defined as follows:

(1) "Child" means an individual who is a son, daughter, stepson, or stepdaughter of an insured.

(2) "Grandfathered plan" is as defined in 45 CFR 147.140.

R590-259-4. Eligibility for Dependent Coverage to Age 26; [Definition of Dependent; |Uniformity of Plan Terms.

(1) A health insurer that [makes\_available\_]provides dependent coverage [of children-]shall make that coverage available [for children until attainment of ]until the end of the month the child turns 26 years of age.

(2) With respect to a child who has not [attained]turned 26 years of age, [a health ]an insurer may not[shall not] define a dependent for purposes of eligibility [for dependent coverage of children ]other than in the terms of a relationship between a child and the [plan participant, and, in the individual market, primary subscriber]insured.

(3) [A health insurer shall-]An insurer may not deny or restrict coverage for a child who has not [attained] turned 26 years of age based on:

[based on the presence or absence of ]the child's (a) financial dependency[-upon the participant, primary subscriber or any other person, ];

(b) the child's residency with the participant and in the individual market the primary subscriber, or with any other person, ]; (c) the child's student status[, ];

(d) the child's employment [or any combination of those factors; or]status;

[(b) based on ](e) the child's eligibility for other coverage, except as provided in [R590-259-4(6).]Subsection (5); or

#### (f) any combination thereof.

[ (4) Nothing in this rule shall be construed to require a health insurer to make coverage available for the child of a child receiving dependent coverage, unless the grandparent becomes the adoptive parent of that grandchild.

(5) The terms of coverage in a health benefit plan offered by a health insurer providing dependent coverage of children cannot vary based on age except for children who are 26 years of age or older.]

(4) The dependent coverage may not vary based on age except for a dependent with a disability.

[(6) For plan years beginning-](5) A group grandfathered plan issued before January 1, 2014, [a group health plan providing group health insurance coverage that is a grandfathered plan and makes available dependent coverage of children-]may exclude an adult child who has not [attained-]turned\_26 years of age [from coverage only-]if the adult child is eligible to enroll in an eligible employer-sponsored health benefit plan, as defined in section 5000A(f)(2) of the Internal Revenue Code, other than [the group health-]an eligible employer-sponsored health benefit plan of a parent.

#### [R590-259-5. Special Enrollment for Qualifying Events.

Nothing in this rule shall alter an applicant's ability to obtain health insurance during a special enrollment period, outside of the open enrollment period, resulting from a qualifying event as defined by the Health Insurance Portability and Accountability Act and PPACA.

# R590-259-6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

# R590-259-[7]5. Severability.

[If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]If any provision of this rule, Rule R590-259, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

# KEY: health insurance open enrollment Date of Last Change: <u>2023[December 2, 2014]</u>

Notice of Continuation: January 22, 2021

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-22-605

TYPE OF FILING: Amendment		
Rule or Section Number:		Filing ID: 55821

# 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- stacicoons@utah.gov 450- 3093			

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

# **General Information**

### 2. Rule or section catchline:

R657-13. Taking Fish and Crayfish

# 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) fishing management program.

# 4. Summary of the new rule or change:

During the 2023 General Session, H.B. 30 recodified Title 23 and created Title 23A – rules governed by Title 23 now need to be updated to reflect the current code references. Amendments to this rule update the state code references to reflect the recent recodification of Title 23.

This rule is also being amended to modify the definition of "spearfishing" to include SCUBA and to add five waterbodies to the list of areas where underwater spearfishing is allowed.

# **Fiscal Information**

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

# A) State budget:

This amendment adds additional opportunities for fishermen to harvest fish using underwater spearfishing techniques, therefore the DWR has determined 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 this amendment only adds opportunities for fishermen, this should have little to no effect on the local governments.

This filing does not create any direct cost or savings impact on local governments because they are not directly affected by this rule. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

This rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses because this rule does not create a situation requiring services from them.

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

This rule does not impose any additional financial requirements on non-small businesses, nor generate a cost or saving impact to non-small businesses because this rule does not create a situation requiring services from them.

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

This rule does not impose any additional financial requirements on other persons, nor generate a cost or saving impact to other persons because this rule does not create a situation requiring services from them.

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

DWR has determined that this amendment will not create additional costs for those individuals wishing to participate in fishing in Utah because there is no cost associated with adding underwater spearfishing opportunities.

**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 23A-2-305 Section 23A-2-304 Section 23A-1-101

#### 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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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:	09/28/2023
and title:			

# R657. Natural Resources, Wildlife Resources. R657-13. Taking Fish and Crayfish.

R657-13-1. Purpose and Authority.

(1) Under authority of Sections [23-14-18]23A-2-305 and [23-14-19]23A-2-304, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

#### R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section [23-13-2]23A-1-101.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight,  $[{not to exceed 100 feet}]_{,0} of_{,1}$  the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(c) "Daily limit" means the maximum limit, in number or amount, of protected aquatic wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including corn, worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

 $(j)\;$  "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

 $(k)\$  "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(1) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout <u>including [(</u>rainbow, albino, cutthroat, brown, golden, brook, lake[<u>/] or mackinaw</u>, kokanee salmon, and grayling or any hybrid of the foregoing[<del>)</del>]; tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal [<del>(tail)</del>] fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Permanent residence" means, for the purposes of this rule only, the domicile an individual claims pursuant to [Utah Code 23-13-2]Subsection 23A-1-101(13).

(y) "Possession limit" means, for purposes of this rule only, two daily limits, including fish in a cooler, camper, tent, freezer, livewell or any other place of storage, excluding fish stored in an individual's permanent residence.

(z) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(aa) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(dd) "Single hook" means a hook or multiple hooks having a common shank.

(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.

(gg) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(hh)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake or [{]mackinaw[]], splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

(ii) "Underwater spearfishing" means fishing by a person swimming, snorkeling, or <u>SCUBA</u> diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other device to propel a pointed shaft to take fish from under the surface of the water.

#### R657-13-9. Underwater Spearfishing.

(1) A person possessing a valid Utah fishing or combination license may engage in underwater spearfishing, only as provided in this section.

(2) The following waters are open to underwater spearfishing from January 1 through December 31 for all species of game fish, unless specified otherwise by individual water:

(a) Big Sand Wash Reservoir (Duchesne County);

(b) Brown's Draw Reservoir (Duchesne County);

(c) Causey Reservoir (Weber County);

(d) Deer Creek Reservoir (Wasatch County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(c) East Canyon Reservoir (Morgan County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(f) Echo Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(g) Electric Lake (Emery County);

(h) Fish Lake (Sevier County), except underwater spearfishing for any game fish is closed from September 10 to the first Saturday in June the following year;

(i) Flaming Gorge Reservoir (Daggett County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(j) Grantsville Reservoir (Tooele County);

(k) Jordan River, for northern pike only (Salt Lake and Utah Counties):

(1) Lake Powell (Garfield, Kane and San Juan Counties), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

 $([4]\underline{m})$  Newcastle Reservoir (Iron County), except underwater spearfishing is closed for all species of game fish other than wipers and rainbow trout;

 $([\underline{m}]\underline{n})$  Pineview Reservoir (Weber County), except underwater spearfishing is closed for:

(i) largemouth and small mouth bass from April 1 through the fourth Saturday in June; and

(ii) tiger musky year round.

([n]o) Porcupine Reservoir (Cache County);

([ $\Theta$ ]p) [Recapture]Ouail Creek Reservoir[-(San Juan], for smallmouth bass only (Washington County);

([<del>p</del>]<u>q</u>) [<del>Red Fleet</del>]<u>Recapture</u> Reservoir ([<u>Uintah]San Juan</u> County);

(s) Rockport Reservoir (Summit County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

([<del>r)</del>]t)\_Sand Lake (Uintah County);

 $([\underline{u}]\underline{v})$  [Steinaker]Starvation Reservoir ([Uintah]Duchesne County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

[<u>(v)</u>] (w) Steinaker Reservoir (Uintah County), except underwater spearfishing for largemouth and smallmouth bass is closed from April 1 through the fourth Saturday in June;

(x) Utah Lake, for northern pike and white bass only (Utah County);

(y) Utah Lake tributaries, including the following tributaries, west of I-15: American Fork, Creek, Beer Creek, Dry Creek, Hobble Creek, Spanish Fork River, Spring Creek and Spring Run Creek, for northern pike only (Utah County). Spearfishing is not permitted on the Provo River or Provo River Delta;

(z) Willard Bay Reservoir (Box Elder County); and

([w]aa) Yuba Reservoir (Juab and Sanpete Counties).

(3) Nongame fish, excluding prohibited species listed in Section R657-13-13, may be taken by underwater spearfishing:

(a) in the waters listed in Subsection (2) and at Blue Lake (Tooele County) for tilapia and pacu only; and

(b) during the open angling season set for a given body of water.

(4) The waters listed in Subsections (2) and (3)(a) are the only waters open to underwater spearfishing for game or nongame fish, except carp may be taken by underwater spearfishing from any water open to angling during the open angling season set for a given body of water.

(5)(a) Underwater spearfishing is permitted from official sunrise to official sunset only, except burbot may be taken by underwater spearfishing at Flaming Gorge Reservoir (Daggett County) between official sunset and official sunrise.

(b) No other species of fish may be taken with underwater spearfishing techniques at Flaming Gorge Reservoir or any other water in the state between official sunset and official sunrise.

(6)(a) Use of artificial light is unlawful while engaged in underwater spearfishing, except artificial light may be used when underwater spearfishing for burbot at Flaming Gorge Reservoir (Daggett County).

(b) Artificial light may not be used when underwater spearfishing for fish species other than burbot at Flaming Gorge Reservoir.

(7) Free shafting is prohibited while engaged in underwater spearfishing.

(8) The daily limit and possession limit for underwater spearfishing is the same as the daily limit and possession limit applied to anglers using other techniques in the waters listed in Subsections (2) and (3)(a), and as identified in the annual Utah Fishing Guidebook issued by the Utah Wildlife Board.

KEY: fish, fishing, wildlife, wildlife law

Date of Last Change: [August 10,] 2023

Notice of Continuation: August 24, 2022

Authorizing, and Implemented or Interpreted Law: [23-14-18; 23-14-19; 23-19-1; 23-22-3]23A-2-305; 23A-2-304; 23A-1-101

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal			
Rule or Section Number:	R657-59	Filing ID: 55822	

# **Agency Information**

J			
1. Department:	Natural Resources		
Agency:	Wildlife Resources		
Room number:	Suite 2110		
Building:	Departm	ent 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- stacicoons@utah.gov 450- 3093		

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

# **General Information**

# 2. Rule or section catchline:

R657-59. Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture

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

The Division of Wildlife Resources (DWR) is recommending changes to Rule R657-59 Private Fish Ponds, Short-term Fishing Events, Private Fish Stocking, and Institutional Aquaculture (Private Pond Rule).

The Private Pond Rule as it currently stands is difficult to read, navigate, and understand. The goal of these proposed changes is to simplify this rule by making it easier for the public and DWR staff to navigate and use. A major proposed change is to the structure of this rule by repealing it and making five new rules.

Instead of one long Rule R657-59, DWR is proposing breaking it up into Rule R657-59a (Private Fish Ponds), Rule R657-59b (Short Term Fishing Events), Rule R657-59c (Aquaponics), Rule R657-59d (Institutional Aquaculture), and Rule R657-59e (Stocking into Natural Lakes, Natural Flowing Streams, or Reservoirs on Natural Stream Channels).

The proposed changes will help those wishing to participate in the regulated activities easily find and understand the regulations governing the activity.

### 4. Summary of the new rule or change:

This current rule will be repealed in its entirety and then replaced by Rules R657-59a, R657-59b, R657-59c, R657-59d, and R657-59e.

# **Fiscal Information**

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

# A) State budget:

The repeal of Rule R657-59 will have no impact on DWR since the rule language is being moved to Rules R657-59a, R657-59b, R657-59c, R657-59d, and R657-59e, the program will continue as it currently is.

The program has been managed within the current workload and resources of DWR; therefore, DWR does not believe that the repeal of this rule 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:

The repeal of Rule R657-59 and placement of Rules R657-59a, R657-59b, R657-59c, R657-59d, and R657-59e is an administrative adjustment and does not require the services directly or indirectly from the local governments, therefore it will not cause a cost impact to the local governments.

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

The proposed repeal 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 repeal 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*):

This rule does not have the potential to create a cost impact to those individuals wishing to participate in private pond activities because it is not establishing any new requirements. The repeal of Rule R657-59 and the placement of Rules R657-59a, R657-59b, R657-59c, R657-59d, and R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program. F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

DWR has determined that this repeal will not create additional costs for those participating in private pond and fish stocking activities because it is not establishing any new requirements. The repeal of Rule R657-59 and the placement of Rules R657-59a, R657-59b, R657-59c, R657-59d, and R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in 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				
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 23-15-9 Section 23-15-10

### 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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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:	Justin Shirley, DWR Director	Date:	06/14/2023
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#### **R657.** Natural Resources, Wildlife Resources.

[R657-59. Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture. R657-59-1. Purpose and Authority.

(1) Under the authority of Sections 23-15-9 and 23-15-10,

this rule provides the standards and procedures for:

(a) private fish ponds;

(b) short-term fishing events;

(c) aquaponics facilities;

(d) private fish stocking; and

(e) institutional aquaculture.

(2)(a) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 Aquaculture Act, and Department of Agriculture Rule R58-17.

(b) The display of aquatic wildlife in aquaria for personal, commercial, or educational purposes is regulated by Rules R657-3a and R657-3e.

(3) A person engaging in any activity provided in Subsection (1) must also comply with all requirements established by Title 4 Utah Agricultural Code and all rules promulgated by the Utah Department of Agriculture, including:

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with, Title 23 Wildlife Resources Code of Utah, this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

#### R657-59-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.
 (2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions that holds a valid Certificate of Registration from the Utah Department of Agriculture.

 (c)(i) "Aquaculture product" means privately purchased, domestically produced aquatic organisms, or their gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Aquaponics facility" means a facility that combines fish and plant culture for a noncommercial purpose where:

 (i) all water flowing into or through the facility is completely isolated from any other water source via a self-contained water transport system;

(ii) all water flowing from the facility is discarded into a permitted sewer or septic system;

 (iii) the aquatic animals held within the facility are used for hobby purposes only;

(iv) no aquatic animals are transported from the facility alive; and

 (v) the primary use of the facility is for food production and not for the general display of fish in aquaria.

(c) "Aquatic wildlife" for the purposes of this chapter are aquatic organisms that are conceived and born in public waters.

(f) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization, and is confirmed as sterile using the protocol described in Section R657-59-13.

<u>(g)</u> "FEMA" means Federal Emergency Management Administration.

(h)(i) "HUC" or "Hyrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States.

(ii) HUCs are typically reported at the large river basin (6digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.

(iii) HUC maps and other associated information are available at http://water.usgs.gov/wse/sub/1602.html.

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

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

(ii) "Ornamental aquatic animal species" does not mean:

(A) Sport fish;

(B) Baitfish;

(C) Aquatic animal species that are native to Utah;

(D) Aquatic animals and marine aquatic animals prohibited for importation or possession under federal law; or

(E) Aquatic animals and marine aquatic animals listed as prohibited or controlled in Subsection R657 3c 5(1).

 (k) "Private fish pond" means a body of water or any fish culture system that:

(A) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;

(B) is contained entirely on privately owned land; and

 (C) is used for holding or rearing fish for a private, noncommercial purpose.

 (1) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(m) "Salmonid" means any fish belonging to the trout/salmon family.

(n) "Short-term fishing event" means any event where:

(i) privately acquired fish are held or confined for a period not to exceed ten days in a temporary structure or container:

(ii) for the purposes of providing fishing arfor recreational opportunity; and

(iii) no fee is charged as a requirement to fish.

(o) "Sterile" means the inability to reproduce.

R657-59-3. Certificate of Registration Not Required – Private Fish Ponds, Short-Term Fishing Events, and Aquaponies Facilities.

 (1) A certificate of registration is not required to stock an aquatic animal in an aquaponics facility, provided:

(a) the aquatic animals stocked are accompanied by a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 Aquaculture Act; and

(b) the aquatic animals to be stocked belong to one of the following species:

(i) bluegill;

(ii) hybrid bluegill (bluegill x green sunfish);

(iii) redear sunfish;

(iv) green sunfish;

(v) striped bass;

(vi) white bass;

(vii) hybrid striped bass or wiper (white bass x striped bass);

(viii) largemouth bass:

(ix) smallmouth bass;

(x) channel catfish;

(xi) yellow perch;

(xii) fathead minnow;

(xiii) black crappie;

- (xiv) white crappie;
- (xv) rainbow trout;
- (xvi) cutthroat trout;
- (xvii) brook trout;

(xix) tiger trout;

(xx) walleye;

(xxi) golden shiner; and

(xxii) any aquatic animal species classified as noncontrolled for possession and importation under Section R657-3c-5.

 (2) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided:

(a) the private fish pond satisfies the screening requirements established in Section R657-59-10;

 (b) if a screen is required, the aquaculture product received must be of sufficient size to be incapable of escaping the pond through or around the screen;

(c) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the private fish pond is located consistent with the requirements in Section R657-59-11;

(d) the aquaculture product is:

 (i) delivered to the pond by a licensed aquaculture facility as defined in Title 4 Chapter 37 Aquaculture Act; or

(ii) the owner, lessee, or operator of the private pond:

 (A) possesses documentation from the aquaculture facility verifying the information itemized in Sections R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the private fish pond;

(c) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 Aquaculture Act; and

(f) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section.

(3) A certificate of registration is not required to receive and stock an aquaculture product in a short-term fishing event, provided:

 (a) the temporary container or structure to be stocked is entirely separated from any public waterway or waterbody;

(b) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the short term fishing event is located consistent with the requirements in Section R657-59-11;

(c) the aquaculture product is:

 (i) delivered to the pond by a licensed aquaculture facility as defined in Chapter 4 Title 37 Aquaculture Act; or

(ii) the owner, lessee, or operator of the short term fishing event:

(A) possesses documentation from the aquaculture facility verifying the information itemized in Sections R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the short term fishing event; (d) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 Aquaculture Act; and

(e) the operator of the short-term fishing event provides the aquaculture facility a signed written statement that the short-term fishing event and aquaculture product received are in compliance with this section.

#### R657-59-4. Certificate of Registration Required Other Fish Stocking Activities.

(1)(a) A certificate of registration must be obtained from the division to receive, possess, stock, or release an aquaculture product or aquatic wildlife in a manner that does not satisfy the certificate of registration waiver requirements identified in R657-59-3.

(b) If a certificate of registration is required, a separate application for each fish stocking request must be submitted, except:
 (i) stocking locations are separated by less than 1/2 mile may be placed on a single application; and

(ii) water bodies that drain to, or are modified to drain to, the same drainage may be listed on a single application.

 (2) Fish stocked or released in a water body not eligible as a private fish pond or short-term fishing event under R657-59-3 are eonsidered wild aquatic wildlife and may be taken only as provided in Rule R657-13 and the fishing proclamation.

(3) A permanent water body stocked pursuant to a certificate of registration for private stocking may not be screened to contain fish, except:

 (a) a water stocked with grass carp to control aquatic weeds must be adequately screened to prevent the grass carp from escaping; and

(b) the division may require screening of the water body to protect wildlife resources found in the water body and any connected waterways.

(4)(a) An application for a certificate of registration for private stocking to stock fish other than grass carp may be approved only if:

(i) the stocking will only occur on privately owned land;
 (ii) the body of water to be stocked is a reservoir that is wholly contained on the land owned by the applicant;

(iii) the body of water is not stocked or otherwise actively managed by the division;

(iv) the fish to be stocked are for a non-commercial purpose; and

(v) in the opinion of the division, stocking will not interefere with division management objectives or cause detrimental interactions with other species of fish or wildlife.

(5) An application for a certificate of registration for private stocking of triploid grass carp for control of aquatic weeds will be evaluated based upon:

(a) the severity of the weed problem;

(b) availability of other suitable means of weed control;

(c) adequacy of screening to contain the grass carp; and

 (d) potential for conflict with division management objectives or detrimental interactions with other species of fish or wildlife.

#### R657-59-5. Application for a Fish Stocking Certificate of Registration; Application Criteria; Amendment of Certificate of Registration.

(1)(a) A person may apply to receive a certificate of registration for a fish stocking activity by submitting an application with the required handling and inspection fee to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.

 (b) Application forms are available at all division offices and at the division's internet address.

(c) The application may require up to 30 days for processing.

(d) The division may require a site inspection of the stocking location be performed to confirm compliance with the provisions found in this rule.

(e) The division may deny an application where:

 (i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

 (ii) receiving or stocking the aquaculture product or aquatic wildlife may:

(A) violate any federal, state or local law or any agreement between the state and another party;

 (B) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(C) pose an identifiable adverse threat to other wildlife species or their habitat;

(D) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives; or

(E) non-salmonid aquaculture product will be stocked in a pond within the 100 year flood plain (below 6500 feet in elevation) in the Green River and Colorado River drainages and the pond does not meet FEMA standards on construction and screening; or

(iii) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that bears a reasonable relationship to the applicant's ability to responsibly carry out the stocking activity.

(2) An application for a certificate of registration may not be denied without the review and consent of the division director or a designee.

(3) A certificate of registration for a fish stocking activity may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:

 (a) amended by the division at the request of the certificate of registration holder;

 (b) terminated or modified by the division pursuant to R657-59-13; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

(4) An amendment to the certificate of registration is required each time fish are stocked, except a person may request to stock fish more than once if the request is made on the application and the request is approved by the division on the certificate of registration.

# R657-59-6. Acquiring, Importing, and Transferring Aquaculture Products.

(1)(a) Species of aquaculture products that may be imported into the state are provided in Section R657-3c-5.

(b) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City.

(c) Complete applications may require up to 30 days for processing.

 (2) Live aquaculture products, other than ornamental fish, may only be:

 (a) purchased or acquired from sources approved by the Utah Department of Agriculture and Food to sell such products; and
 (b) acquired, purchased or transferred from sources which

have been health approved by the Utah Department of Agriculture and Food and assigned a number as provided in Title 4 Chapter 37 Aquaculture Act.

(3)(a) Any person who has been issued a valid aquaculture certificate of registration may transport live aquaculture products as specified on the certificate of registration to a stocking location.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

 (i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped, by species;

(iii) name, address, and certificate of registration number, if applicable, of the destination; and

(iv) a copy of the importation permit provided by the Utah Department of Agriculture.

(c)(i) Once stocked in a water body, aquaculture products may not be transferred or relocated live.

(4)(a) To import, transport, or stock live grass carp (Ctenopharyngodon idella), each fish must be verified as being sterile triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City before importation.

(c) A copy of the triploidy verification form must also accompany the fish during transport.

— (5)(a) Live aquaculture products may be shipped through Utah without a certificate of registration provided that:

 (i) the aquatic wildlife or aquaculture products are not sold or transferred;

(ii) the aquatic wildlife or aquaculture products remain in the original container;

(iii) the water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

#### R657-59-7. Inspection of Records and Fish Stocking Locations.

(1) Records of purchase, distribution, and acquisition of aquaculture products and copies of certificates of registration must be kept for the duration of the certificate of registration and must be available for inspection by a division representative during reasonable hours.

(2) The division and its authorized representatives may inspect a private fish pond or other stocking location during reasonable hours to verify compliance with the requirements of Title 23 of the Utah Code and this rule.

(3) Consistent with the provisions of Utah Administrative Code R58-17, the division and its authorized representatives may inspect aquaculture products stocked pursuant to this rule to conduct sterility, pathological, fish culture, or physical investigations during reasonable hours to verify compliance with the requirements of Title 23 of the Utah Code and this rule.

#### R657-59-8. Prohibited Activities.

(1) Live aquatic wildlife may not be collected from the wild and used in stocking activities unless authorized by the division consistent with the requirements in Rules R657-3a and R657-3c.

(2) A person may not release or transport any live aquaculture product received or held under this rule without prior written authorization of the division and the Fish Health Policy Board.

# R657-59-9. Fishing License and Transportation of Dead Aquaculture Product.

(1) A fishing license is not required to:

 (a) take fish from a legally recognized private fish pond or short term fishing event; or

 (b) to transport dead aquaculture product from a private fish pond or short-term fishing event.

### R657-59-10. Screen Requirements.

(1)(a) Except as provided in Subsection (b), all permanent and intermittant inlets and outlets of a private fish pond shall be screened to prevent the movement of aquatic wildlife into the pond or the escapement of any aquaculture product from the private fish pond into public waters.

(b) Upon request of the private pond owner or lessee, the division may conduct a site analysis and waive screen requirements if it is determined that the waiver of screen requirements will not be detrimental to the wildlife resource.

(c) Any aquaculture product that escapes a private fish pond are considered aquatic wildlife for the purposes of licensing requirements, bag limits, and allowable methods of take.

(2) If a screen is required, the screen must meet the following provisions:

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

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

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

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

Species and Reproductive Capabilities of R657-59-11 Aquaculture Product Authorized by Area for Stocking in Private Fish Ponds and Short-Term Fishing Events.

(1) A certificate of registration must be obtained from the division pursuant to R657-59-4 and R657-59-5 prior to stocking in any private fish pond of:

(a) a non-salmonid aquaculture product; or

(b) any other species or sterility of aquaculture product not specifically authorized in this Section.

(2)(a) Except as provided in Subsection 4, a certified sterile salmonid aquaculture product may be stocked in any private fish pond or short-term fishing event within the state without a certificate of registration.

(b) Triploid salmonids accepted as sterile pursuant to this rule shall originate from a source that is certified as incapable of reproduction using the following protocols:

(i) fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division or Utah Department of Agriculture;

(ii) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division;

(iv) sterility shall be determined by sampling and testing 60 fish from each egg lot using either flow cytometry, particle analysis, or karyotyping; and

(v) At least 95% of the fish test triploid.

(c) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product, provided the sterile salmonids are kept segregated from other fertile salmonids.

(d) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout eross) and tiger trout (brown trout/brook trout cross).

(3) Fertile rainbow trout may be stocked without a certificate of registration in any private fish pond or short-term fishing event within the state consistent with R657-59-3, except for waters located within the following drainages designated by County and hydrologic unit code (HUC) or township and range:

Beaver County:

(i) North Creek drainage - HUCs 160300070203, 160300070208; and

(ii) Pine Creek drainage (near Sulphurdale) - HUC 160300070501. (b) Box Elder County - stocking is prohibited in the following: (i) Morison Creek drainage - HUC 16020308; (ii) Bettridge Creek drainage - HUC 16020308; (iii) Death Creek drainage - HUC 16020308; (iv) Camp Creek drainage - HUC 16020308; (v) Goose Creek drainage - HUC 17040211: (vi) Raft River drainage - HUC 17040210; (vii) Fat Whorled Pond Snail Springs - Township 10 North, Ranges 4 and 5 West; and (c) Cache County: (i) Logan River drainage - HUC 16010203; (ii) Blacksmith Fork River drainage - HUC 16010203; (iii) East Fork Little Bear River drainage- HUC 16010203; and (iv) Little Bear River drainage - HUC 16010203. (d) Carbon County: (i) waters above 7000 feet in elevation. (e) Daggett County: (i) waters above 7000 feet in elevation. (f) Duchesne County: (i) waters above 7000 feet in elevation. (g) Emery County: (i) waters above 7000 feet in elevation. (i) Garfield County: (i) Birch Creek/Main Canyon drainage - HUC 140700050102; (ii) Center Creek drainage (tributary to East Fork Sevier R) HUC 160300020412; (iii) Cottonwood Creek drainage - HUC 160300020406; (iv) East Fork of Boulder Creek/West Fork Boulder Creek drainage - HUC 140700050206; and Ranch Creek drainage (East Fork Sevier River (v)drainage) - HUC 160300020405. (h) Grand County: (i) waters above 7000 feet in elevation. (i) Juab County: (i) Sulphur Wash drainage - HUC 160203011303; (ii) Middle Pleasant Valley Draw drainage HUC 160203011402; Lower Pleasant Valley Draw drainage HUC <del>(iii)</del> 160203011403; (iv) Cookscomb Ridge drainage - HUC 160203011501; (v) Outlet Salt Marsh Lake drainage HUC 160203011502; (vi) Deep Creek Range drainage - HUC 160203011503; (vii) Snake Valley drainage - HUC 160203011504; (viii) Little Red Cedar Wash drainage HUC 160203011505: (ix) Trout Creek drainage - HUC 160203060101; (x) Smelter Knolls drainage - HUC 160203060104; (xi) Toms Creek drainage - HUC 160203060201; (xii) Goshute Canyon drainage - HUC 160203060202; (xiii) Indian Farm Creek drainage - HUC 160203060204; (xiv) Spring Creek drainage - HUC 160203060803; (xv) Fifteenmile Creek drainage - HUC 160203060804; East Creek/East Deep Creek drainage HUC (xvi)

160203060805: (xvii) East Creek/East Deep Creek drainage - HUC

160203060806;

(xviii) West Deep Creek drainage - HUC 160203060808; (xix) Horse Valley drainage - HUC 160203060304; (xx) Starvation Canyon drainage - HUC 160203060305; (xxi) Cane Springs drainage - HUC 160203060307; (xxii) Fish Springs Range drainage - HUC 160203060308; (xxiii) Middle Fish Springs Wash drainage -HUC 160203060309; HUC Lower Fish Springs Wash drainage (xxiv) 160203060403: Fish Springs drainage - HUC 160203060405; (xxv) Wilson Health Springs drainage HUC (xxvi) 160203060407; (xxvii) Vernon Creek drainage - HUC 160203040102; (xxviii) Outlet Chicken Creek drainage HUC 160300050206: Little Valley/Sevier River drainage -HUC (xxix) 160300050403; Pole Creek/Salt Creek drainage HUC <del>(xxx)</del> 160202010104; and West Creek/Current Creek drainage (xxxi) HUC160202010107. (j) Millard County (i) Outlet Salt Marsh Lake drainage - HUC 160203011502; (ii) Sulphur Wash drainage - HUC160203011303; (iii) Cockscomb Ridge drainage - HUC 160203011501; (iv) Tungstonia Wash drainage - HUC 160203011302; (v) Salt Marsh Lake - HUC 160203011304; (vi) Indian George Wash drainage - HUC 160203011301 Outlet Bishop Springs drainage HUC (vii) 160203011203; (viii) Warm Creek drainage - HUC 160203011204; Headwaters Bishop Springs drainage - HUC (ix) 160203011202; (x) Indian Pass - HUC 160203011107: (xi) Chevron Ridge drainage - HUC 160203011110; (xii) Petes Knoll drainage - HUC 160203011109; (xiii) Red Gulch drainage - HUC 160203011102; (xiv) Horse Canyon drainage - HUC 160203011106; (xv) Hampton Creek drainage - HUC 160203011105; (xvi) Knoll Springs drainage - HUC 160203011103; (xvii) Browns Wash drainage - HUC 160203011101; (xviii) Outlet Baker Creek drainage - HUC 160203011004; Outlet Old Mans Canyon drainage HUC (xix) 160203011003; (xx) Hendrys Creek drainage - HUC 160203011104; (xxi) Headwaters Old Mans Canyon drainage - HUC 160203011002; (xxii) Rock Canyon drainage - HUC 160203011001 (xxiii) Silver Creek drainage - Baker Creek drainage HUC 160203010806: (xxiv) Outlet Weaver Creek drainage -HUC 160203010804: (xxv) Conger Spring drainage - HUC 160203010702; and Sheepmens Little Valley drainage -HUC (xxvi) 160203010607. (k) Morgan County: (i) Weber River drainage - HUC 16020102; (ii) East Canyon Creek drainage - HUC 16020102; and (iii) Lost Creek drainage - HUC 16020101. (1) Piute County: (i) Birch Creek drainage HUC 160300010603; (ii) Clear Creek drainage HUC 1603000301;

(iii) Manning Creek drainage - HUC 160300030203; (iv) Tenmile Creek drainage HUC 160300030204. (m) Rich County: (i) Bear Lake drainage - HUC 16010201; (ii) Big Creek drainage - HUC 16010101; (iii) Birch Creek drainage from Birch Creek Reservoir, upstream HUC 16010101; (iv) Little Creek drainage from Little Creek Reservoir, upstream HUC 16010101: (v) Otter Creek drainage - HUC 16010101; (vi) Woodruff Creek drainage - HUC 16010101; and (vii) Home Canyon and Meachum Canyon (Deseret Ranch) drainage - HUC 16010101. (n) Salt Lake County: (i) Big Cottonwood Canyon Creek drainage - HUC 160202040201; (ii) Little Cottonwood Canyon Creek drainage - HUC 160202040202: (iii) Mill Creek drainage - HUC 160202040301; (iv) Parleys Creek drainage - HUC 160202040302; (v) Emigration Creek drainage - HUC 160202040303; (vi) City Creek drainage - HUC 160202040304; and (vii) Red Butte Creek/Emigration Creek drainage - HUC 160202040306. (o) San Juan County: (i) waters above 7000 feet in elevation. (p) Sanpete County: (i) Areas west of the Manti Mountain Range divide: (A) Dry Creek/San Pitch River drainage HUC 160300040201: <del>(B)</del> Oak Creek/San Pitch River drainage - HUC 160300040202: (C) Cottonwood Canyon/San Pitch River drainage - HUC 160300040203: (D) Birch Creek/San Pitch River drainage HUC 160300040204: (E) Pleasant Creek drainage - HUC 160300040205; Dublin Wash/San Pitch River drainage HUC (F)160300040206; (G) Cedar Creek drainage - HUC 160300040207; (H) Spring Hollow/San Pitch River drainage HUC 160300040208: (I) Upper Oak Creek drainage - HUC 160300040302; (J) Petes Canyon/San Pitch River drainage HUC 160300040306; (K) Uinta Gulch drainage - HUC 160202020201; (L) Upper Thistle Creek drainage - HUC 160202020202; (M) Nebo Creek drainage - HUC 160202020203; (N) Middle Thistle Creek drainage - HUC 160202020204; (0)Dry Canyon/San Pitch River drainage HUC 160300040308; (P) -Maple Canyon/San Pitch River drainage - HUC 160300040309; (Q) Gunnison Reservoir/San Pitch River drainage - HUC 160300040503; (R) Outlet San Pitch River drainage - HUC 160300040505; (S) Beaver Creek drainage - HUC 140700020201; (T)Box Canyon/Muddy Creek drainage HIC 140700020203: Skumpah Creek-Salina Creek drainage (U)HUC 160300030402: and

(V) Headwaters Twelvemile Creek drainage - HUC 160300040402. (ii) Waters above 7000 feet in elevation east of the Manti Mountain Range divided. (q) Sevier County: (i) Clear Creek drainage HUC 1603000301; (ii) Salina Creek drainage - HUC 160300030402; and (iii) U M Creek drainage - HUC 140700030101. (r) Summit County: (i) Bear River drainage drainage - HUC 16010101; (ii) Mill Creek drainage - HUC 16010101; (iii) Muddy Creek and Van Tassel Creek drainage - HUC 14040108; (iv) Little West Fork/Blacks Fork drainage -HUC 14040107 (v) Blacks Fork drainage - HUC 14040107; (vi) Archie Creek drainage - HUC 14040107; (vii) West Fork Smiths Fork drainage - HUC 14040107; (viii) Gilbert Creek drainage - HUC 14040107; (ix) East Fork Smiths Fork drainage - HUC 14040107; (x) Dahlgreen Creek drainage - HUC 14040106; (xi) Henrys Fork drainage - HUC 14040106; (xii) Spring Creek and Poison Creek drainage - HUC 14040106; (xiii) West Fork Beaver Creek drainage - HUC 14040106; (xiv) Middle Fork Beaver Creek drainage - HUC 14040106: (xv) Echo Creek drainage - HUC 16020101; (xvi) Chalk Creek drainage - HUC 16020101; (xvii) Silver Creek drainage - HUC 16020101; (xviii) Weber River drainage - HUC 16020101; (xix) Beaver Creek drainage - HUC 16020101; (xx) Provo River drainage - HUC 16020101; (xxi) Kimball Creek drainage - HUC 160201020101; (xxii) Big Dutch Hollow/East Canvon Creek drainage HUC 160201020103; and (xxiii) Toll Canyon/East Canyon Creek drainage - HUC 160201020102. (w) Tooele County: (i) Toms Creek drainage - HUC 160203060201; (ii) Goshute Canyon drainage - HUC 160203060202; (iii) Eightmile Wash drainage - HUC 160203060203; (iv) Indian Farm Creek drainage - HUC 160203060204; (v) Willow Spring Wash drainage HUC 160203060205; (vi) Willow Canyon drainage - HUC 160203080104; (vii) Bettridge Creek drainage - HUC 160203080106; East Creek/East Deep Creek drainage HUC (viii) 160203060806; (ix) East Deep Creek drainage - HUC 160203060807; (x) West Deep Creek drainage - HUC 160203060808; (xi) Gullmette Gulch/Deep Creek drainage HUC 160203060902; Pony Express Canyon/Deep Creek drainage - HUC (xii) 160203060904; Badlands drainage - HUC 160203060905: (xiii) (xiv) White Sage Flat/Deep Creek drainage HUC 160203060907; Lower Fish Springs Wash drainage HUC (xv)160203060403: (xvi) Fish Springs drainage - HUC 160203060405; Wilson Health Springs drainage HUC (xvii) 160203060407;

East Government Creek drainage (xviii) HUC 160203040101: (xix) Vernon Creek drainage - HUC 160203040102; and (xx) Faust Creek drainage - HUC 160203040105. (s) Uintah County: (i) waters above 7000 feet in elevation. (t) Utah County: (i) Starvation Creek drainage - HUC 160202020101; (ii) Upper Soldier Creek drainage - HUC 160202020102; (iii) Tie Fork drainage - HUC 160202020103: (iv) Middle Soldier Creek drainage - HUC 160202020105; (v) Lake Fork drainage - HUC 160202020106; (vi) Lower Soldier Creek drainage - HUC 160202020107; (vii) Upper Thistle Creek drainage - HUC 160202020202; (viii) Nebo Creek drainage - HUC 160202020203; (ix) Middle Thistle Creek drainage - HUC 160202020204; (x) Lower Thistle Creek drainage - HUC 160202020205; (xi) Sixth Water Creek drainage - HUC 160202020301; (xii) Cottonwood Canyon drainage - HUC 160202020302; (xiii) Fifth Water Creek drainage - HUC160202020303; (xiv) Upper Diamond drainage Fork HUC 160202020304: (xv) Wanrhodes Canyon drainage - HUC 160202020305; (xvi) Middle Diamond Fork drainage HUC 160202020306; Lower Diamond Fork drainage - HUC (xvii) 160202020307: Headwaters Left Fork Hobble Creek drainage (xviii) HUC 160202020401; (xix) Headwaters Right Fork Hobble Creek drainage HUC 160202020402; (xx) Outlet Left Fork Hobble Creek drainage - HUC 160202020403; Outlet Right Fork Hobble Creek drainage - HUC (xxi) 160202020404: Upper Spanish Fork Creek drainage - HUC (xxii) 160202020501; Middle Spanish Fork Creek drainage HUC (xxiii) 160202020502; (xxiv) Peteetneet Creek drainage - HUC 160202020601; (xxv) Spring Creek drainage - HUC 160202020602; (xxvi) Beer Creek drainage - HUC 160202020603; (xxvii) Big Spring Hollow/South Fork Provo River drainage - HUC 160202030502; Pole Creek/Salt Creek drainage - HUC (xxviii) 160202010104; (xxix) Middle American Fork Canyon drainage - HUC 160202010802; (xxx) Mill Fork drainage - HUC 160202020104; and (xxxi) Upper American Fork Canyon drainage HUC 160202010801. (u) Wasatch County: -Willow Creek/Strawberry River drainage - HUC <del>(i)</del> 140600040101; (ii) Clyde Creek/Strawberry River drainage - HUC 140600040102: (iii) Indian Creek drainage - HUC140600040104; Trout Creek/Strawberry River drainage HUC (iv) 140600040105: (v)Soldier Creek/Strawberry River drainage HUC 140600040106: (vi) Willow Creek drainage - HUC 140600040301;

Current Creek Reservoir drainage (vii) HUC 140600040401; (viii) Little Red Creek drainage - HUC 140600040402; (ix) Outlet Current Creek drainage - HUC 140600040403; Water Hollow/Current Creek drainage HUC  $(\mathbf{x})$ 140600040404; (xi) Headwaters West Fork Duchesne River drainage -HUC 140600030101: Little South Fork Provo River drainage (xii) HUC 160202030201: Bench Creek/Provo River drainage (xiii) HUC160202030202; (xiv) Lady Long Hollow/Provo River drainage - HUC 160202030203; (xv) Charcoal Canyon/Provo River drainage - HUC 160202030204; (xvi) Drain Tunnel Creek drainage - HUC 160202030301; (xvii) Lake Creek drainage - HUC 160202030302: (xviii) Center Creek drainage - HUC 160202030303; (xix) Cottonwood Canyon/Provo River drainage - HUC 160202030304: (xx) Snake Creek drainage - HUC 160202030305; Spring Creek/Provo River drainage HUC (xxi) 160202030306; (xxii) Daniels Creek drainage - HUC 160202030401; (xxiii) Upper Main Creek drainage - HUC 160202030403; (xxiv) Lower Main Creek drainage - HUC 160202030404; (xxv) Deer Creek Reservoir-Provo River drainage HUC160202030405; (xxvi) Provo Deer Creek drainage - HUC 160202030501; (xxvii) Little Hobble Creek drainage - HUC 160202030402: (xxviii) Mill Hollow/South Fork Provo River drainage -HUC 160202030104: and (xxix) Mud Creek drainage - HUC 140600040103. (v) Washington County: (i) Ash Creek drainage - HUC 150100080405; (ii) Beaver Dam Wash drainage - HUC 15010010; (iii) Laverkin Creek drainage - HUC 150100080302; (iv) Leeds Creek drainage - HUC 150100080906; (v) Baker Dam Reservoir/Santa Clara River drainage HUC 150100080704; (vi) Tobin Wash drainage - HUC 150100080802; (vii) Sand Cove Wash drainage - HUC 150100080801; (viii) Manganese Wash/Santa Clara River drainage - HUC 150100080804: (ix) Wittwer Canyon/Santa Clara River drainage - HUC 150100080808; Cove Wash/Santa Clara River drainage <del>(x)</del> HUC 150100080809; (xi) Moody Wash drainage - HUC 150100080603; (xii) Upper Moody Wash drainage - HUC 150100080602; (xiii) Magotsu Creek drainage - HUC 150100080704; (xiv) South Ash Creek drainage - HUC 150100080405); (xv) Water Canyon drainage - HUC 150100080701); (xvi) Chinatown Wash/Virgin River drainage - HUC 150100080508; (xvii) Lower Gould Wash drainage - HUC 150100080508; (xviii) Grapevine Wash/Virgin River drainage HUC 150100080903; (xix) Cottonwood Wash/Virgin River drainage - HUC 150100080909;

Middleton Wash/Virgin River drainage - HUC (xx)150100080910; Lower Fort Pierce Wash drainage - HUC (xxi) 150100080605; (xxii) Atkinville Wash drainage - HUC 150100080303; (xxiii) Lizard Wash drainage - HUC 150100080302; Val Wash/Virgin River drainage (xxiv) HUC 150100080307: (xxv) Bulldog Canyon drainage - HUC 150100080310; and (xxvi) Fort Pierce Wash drainage - HUC 15010009. (w) Weber County (i) North Fork Ogden River drainage - HUC 16020102; (ii) Middle Fork Ogden River drainage - HUC 16020102; and (iii) South Fork Ogden River drainage-HUC 16020102. (4) Brown trout and brown trout hybrids may not be stocked within Washington County. R657-59-12. Institutional Aquaculture. (1)(a) A certificate of registration is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture. (b) A certificate of registration is not required for any public agency, institution of higher learning, school, or educational program to engage in the hobby of aquaponics, so long as the aquaponics facility complies with the regulations in R657-59-3(1).

 (2) Aquatic wildlife or aquaculture products produced by institutional aquaculture may not be:

(a) sold;

(b) stocked; or

(c) transferred into waters of the state unless specifically authorized by the certificate of registration.

(3) The fish health approval requirements of Title 4 Chapter 37 apply.

 (4)(a) A certificate of registration for institutional aquaculture may be obtained by submitting an application to the division.

(b) A certificate of registration may be renewed by submitting an application prior to the expiration date of the current certificate of registration.

 (c) The application may require up to 30 days for processing.

(d) The division may require a site inspection of the institutional aquaculture facility be performed to confirm compliance with the provisions found in this rule.

(e) The division may deny an application where:

(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

 (ii) operating the institutional aquaculture facility may violate any federal, state or local law or any agreement between the state and another party;

(iii) the application fails to demonstrate an ability to operate the aquaculture facility in a manner that protects Utah's wildlife, their habitats, and other aquaculture facilities from contamination; or

(iv) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that bears a reasonable relationship to the applicant's ability to responsibly operate an institutional aquaculture facility.

UTAH STATE BULLETIN, October 15, 2023, Vol. 2023, No. 20

(5) An application for a certificate of registration may not be denied without the review and consent of the division director or a designee.

(6) A certificate of registration for a institutional aquaculture may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:

 (a) amended by the division at the request of the certificate of registration holder;

(b) terminated or modified by the division pursuant to R657-59-13; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

R657-59-13. Expiration and Termination of Certificates of Registration.

(1) If a certificate of registration expires or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of as follows:

(a) Unless the Wildlife Board orders otherwise, all aquaculture products or aquatic wildlife must be removed within 30 days of suspension or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or

(b) At the discretion of the division, aquaculture products and aquatic wildlife may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.

KEY: wildlife, aquaculture, fish Date of Last Change: August 10, 2023 Notice of Continuation: July 5, 2023 Authorizing, and Implemented or Interpreted Law: 23-15-9; 23-15-10

NOTICE OF PROPOSED RULE			
TYPE OF FILING: New			
Rule or SectionR657-59aFiling ID:Number:55823			

**Agency Information** 

1. Department:	Natural Resources			
Agency:	Wildlife Resources			
Room number:	Suite 2110			
Building:	Departm	nent 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:	Contact persons:			
Name:	Phone: Email:			
Staci Coons	801- stacicoons@utah.gov 450- 3093			

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

### General Information

2. Rule or section catchline:

R657-59a. Private Fish Ponds

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

The new Rule R657-59a largely contains the same content as the repealed Rule R657-59. However, some differences include the separation of Short Term Fishing into new Rule R657-59b, Aquaponics into new Rule R657-59c, Institutional Aquatics into new Rule R657-59d, and Stocking into Natural Lakes into new Rule R657-59e. The new rules clarify the regulations and requirements specific to each activity.

(EDITOR'S NOTE: The proposed repeal of Rule R657-59, ID 55822; and the proposed new rules of R657-59b, ID 55824; R657-59c, ID 55825; R657-59d, ID 55826; and R657-59e, ID 55827; are in this issue, October 15, 2023, of the Bulletin.)

### 4. Summary of the new rule or change:

This rule sets the process and procedures for operating a private fish pond.

### Fiscal Information

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

# A) State budget:

The implementation of the new Rule R657-59a are administrative in nature, the Division of Wildlife Resources (Division) has determined that implementing this new rule can be initiated within the current workload and resources of the Division, therefore, the Division does not believe that these amendments would create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.

# B) Local governments:

Since this proposed new rule simplifies an existing program this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

This proposed new rule 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):

This proposed new rule 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*):

The Division determines that the repeal of Rule R657-59 and the implementation of Rule R657-59a will not create additional costs for those participating in the Private Fish pond program because it is not establishing any new requirements.

The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

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

The Division has determined that the repeal of Rule R657-59 and the implementation of Rule R657-59a will not create additional costs for those participating in the Private Fish pond program because it is not establishing any new requirements.

The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in 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

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 23A-9-305 Section 23A-9-202

# Incorporations by Reference Information

7. I	ncorporations	by	Reference:
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A) This rule adds, updates, or removes the following title of materials incorporated by references:

Official Title of Materials Incorporated (from title page)	Table 59-1, dated August 14, 2023
Publisher	Utah Division of Wildlife Resources
Issue Date	08-14-2023
Issue or Version	59-1

# 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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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	Date:	10/02/2023
or designee	Director		
and title:			

#### R657. Natural Resources, Wildlife Resources. <u>R657-59a. Private Fish Ponds.</u> <u>R657-59a-1. Purpose and Authority.</u>

(1) Under the authority of Sections 23A-9-305 and 23A-9-202, this rule provides the standards and procedures for private fish ponds.

(2) Fee fishing facility and private aquaculture facility licensing is regulated by the Utah Department of Agriculture and Food under Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act, and Rule R58-17.

(3) A person operating a private fish pond must also comply with all requirements established by Title 4, the Utah Agricultural Code and all rules promulgated by the Utah Department of Agriculture and Food, including:

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with Title 23A, the Wildlife Resources Code of Utah, this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate of registration or denial of future certificates of registration, as determined by the division.

#### R657-59a-2. Definitions.

(1) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(2) "Aquaculture facility" means any facility used for the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions that holds a valid aquaculture facility license from the Utah Department of Agriculture and Food.

(3)(a) "Aquaculture product" means privately purchased, domestically produced aquatic

organisms, or their gametes.

(b) "Aquaculture product" does not mean aquatic wildlife obtained from the wild, aquatic wildlife produced by the state or federally owned aquaculture facilities, or ornamental aquatic animal species.

(4) "Aquaponics facility" means a facility that combines fish and plant culture for a non-commercial purpose where:

(a) all water flowing into or through the facility is completely isolated from any other water source via a self-contained water transport system;

(b) all water and waste flowing from the facility is discharged into a permitted sewer or septic system;

(c) the aquatic animals held within the facility are used for non-commercial purposes only;

(d) no aquatic animals or their gametes are transported from the facility alive; and

(e) the primary use of the facility is for food production and not for the general display of fish in aquaria.

(5) "Aquatic wildlife" for the purposes of this chapter means:

(a) fish, mollusk, or crustacean species that are spawned and hatched in public waters, state or federal aquaculture facilities, and:

(b) fish, mollusk, or crustacean species that escape a private fish pond into a public water.

(6) "Certified sterile aquaculture product" means any fish or gamete that originates from a health certified source, as described in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act and is incapable of reproduction due to triploidy or hybridization, and is confirmed as sterile using the protocol described in Sections R657-59-7 and R657-59a-5.

(7) "Division" means the Utah Division of Wildlife Resources.

(8) "FEMA" means Federal Emergency Management Administration.

(9) "HUC" or "Hydrologic Unit Code" means a cataloging system developed by the U.S. Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States.

(10) "Institutional aquaculture" means aquaculture engaged in by a school, college, university, or other educational program, or public agency other than the division.

(11) "Lake" means a naturally formed, perennial or intermittent, non-flowing waterbody that collects and keeps water in quantity for use.

(12) "Lot" means fish of the same species that are subject to a health inspection under the Aquatic Animal Health Inspection Policy in Subsection R58-17-2(26), which establishes guidelines for lot designation for salmonid and non-salmonid fish.

(13) "Natural stream channel" means a body of water that maintains continuous, seasonal or potential flow, as determined by the division.

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

(b) "Ornamental aquatic animal species" does not include: (i) fresh water:

(A) sport fish - aquatic animal species regulated for angling or harvest for recreation or sport;

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

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

(D) native species; or

(ii) aquatic animals and marine aquatic animals prohibited for importation or possession by any state, federal, or local law; or

(iii) aquatic animals and marine aquatic animals listed as prohibited or controlled in Sections R657-3-22 and R657-3-23.

(15) "Private fish pond" means a standing body of water or any fish culture system which:

(a) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;

(b) is contained entirely on privately owned land; and

(c) is used for holding or rearing fish for a private, noncommercial purpose.

(16) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for monetary consideration or advantage.

(17) "Reservoir" means an artificially constructed, nonflowing waterbody that is used to collect and keep water in quantity for use built by damming a natural stream channel. (18) "Salmonid" means any fish belonging to the trout or salmon family.

(19) "Short-term fishing event" means an event where:

(a) privately acquired fish are held or confined for a period not to exceed ten days in a temporary event tank:

(b) for the purposes of providing a recreational opportunity; and

(c) no fee is charged as a requirement to fish.

(20) "Sterile" means the inability to reproduce.

#### R657-59a-3. Aquaculture Facility Requirements.

(1) An aquaculture facility that possesses a valid license from the Utah Department of Agriculture and Food may stock aquatic wildlife into private fish ponds in Utah, provided:

(a)(i) The purchaser of the aquatic wildlife possesses a valid private fish pond certificate of registration as issued by the division; or

(ii) the species being stocked meets the criteria where a certificate of registration is not required as described in Section R657-59a-5;

(b) Any triploid aquaculture product that are stocked originate from a lot that has been tested and meet the requirements specified in Subsection R657-59a-9(3); and

(c) The aquaculture facility provides the purchaser of any triploid fish a copy of the letter issued by the division certifying that the stocked fish originate from a lot that meets the requirements specified in Subsection R657-59a-9(3).

(2) The division may collect aquatic wildlife from private fish ponds to verify that the species and ploidy meet the requirements of this rule.

(3)(i) It is unlawful for an aquaculture facility to release aquatic wildlife that violates the terms of Rule R657-59a or other rules established under Title 23A, the Wildlife Resources Code of Utah, and the Wildlife Board.

(ii) Violation of this rule may result in a violation of Sections 23A-5-305 and 4-37-601.

#### R657-59a-4. Certificate of Registration Not Required.

(1) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided:

(a) the pond is not a natural lake, natural flowing stream, or reservoir constructed on a natural flowing stream;

(b) the private fish pond satisfies the screening requirements established in Section R657-59a-7;

(c) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the private fish pond is located consistent with the requirements in Section R657-59a-9;

(d) the aquaculture product is:

(i) delivered to the private fish pond by a licensed aquaculture facility as defined in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act; or

(ii) the owner, lessee, or operator of the private fish pond: (A) possesses documentation from the aquaculture facility verifying the information itemized in Subsection R657-59a-6(4)(b)

during transport; and (B) assumes legal responsibility for directly transporting

the fish from the aquaculture facility to the private fish pond;

(e) the owner, lessee, or operator of the private fish pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act; and

(f) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section.

(2) A certificate of registration is required to receive and stock an aquaculture product in a private fish pond when the criteria described in Subsection (1) are not met.

#### R657-59a-5. Certified Sterile Aquaculture Product.

(1) For the purposes of this rule, the following hybrid fish species are considered certified sterile aquaculture product:

(a) Splake;

(b) Tiger Muskellunge;

(c) Tiger Trout; and

(d) Wiper.

(2) Triloid grass carp is considered a certified sterile aquaculture product if documentation is submitted by an aquaculture facility to the division that demonstrates that each fish is tested individually and meets the standards of the U.S. Fish and Wildlife Service National Triploid Grass Carp Inspection and Certification Program. In addition, the same documentation must be provided by the aquaculture facility to customers who purchase triploid grass carp.

(3) All other species not specified in Subsections R657-59a-5(1) and (2) may be considered certified sterile aquaculture product if they are triploid and the following procedures are followed:

(a) fish samples from each lot of triploid fish at an aquaculture facility are collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division or Utah Department of Agriculture and Food;

(b) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division;

(c) sterility shall be determined by sampling and testing 60 fish from each lot using either flow cytometry, particle analysis, or karyotyping;

(d) at least 95% of the fish test triploid; and

(e) the professional laboratory submitted the testing results directly to the division and the division issued the aquaculture facility a letter verifying that the lot meets the criteria established in Subsections R657-59a-5-(3)(a) through (d). A copy of this letter must be provided to all customers who purchase triploid fish.

(4) An aquaculture facility that receives certified sterile aquaculture product from another aquaculture facility is not required to conduct additional sterility testing before stocking the aquaculture product, provided the division is given documentation demonstrating that the fish meet the requirements of Subsection R657-59a-5(3) and the sterile fish are kept segregated from other fertile fish.

### <u>R657-59a-6. Acquiring, Importing, and Transferring</u> <u>Aquaculture Products.</u>

(1)(a) Species of aquaculture products that may be imported into the state are provided in Section R657-3c-5.

(b) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City.

(c) Complete applications may require up to 30 days for processing after submission.

(2) Live aquaculture products, other than ornamental fish, may only be:

(a) purchased or acquired from sources approved by the Utah Department of Agriculture and Food to sell such products; and

(b) acquired, purchased or transferred from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a number as provided in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act.

(3) Triploid fish may only be acquired, purchased, or transferred from lots that have been certified triploid by the division.

(4)(a) Any person who has been issued a valid aquaculture license from the Utah Department of Agriculture and Food may transport live aquaculture products as specified on the certificate of registration to a stocking location.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped by species;

(iii) name, address, and certificate of registration number, if applicable, of the destination; and

(iv) a copy of the importation permit provided by the Utah Department of Agriculture and Food.

(c) Once stocked in a water body, aquaculture products may not be transferred or relocated while live.

(5)(a) To import, transport, or stock live grass carp (*Ctenopharyngodon idella*), each fish must be verified as being triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City before importation.

(c) A copy of the triploidy verification form must also accompany the fish during transport.

(6)(a) Live aquaculture products may be shipped through Utah without a certificate of registration, provided that:

(i) aquaculture products are not sold or transferred;

(ii) aquaculture products remain in the original container;

(iii) water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

#### R657-59a-7. Inspection of Records and Private Fish Ponds.

(1) Records of purchase, distribution, and acquisition of aquaculture products and copies of certificates of registration must be kept during the certificate of registration and must be available for inspection by a division representative during reasonable hours.

(2) The division and its authorized representatives may inspect a private fish pond or other stocking location during reasonable hours to verify compliance with the requirements of Title 23A, the Wildlife Resources Code of Utah and this rule.

#### R657-59a-8. Pond Screening Requirements.

(1)(a) Except as provided in Subsection (b), all permanent and intermittent inlets and outlets of a private fish pond shall be screened to prevent the movement of aquatic wildlife into the private pond or the escapement of any aquaculture product from the private fish pond into public waters.

(b) Upon request of the owner or lessee, the division may conduct a site analysis and waive screen requirements if the division

determines waiving screen requirements will not be detrimental to the wildlife resource.

(c) Any aquaculture product that escapes a private fish pond is considered aquatic wildlife and is subject to the licensing requirements, bag limits, and allowable methods of take described in the current Utah Fishing Guidebook issued by the Utah Wildlife Board.

(2) If a screen is required, the screen must meet the following provisions:

(a) the screen should be constructed of durable materials that are capable of maintaining integrity when exposed to water and air for an extended period;

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

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

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

### **R657-59a-9.** Species and Reproductive Capabilities of Aquaculture Product Authorized by Area for Stocking in Private Fish Ponds.

(1) Aquaculture product may be stocked into a private fish pond without a certificate of registration provided the pond stocked with aquaculture product is outside the 100 year floodplain of the Colorado River and its tributaries; and the aquaculture product stocked belongs to one of the following species:

(a) In all drainages except the Virgin River drainage:

(b) any species defined as certified sterile aquaculture product as established in Subsection R657-59a-5(1); and

(c) triploid individuals from the following species, provided the stocked aquaculture product is from a lot that meets the requirements specified in Subsection R657-59a-5(3):

(i)	Bluegill;	

 (ii)	Black	Crap	pie;
····	\$7.11	<b>D</b>	1

 (11	1)	Ye	llow	v P	erc.	h;
		-				

(iv) Brook Trout;

(v) Brown Trout;

- (vi) Lake Trout; and
- (vii) Rainbow Trout.

(1) In the Virgin River Drainage, only Triploid Rainbow Trout may be stocked without a certificate of registration

(2) Fertile rainbow trout and brown trout may be stocked into all waters without a certificate of registration except those identified in a table entitled Table 59-1, dated August 14, 2023 is incorporated by reference. Table 59-1 can be accessed in person or by contacting the Salt Lake division office located at 1594 West North Temple, Salt Lake City, Utah 84114, and on the division's Certificates of Registration webpage at https://wildlife.utah.gov/ licenses/certificates-of-registration.html, copy currently available at: https://docs.google.com/document/d/16KMRMSp5pZnvZforuCdW wzF9tRdiEObqFW-mvTqAsWE/edit?usp=sharing)

(2)(a) A certificate of registration must be obtained from the division pursuant to Section R657-59a-11 before stocking any private fish pond with any species or sterility of aquaculture product not specifically authorized in this Section.

(b)(i) A certificate of registration application to stock triploid grass carp for control of aquatic weeds will be evaluated based upon: (1) adequacy of screening to contain the grass carp; and

(2) potential for conflict with division management objectives or detrimental interactions with other species of fish or wildlife.

(ii) To import, transport, or stock live grass carp, each fish must be verified as being sterile triploid by the U.S. Fish and Wildlife Service.

# <u>R657-59a-10.</u> Fishing License and Transportation of Dead Aquaculture Product.

(1) A fishing license is not required to:

(a) take fish from a legally recognized private fish pond; or

(b) to transport dead aquaculture product from a private fish pond, provided that the person in possession of the dead aquaculture product can provide the name, address, and phone number of the owner of the private fish pond if requested by the division.

# <u>R657-59a-11.</u> Application for a Fish Stocking Certificate of Registration; Application Criteria; Amendment of Certificate of Registration.

(1) The following persons may apply for a certificate of registration for a private fish pond:

(a) The owner of the private fish pond;

(b) The president of a homeowners association, if the pond is on homeowners association property; or

(c) An individual who is a full-time employee of the private pond owner, who represents the pond owner or is a property manager.

(2)(a) A person may apply for a certificate of registration for a fish stocking activity by submitting an application with the required handling and inspection fee following the instructions provided at: https://wildlife.utah.gov/private-ponds.html

(b) The application may require up to 30 days for processing.

(c) The division may require a site inspection of the stocking location be performed to confirm compliance with the provisions found in this rule.

(d) The division may deny an application when:

(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(ii) receiving or stocking the aquaculture product or aquatic wildlife may:

(A) violate any federal, state or local law or any agreement between the state and another party;

(B) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(C) pose an identifiable adverse threat to other wildlife species or their habitat:

(D) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives; or

(iii) the applicant has violated Title 23A, the Wildlife Resources Code of Utah, Title R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law related to the applicant's ability to responsibly carry out the stocking activity.

(3) A certificate of registration for a private fish pond is effective 5 years from the date of issuance as identified on the certificate of registration. During the effective period of the certificate of registration, the certificate of registration holder may stock any of the aquaculture products approved by the certificate of registration at the locality identified on the certificate of registration so long as all stipulations under Rule R657-59a are adhered to, unless the certificate of registration is:

(a) amended by the division at the request of the certificate of registration holder. Amendments do not change the expiration date of a certificate of registration and the original expiration date will remain after an amendment;

(b) terminated or modified by the division pursuant to Section R657-59-13; or

(c) suspended by the division or a court pursuant to Section 23A-4-1106.

# <u>R657-59a-12.</u> Expiration and Termination of Certificates of <u>Registration.</u>

If a certificate of registration expires or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of in a manner that complies with all federal, state, and local laws.

# R657-59a-13. Prohibited Activities.

(1) Live aquatic wildlife may not be collected from the wild and used in stocking activities unless authorized by the Wildlife Board and Fish Health Policy Board.

(2) A person may not release or transport any live aquaculture product received or held under this rule without prior written authorization of the division and the Fish Health Policy Board.

### R657-59a-14. Administrative Appeal Procedures.

(1) An aggrieved party to a final division action under this rule may file a request for agency action with the division under Rule R657-2.

(2) The Director or a designee appointed by the Director shall be the presiding officer for any adjudicative proceedings initiated under this rule.

# KEY: wildlife, aquaculture, fish

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 23A-9-305; 23A-9-202

NOTICE OF PROPOSED RULE		
TYPE OF FILING:	New	
Rule or Section Number:	R657-59b	Filing ID: 55824

# 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	Salt Lake City, UT 84114-6301
zip:			

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:

R657-59b. Short-Term Fishing Events

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

This new rule, R657-59b, largely contains the same content as repealed Rule R657-59. However, some differences include the separation of Private Fish Ponds into new Rule R657-59a, Aquaponics into new Rule R657-59c, Institutional Aquatics into new Rule R657-59d, and Stocking into Natural Lakes into new Rule R657-59e. The new rules clarify the regulations and requirements specific to each activity.

(EDITOR'S NOTE: The proposed repeal of Rule R657-59, ID 55822; and the proposed new rules of R657-59a, ID 55823; R657-59c, ID 55825; R657-59d, ID 55826; and R657-59e, ID 55827; are in this issue, October 15, 2023, of the Bulletin.)

#### 4. Summary of the new rule or change:

This rule sets the process and procedures for conducting a short term fishing event.

# Fiscal Information

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

#### A) State budget:

The implementation of this new rule, R657-59b, are administrative in nature, the Division of Wildlife Resources (Division) has determined that implementing this new rule can be initiated within the current workload and resources of the Division, therefore, the Division does not believe that these amendments would create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.

# B) Local governments:

Since this proposed new rule simplifies an existing program, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments. **C) Small businesses** ("small business" means a business employing 1-49 persons):

This proposed new rule 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):

This proposed new rule 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*):

The Division has determined that the repeal of Rule R657-59 and the implementation of Rule R657-59b will not create additional costs for those participating in short-term fishing events because it is not establishing any new requirements.

The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

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

The Division has determined that the repeal of Rule R657-59 and the implementation of Rule R657-59b will not create additional costs for those participating in short-term fishing events because it is not establishing any new requirements.

The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in 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				
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 23A-9-305 Section 23A-9-203

# **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 11/14/2023 until:

9.	This	rule	change	MAY	11/21/2023
bec	ome e	effect	ive 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	J. Shirley, Division Director	Date:	10/02/2023
and title:	Director		

#### R657. Natural Resources, Wildlife Resources.

R657-59b. Short-Term Fishing Events.

R65-59b-1. Purpose and Authority.

(1) Under the authority of Sections 23A-9-305 and 23A-9-203, this rule provides the standards and procedures for short-term fishing events.

(2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4. Utah Agricultural Code, Chapter 37, Aquaculture Act and Rule R58-17.

(3) A person operating a short-term fishing event must also comply with all requirements established by Title 4, the Utah Agricultural Code and all rules promulgated by the Utah Department of Agriculture and Food, including:

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with, Title 23A, the Wildlife Resources Code of Utah, this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

#### R657-59b-2. Definitions.

(1)(a) "Aquaculture product" means privately purchased, domestically produced aquatic

organisms, or their gametes.

(b) "Aquaculture product" does not mean aquatic wildlife obtained from the wild, aquatic wildlife produced by the state or federally owned aquaculture facilities, or ornamental aquatic animal species.

(2) "Aquaponics facility" means a facility that combines fish and plant culture for a non-commercial purpose where:

(a) all water flowing into or through the facility is completely isolated from any other water source via a self-contained water transport system;

(b) all water and waste flowing from the facility is discharged into a permitted sewer or septic system;

(c) the aquatic animals held within the facility are used for non-commercial purposes only;

(d) no aquatic animals or their gametes are transported from the facility alive; and

(e) the primary use of the facility is for food production and not for the general display of fish in aquaria.

(3)(a) "Event tank" means a tank, container, or vessel used to hold fish during a short-term fishing event.

(b) "Event tank" does not mean a tank, container, or vessel that is mounted to a vehicle and used to transport fish to a destination.

(4) "Institutional aquaculture" means aquaculture engaged in by a school, college, university, or other educational program, or public agency other than the division.

(5) "Lake" means a naturally formed, perennial or intermittent, non-flowing waterbody that collects and keeps water in quantity for use

(6) "Natural stream channel" means a body of water that maintains continuous, seasonal or potential flow, as determined by the division.

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

(b) "Ornamental aquatic animal species" does not include:(i) fresh water;

(A) sport fish - aquatic animal species regulated for angling or harvest for recreation or sport;

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

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

(D) native species; or

(ii) aquatic animals and marine aquatic animals prohibited for importation or possession by any state, federal, or local law; or

(iii) aquatic animals and marine aquatic animals listed as prohibited or controlled in Sections R657-3-22 and R657-3-23.

(8) "Private fish pond" means a standing body of water or any fish culture system which:

(a) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural

stream channel;

(b) is contained entirely on privately owned land; and

(c) is used for holding or rearing fish for a private, noncommercial purpose.

(9) "Reservoir" means an artificially constructed, nonflowing waterbody that is used to collect and keep water in quantity for use built by damming a natural stream channel.

(10) "Short-term fishing event" means any event where: (a) privately acquired fish are held or confined for a period not to exceed ten days in a temporary event tank:

(b) for the purposes of providing a recreational opportunity; and

(c) no fee is charged as a requirement to fish.

#### R657-59b-3. Aquaculture Facility Requirements.

(1) An aquaculture facility that possesses a valid license from the Utah Department of Agriculture and Food may stock aquatic wildlife for short-term fishing events in Utah, provided:

(a)(i) The purchaser of the aquatic wildlife possesses a valid short-term fishing event certificate of registration as issued by the division; or

(ii) the species being stocked meets the criteria where a certificate of registration is not required as described in Section R657-59a-4;

(b) Any triploid aquaculture product that are stocked originate from a lot that has been tested and meet the requirements specified in Subsection R657-59a-5(3); and

(c) The aquaculture facility provides the purchaser of any triploid fish a copy of the letter issued by the division certifying that the stocked fish originated from a lot that meets the requirements specified in Subsection R657-59a-5(3).

(2) The division may collect aquatic wildlife at short-term fishing events to verify that the species and ploidy meet the requirements of Rule R657-59a

(3)(i) It is unlawful for an aquaculture facility to stock aquatic wildlife that violates the terms of Rule R657-59b or other rules established under Title 23A, the Wildlife Resources Code of Utah, and the Utah Wildlife Board.

(ii) Violation of this rule may result in a violation of Sections 23A-5-305 and 4-37-6.

R657-59b-4. Certificate of Registration Not Required.

(1) A certificate of registration is not required to receive and stock an aquaculture product in an event tank for the purposes of holding a short-term fishing event, provided:

(a) the event tank used to hold fish temporarily is completely independent of and separated from any public waterway or waterbody;

(b) there is no risk of fish escaping the event tank into a public waterway or waterbody; and

(c) the short-term fishing event is being held at a location where the species, sub-species, and sterility of aquaculture product being used for the event is authorized for stocking without a certificate of registration, as described in Section R657-59a-9;

(d) the aquaculture product is:

(i) delivered to the event tank by a licensed aquaculture facility as defined in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act; or

(ii) the owner, lessee, or operator of the short-term fishing event:

(A) possesses documentation from the aquaculture facility verifying the information itemized in Section R657-59b-4 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the short-term fishing event;

(e) the operator of the short-term fishing event obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act; and

(f) the operator of the short-term fishing event provides the aquaculture facility with a signed written statement that the short-term fishing event and aquaculture product received are in compliance with this section.

(2) A certificate of registration must be obtained from the division under Section R657-59b-8 before stocking in any facility that does not meet the definition of a short-term fishing event in Subsection R657-59b-2(10), or meet the criteria in Subsection R657-59b-4(1).

#### <u>R657-59b-5. Acquiring, Importing, and Transferring</u> <u>Aquaculture Products.</u>

(1)(a) Species of aquaculture products that may be imported into the state are provided in Section R657-3c-5.

(b) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City.

(c) Complete applications may require up to 30 days for processing after submission.

(2) Live aquaculture products, other than ornamental fish, may only be:

(a) purchased or acquired from sources approved by the Utah Department of Agriculture and Food to sell such products; and

(b) acquired, purchased, or transferred from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a number as provided in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act.

(3) Triploid fish may only be acquired, purchased, or transferred from lots that have been certified triploid by the division.

(4)(a) Any person who has been issued a valid aquaculture license from the Utah Department of Agriculture and Food may transport live aquaculture products as specified on the certificate of registration to a stocking location.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped by species;

(iii) name, address, and certificate of registration number, if applicable, of the destination; and

(iv) a copy of the importation permit provided by the Utah Department of Agriculture and Food.

(c) Once stocked in a water body, aquaculture products may not be transferred or relocated while live.

(5)(a) To import, transport, or stock live grass carp (*Ctenopharyngodon idella*), each fish must be verified as being triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City before importation.

(c) A copy of the triploidy verification form must also accompany the fish during transport.

(6)(a) Live aquaculture products may be shipped through Utah without a certificate of registration, provided that:

(i) aquaculture products are not sold or transferred;

(ii) aquaculture products remain in the original container;

(iii) water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

# R657-59b-6. Inspection of Records and Fish Stocking Locations.

(1) Records of purchase, distribution, and acquisition of aquaculture products and copies of certificates of registration must be kept during the certificate of registration and must be available for inspection by a division representative during reasonable hours.

(2) The division and its authorized representatives may inspect a short-term fishing event during reasonable hours to verify compliance with the requirements of Title 23A, the Wildlife Resources Code of Utah and this rule.

(3) Consistent with Rule R58-17, the division and its authorized representatives may inspect aquaculture products stocked pursuant to this rule to conduct sterility, pathological, fish culture, or physical investigations during reasonable hours to verify compliance with the requirements of Title 23A, the Wildlife Resources Code of Utah and this rule.

# <u>R657-59b-7.</u> Fishing License and Transportation of Dead Aquaculture Product.

A fishing license is not required to:

(1) take fish from a legally recognized short-term fishing event; or

(2) to transport dead aquaculture product from a short-term fishing event, provided that the person in possession of the dead aquaculture product can provide the name of the event sponsor and the event location, if requested by the division.

### <u>R657-59b-8.</u> Application for a Short-Term Fishing Event Certificate of Registration; Application Criteria; Amendment of Certificate of Registration.

(1) The following persons may apply for a certificate of registration for a short-term fishing event:

(a) The owner of the property where the short-term fishing event will be held;

(b) The president of a homeowners association, if the pond is on homeowners association property; or

(c) An individual who is a full-time employee of property owner where the short-term fishing event will be held, who represents the owner as a property manager.

(2)(a) A person may apply for a certificate of registration for a fish stocking activity by submitting an application with the required handling and inspection fee following the instructions provided at: https://wildlife.utah.gov/private-ponds.html

(b) The application may require up to 30 days for processing.

(c) The division may require a site inspection of the stocking location be performed to confirm compliance with the provisions found in this rule.

(d) The division may deny an application where:

(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(ii) receiving or stocking the aquaculture product or aquatic wildlife may:

(A) violate any federal, state or local law or any agreement between the state and another party:

(B) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(C) pose an identifiable adverse threat to other wildlife species or their habitat;

(D) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives; or

(iii) the applicant has violated Title 23A, the Wildlife Resources Code of Utah, Title R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law related to the applicant's ability to responsibly carry out the stocking activity.

(3) A certificate of registration for a short-term fishing event will be effective for the days listed on the certificate of registration, unless:

(a) amended by the division at the request of the certificate of registration holder;

(b) terminated or modified by the division pursuant to Section R657-59b-9; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

# <u>R657-59b-9.</u> Expiration and Termination of Certificates of <u>Registration.</u>

If a certificate of registration expires or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of in a manner that complies with all federal, state, and local laws.

#### R657-59b-10. Prohibited Activities.

(1) Live aquatic wildlife may not be collected from the wild and used in stocking activities unless authorized by the Wildlife Board consistent with the requirements in Rule R657-3.

(2) A person may not release or transport any live aquaculture product received or held under this rule without prior written authorization of the division and the Fish Health Policy Board.

#### R657-59b-11. Administrative Appeal Procedures.

(1) An aggrieved party to a final division action under this rule may file a request for agency action with the division under Rule R657-2.

(2) The Director or a designee appointed by the Director shall be the presiding officer for any adjudicative proceedings initiated under this rule.

# KEY: wildlife, aquaculture, fish

#### Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 23A-9-305; 23A-9-203

NOTICE OF PROPOSED RULE				
TYPE OF FILING: New				
Rule or Section Number:	R657-59c	Filing ID: 55825		

#### **Agency Information**

1. Department:	Natural Resources		
Agency:	Wildlife Resources		
Room number:	Suite 21	10	
Building:	Departm	ent 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:

R657-59c. Aquaponics

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

This new rule, R657-59c, largely contains the same content as the repealed rule R657-59. However, some differences include the separation of Private Fish Ponds

into new Rule R657-59a, Short Term Fishing Events into new Rule R657-59b, Institutional Aquaculture into new Rule R657-59d, and Stocking into Natural Lakes into new Rule R657-59e. The new rules clarify the regulations and requirements specific to each activity.

(EDITOR'S NOTE: The proposed repeal of Rule R657-59, ID 55822; and the proposed new rules of R657-59a, ID 55823; R657-59b, ID 55824; R657-59d, ID 55826; and R657-59e, ID 55827; are in this issue, October 15, 2023, of the Bulletin.)

#### 4. Summary of the new rule or change:

This rule sets the standards and procedures for operating a private aquaponics system.

# **Fiscal Information**

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

# A) State budget:

The implementation of the new Rule R657-59c are administrative in nature, the Division of Wildlife Resources (Division) determines that implementing this new rule can be initiated within the current workload and resources of the Division, therefore, the Division does not believe that these amendments would create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.

# B) Local governments:

Since the proposed new rule simplifies an existing program this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed new rule 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 new rule 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*):

The Division has determined that the repeal of Rule R657-59 and the implementation of Rule R657-59c will not create additional costs for those participating in a private aquaponics system because it is not establishing any new requirements.

The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

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

The Division has determined that the repeal of Rule R657-59 and the implementation of Rule R657-59c will not create additional costs for those participating in a private aquaponics systems because it is not establishing any new requirements.

The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in 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 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	\$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	\$0	\$0	\$0		
Benefits					
U) Department hand comments on fiscal impact and					

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 23A-9-305 Section 23A-9-203

#### **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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	J. Shirley, Division	Date:	10/02/2023
or designee	Director		
and title:			

# R657. Natural Resources, Wildlife Resources. <u>R657-59c. Aquaponics.</u>

R657-59c-1. Purpose and Authority.

(1) Under the authority of Sections 23A-9-305 and 23A-9-203, this rule subpart provides the standards and procedures for private fish stocking.

(2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4. Utah Agricultural Code, Chapter 37, Aquaculture Act and Rule R58-17.

(3) A person engaging in private fish stocking must also comply with all requirements established by Title 4, the Utah Agricultural Code and all rules promulgated by the Utah Department of Agriculture and Food, including:

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with, Title 23A, the Wildlife Resources Code of Utah, this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

#### R657-59c-2. Definitions.

(1)(a) "Aquaculture product" means privately purchased, domestically produced aquatic

organisms, or their gametes.

(b) "Aquaculture product" does not mean aquatic wildlife obtained from the wild, aquatic wildlife produced by the state or federally owned aquaculture facilities, or ornamental aquatic animal species.

(2) "Aquaponics facility" means a facility that combines fish and plant culture for a non-commercial purpose where:

(a) all water flowing into or through the facility is completely isolated from any other water source via a self-contained water transport system;

(b) all water and waste flowing from the facility is discharged into a permitted sewer or septic system;

(c) the aquatic animals held within the facility are used for non-commercial purposes only;

(d) no aquatic animals or their gametes are transported from the facility alive; and

(e) the primary use of the facility is for food production and not for the general display of fish in aquaria.

(3) "Institutional aquaculture" means aquaculture engaged in by a school, college, university, or other educational program, or public agency other than the division.

(4) "Lake" means a naturally formed, perennial or intermittent, non-flowing waterbody that collects and keeps water in quantity for use

(5) "Natural stream channel" means a body of water that maintains continuous, seasonal or potential flow, as determined by the division.

(6) "Private fish pond" means a standing body of water or any fish culture system which:

(a) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural

stream channel;

(b) is contained entirely on privately owned land; and

(c) is used for holding or rearing fish for a private, noncommercial purpose.

(7) "Reservoir" means an artificially constructed, nonflowing waterbody that is used to collect and keep water in quantity for use built by damming a natural stream channel.

 (8) "Short-term fishing event" means an event where:
 (a) privately acquired fish are held or confined for a period not to exceed ten days in a temporary event tank;

(b) for the purposes of providing a recreational opportunity; and

(c) no fee is charged as a requirement to fish.

#### R657-59c-3. Aquaculture Facility Requirements.

(1) An aquaculture facility that possesses a valid license from the Utah Department of Agriculture and Food may stock aquatic wildlife into aquaponics facilities within Utah, provided:

(a)(i) The purchaser of the aquatic wildlife possesses a valid aquaponics facility certificate of registration as issued by the division; or

(ii) the species being stocked meets the criteria where a certificate of registration is not required as described in Section R657-59a-4;

(b) Any triploid aquaculture product that are stocked originate from a lot that has been tested and meet the requirements specified in Subsection R657-59a-5(3); and (c) The aquaculture facility provides the purchaser of any triploid fish a copy of the letter issued by the division certifying that the stocked fish originated from a lot that meets the requirements specified in Subsection R657-59a-5(3).

(2) The division may collect aquatic wildlife from aquaponics facilities to verify that the species and ploidy meet the requirements of Rule R657-59a.

(3)(i) It is unlawful for an aquaculture facility to release aquatic wildlife that violates the terms of Rule R657-59c or other rules established under Title 23A, the Wildlife Resources Code of Utah, and the Utah Wildlife Board.

(ii) Violation of this rule may result in a violation of Sections 23A-5-305 and 4-37-6.

#### R657-59c-4. Certificate of Registration Not Required.

(1) A certificate of registration is not required to stock an aquaculture product in an aquaponics facility, provided:

(a) the aquaculture product stocked are accompanied by a valid health approval number issued by the Utah Department of Agriculture and Food under Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act;

(b) The facility is located outside the 100 year floodplain of the Colorado River and its tributaries;

(c) In the Virgin River drainage, only the following species may be stocked:

(i) Largemouth Bass;

(ii) Bluegill; and

(iii) Rainbow Trout.

(d) In all other drainages, the following species may be stocked:

(i) bluegill;

(ii) hybrid bluegill (bluegill x green sunfish);

(iii) redear sunfish;

(iv) green sunfish;

(v) striped bass;

(vi) white bass;

(vii) hybrid striped bass or wiper (white bass x striped bass);

(viii) largemouth bass;

(ix) smallmouth bass;

(x) channel catfish;

(xi) yellow perch;

(xii) fathead minnow;

(xiii) black crappie;

(xiv) white crappie;

(xv) rainbow trout;

(xvi) cutthroat trout;

(xvii) brown trout;

(xviii) brook trout;

(xix) tiger trout;

(xx) walleye;

(xxi) white sturgeon; and

(xxii) any aquatic animal species classified as noncontrolled for possession and importation under Section R657-3c-5.

(3) A certificate of registration must be obtained from the division under Section R657-59c-7 before stocking in any facility that does not meet the definition of an aquaponics facility in Subsection R657-59c-2(2), or meet the criteria in Subsection R657-59c-4(1).

#### <u>R657-59c-5. Acquiring, Importing, and Transferring</u> <u>Aquaculture Products.</u>

(1)(a) Species of aquaculture products that may be imported into the state are provided in Section R657-3c-5.

(b) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City.

(c) Complete applications may require up to 30 days for processing after submission.

(2) Live aquaculture products, other than ornamental fish, may only be:

(a) purchased or acquired from sources approved by the Utah Department of Agriculture and Food to sell such products; and

(b) acquired, purchased or transferred from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a number as provided in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act.

(3) Triploid fish may only be acquired, purchased, or transferred from lots that have been certified triploid by the division.

(4)(a) Any person who has been issued a valid aquaculture license from the Utah Department of Agriculture and Food may transport live aquaculture products as specified on the certificate of registration to a stocking location.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped by species;

(iii) name, address, and certificate of registration number, if applicable, of the destination; and

(iv) a copy of the importation permit provided by the Utah Department of Agriculture and Food.

(c) Once stocked in a water body, aquaculture products may not be transferred or relocated while live.

(5)(a) To import, transport, or stock live grass carp (*Ctenopharyngodon idella*), each fish must be verified as being triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City before importation.

(c) A copy of the triploidy verification form must also accompany the fish during transport.

(6)(a) Live aquaculture products may be shipped through Utah without a certificate of registration, provided that:

(i) aquaculture products are not sold or transferred;

(ii) aquaculture products remain in the original container;

(iii) water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

#### R657-59c-6. Inspection of Records and Fish Stocking Locations.

(1) Records of purchase, distribution, and acquisition of aquaculture products and copies of certificates of registration must be kept during the certificate of registration and must be available for inspection by a division representative during reasonable hours.

(2) The division and its authorized representatives may inspect an aquaponics facility during reasonable hours to verify compliance with the requirements of Title 23A, the Wildlife Resources Code of Utah and this rule.

(3) Consistent with Rule R58-17, the division and its authorized representatives may inspect aquaculture products stocked pursuant to this rule to conduct sterility, pathological, fish culture, or physical investigations during reasonable hours to verify compliance with the requirements of Title 23A, the Wildlife Resources Code of Utah and this rule.

# **R657-59c-7.** Application for a Aquaponics Certificate of Registration; Application Criteria; Amendment of Certificate of Registration.

(1) The following persons may apply for a certificate of registration for an aquaponics facility:

(a) The owner of the aquaponics facility; and

(b) An individual who is a full-time employee of the aquaponics facility owner and represents the owner as a facility manager.

(2)(a) A person may apply to receive a certificate of registration for an aquaponics facility by submitting an application with the required handling and inspection fee following the instructions provided at: https://wildlife.utah.gov/private-ponds.html

(b) The application may require up to 30 days for processing.

(c) The division may require a site inspection of the stocking location be performed to confirm compliance with the provisions found in this rule.

(d) The division may deny an application where:

(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(ii) receiving or stocking the aquaculture product or aquatic wildlife may:

(A) violate any federal, state or local law or any agreement between the state and another party:

(B) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(C) pose an identifiable adverse threat to other wildlife species or their habitat;

(D) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives;

(iii) the applicant has violated Title 23A, the Wildlife Resources Code of Utah, Title R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law related to the applicant's ability to responsibly carry out the stocking activity.

(3) A certificate of registration for an aquaponics facility may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration. During the effective period of the issued certificate of registration, the certificate of registration holder may stock any of the aquaculture products approved on the certificate of registration at the locality identified on the certificate of registration as long as all stipulations under Rule R657-59c are adhered to, unless the certificate of registration is:

(a) amended by the division at the request of the certificate of registration holder;

(b) terminated or modified by the division pursuant to Section R657-59c-8; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

# <u>R657-59c-8. Expiration and Termination of Certificates of</u> <u>Registration.</u>

If a certificate of registration expires or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of in a manner that complies with all federal, state, and local laws.

# R657-59c-9. Prohibited Activities.

(1) Live aquatic wildlife shall not be collected from the wild and used in stocking activities unless authorized by the Wildlife Board consistent with the requirements in Rule R657-3c.

(2) A person shall not release or transport any live aquaculture product received or held under the provisions of this rule without prior written authorization of the division and the Fish Health Policy Board.

# R657-59c-10. Administrative Appeal Procedures.

(1) An aggrieved party to a final division action under this rule may file a request for agency action with the division under Rule R657-2.

(2) The Director or a designee appointed by the Director shall be the presiding officer for any adjudicative proceedings initiated under this rule.

# KEY: wildlife, aquaculture, fish

# Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 23A-9-305; 23A-9-203

# NOTICE OF PROPOSED RULE

TYPE OF FILING: New				
Rule or Section Number:	R657-59d	Filing ID: 55826		

# Agency Information

-geney momation			
1. Department:	Natural Resources		
Agency:	Wildlife Resources		
Room number:	Suite 2110		
Building:	Departm	nent 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- stacicoons@utah.gov 450- 3093		
	nucetion	a regarding information on	

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

# General Information

# 2. Rule or section catchline:

R657-59d. Institutional Aquaculture

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

The new Rule R657-59d largely contains the same content as the repealed Rule R657-59. However, some differences include the separation of Private Fish Ponds into new Rule R657-59a, Short term fishing events into new Rule R657-59b, Aquaponics into new Rule R657-59c, and Stocking into Natural Lakes into new Rule R657-59e. The new rules clarify the regulations and requirements specific to each activity.

(EDITOR'S NOTE: The proposed repeal of Rule R657-59, ID 55822; and the proposed new rules of R657-59a, ID 55823; R657-59b, ID 55824; R657-59c, ID 55825; and R657-59e, ID 55827; are in this issue, October 15, 2023, of the Bulletin.)

# 4. Summary of the new rule or change:

This rule sets the standards and procedures for institutional aquaculture.

# **Fiscal Information**

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

# A) State budget:

The implementation of the new Rule R657-59d are administrative in nature, the Division of Wildlife Resources (Division) determines that implementing this new rule can be initiated within the current workload and resources of the Division, therefore, the Division does not believe that these amendments would create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.

# B) Local governments:

Since the proposed new rule simplifies an existing program this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed new rule 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 new rule 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*):

The Division has determined that the repeal of Rule R657-59 and the implementation of Rule R657-59d will not create additional costs for those participating in institutional aquaculture because it is not establishing any new requirements.

The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

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

The Division has determined that the repeal of Rule R657-59 and the implementation of Rule R657-59d will not create additional costs for those participating in institutional aquaculture because it is not establishing any new requirements.

The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in 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**

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	

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

# 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 23A-9-305 Section 23A-9-203

#### **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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	J. Shirley, Division	Date:	10/02/2023
or designee and title:	Director		

R657. Natural Resources, Wildlife Resources. R657-59d. <u>Institutional Aquaculture.</u>

**R657-59d-1.** Purpose and Authority.

(1) Under the authority of Sections 23A-9-305 and 23A-9-203, this rule provides the standards and procedures for institutional aquaculture.

(2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act and Rule R58-17.

(3) A person engaging in institutional aquaculture must also comply with all requirements established by Title 4, the Utah Agricultural Code and all rules promulgated by the Utah Department of Agriculture and Food, including:

UTAH STATE BULLETIN, October 15, 2023, Vol. 2023, No. 20

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with, Title 23A, the Wildlife Resources Code of Utah, this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

#### R657-59d-2. Definitions.

(1)(a) "Aquaculture product" means privately purchased, domestically produced aquatic

organisms, or their gametes.

(b) "Aquaculture product" does not mean aquatic wildlife obtained from the wild, aquatic wildlife produced by the state or federally owned aquaculture facilities, or ornamental aquatic animal species.

(2) "Aquaponics facility" means a facility that combines fish and plant culture for a non-commercial purpose where:

(a) all water flowing into or through the facility is completely isolated from any other water source via a self-contained water transport system;

(b) all water and waste flowing from the facility is discharged into a permitted sewer or septic system;

(c) the aquatic animals held within the facility are used for non-commercial purposes only:

(d) no aquatic animals or their gametes are transported from the facility alive; and

(e) the primary use of the facility is for food production and not for the general display of fish in aquaria.

(3) "Institutional aquaculture" means aquaculture engaged in by a school, college, university, or other educational program, or public agency other than the division.

(4) "Lake" means a naturally formed, perennial or intermittent, non-flowing waterbody that collects and keeps water in quantity for use

(5) "Natural stream channel" means a body of water that maintains continuous, seasonal or potential flow, as determined by the division.

(6) "Private fish pond" means a standing body of water or any fish culture system which:

(a) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural

stream channel;

(b) is contained entirely on privately owned land; and

(c) is used for holding or rearing fish for a private, noncommercial purpose.

(7) "Reservoir" means an artificially constructed, nonflowing waterbody that is used to collect and keep water in quantity for use built by damming a natural stream channel.

(8) "Short-term fishing event" means any event where:

(a) privately acquired fish are held or confined for a period not to exceed ten days in a temporary event tank;

(b) for the purposes of providing a recreational opportunity; and

(c) no fee is charged as a requirement to fish.

#### R657-59d-3. Aquaculture Facility Requirements.

(1) An aquaculture facility that possesses a valid license from the Utah Department of Agriculture and Food may stock aquatic wildlife into institutional aquaculture facilities within Utah, provided:

(a)(i) The purchaser of the aquatic wildlife possesses a valid institutional aquaculture facility Certificate of Registration as issued by the division; or

(ii) the species being stocked meets the criteria where a certificate of registration is not required as described in Section R657-59a-4;

(b) Any triploid aquaculture product that are stocked originate from a lot that has been tested and meet the requirements specified in Subsection R657-59a-5(3); and

(c) The aquaculture facility provides the purchaser of any triploid fish a copy of the letter issued by the division certifying that the stocked fish originated from a lot that meets the requirements specified in Subsection R657-59a-5(3).

(2) The division may collect aquatic wildlife from institutional aquaculture facilities to verify that the species and ploidy meet the requirements of Rule R657-59a.

(3)(i) It is unlawful for an aquaculture facility to release aquatic wildlife that violates the terms of Rule R657-59d or other rules established under Title 23A, the Wildlife Resources Code of Utah, and the Utah Wildlife Board.

(ii) Violation of this rule may result in a violation of Sections 23A-5-305 and 4-37-6.

#### R657-59d-4. Certificate of Registration Required.

(1)(a) A certificate of registration is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture.

(b) A certificate of registration is not required for any public agency, institution of higher learning, school, or educational program to engage in the hobby of aquaponics, so long as the aquaponics facility complies with Subsection R657-59c.

(2) Aquaculture products produced by institutional aquaculture facility may not be:

<u>(a) sold;</u>

(b) stocked; or

(c) transferred into waters of the state unless specifically authorized by the certificate of registration.

(i) All fish transferred into waters of the state must receive a valid fish health certification number from the Utah Department of Agriculture and Food as described in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act.

# <u>R657-59d-5. Acquiring, Importing, and Transferring</u> <u>Aquaculture Products.</u>

(1)(a) Species of aquaculture products that may be imported into the state are provided in Section R657-3c-5.

(b) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City.

(c) Complete applications may require up to 30 days for processing after submission.

(2) Live aquaculture products, other than ornamental fish, may only be:

(a) purchased or acquired from sources approved by the Utah Department of Agriculture and Food to sell such products; and

(b) acquired, purchased, or transferred from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a number as provided in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act. (3) Triploid fish may only be acquired, purchased, or transferred from lots that have been certified triploid by the division.

(4)(a) Any person who has been issued a valid aquaculture license from the Utah Department of Agriculture and Food may transport live aquaculture products as specified on the certificate of registration to a stocking location.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped by species;

(iii) name, address, and certificate of registration number, if applicable, of the destination; and

(iv) a copy of the importation permit provided by the Utah Department of Agriculture and Food.

(c) Once stocked in a water body, aquaculture products may not be transferred or relocated while live.

(5)(a) To import, transport, or stock live grass carp (*Ctenopharyngodon idella*), each fish must be verified as being triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City before importation.

(c) A copy of the triploidy verification form must also accompany the fish during transport.

(6)(a) Live aquaculture products may be shipped through Utah without a certificate of registration, provided that:

(i) aquaculture products are not sold or transferred;

(ii) aquaculture products remain in the original container;

(iii) water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

# R657-59d-6. Inspection of Records and Fish Stocking Locations.

(1) Records of purchase, distribution, and acquisition of aquaculture products and copies of certificates of registration must be kept during the certificate of registration and must be available for inspection by a division representative during reasonable hours.

(2) The division and its authorized representatives may inspect an institutional aquaculture facility during reasonable hours to verify compliance with the requirements of Title 23A, the Wildlife Resources Code of Utah and this rule.

(3) Consistent with Rule R58-17, the division and its authorized representatives may inspect aquaculture products stocked pursuant to this rule to conduct sterility, pathological, fish culture, or physical investigations during reasonable hours to verify compliance with the requirements of Title 23A, the Wildlife Resources Code of Utah and this rule.

# <u>R657-59d-7.</u> Application for a Fish Stocking Certificate of Registration; Application Criteria; Amendment of Certificate of Registration.

(1) Only persons who are full-time employees of the institution of higher learning, school, or other educational program, or public agency seeking to engage in institutional aquaculture may apply for a certificate of registration.

(2)(a) A person may apply to receive a certificate of registration for an aquaponics facility by submitting an application with the required handling and inspection fee following the instructions provided at: https://wildlife.utah.gov/private-ponds.html

(b) The application may require up to 30 days for processing.

(c) The division may require a site inspection of the stocking location be performed to confirm compliance with the provisions found in this rule.

(d) The division may deny an application where:

(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(ii) receiving or stocking the aquaculture product or aquatic wildlife may:

(A) violate any federal, state or local law or any agreement between the state and another party:

(B) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(C) pose an identifiable adverse threat to other wildlife species or their habitat;

(D) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives; or

(iii) the applicant has violated Title 23A, the Wildlife Resources Code of Utah, Title R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law related to the applicant's ability to responsibly carry out the stocking activity.

(2) A certificate of registration for an institutional aquaculture facility may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:

(a) amended by the division at the request of the certificate of registration holder;

(b) terminated or modified by the division pursuant to Section R657-59d-8; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

# <u>R657-59d-8.</u> Expiration and Termination of Certificates of <u>Registration</u>

If a certificate of registration expires or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of in a manner that complies with all federal, state, and local laws.

#### R657-59d-9. Prohibited Activities.

(1) Live aquatic wildlife shall not be collected from the wild and used in stocking activities unless authorized by the Wildlife Board consistent with the requirements in Rule R657-3c.

(2) A person shall not release or transport any live aquaculture product received or held under the provisions of this rule without prior written authorization of the division and the Fish Health Policy Board.

#### **R657-59d-10.** Administrative Appeal Procedures.

(1) An aggrieved party to a final division action under this rule may file a request for agency action with the division under Rule R657-2.

(2) The Director or a designee appointed by the Director shall be the presiding officer for any adjudicative proceedings initiated under this rule.

#### KEY: wildlife, aquaculture, fish Date of Last Change: 2023

<u>Authorizing, and Implemented or Interpreted Law: 23A-9-305;</u> 23A-9-203

NOTICE OF PROPOSED RULE			
TYPE OF FILING: New			
Rule or Section Number:	R657-59e	Filing ID: 55827	

# Agency Information

1. Department:	Natural Resources		
Agency:	Wildlife Resources		
Room number:	Suite 2110		
Building:	Departm	nent 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- stacicoons@utah.gov 450- 3093		

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

# General Information

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<b>z</b> .	Rule	UI.	Section	catchine.	

R657-59e. Stocking into Natural Lakes, Natural Flowing Streams, or Reservoirs on Natural Stream Channels

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

This new rule, R657-59e, largely contains the same content as the repealed rule R657-59. However, some differences include the separation of Private Fish Ponds into new rule R657-59a, Short term fishing events into new rule R657-59b, Aquaponics into new rule R657-59c, and Institutional Aquaculture into new rule R657-59d. The new rules clarify the regulations and requirements specific to each activity.

(EDITOR'S NOTE: The proposed repeal of Rule R657-59, ID 55822; and the proposed new rules of R657-59a, ID 55823; R657-59b, ID 55824; R657-59c, ID 55825; and R657-59d, ID 55826; are in this issue, October 15, 2023, of the Bulletin.)

# 4. Summary of the new rule or change:

This rule sets the standards and procedures for stocking fish into natural lakes, natural flowing streams, and reservoirs built on natural stream channels.

### **Fiscal Information**

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

# A) State budget:

The implementation of this new rule, R657-59e, are administrative in nature, the Division of Wildlife Resources (Division) has determined that implementing this new rule can be initiated within the current workload and resources of the Division, therefore, the Division does not believe that these amendments would create a cost or savings impact to the state budget or the Division's budget since the changes will not increase workload and can be carried out with existing budget.

# B) Local governments:

Since the proposed new rule simplifies an existing program, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed new rule 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 new rule 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*):

The Division has determined that the repeal of R657-59 and the implementation of R657-59e will not create additional costs for those participating in stocking fish into natural lakes because it is not establishing any new requirements.

The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in the program.

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

The Division has determined that the repeal of R657-59 and the implementation of R657-59e will not create additional costs for those participating in stocking fish into natural lakes because it is not establishing any new requirements. The repeal of Rule R657-59 and the placement of Rules R657-59a through R657-59e is an administrative adjustment and does not require additional costs or savings to those wishing to participate in 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 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 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 23A-9-305 Section 23A-9-203

# **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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:	10/02/2023
or designee	Director		
and title:			

#### R657. Natural Resources, Wildlife Resources.

R657-59e. Stocking into Natural Lakes, Natural Flowing Streams, or Reservoirs on Natural Stream Channels.

**R657-59e-1.** Purpose and Authority.

(1) Under the authority of Sections 23A-9-305 and 23A-9-203, this rule provides the standards and procedures for the stocking of fish into natural lakes, natural flowing streams, and reservoirs built on natural stream channels.

(2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4. Utah Agricultural Code, Chapter 37, Aquaculture Act and Rule R58-17.

(3) A person operating a private fish pond must also comply with all requirements established by Title 4, the Utah Agricultural Code and all rules promulgated by the Utah Department of Agriculture and Food, including:

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with, Title 23A, the Wildlife Resources Code of Utah, this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate of registration or denial of future certificates of registration, as determined by the division.

# R657-59e-2. Definitions.

(1) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(2) "Aquaculture facility" means any facility used for the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions that holds a valid aquaculture facility license from the Utah Department of Agriculture and Food.

(3)(a) "Aquaculture product" means privately purchased, domestically produced aquatic

organisms, or their gametes.

(b) "Aquaculture product" does not mean aquatic wildlife obtained from the wild, aquatic wildlife produced by the state or federally owned aquaculture facilities, or ornamental aquatic animal species.

(4) "Aquaponics facility" means a facility that combines fish and plant culture for a non-commercial purpose where:

(a) all water flowing into or through the facility is completely isolated from any other water source via a self-contained water transport system;

(b) all water and waste flowing from the facility is discharged into a permitted sewer or septic system;

(c) the aquatic animals held within the facility are used for non-commercial purposes only;

(d) no aquatic animals or their gametes are transported from the facility alive; and

(e) the primary use of the facility is for food production and not for the general display of fish in aquaria.

(5) "Aquatic wildlife" for the purposes of this chapter are:

 (a) fish, mollusk, or crustacean species that are spawned and hatched in public waters, state or federal aquaculture facilities; and

(b) fish, mollusk, or crustacean species that escape a private fish pond into a public water.

(6) "Certified sterile aquaculture product" means any fish or gamete that originates from a health certified source, as described in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act and is incapable of reproduction due to triploidy or hybridization, and is confirmed as sterile using the protocol described in Section R657-59a-5.

(7) "Division" means the Utah Division of Wildlife Resources.

(8) "Fee fishing facility" means a body of water used for holding or rearing fish for providing fishing for a fee or for pecuniary consideration or advantage.

(9) "FEMA" means Federal Emergency Management Administration.

(10) "HUC" or "Hydrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States.

(11) "Institutional aquaculture" means aquaculture engaged in by a school, college, university, or other educational program, or public agency other than the division.

(12) "Lake" means an naturally formed, perennial or intermittent, non-flowing waterbody that collects and keeps water in quantity for use

(13) "Lot" means fish of the same species that are subject to a health inspection under the Aquatic Animal Health Inspection Policy in Subsection R58-17-2(26), which establishes guidelines for lot designation for salmonid and non-salmonid fish.

(14) "Natural stream channel" means a body of water that maintains continuous, seasonal or potential flow, as determined by the division.

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

(b) "Ornamental aquatic animal species" does not include: (i) fresh water;

(A) sport fish - aquatic animal species regulated for angling or harvest for recreation or sport;

(B) baitfish - aquatic animal species authorized for use as bait in Subsection R657-13-12, or any other species used by anglers as bait in sporting fishing;

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

(D) native species; or

(ii) aquatic animals and marine aquatic animals prohibited for importation or possession by any state, federal, or local law; or

(iii) aquatic animals and marine aquatic animals listed as prohibited or controlled in Sections R657-3-22 and R657-3-23.

(16) "Private fish pond" means a standing body of water or any fish culture system which:

(a) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural

stream channel;

(b) is contained entirely on privately owned land; and

(c) is used for holding or rearing fish for a private, noncommercial purpose.

(17)(a) "Private stocking" means an authorized release of privately owned live fish into waters of the state that are not eligible as a private fish pond, aquaculture facility, or fee fishing facility.

(18) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for monetary consideration or advantage.

(19) "Reservoir" means an artificially constructed, nonflowing waterbody that is used to collect and keep water in quantity for use built by damming a natural stream channel.

(20) "Salmonid" means any fish belonging to the trout or salmon family.

(21) "Short-term fishing event" means any event where:

(a) privately acquired fish are held or confined for a period not to exceed ten days in a temporary event tank;

(b) for the purposes of providing a recreational opportunity; and

(c) no fee is charged as a requirement to fish.

(22) "Sterile" means the inability to reproduce.

#### R657-59e-3. Aquaculture Facility Requirements.

(1) An aquaculture facility that possesses a valid license from the Utah Department of Agriculture and Food may stock aquatic wildlife into natural lakes, natural flowing streams, or reservoirs on natural stream channels within Utah, provided:

(a)(i) The purchaser of the aquatic wildlife possesses a valid certificate or registration to stock in natural lakes, natural flowing streams, or reservoirs on natural stream channels; or

(ii) the species being stocked meets the criteria where a certificate of registration is not required as described in Section R657-59a-4;

(b) Any triploid aquaculture product that are stocked originate from a lot that has been tested and meet the requirements specified in Subsection R657-59a-5(3); and

(c) The aquaculture facility provides the purchaser of any triploid fish a copy of the letter issued by the division certifying that the stocked fish originated from a lot that meets the requirements specified in Subsection R657-59a-5(3).

(2) The division may collect aquatic wildlife from natural lakes, natural flowing streams, or reservoirs on natural stream channels to verify that the species and ploidy stocked meet the requirements of Rule R657-59a.

(3)(i) It is unlawful for an aquaculture facility to release aquatic wildlife that violates the terms of Rule R657-59e or other

rules established under Title 23A, the Wildlife Resources Code of Utah, and the Utah Wildlife Board.

(ii) Violation of this rule may result in a violation of Sections 23A-5-305 and 4-37-6.

#### R657-59e-4. Certificate of Registration Required.

(1) A certificate of registration is required for all private stocking events.

(2) An application for a certificate of registration for a private stocking event may be approved only if all the following requirements are met:

(a) The waterbody to be stocked is a lake or reservoir;

(b) The lake or reservoir to be stocked is wholly owned by the applicant;

(c) The lake or reservoir and its inlet neither contains feral fish nor are likely to support such species in the future;

(d) The intended use of the lake or reservoir will not jeopardize conservation of aquatic wildlife populations or lead to the privatization or commercialization of aquatic wildlife;

(e) The lake or reservoir being stocked satisfies the screening requirements established in Section R657-59e-7;

(f) The lake or reservoir is not vulnerable to flood or high water events capable of compromising the inlet or outlet screens which may cause privately owned fish to escape into waters of the state;

(g) The species, sub-species, and sterility of the aquaculture product received is authorized for stocking consistent with the requirements in Section R657-59a-9;

(h) the aquaculture product is delivered to the lake, natural stream channel, or reservoir:

(i) by a licensed aquaculture facility as defined in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act; or

(ii) by the owner, lessee, or operator of the private stocking event provided this individual:

(A) possesses documentation from the aquaculture facility verifying the information itemized in Subsection R657-59a-6(4)(b) during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the private fish pond;

(i) The individual purchasing fish provides the aquaculture facility with a signed written statement that the pond and aquaculture product received are in compliance with this section.

R657-59e-5. Acquiring, Importing, and Transferring Aquaculture Products

(1)(a) Species of aquaculture products that may be imported into the state are provided in Section R657-3c-5.

(b) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City.

(c) Complete applications may require up to 30 days for processing after submission.

(2) Live aquaculture products, other than ornamental fish, may only be:

(a) purchased or acquired from sources approved by the Utah Department of Agriculture and Food to sell such products; and

(b) acquired, purchased, or transferred from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a number as provided in Title 4, Utah Agricultural Code, Chapter 37, Aquaculture Act.

(3) Triploid fish may only be acquired, purchased, or transferred from lots that have been certified triploid by the division.

(4)(a) Any person who has been issued a valid aquaculture license from the Utah Department of Agriculture and Food may transport live aquaculture products as specified on the certificate of registration to a stocking location.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped by species;

(iii) name, address, and certificate of registration number, if applicable, of the destination; and

(iv) a copy of the importation permit provided by the Utah Department of Agriculture and Food.

(c) Once stocked in a water body, aquaculture products may not be transferred or relocated while live.

(5)(a) To import, transport, or stock live grass carp (*Ctenopharyngodon idella*), each fish must be verified as being triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City before importation.

(c) A copy of the triploidy verification form must also accompany the fish during transport.

(6)(a) Live aquaculture products may be shipped through Utah without a certificate of registration, provided that:

(i) aquaculture products are not sold or transferred;

(ii) aquaculture products remain in the original container;

(iii) water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

# R657-59e-6. Inspection of Records and Fish Stocking Locations.

(1) Records of purchase, distribution, and acquisition of aquaculture products and copies of certificates of registration must be kept during the certificate of registration and must be available for inspection by a division representative during reasonable hours.

(2) The division and its authorized representatives may inspect a private fish pond or other stocking location during reasonable hours to verify compliance with the requirements of Title 23A, the Wildlife Resources Code of Utah and this rule.

(3) Consistent with Rule R58-17, the division and its authorized representatives may inspect aquaculture products stocked pursuant to this rule to conduct sterility, pathological, fish culture, or physical investigations during reasonable hours to verify compliance with the requirements of Title 23A, the Wildlife Resources Code of Utah and this rule.

#### R657-59e-7. Screening Requirements.

(1)(a) Except as provided in Subsection (b), all permanent and intermittent inlets and outlets shall be screened to prevent the movement of aquatic wildlife from the private stocking event into public waters.

(b) Upon request of the owner or lessee, the division may conduct a site analysis and waive screen requirements if the division determines waiving screen requirements will not be detrimental to the wildlife resource.

(c) Any aquaculture product that escapes a private fish pond is considered aquatic wildlife for the purposes of licensing requirements, bag limits, and allowable methods of take. (2) If a screen is required, the screen must meet the following provisions:

(a) the screen should be constructed of durable materials that are capable of maintaining integrity when exposed to water and air for an extended period;

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

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

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

# <u>R657-59e-8.</u> Fishing License and Transportation of Dead Aquaculture Product.

(1) A fishing license is required to:

(a) take fish from a legally recognized private stocking event; and

(b) to transport dead aquaculture product from a private stocking event.

(2) Any aquaculture product that escapes a private stocking event are considered aquatic wildlife and are subject to the licensing requirements, bag limits, and allowable methods of take described in the current Utah Fishing Guidebook issued by the Utah Wildlife Board.

#### R657-59e-9. Escapement of Fish from Private Stocking Events.

Fish that escape from privately stocked natural lakes, natural flowing streams, or reservoirs on natural stream channels become the property of the state and are subject to the fishing requirements set forth in this title and proclamations of the Wildlife Board.

# **R657-59e-10.** Application for a Fish Stocking Certificate of Registration; Application Criteria; Amendment of Certificate of Registration.

(1) The following persons may apply for a certificate of registration for a private fish pond:

(a) The owner of the private fish pond;

(b) The president of a homeowners association, if the pond is on homeowners association property; or

(c) An individual who is a full-time employee of the private pond owner, who represents the pond owner as a property manager.

(2)(a) A person may apply to receive a certificate of registration for a fish stocking activity by submitting an application with the required handling and inspection fee following the instructions provided at: https://wildlife.utah.gov/private-ponds.html

(b) The application may require up to 30 days for processing.

(c) The division may require a site inspection of the stocking location be performed to confirm compliance with the provisions found in this rule.

(d) The division may deny an application where:

(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(ii) receiving or stocking the aquaculture product or aquatic wildlife may:

(A) violate any federal, state or local law or any agreement between the state and another party:

(B) negatively impact native wildlife species listed by the division as sensitive or by the federal government as threatened or endangered;

(C) pose an identifiable adverse threat to other wildlife species or their habitat;

(D) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives; or

(iii) the applicant has violated Title 23A, the Wildlife Resources Code of Utah, Title R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that relates to the applicant's ability to responsibly carry out the stocking activity.

(3) A certificate of registration for a private stocking event may remain effective for the length of time identified on the certificate of registration. During the effective period of the issued certificate of registration, the certificate of registration holder may stock any of the aquaculture products approved by the certificate of registration at the locality identified on the certificate of registration so long as all stipulations under Rule R657-59e are adhered to, unless the certificate of registration is:

(a) amended by the division at the request of the certificate of registration holder;

(b) terminated or modified by the division pursuant to Section R657-59-10; or

(c) suspended by the division or a court pursuant to Section 23A-4-1106.

# **R657-59e-11.** Expiration and Termination of Certificates of Registration.

If a certificate of registration expires or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of in a manner that complies with all federal, state, and local laws.

# R657-59e-12. Prohibited Activities.

(1) Live aquatic wildlife shall not be collected from the wild and used in stocking activities unless authorized by the Wildlife Board consistent with the requirements in Rule R657-3c.

(2) A person shall not release or transport any live aquaculture product received or held under the this rule without prior written authorization of the division and the Fish Health Policy Board.

#### R657-59e-13. Administrative Appeal Procedures.

(1) An aggrieved party to a final division action under this rule may file a request for agency action with the division under Rule R657-2.

(2) The Director or a designee appointed by the Director shall be the presiding officer for any adjudicative proceedings initiated under this rule.

#### KEY: wildlife, aquaculture, fish

Date of Last Change: 2023

#### Authorizing, and Implemented or Interpreted Law: 23A-9-305; 23A-9-203

NOTICE OF PROPOSED RULE			
TYPE OF FILING: New			
Rule or Section Number:	R698-12	Filing ID: 55811	

# Agency Information

1. Department:	Public Safety		
Agency:	Administration		
Building:	Calvin F	ampton Building	
Street address:	4501 S 2	2700 W	
City, state and zip:	Salt Lake City, UT 84119		
Mailing address:	PO Box 141775		
City, state and zip:	Salt Lake City, UT 84114-1775		
Contact persons:			
Name:	Phone: Email:		
Kim Gibb	801- kgibb@utah.gov 556- 8198		

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

# General Information

# 2. Rule or section catchline:

R698-12. Fallen Officer Memorial Scholarship Program

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

This rule is being enacted as a result of the passage of H.B. 332 during the 2023 General Session and is authorized under Section 53-17a-101.

# 4. Summary of the new rule or change:

This rule outlines the application process and eligibility criteria for a child of a fallen officer that wishes to apply for funding from the Fallen Officer Memorial Scholarship Program.

# Fiscal Information

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

# A) State budget:

The Utah Legislature appropriated \$46,000 ongoing to provide grant funding for children of fallen officers to apply for scholarship funding as outlined in Section 53-17a-101.

The Department of Public Safety (Department) does not anticipate a cost or savings to the state as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

# B) Local governments:

The Utah Legislature appropriated \$46,000 ongoing to provide grant funding for children of fallen officers to apply for scholarship funding as outlined in Section 53-17a-101.

The Department does not anticipate a cost or savings to local governments as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

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

The Utah Legislature appropriated \$46,000 ongoing to provide grant funding for children of fallen officers to apply for scholarship funding as outlined in Section 53-17a-101.

The Department does not anticipate a cost or savings to small businesses as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

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

The Utah Legislature appropriated \$46,000 ongoing to provide grant funding for children of fallen officers to apply for scholarship funding as outlined in Section 53-17a-101.

The Department does not anticipate a cost or savings to non-small businesses as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

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 Utah Legislature appropriated \$46,000 ongoing to provide grant funding for children of fallen officers to apply for scholarship funding as outlined in Section 53-17a-101.

The passage of the bill allows for children of fallen officers to apply for scholarship funding from the Fallen Officer Memorial Scholarship Program in the amount of \$5,000 per year for four years, for a total amount of \$20,000 per applicant.

This statutory change will allow for a cost savings of up to \$20,000 per year for each child of a fallen officer that applies for scholarship funding.

**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 this rule only identifies the process for a child of a fallen officer to apply for scholarship funding appropriated by the legislature from the Fallen Officer Memorial Scholarship.

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 Public Safety, Jess L. Anderson, 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 17-22-34

#### **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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

0 5	Jess L. Anderson, Commissioner	Date:	09/28/2023
and title:			

#### R698. Public Safety, Highway Patrol.

### <u>R698-12. Fallen Officer Memorial Scholarship Program.</u> <u>R698-12-1. Purpose.</u>

The purpose of this rule is to establish the process for a child of a public safety officer of a firefighter who died in the line of duty, and who is at least 17 years of age, to apply for the Fallen Officer Memorial Scholarship Program created in Section 53-17a-101.

#### R698-12-2. Authority.

This rule is authorized by Section 53-17a-101.

#### R698-12-3. Definitions.

Terms used in this rule are found in Section 53-17a-101.

#### R698-12-4. Applications.

(1) A child applying for scholarship funding shall submit the application to the department:

(a) on a form approved by the department;

(b) with supporting documentation that reflects the educational-related expenses for which the funding will be used; and

(c) between January 1 and March 31 of each year, for up to four years.

(2) Applications received by the department from an applicant after funding has been granted to the applicant for four years shall be denied.

### R698-12-5. Awards of Scholarship Funding.

The department shall:

(1) review timely applications submitted to the department to determine that;

(a) the applicant is eligible to receive grant funding in accordance with Section 53-17a-101; and

(b) the educational-related expenses outlined in supporting documentation submitted with the application are eligible to receive scholarship funding;

(2) approve funding awards for qualified applicants; and
 (3) notify each applicant;

(a) of the approval or denial of the application for scholarship funding;

(b) of the amount of scholarship funding that will be made available to the applicant for education-related expenses; and

(c) that funds provided may be subject to funding availability or be reduced in accordance with Subsection 53-17a-101(6).

### R698-12-6. Appeal Process for Denial of Scholarship Funding.

If an application is denied, an applicant may seek reconsideration by contacting the department and requesting that their application be reviewed.

#### KEY: fallen officer memorial scholarship, scholarship program Date of Last Change: 2023 Authorizing, and Implemented or Interpreted Law: 53-17a-101

TYPE OF FILING: Repeal and Reenact			
Rule or Section Number:	R708-7	Filing ID: 55800	

# Agency Information

1. Department:	Public Safety
Agency:	Driver License
Room number:	Suite 2600
Street address:	4315 S 2700 W, 2nd Floor
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 144501
City, state and zip:	Salt Lake City, UT 84114-4501
Contact persons:	

Name:	Phone:	Email:
Kim Gibb	801- 556- 8198	kgibb@utah.gov
Tara Zamora	801- 964- 4483	tarazamora@utah.gov
Britani Flores	801- 884- 8313	bflores@utah.gov

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

# General Information

2. Rule or section catchline:

R708-7. Functional Ability in Driving: Guidelines for Physicians

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

This rule filing is needed to implement H.B. 62 passed during the 2023 General Session.

In addition, this filing updates the authorizing statute to Section 53-3-104 and adds Section 53-3-1007.

Unnecessary and repetitive information has been removed to clarify the responsibilities of healthcare professionals, drivers, and the Medical Advisory Board.

# 4. Summary of the new rule or change:

This filing establishes the process for an individual to apply for a medical exemption to the requirement of an ignition interlock device to reinstate a driving privilege in compliance with H.B. 62 (2023).

In addition, this rule filing removes unnecessary citation of code throughout the existing rule.

The rule catchline is being updated to reflect the rule's purpose and contents more accurately.

The authorizing statute was incorrectly cited in the existing rule and has been updated to Section 53-3-104 and has added Section 53-3-1007.

Definitions have been updated to reflect current information and to lessen confusion throughout.

The sections of this rule have been clarified to identify responsibilities of health care professionals, drivers, and the Medical Advisory Board more accurately.

A section regarding the denial of driving privileges for medical reasons has been added to be more prominent within this rule and lessen confusion.

# **Fiscal Information**

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

# A) State budget:

The proposed rule is not expected to have any fiscal impact on state budgets.

This rule filing is clarifying a process that is already in place.

In addition, the changes to this rule for the implementation of H.B. 62 (2023) do not require changes to any state agencies processes that would incur any costs.

# B) Local governments:

The proposed rule is not expected to have any fiscal impact on any local governments.

This rule filing is clarifying a process that is already in place.

In addition, the changes to this rule for the implementation of H.B. 62 (2023) do not require the involvement of any local governments.

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

The proposed rule is not expected to have any fiscal impact on small businesses.

This rule filing is clarifying a process that is already in place.

In addition, the changes to this rule for the implementation of H.B. 62 (2023) does not require changes to any small businesses that would incur any costs.

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

The proposed rule is not expected to have any fiscal impact on non-small businesses.

This rule filing is clarifying a process that is already in place.

In addition, the changes to this rule for the implementation of H.B. 62 (2023) does not require changes to any nonsmall businesses that would incur any costs.

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

The proposed rule may have a direct fiscal cost to members of the public.

If an individual chooses to apply for a medical exemption from the ignition interlock requirement that is needed to reinstate a driving privilege after an arrest or conviction of driving under the influence, they would be required to submit medical tests and forms filled out by a physician.

The cost to obtain the tests and forms would be the responsibility of the individual.

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

The compliance costs for affected persons are inestimable.

The Division of Driver License is not able to determine how many individuals would apply for this medical exemption or how much it would cost an individual to have a physician complete the tests and forms needed.

**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 Public Safety, Jess L. Anderson, 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 53-3-104

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)	Functional Ability In Driving: Guidelines and Standards for Health Care Professionals.
Publisher	Driver License Division
Issue Date	June 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	11/14/2023
unti	l:				

9.	This	rule	change	MAY	11/21/2023
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	Christopher	Date:	09/26/2023
or designee	Caras, Division		
and title:	Director		

#### **R708.** Public Safety, Driver License.

[<del>R708-7. Functional Ability in Driving: Guidelines for Physicians.</del>

#### R708-7-1. Purpose.

The purpose of this rule is to establish standards and guidelines to assist health care professionals in determining who may be impaired, the responsibilities of the health care professionals, and the driver's responsibilities regarding their health as it relates to highway safety.

#### R708-7-2. Authority.

This rule is authorized by Sections 53-3-224, 53-3-303, 53-3-304, and 49 CFR 391.43.

#### R708-7-3. Definitions.

(1) "Board" means the Driver License Medical Advisory Board created in Section 53-3-303.

(2) "Division" means the Driver License Division.

(3) "Health care professional" means a physician or surgeon licensed to practice medicine in the state, or when recommended by the Medical Advisory Board, may include other health care professionals licensed to conduct physical examinations in this state.

(4) "Impaired person" means a person who has a mental, emotional, or nonstable physical disability or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while driving on the highway. It does not include a person having a nonprogressive or stable physical impairment that is objectively observable and that may be evaluated by a functional driving examination.

#### R708-7-4. Health and Driving.

(1) Every driver operating a vehicle is individually responsible for their health when driving. Each applicant for a Utah driver license shall be required to answer personal health questions related to driving safety in accordance with recommendations made by the Driver License Medical Advisory Board pursuant to the provisions of Section 53-3-303(8). If the applicant experiences a significant health problem, the applicant is required to take a form furnished by the division to a health care professional who provides all requested information, including a safety assessment level that reflects the applicant's medical condition.

(2) The health care professional will be expected to discuss the applicant's health as it may affect driving abilities and to make

special recommendations in unusual circumstances. Based upon a completed safety assessment, the division may deny driving privileges or issue a license with or without limitations in accordance with the standards described in this rule and lists, tables, and charts incorporated herein. Health care professionals have a responsibility to help reduce unsafe highway driving conditions by carefully applying these guidelines and standards, and by counseling with their patients about driving under medical constraints.

### **R708-7-5.** Driver's Responsibilities.

(1) The 1979 Utah State Legislature has defined driver operating responsibilities in Section 53-3-303, related to physical, mental or emotional impairments of drivers. Drivers are:

(a) responsible to refrain from driving if there is uncertainty caused from having a physical, mental or emotional impairment which may affect driving safety;

(b) expected to seek competent medical evaluation and advice about the significance of any impairment that relates to driving vehicles safely; and

(c) responsible for reporting a "physical, mental or emotional impairment which may affect driving safety" to the Driver License Division in a timely manner.

#### R708-7-6. Health Care Professional's Responsibilities.

(1) Pursuant to Section 53-3-303, health care professionals shall:

 (a) make reports to the division respecting impairments which may affect driving safety when requested by their patients.
 Nevertheless, the final responsibility for issuing a driver license remains with the director of the division;

(b) counsel their patients about how their condition affects safe driving. For example, if medication is prescribed for a patient which may cause changes in alertness or coordination, the health care professional shall advise the patient about how the medication can affect safe driving, and when it would be safe to operate a vehicle. Or, if a patient's visual acuity drops, the patient should similarly be advised, at least until corrective action has been taken to improve vision; and

(c) in accordance with Section 53-3-303(14)(b), be responsible for making available to their patients without reservation, their recommendations and appropriate information related to driving safety and responsibilities, whether defined by published guidelines or not.

#### **R708-7-7.** Driver License Medical Advisory Board.

(1) The Driver License Medical Advisory Board, as per Section 53-3-303, shall advise the director of the division and recommend written functional ability and safety assessment guidelines and standards for determining the physical, mental and emotional capabilities of applicants for licenses, appropriate to various driving abilities.

(2) In case of uncertainty of interpretation of these guidelines and standards, or in special circumstances, applicants may request a review of any division decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

(3) In accordance with Section 53-3-303(8), the board shall administer the functional ability and safety assessment guidelines, which are intended to minimize such conflicts as the individual's desire to drive and the community's desire for highway safety.

#### **R708-7-8.** Persons Authorized to Complete Functional Ability Evaluation Medical Report Form.

(1) Physicians and surgeons licensed to practice medicine may complete the entire Functional Ability Evaluation Medical Report form.

(2) Nurse practitioners and physician assistants, and in accordance with 49 CFR 391.43, physician assistants, advanced practice nurses, doctors of chiropractic and other health care professionals, may perform physical examinations and report their findings on the Functional Ability Evaluation Medical Report form provided that:

(a) they are licensed by the state as health care professionals;

 (b) the physical examination does not require advanced or complex diagnosis or treatment; and

(c) in the event that advanced or complex medical diagnostic analysis is required, the licensed health care professional, consistent with sound medical practices, will be expected to promptly refer the patient to the appropriate physician, surgeon or doctor of osteopathy for further evaluation and for completion of the functional ability evaluations certifications report in those categories.

#### **R708-7-9.** Safety Assessment Level Categories.

Functional ability of a driver to operate a vehicle safely may be affected by a wide range of physical, mental or emotional impairments. To simplify reporting and to make possible a comparison of relative risks and limitations, the Medical Advisory Board has adopted physical, emotional and behavioral safety assessment levels as defined in 11 separate categories, with multiple levels under each category.

#### R708-7-10. Use of the Safety Assessment Level.

(1) Health care professionals who evaluate their patients' health status for purposes of the patient obtaining a Utah driver license, shall report safety assessment levels on forms provided by the division.

(2) In assessing patient health and completing these report forms, health care professionals shall apply the standards and related information contained in the following lists, charts, and tables, which standards and guidelines are referred to in, "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals." Specific categories are:

(a) "Category A" - diabetes and other metabolic conditions; narrative listing and table;

(b) "Category B" - cardiovascular; narrative listing and table;

(c) "Category C" - pulmonary; narrative listing and table;
 (d) "Category D" - neurologic; narrative listing and table;

(a) "Category E" - seizures and other episodic conditions;
 (c) "Category E" - seizures and other episodic conditions;
 narrative listing and table;

 (f) "Category F" - learning, memory and communications; narrative listing and table;

(g) "Category G" - mental health; narrative listing and table;

(h) "Category H" alcohol and other drugs; narrative listing and table;

(i) "Category I" - visual acuity; narrative listing and table; (j) "Category J" - musculoskeletal abnormality or chronic medical debility; narrative listing and table; and

(k) "Category K" - alertness or sleep disorders; narrative listing and table;

(3) These guidelines are published on the Driver License Division webpage. A copy may be obtained in person at any Division office or by written request to the Driver License Division Medical Section at P.O. Box 144501, Salt Lake City, Utah 84114-4501.

(1) Report forms completed by a health care professional and received by the division are to be used as a screening tool in assessing an individual's ability to safely operate a motor vehicle.

(a) Some safety assessment levels as identified in the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", may result in the division requesting an individual to complete a driver review, which may include a driving skills test in order to demonstrate the ability to safely operate a motor vehicle before determining whether the individual will maintain the privilege to drive. In some cases when a privilege to drive is granted, driving restrictions may be required in order to ensure public safety. (b) A health care professional may also request that the

division evaluate an individual's driving skill level at the health care professional's discretion.

(5) The division shall notify an individual that their privilege to drive is denied upon receipt of the following:

(a) a medical report that is completed in the categories A, B, C, D, E, F, G, H, J, or K, for which the driver is assessed at a level "8" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive; or

(b) a medical report that is completed in the category I for which the driver is assessed at a level "10" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive.

(6) Upon receipt of a notice of denial of the privilege to drive, an individual may request a review of the division's decision by a panel of board members. All of the actions of the director and board are subject to judicial review.]

# **R708-7.** Functional Ability in Driving: Responsibilities for Physicians and Drivers.

**R708-7-1.** Purpose.

The purpose of this rule is to establish the:

(1) procedure for administering the standards and guidelines used by health care professionals to assess certain medical conditions in relation to driving safety:

(2) responsibilities of health care professionals to educate patients on medical conditions that may affect driving safety;

(3) responsibilities of individuals regarding their health in relation to driving safety; and

(4) procedures regarding a petition requesting removal of an ignition interlock restriction.

#### R708-7-2. Authority.

This rule is authorized by Section 53-3-104.

#### R708-7-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-3-102 and 53-3-302.

(2) In addition:

(a) "deep breath lung sample" also known as alveolar breath sample, means an air sample that is the last portion of a prolonged, uninterrupted exhalation and that gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined;

(b) "FEV1" means the amount of air that can be forcibly exhaled from the lungs over one second of time after taking the deepest breath possible;

(c) "FVC" means the amount of air that can be forcibly exhaled from the lungs after taking the deepest breath possible;

(d) "guidelines" means the Functional Ability In Driving: Guidelines and Standards for Health Care Professionals created by the board to assist health care professionals in assessing certain medical conditions in relation to driving safety;

(e) "IID Removal Petition Physician Statement" means the form furnished by the division used by a physician to provide a synopsis of an individual's medical condition to determine eligibility for an exemption from an ignition interlock device requirement;

(f) "medical form" means a Functional Ability Evaluation Medical Report Form furnished by the division used by health care professionals to assess medical conditions;

(g) "spirometry" means a test of lung function that measures the quantity and speed of air that is inhaled or exhaled; and (h) "vision form" means a Certificate of Visual

Examination Form furnished by the division used by health care professionals to assess visual acuity.

# R708-7-4. Driver's Responsibilities.

(1) Each individual that applies for or holds a Utah driver license shall:

(a) answer health questions related to driver safety each time an application for a Utah driving privilege is submitted to the division;

(b) refrain from driving if there is uncertainty caused from having a physical, mental, or emotional impairment that may affect driving safety;

(c) seek medical evaluation and advice about the significance of any impairment that relates to driving safety; and

(d) report a physical, mental, or emotional impairment that may affect driving safety to the division in a timely manner.

(2) Individuals who experience a physical, mental, or emotional impairment, shall take a medical or vision form to a health care professional who shall provide the requested information, including a safety assessment level that reflects the individual's condition.

#### **R708-7-5.** Health Care Professional's Responsibilities.

(1) Health care professionals shall:

(a) discuss the individual's health as it may affect driving abilities and make special recommendations in unusual circumstances;

(b) assess physical, mental, or emotional impairment conditions on forms furnished by the division; and

(c) report to the division regarding serious physical, mental, or emotional impairments that may affect driving safety concerning their patients.

(2) Health care professionals who make reports to the division regarding physical, mental, or emotional impairments that pose a threat to driving safety have immunity from any damages claimed from making the report.

# R708-7-6. Driver License Medical Advisory Board.

The Driver License Medical Advisory Board shall:

(1) recommend written functional ability and safety assessment guidelines and standards for determining the physical, mental, and emotional capabilities of individuals appropriate to various driving abilities;

(2) advise the director of the division on individual cases regarding medical impairment and driving safety; and

(3) administer the guidelines.

### **R708-7-7.** Persons Authorized to Complete Functional Ability **Evaluation Medical Report Form.**

(1) Physicians and surgeons licensed to practice medicine may complete the entire medical report form.

(2) Nurse practitioners, physician assistants, advanced practice nurses, chiropractors, and other health care professionals may perform physical examinations and report their findings on the medical form provided that:

(a) they are licensed by the state as health care professionals;

(b) the physical examination does not need advanced or complex diagnosis or treatment; and

(c) if advanced or complex medical diagnostic analysis is needed, they shall refer the patient to the appropriate physician, surgeon, or doctor of osteopathy for further evaluation and for completion of the functional ability evaluations certifications report in those categories.

#### R708-7-8. Use of the Safety Assessment Level.

(1) Health care professionals shall apply the standards in the Functional Ability in Driving Guidelines and Standards for Health Care Professionals, June 2023 edition, which are incorporated by reference, when assessing patient health and completing the report forms.

(2) The board has identified the following specific medical categories:

(a) "category A" diabetes and metabolic conditions;

(b) "category B" cardiovascular;

(c) "category C" pulmonary;

(d) "category D" neurologic;

(e) "category E" seizures and episodic conditions;

(f) "category F" learning and memory;

(g) "category G" mental health;

(h) "category H" alcohol and other drugs;

(j) "category J" musculoskeletal or chronic debility; and (k) "category K" alertness or sleep disorder.

(3) The division shall publish the guidelines on the division's website, dld.utah.gov.

(4) The division may request an individual to complete a driver review upon receipt of certain safety assessment levels, which may include a driving skills test to demonstrate the ability to safely operate a motor vehicle before the division can determine if:

(a) the individual will keep the privilege to drive without restrictions;

(b) driving restrictions may be needed to ensure public safety; or

(c) the individual must discontinue driving.

(5) A health care professional may also request the division evaluate an individual's driving skill level at the health care professional's discretion.

# **R708-7-9.** Denial of Driving Privileges.

(1) The division shall notify an individual their privilege to drive is denied for any of the following:

(a) a medical form that is completed in any category that the driver is assessed at a level eight in accordance with the guidelines, or other documentation that states the health care professional recommends the individual not drive;

(b) a vision form that the driver is assessed at a level ten in accordance with the guidelines, or other documentation that states the health care professional recommends the individual not drive; or

(c) the inability to complete or successfully pass a driver review.

(2) An individual may request a review of the division's decision upon receipt of a notice of denial of the privilege to drive.

### **R708-7-10.** Petition to Remove Ignition Interlock Restriction.

(1) An individual with a medical condition that prohibits the individual from providing a deep lung breath sample necessary to operate an ignition interlock system may submit a petition to the division containing the following:

(a) an IID Removal Petition Physician Statement Form provided by the division completed by the physician;

(b) a medical form completed by a physician;

(c) medical history documenting the date of onset of the condition, the prognosis, and current treatments; and

(d) measurements of FVC and FEV1 as measured by reproducible spirometry within 90 days of the petition.

(2) The board shall review documentation submitted to support the individual cannot provide a deep lung breath sample under Title 53, Chapter 3, Part 3, Impaired Persons Licensing Act.

(3) The board may request additional documentation regarding a medical exemption requested under this rule.

(4) The division may consider:

(a) the recommendation of the panel;

(b) public safety;

(c) the availability of ignition interlock systems that may be used with the individual's condition; and

(d) the level of pulmonary or other impairment affecting the individual in determining the individual's license restrictions.

KEY: administrative procedures, health care professionals, physicians

Date of Last Change: 2023[January 9, 2020]

Notice of Continuation: December 16, 2021

Authorizing, and Implemented or Interpreted Law: [<del>53-3-224;</del> <del>53-3-303; 53-3-304; 49 CFR 391.43</del>]<u>53-3-104; 53-3-224; 53-3-303;</u> <u>53-3-304; 49 CFR 391.43; 41-6a-518.2</u>

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment				
Rule or Section Number:		Filing ID: 55813		

#### **Agency Information**

1. Department:	Public Safety		
Agency:	Driver License		
Room number:	Suite 2600		
Street address:	4315 S 2700 W, 2nd Floor		
City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box 144501		
City, state and zip:	Salt Lake City, UT 84114-4501		

Contact persons:			
Name:	Phone:	Email:	
Kim Gibb	801- 556- 8198	kgibb@utah.gov	
Tara Zamora	801- 964- 4483	tarazamora@utah.gov	
Britani Flores	801- 884- 8313	bflores@utah.gov	

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

# General Information

2. Rule or section catchline:

R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs

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

This rule filing is required for implementation of S.B. 244 which passed during the 2023 General Session.

In addition, general updates were made to this rule for clarity and in accordance with the Rulewriting Manual for Utah guidelines.

# 4. Summary of the new rule or change:

This rule adds the ability for the Division of Driver License (Division) to choose the county in which an administrative hearing for alcohol or drug proceedings may be held providing all parties involved have requested to appear via live audiovisual means.

In addition, the statute granting rulemaking authority has been updated, and language not in line with the Rulewriting Manual for Utah guidelines has been reformatted.

A section has been added that contains information on what is needed for and the process of requesting an administrative hearing with the Division, this also includes the requirement to designate whether the individual is requesting to appear via live audiovisual or telephonic means.

Statutes have been added to the list of authorizing, implemented, or interpreted law.

# 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 of this rule filing.

The Division currently has the resources to provide hearings via live audiovisual and telephonic means.

In addition, the county in which the hearing is held does not influence the state budget.

### B) Local governments:

There is no anticipated cost or savings to local governments because of this rule filing.

This rule only has the potential to affect the location where an officer might have to appear for an administrative alcohol or drug hearing which is not expected to have a fiscal impact.

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

There is no anticipated cost or savings to small businesses because of this rule filing.

This rule only affects the processes of the Division.

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

There is no anticipated cost or savings to non-small businesses because of this rule filing.

This rule only affects the processes of the Division.

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

There is no anticipated cost or savings to persons other than small businesses, non-small businesses, state or local governments because of this rule filing.

This rule only affects the processes of the Division.

**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 Division already has the resources necessary for the implementation of this rule.

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

Regulatory 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	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
₋ocal 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 Public Safety, Jess L. Anderson, 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	Subsection	
63G-4-203(1)	53-3-221(6)(v)	

#### **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 11/14/2023 until:

9.	This	rule	change	MAY	11/21/2023
bec	ome e	effect			

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	Christopher	Date:	09/29/2023
or designee	Caras, Division		
and title:	Director		

### **R708.** Public Safety, Driver License.

**R708-14.** Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.

# R708-14-1. Purpose.

Th[e]is [purpose of this]rule [is to-]establishes procedures [to be-]used by the[-Utah] Driver License Division [for]regarding alcohol and drug related adjudicative proceedings.

#### R708-14-2. Authority.

This rule is authorized by [Section 53-3-104 and ]Subsections 63G-4-203(1) and 53-3-221(6)(v).

#### R708-14-3. Definitions.

(1) Terms used in this rule are defined in Sections 63G-4-103 and 53-3-102.

(2) In addition;

[<u>(a)</u> "division" means the Driver License Division of the Utah Department of Public Safety;]

[(b)](a) "division record" means the entire division file, including written reports received or generated by the division. It also includes[, but is not limited to, minutes,] written comments, [presiding]hearing officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders;

(c) "hearing" means an [alcohol or drug]informal adjudicative proceeding where evidence is considered to determine an issue of fact;

(d) "hearing officer" means a division employee with authority to conduct a hearing; and

(c) "record[<u>ing</u>]" means<u>to</u> document[<u>ing</u>], by electronic or other means, the testimony or information presented at an alcohol or drug adjudicative proceeding.

#### R708-14-4. Designations.

(1) In compliance with Section 63G-4-202, [all]<u>the</u> <u>division has designated any</u> division [alcohol and drug\_]adjudicative proceeding[s are designated] as informal[<u>proceedings</u>, unless converted to formal proceedings by a presiding officer or division supervisor].

(2) A[<u>n informal proceeding] division supervisor</u> may[<u>be</u>] convert[<u>ed</u>] <u>an informal proceeding</u> to a formal proceeding [<u>only</u>]if [<del>approved by a division supervisor and only if</del>]the conversion will promote efficiency, public safety, and not unreasonably increase cost.

(3) The driver may represent [himself]themselves or be represented by a <u>Utah [S]state [L]licensed</u> attorney in the adjudicative proceeding.

#### **R708-14-5.** Authority for Conducting Adjudicative Proceedings.

Alcohol and drug adjudicative proceedings will be conducted in accordance with Sections 41-6a-521, 53-3-223, 53-3-231, 53-3-418, 63G-4-203, and this rule.

# R708-14-6. [Commencement of]Initiating an Adjudicative Proceeding[s].

(1) [In accordance with Subsection 63G-4-201, a]Alcohol and drug adjudicative proceedings <u>under this rule</u> may begin [commenced]by:

(a) a notice of division action<u>signed by the division</u> <u>director</u>, if the proceeding[<u>s are</u>] <u>is [commenced]initiated</u> by the division; or

(b) a request for division action, if the proceeding[s are] is [commenced-]initiated by a person other than the division.

(2) A notice of division action <u>sent by the division [and-]or</u> <u>a</u> request for division action <u>sent by a person other than the division</u> shall include the information [set forth-]in Subsections 63G-4-201(2)(a) and (3)(a) respectively.

(3) In addition to the information in Subsection 63G-4-201(3)(a), a petitioner's request for division action shall include the petitioner's:

(a) full name[<del>,</del>];

(b) date of birth[<del>,</del>]; and

(c) [the-]date of arrest or occurrence which prompted the request for division action.

#### R708-14-7. Alcohol and Drug Adjudicative Proceedings.

The alcohol and drug adjudicative proceedings <u>conducted</u> <u>by the division</u>, deal with the following types of hearings:

([a]1) [driving under the influence of alcohol or drugs (perse), S]any violation listed in Subsection 53-3-223(2);

([b]2) implied consent[-(refusal)], Section 41-6a-52[ $\theta$ ]1;

([e]3) measurable metabolite in body, Section [4<del>1 6a-517</del>]53-3-223;

 $([\underline{d}]\underline{4})$  consumption by a minor[-(not a drop)], Section 53-3-231; and

([e]5) CDL [(].04[)], Section 53-3-418.

#### R708-14-8. Request for Alcohol or Drug Hearing.

	(1) An individual requesting an alcohol or drug hearing
shall:	
	(a) submit a request in writing to the division within ten

	(a)	submi	t a req	uest ii	1 writing	g to	the	division	Within	ten
1	1	- <b>f</b> 41		. <b>.</b>	<b>4</b>					
<u>calendar</u>	days	of the	notice	of arr	est; and					
	(1-)	:	- 411		-					

(b	) include the driver's:
	a

(i) full name;

(ii) date of birth;

(iii) date of arrest;

(iv) current address;

(v) Utah license number if applicable; and

(vi) a designation if the driver will attend the hearing in person at a division office, telephonically, or by live audiovisual means.

(2) An individual making a request under Subsection (1) may submit the request to the division by:

(a) accessing the division's website dld.utah.gov/duihearing-request/;

(b) emailing dldui@utah.gov; or

(c) mailing the written request to PO Box 144501, Salt Lake City, Utah 84114-4501.

#### R708-14-[8]9. Hearing Procedures.

(1) <u>The division shall hold [A]alcohol and drug</u> adjudicative proceedings<u>, including the hearings listed in Section</u> <u>R708-14-7:[-will be held]</u>

(a) at a time and place designated by the division, or agreed upon by the parties; and

(b) in the county of arrest or a county [which is-]adjacent to the county in which the offense occurred[, at a time and place designated by the division, or agreed upon by the parties].

(2) <u>The county in which the hearing is held may be</u> designated by the division if each party and witness have requested to attend telephonically or by live audiovisual means.

(3) Notice of the hearing provided by the division shall be: (a) given as provided in Subsection 53-3-216([4]3) unless otherwise agreed upon by the parties:[-]

(b) mailed to the driver at their address on file with the division unless otherwise agreed upon by the parties;

(c) [Notice shall be given ]on a form approved by the division; and

(d) [is deemed to be ]signed by the [presiding officer]division director.

(4) The notice provided under Subsection (3) need only inform the parties as to the date, time, place, and basic purpose of the proceeding. The parties are [deemed]considered to [have knowledge of]know the law.

 $([\frac{3}{5})$  If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Subsection [63G-4-209]53-3-223(7)(a).

([4]6) The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues.

(7) The hearing officer may:

(a) exclude irrelevant, repetitious, immaterial, or privileged information or evidence[-];

(b) [The hearing officer may ]consider hearsay evidence and receive documentary evidence, including copies or excerpts[-];

(c) administer oaths;

(d) issue subpoenas;

(e) conduct prehearing conference by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(f) record or take notes of the hearing at their discretion; and

(g) take appropriate measures to keep the integrity of the hearing.

([5]8) The driver shall have access to information in the division file to the extent permitted by law.

([6]9) Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

([7]10) The hearing officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the hearing officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(a) administer oaths;

(b) issue subpoenas;

 (c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;  (d) audio record or take notes of the hearing at his discretion; and

 (e) take appropriate measures to preserve the integrity of the hearing.]

([9]11) The hearing officer shall make a recommendation to the presiding officer regarding action to be taken following the hearing.

# R708-14-[9]<u>10</u>. Findings, Conclusions, Recommendations and Orders.

(1) Statements reflecting findings of fact, conclusions of law, and recommendation may be written on forms [that utilize a system of check boxes and fill in blanks]approved by the division.

(2) Within a reasonable period[-of time] after the close of the hearing, the hearing officer shall issue an order[completed recommendation form will be transmitted to the presiding officer for the preparation of an order] that complies with Subsection 63G-4-203(1)(i).

#### R708-14-[10]11. Reconsideration.

(1) In accordance with Section 63G-4-302 a driver may file a request for reconsideration of the order within 20 days after receiving it.

(2) If the division does not issue an amended order within 20 days after receiving the request for reconsideration, the request for reconsideration shall be considered denied  $[_{7}]$ . [-and]

(3) [t]<u>The</u> driver may seek judicial review in accordance with Section 63G-4-402.

### KEY: adjudicative proceedings

Date of Last Change: 2023[November 1, 2018]

Notice of Continuation: December 16, 2021

Authorizing, and Implemented or Interpreted Law: <u>41-6a-521;</u> [<del>53-3-104;</del> ]<u>53-3-221(6)(v);</u> 53-3-223; 53-3-231; 53-3-418; 53-3-223.5; 63G-4-203(1)

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Repeal and Reenact				
Rule or Section Number:	R708-31	Filing ID: 55755		

# Agency Information

1. Department:	Public Safety		
Agency:	Driver Li	cense	
Room number:	Suite 26	00	
Street address:	4315 S 2	2700 W, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box 144501		
City, state and zip:	Salt Lake City, UT 84114-4501		
Contact persons:			
Name:	Phone:	Email:	
Kim Gibb	801- 556- 8198	kgibb@utah.gov	

Tara Zamora	801- 964- 4483	tarazamora@utah.gov
Britani Flores	801- 884- 8313	bflores@utah.gov

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

# General Information

# 2. Rule or section catchline:

R708-31. Ignition Interlock Systems

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

This rule filing has been edited to ensure compliance with industry standards necessary to set standards for the certification of ignition interlock systems.

# 4. Summary of the new rule or change:

This rule filing adds a definition section to explain terms used within this rule.

Sections have been added to clarify the certification process and to state clear expectations of ignition interlock system manufacturers to obtain and keep a certification.

Sections have also been added to include grounds for refusing or revoking certification and information on adjudicative proceedings.

# Fiscal Information

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

### A) State budget:

This rule filing is not expected to have any impact on the state government budget because the proposed changes are setting new and expanding existing requirements for manufacturers of ignition interlock systems.

There are no ignition interlock systems manufactured by the state.

# B) Local governments:

This rule filing is not expected to have any impact on local governments because the proposed changes are setting new and expanding existing requirements for manufacturers of ignition interlock systems.

There are no ignition interlock systems manufactured by any local government.

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

This rule filing may have an inestimable indirect fiscal cost to 40 certified ignition interlock system providers.

This rule is requiring manufacturers of ignition interlock systems to obtain certifications for their systems from an ISO-17025 Laboratory Management System to be on the Division of Driver License's (Division) list of certified systems.

This rule is also requiring manufacturers to have their manufacturing facilities brought up to the industry standard according to the ISO-9001 Quality Management Standard.

In addition, the systems are being required to be equipped with cameras.

The changes this rule imposes on the manufacturers of ignition interlock systems have a potential to raise the cost an ignition interlock system provider may have to pay a manufacturer to provide an ignition interlock system to the public.

The costs are inestimable because the Division is not able to determine what, if any, cost may be passed down to the system providers from the manufacturers.

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

This rule filing may have an inestimable direct fiscal cost to eight certified ignition interlock system manufacturers.

This rule is requiring the manufacturers of ignition interlock systems to obtain certifications of any system submitted to the Division to be certified in an independent lab that is accredited to the ISO-17025 Laboratory Management Standard to be on the Division's list of certified systems, and to have any facility that manufactures ignition interlock systems to be certified to the ISO-9001 Quality Management Standard.

Additionally, this rule filing requires all ignition interlock systems to be equipped with a camera no later than 12/31/2023, and will require a new certification of any system that has undergone updates or software changes to the degree that it changes the system from the condition it was originally certified under.

The rule filing also requires manufacturers to submit a new certification of the system from an independent lab that is accredited to the ISO-17025 Laboratory Management Standards every three years.

The costs are inestimable because the Division is not able to determine how much an interlock manufacturer would have to pay to become certified to the industry standard to the ISO-9001 Quality Management Standard.

A search of companies who offer the certification shows a range of fees from as low as \$497 to as high as \$1,000,000 depending on several different factors. Due to the wide range of fees and the options available to each

manufacturer to choose for their certifications, the Division is not able to list an accurate or specific cost for certification.

The Division would also not be able to determine the cost of facility upgrades a manufacturer may need to make it be in compliance with ISO-9001 Quality Management Standards to obtain the certification.

In addition, the Division is not able to determine how much it might cost a manufacturer to produce ignition interlock systems that are equipped with cameras. Each manufacturer may have several options for choosing a camera that are not stipulated in this rule.

The Division is only asking for the camera to capture certain information, not the type of camera. This may make the cost vary depending on which type of camera the manufacturer chooses to install on the systems.

Furthermore, several of the manufacturers are already manufacturing systems with qualifying cameras meaning that this potential cost would not apply to those. A survey of existing certified manufacturers yielded a fee of \$100,000 to \$150,000 to have a single ignition interlock system certified by a lab that is accredited to the ISO-17025 Laboratory Management Standard.

There are currently 10 certified systems in production. Because each system will have a different renewal date, the Division is not able to determine how much it might cost a manufacturer to submit the systems they have in production to show compliance with NHTSA standards for renewal or for recertification after any changes have been made.

Although this rule is requiring the manufacturers of ignition interlock systems to obtain certifications of any system submitted to the Division to be certified in an independent lab that is accredited to the ISO-17025 Laboratory Management Standard in order to be on the list of certified systems, this requirement is not new to the process and all current ignition interlock system manufacturers currently have this certification, as a result, this addition to this rule will not have any compliance costs.

This rule filing may have an inestimable indirect fiscal cost to one certified ignition interlock provider. This provider is not included with the other non-small businesses because the possible fiscal impact is different since it is an ignition interlock system provider and not an ignition interlock system manufacturer.

This rule is requiring manufacturers of ignition interlock systems to obtain certifications for their systems from an ISO-17025 Laboratory Management System. This rule is also requiring manufacturers to have their manufacturing facilities brought up to the industry standard according to the ISO-9001 Quality Management Standard.

In addition, the systems are being required to be equipped with cameras. The changes this rule imposes on the

manufacturers of ignition interlock systems have a potential to raise the cost an ignition interlock system provider may have to pay a manufacturer to provide an ignition interlock system to the public.

The costs are inestimable because the Division is not able to determine what, if any, cost may be passed down to the system providers from the manufacturers.

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 filing may have an inestimable indirect fiscal cost to approximately 15,263 persons other than small businesses, non-small businesses, state, or local government entities. This number is an approximation of current drivers with an ignition interlock restriction in the Division's database, and is likely to change as individuals have the ignition interlock requirement removed or as new individuals have the requirement added.

Members of the public who are required to have an ignition interlock system installed in their vehicle may see an increase in fees from ignition interlock system providers that may have incurred a cost increase to obtain the ignition interlock systems this rule filing requires.

The costs are inestimable because the Division is not able to determine what, if any, cost may be passed down to the system providers from the manufacturers which, in turn, could mean an increase in the form of fees for members of the public.

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

The compliance costs for affected persons are inestimable due to ranging costs and variables that would be specific to each manufacturer.

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 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	\$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 Public Safety, Jess L. Anderson, 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 41-6a-518

# 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)	Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS)
Publisher	Office of the Federal Register, National Archives and Records Administration
Issue Date	May 8, 2013
Issue or Version	Volume 78, Number 89

#### 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	11/14/2023
unt	il:				

# 9. This rule change MAY 11/21/2023 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	Christopher	Date:	09/19/2023
or designee	Caras, Division		
and title:	Director		

**R708.** Public Safety, Driver License. **R708-31.** Ignition Interlock Systems.

[R708-31-1. Authority.

(1) This rule establishes standards for the certification of ignition interlock systems as required by Section 41-6a-518.

#### R708-31-2. Purpose.

(1) The purpose of this rule is to provide standards and requirements for certifying ignition interlock systems.

#### R708-31-3. Standards.

(1) All vendors who want to certify and provide ignition interlock systems shall:

 (a) apply to the Driver License Division of the Department of Public Safety;

(b) provide an independent laboratory report showing evidence that their ignition interlock system meets the requirements of NHTSA (Federal Register Vol. 57. No. 67) which is incorporated by reference, and the standards as specified in Section 41–6a–518; and (c) meet the requirements of Section 4 of this rule in order to be placed on an approved vendor's list.

#### R708-31-4. Requirements.

(1) To be included on an approved vendor's list, each vendor must:

(a) be certified by the Department of Public Safety to operate in Utah;

(b) show evidence that there is adequate product liability insurance; and

(c) pay all applicable fees.]

R708-31-1. Purpose.

The purpose of this rule is to provide standards and requirements for certifying ignition interlock systems and manufacturer performance standards.

#### R708-31-2. Authority.

This rule is authorized by Section 41-6a-518.

#### R708-31-3. Definitions.

(1) Terms used in this rule are defined in Sections 41-6a-518, 53-3-102, and 53-3-1002.

(2) In addition:

(a) "calibration" means the verification of system function, and adjusting an ignition interlock system to ensure the accuracy of the breath test result; (b) "camera" means a feature of the system that captures a digital image of the individual submitting to the breath test;

(c) "captured data" means data or images downloaded or sent from a system;

(d) "circumvention" means bypassing the correct operation of the system to allow starting or operating the vehicle without a passing breath test;

(e) "department" means the Department of Public Safety;

(f) "division" means the Driver License Division;

(g) "handset" means the component on the system that contains the fuel cell for the response after gathering the initial breath data;

(h) "install" means any service provided by an ignition interlock installer including the installation or removal of an ignition interlock system and the performance of any type of maintenance or service on an ignition interlock system;

(i) "ISO-17025 Laboratory Management Standard" means an international operating standard for which labs must hold accreditation to be considered technically competent;

(j) "ISO-9001 Quality Management Standard" means an international operating standard for which an organization may hold certification to show they have met the criteria for quality management principles;

(k) "manufacturer" means an entity responsible for the design, development, production, and repair of a system;

(1) "manufacturer representative" means an individual designated by the manufacturer as the contact for the division:

(m) "monitoring" means the calibration and maintenance of the system to ensure proper function and use, and the downloading of any captured data from the system;

(n) "NHTSA" means the National Highway Traffic Safety Administration;

(o) "relay" means a control box or communication device of the system that logs events and sends data;

(p) "retest" means an additional required breath test;

(q) "system" means an ignition interlock system; and

(r) "tampering" means to physically disable, disconnect, adjust, or otherwise alter the proper operation of a system, and does not include the removal of a system by an ignition interlock installer licensed by the division if the removal is reported to the division as required.

#### **R708-31-4.** Standards for Certification.

(1) An applicant shall complete an application packet for certification of a system in writing and mail it to the division at Box 144501, Salt Lake City, Utah 84114.

(2) The application packet under Subsection (1) shall include:

(a) an application provided by the division;

(b) a certification report for each system from an independent lab accredited to the ISO-17025 Laboratory Management Standard that includes:

(i) a description of the tests run on each system;

(ii) test results dated after May 8, 2014;

(iii) a signature of the corporate officers of the lab that certify the accuracy of the reported results; and

(iv) verification the test results show the system meets or exceeds the standards in:

(A) the NHTSA model specifications for breath alcohol ignition interlock devices (BAIID), 78 FR 26849-26867, May 8, 2013, which are incorporated by reference;

(B) this rule; and

(C) Section 41-6a-518;

(c) a certification the systems are manufactured in a facility that is accredited to the ISO 9001 Quality Management System; and

(d) the operator's manual, users guide, and maintenance manual for each certified system.

(3) The division shall reject any incomplete application packet.

(4) The manufacturer of a system shall bear any costs of that system's certification.

#### R708-31-5. Minimum System Requirements.

(1) For each system submitted for certification the manufacturer shall include:

(a) a system that will record at a minimum:

(i) each start attempt and outcome including override if applicable;

(ii) a description and results of calibration checks;

(iii) any attempts at circumvention;

(iv) any attempts at tampering;

(v) the breath alcohol content for each start attempt;

(vi) the date and time of each attempt; and

(vii) chronological order of each entry; and

(b) a camera as outlined in Section R708-31-8.

(2) The manufacturer shall ensure:

(a) data contained in a system's memory shall be downloaded during any system monitoring or service and reported to the division in a manner described by the division:

(b) login credentials to access system data are provided to the division upon request and at no cost:

(c) captured is retained for four years from the date the system is removed from any vehicle; and

(d) additional reports requested by the division and are provided in a format acceptable to and at no cost to the division.

(3) The division may: (a) conduct testing on any systems submitted for certification. The manufacturer or provider shall provide at no cost at

least one fully functional sample of each system upon request of the division; and

(b) in its discretion, retain systems provided regardless of whether the system is no longer the current version or model of that system.

(4) The division may also select any system in Utah to conduct testing according to Section R708-31-4.

(5) The division may require recertification of an existing certified system that has been modified.

(6)(a) The manufacturer shall notify the division not less than 30 days before implementation of any modification, upgrade, or alteration to any hardware, software, or firmware of a system certified for use in this state.

(b) The notification shall include the following:

(i) a description and explanation of the modification, upgrade, or alteration and proof satisfactory to the division that these modifications, upgrades, or alterations do not adversely affect the ability of the system to satisfy the requirements of this rule and Section 41-6a-518; and

(ii) a comprehensive plan of action for the phasing out of the use of the current system. This plan of action shall be approved by the division before the implementation of the plan of action.

(10) Each existing certified manufacturer shall obtain accreditation of the ISO 9001 Quality Management System no later than December 31, 2023.

(11) Systems not meeting certification standards contained in this rule may not be used or installed in Utah after December 31, 2023.

#### **R708-31-6.** List of Certified Systems.

(1) The division shall maintain and post a list of certified systems on the division website.

(2) To be included on the approved list of certified systems under Subsection (1), each manufacturer shall:

(a) have a system that meets the certification standards in Section R708-31-4;

(b) provide the division with a representative photograph of each certified system;

(c) submit and comply with a quality assurance plan that includes procedures for:

(i) checking the calibration;

(ii) downloading the data;

(iii) maintenance;

(iv) checking for tampering; and

(v) any other information regarding quality assurance unique to the system;

(d) submit a detailed description of the system including:

(i) a signed test certificate with complete test results as identified in Section R708-31-4;

(ii) system serial numbers from the:

(A) relay;

(B) handset; and

(C) camera; and

(iii) software versions of systems tested;

(e)(i) provide a certificate of insurance, issued by an insurance company authorized to transact business in Utah;

(ii) provide an adequate product liability policy with a current effective date;

(iii) specify the name and model number of the systems covered by the policy;

(iv) maintain policy coverage of at least \$1,000,000 per occurrence and 3,000,000 in whole;

(v) list the manufacturer as the insured and the Department of Public Safety, Driver License Division as an additional insured;

(vi) cover product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the system; and

(vii) ensure the insurance company will notify the division immediately upon cancellation and at least 30 days before terminating product liability policy; and

(f) pay any applicable fees.

(3) Certification listed under this section shall expire:

(a) three years after the date of issuance; or

(b) upon changes or updates to the system including any software, hardware, or standards listed in Section R708-31-4.

(4) A manufacturer requesting a recertification or a renewal of a certification of a system shall submit:

(a) a new application and fee; and

(b) certification for each system showing compliance with the standards referenced in Section R708-31-4.

(5) The division may deny an application to renew a system certification or cancel an existing certification if there is pending action against the manufacturer, manufacturer representative, or provider for any violation of this rule, Rule R708-48, or Sections 53-3-1001 through 53-3-1008.

(6) A manufacturer who fails to maintain the standards in this rule will result in loss of certification of their system and removal from the approved list of certified systems.

(7) The division will approve or deny the certification and notify the applicant within 30 days of the determination.

#### **R708-31-7.** Manufacturer Performance Standards.

A manufacturer shall:

(1) designate a manufacturer representative as a contact person for the division;

(2) notify the division in writing of:

(a) a change in manufacturer representative within seven days of the change;

(b) system software changes and effects before the changes are made;

(c) any recalls, defects, or system issues that would result in the system no longer meeting the standards in Section R708-31-4;

(d) any system or model presenting a public safety risk, or five or more failures of an installed system in any 12 month period; and

(e) a certification or license that has been denied, canceled, suspended, revoked or any similar action in any jurisdiction outside of Utah within 30 days of receiving the notice of the action;

(3) not allow programming or modification of system features to be made by installers;

(4) make any data captured through the system or camera readily available to the division;

(5) agree to ensure proper record keeping in a format approved by the division;

(6) provide testimony, at no cost to, and on behalf of the state or a political subdivision of the state relating to;

(a) any aspect of the installation, service, repair, use, or removal, of a system;

(b) interpretation of any report or information recorded in the data storage system of a system; and

(c) the performance of any other duties required;

(7) upon the request of the division, for each model approved by the division, provide a total of not less than 10 hours of training to division employees at no cost to this state that shall:

(a) be held at times and locations within the state designated by the division;

(b) familiarize division employees with the installation, operation, service, repair, and removal of the system; and

(c) include the training and instructions that an installer will give to customers.

#### R708-31-8. Camera Requirements.

(1) A manufacturer submitting a system for certification shall ensure cameras installed on a system shall:

(a) not impede the field of vision for the safe and legal operation of the vehicle;

(b) not pose a threat to the driver or passengers of the vehicle in the event of dislodgement;

(c) take an image of the individual with sufficient clarity to allow identification;

(d) capture images of the individual conducting the breath alcohol test for the following:

(i) successful completion of the initial breath test sample; (ii) successful completion of any retest breath test sample;

(iii) unsuccessful delivery of the initial breath test sample;

(iv) unsuccessful delivery of any retest breath test sample;	(k) the manufacturer, manufacturer representative
and	provider, or installer fails to submit any reports in accordance with
(v) high breath alcohol test results;	any reporting requirement; or
(e) capture identifiable images in any lighting condition;	(1) false or inaccurate information provided by the
and	manufacturer, manufacturer representative, or independent
(f) incorporate tamper detection features that include:	laboratory relating to the performance, reliability, function, o
(i) covering, blocking, or coating of the lens to distort the	capabilities of the system.
image;	(2) The division shall forward the notice and order of
(ii) repositioning of the field of view so that it no longer is	revocation of the certification of a system to the manufacture
aimed at the driver; and	representative and ensure the notice and order of revocation specific
(iii) disconnection from communication or power from the	the basis for the revocation.
· · · · ·	
system. (2) I wanted to be the second shall be stored by the	(3) A manufacturer of a previously decertified system ma
(2) Images taken by the camera shall be stored by the	apply to have the system certified in accordance with this rule
manufacturer with the:	changes to equipment, procedures, or practice correcting the
(a) date and time of the image capture;	violation are submitted in writing to the division.
(b) results of each breath test; and	(4) The division will not consider certification of a system
(c) corresponding system serial number of the:	from a manufacturer that fails to comply with this subsection.
(i) relay;	
(ii) handset; and	R708-31-10. Procedures Governing Informal Adjudicativ
(iii) camera.	Proceedings.
(3) A manufacturer shall have data readily available to the	(1) The division shall notify a manufacturer representativ
division upon request.	in writing of the decision to refuse to certify a system.
(4) A system not equipped with a camera by December 31,	(2) The division shall begin an action to revoke th
2023, will be decertified by the division.	certification of a system by the issuance of a notice of agency actio
	and ensure the notice of agency action complies with Section 63G-4
R708-31-9. Grounds for Refusal to Certify or Revocation of	<u>201.</u>
Certification.	(3) The manufacturer does not need to respond to th
(1) The division may refuse to certify or may revoke an	notice of agency action.
existing certification for any of the following reasons:	(4) The manufacturer may send a written request for
(a) failure to comply with:	hearing within ten days of the letter refusing to certify a system, or t
(i) Title 53, Chapter 3, Part 10, Ignition Interlock System	revoke a system certification to the division, in accordance wit
Program Act;	Subsection 63G-4-201(3).
(ii) Section 41-6a-518;	(5) The division shall grant a hearing when the divisio
(iii) Title 13, Commerce and Trade; or	receives a request, in writing, within ten calendar days from the dat
(iv) this rule or any other rule of the Department of Public	the notice of failure to certify or notice of agency action is issued.
Safety;	(6) The division shall send written notice of a hearing a
(b) any omission, false statement, or any falsification, with	least 14 calendar days before the date of the hearing.
or without intent or knowledge of:	(7) The division may not allow discovery, either
(i) an application; or	compulsory or voluntary, before the hearing except that each part
(ii) any records or other required information relating to	shall have access to information in the division's files to the exter
Title 53, Chapter 3, Part 10, Ignition Interlock System Program Act;	permitted by law, and to investigative information and materials no
(c) interference or failure to permit the division or its	restricted by law.
representatives to inspect records or any data collected from the	(8) A hearing officer shall hold a hearing within 3
camera or system;	<u>calendar days from the day that the division receives the writte</u>
(d) a defect in the design, materials, or workmanship	request for hearing, unless agreed to by the parties;
causing the system to fail to function as intended;	(9) The division shall issue a written decision that sha
(e) notification of the denial, cancellation, or revocation of	constitute final agency action within 20 days after the date of the
certification from another state;	close of the hearing, or after the failure of a party to appear for the
(f) false, incomplete, or inaccurate information provided	hearing.
by the manufacturer, manufacturer representative, or independent	(10) The division shall ensure the written decision state
laboratory;	the reason for the decision, notice of right to request reconsideration
(g) modification of the components or design of the system	under Section 63G-4-302, notice of right of judicial review under
or modification that causes the system to no longer satisfy the	Section 63G-4-402, and the time limits for filing an appeal to the
standards in Section R708-31-4;	appropriate district court.
(h) the system fails the compliance testing conducted by	
the division;	KEY: ignition interlock systems
(i) the system fails to meet the requirements for	Date of Last Change: <u>2023</u> [February 21, 2014]
certification or is no longer in compliance with the requirements in	Notice of Continuation: March 15, 2019
this rule;	Authorizing, and Implemented or Interpreted Law: 41-6a-518
(j) a manufacturer's liability insurance coverage is	<u>53-3-1001</u>
terminated, canceled, or expired;	
172	UTAH STATE BULLETIN. October 15, 2023, Vol. 2023, No. 2

# NOTICE OF PROPOSED RULE

TYPE OF FILING:	Amendment	
Rule or Section Number:		Filing ID: 55815

# **Agency Information**

1. Department:	Public Safety
Agency:	Driver License
Room number:	Suite 2600
Street address:	4315 S 2700 W, 2nd Floor
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 144501

City, state and Salt Lake City, UT 84114-4501 zip:

# Contact persons:

Name:	Phone:	Email:
Kim Gibb	801- 556- 8198	kgibb@utah.gov
Tara Zamora	801- 964- 4483	tarazamora@utah.gov
Britani Flores	801- 884- 8313	bflores@utah.gov

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

# General Information

# 2. Rule or section catchline:

R708-35. Adjudicative Proceedings For Driver License Offenses Not Involving Alcohol or Drug Actions

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

This rule filing adds two new violations to the list of offenses the Division of Driver License (Division) will hold an adjudicative proceeding for as a result of the passage of H.B. 62 from the 2023 General Session.

In addition, formatting and verbiage of this rule has been updated.

# 4. Summary of the new rule or change:

This rule adds two new violations to the list of offenses the Division will hold an adjudicative proceeding for because of the passage of H.B. 62 (2023).

In addition, the statute granting authority has been updated, and a new statute has been added.

The definition section has been edited to include two statutes that contain definitions used throughout this rule.

Information has been added to a request for an administrative hearing.

The rule has been renumbered to be consistent with other division rules. Sections R708-35-8 and R708-35-9 have been edited to be consistent with the verbiage contained in Rule R708-14.

(EDITOR'S NOTE: The proposed amendment to Rule R708-14 is under ID 55813 in this issue, October 15, 2023, of the Bulletin.)

# Fiscal Information

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

# A) State budget:

This rule change is not expected to have an impact on the state budget because this rule does not change any of the Division's current processes.

# B) Local governments:

This rule change is not expected to have an impact on local governments because this rule does not affect any local governments.

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

This rule change is not expected to have an impact on small businesses because this rule does not affect any small businesses.

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

This rule change is not expected to have an impact on nonsmall businesses because this rule does not affect any 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 an impact on persons other than small businesses, non-small businesses, state or local government budget because this rule only affects the Division.

**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 compliances costs for affected persons.

This rule is not changing any of the processes of the Division. It is updating for formatting and verbiage clarification and to add two more violations to the list of

offenses for which the Division may hold an administrative hearing.

**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.)

	-	
Dogulatory	Impost	Tabla
Regulatory	IIIIDaci	I able

ipact rable		
FY2024	FY2025	FY2026
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$0	\$0
FY2024	FY2025	FY2026
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$0	\$0
\$0	\$0	\$0
	FY2024         \$0	FY2024       FY2025         \$0       \$0

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

The Commissioner of the Department of Public Safety, Jess L. Anderson, 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	Subsection
63G-4-203(1)	53-3-221(6)(v)

### **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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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

0 3	d Christopher	Date:	09/29/2023
or designee	Caras, Division		
and title:	Director		

# **R708.** Public Safety, Driver License.

R708-35. Adjudicative Proceedings For Driver License Offenses Not Involving Alcohol or Drug Actions.

# R708-35-1. Purpose.

[The purpose of t]This rule [is to-]establishes procedures [to be-]used by the [Utah-]Driver License Division for non-alcohol[-] or drug adjudicative proceedings.

#### R708-35-2. Authority.

This rule is authorized by [Section 53-3-104 and ]Subsections 63G-4-203(1) and 53-3-221(6)(v).

#### R708-35-3. Definitions.

(1) Terms used in this rule are defined in Sections 63G-4-103 and 53-3-102.

(2) In addition:

[ (1) "Adjudicative proceeding" means any meeting, conference, session or hearing, in person or otherwise, between a person and a presiding officer or designee of the division, that is intended to resolve a dispute.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.]

([3]a) "[ $\oplus$ ]division record" means the entire division file, including written reports received or generated by the division. It also includes[<del>, but is not limited to,</del>] minutes, written comments, [<del>presiding]hearing</del> officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders[-]:

([4]b) "[H]hearing" means a non-alcohol[f] or drug adjudicative proceeding where evidence is considered to determine an issue of fact and to adjudicate a legal right or privilege[-]:

([5]c) "[Presiding]hearing officer" means a division employee with authority to conduct non-alcohol[/] or drug adjudicative proceedings[-]:

 $([\underline{6}]\underline{d})$  "[R]record[ing]" means to\_document[ing], by electronic or other means, the testimony or information presented at a [non-alcohol/drug-]adjudicative proceeding[-]; and

 $([7]_{\underline{c}})$  "[S]<sub>s</sub>erious violation" means a single violation determined by the division to require immediate remedial action.

#### R708-35-4. Designations.

(1) In compliance with Section 63G-4-202, [all]the division has designated any division non-alcohol[/] or drug adjudicative proceeding[s are designated] as informal[-proceedings, unless converted to formal proceedings by a presiding officer or division supervisor].

(2) A[n informal proceeding] division supervisor may[-be] convert[ed to] an informal proceeding to a formal proceeding[-only] if [approved by a division supervisor and only if] the conversion will promote efficiency, public safety, and not unreasonably increase cost. (3) The driver may represent themselves or be represented

by a Utah state licensed attorney in the adjudicative proceeding.

#### **R708-35-5.** Authority for Conducting Adjudicative Proceedings.

Non-alcohol[/] or drug adjudicative proceedings will be conducted by the division in accordance with Sections 53-3-221, 63G-4-203, and this rule.

#### R708-35-6. [Commencement of |Initiating an Adjudicative Proceeding[s].

(1) [In accordance with Subsection 63G-4-201(1), nonalcohol/drug a]Adjudicative proceedings under this rule may begin [commenced]by:

(a) a notice of division action, signed by the division director, if the proceeding[s are] is [commenced]initiated by the division: or

(b) a request for division action, if the proceeding[s are] is [commenced]initiated by a person other than the division.

(2) A notice of division action sent by the division or a[and] request for division action sent by a person other than the division shall include the information [set forth-]in Subsections 63G-4-201(2)(a) and (3)(a) respectively.

(3) In addition to the information in Subsection 63G-4-201(3)(a), a petitioner's request for division action shall include the petitioner's:

(a) full name;

(b) date of birth; and

(c) date of arrest or occurrence which prompted the request for division action.

#### R708-35-7. [Non-Alcohol/Drug-]Adjudicative Proceedings\_Not **Involving Alcohol or Drugs.**

The non-alcohol[/] or drug adjudicative proceedings conducted by the division deal with the following types of hearings:

([a]1) point system, Sections 53-3-209 and 53-3-221;

([b]2) financial responsibility, Sections 41-12a-303.2, 41-12a-503, 41-12a-511, and 53-3-221;

([e]3) caused or contribut[ing]ed to an [fatality]accident resulting in injury, death, or serious property damage, Section 53-3-221;

([d]4) serious violation, Section 53-3-221;

([e]5) unlawful use of a license, Section 53-3-229;

([f]6) fraudulent application, Section 53-3-229;

 $\left(\frac{1}{2}\right)$  failure to appear or comply, Section 53-3-221;

([h]8) review examination request, Subsection 53-3-221(11);

([i]9) driving during denial, suspension, revocation, or disqualification, Subsection 53-3-220(2);

([i]10) leaving the scene of an accident, Section 53-3-221 [(]serious violation[)];[-and]

([k]11) limited license, Subsection 53-3-220-(4)(a)[-];

(12) attempting to start a vehicle with a measurable amount of breath alcohol, Subsection 53-3-1007(2)(b); and

(13) failing to report for maintenance of an ignition interlock system, Subsection 53-3-1007(2)(c).

#### R708-35-8. Hearing Procedures.

(1) [Time and place. Non-alcohol/drug ]The division shall hold adjudicative proceedings [will be held ]at a time and place agreed upon by the parties.

(2) [Notice.]Notice of the adjudicative proceeding issued by the division shall be:

(a) given as provided in Subsection 53-3-216(3) unless otherwise agreed upon by the parties[-];

(b) mailed to the last known address on file with the division unless otherwise agreed upon by the parties;

(c) [Notice shall be given ]on a form approved by the division; and

(d) [is deemed to be ]signed by the [presiding officer]division director.

(3) The notice provided under Subsection (2) need only inform the parties about the date, time, place, and basic purpose of the proceeding. The parties are [deemed\_]considered to [have knowledge of know the law.

([3]4) [Default.] If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Subsection [63G-4-209]53-3-223(7)(a).

([4]5) [Evidence.] The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues.

(6) The [presiding ]hearing officer may:

(a) exclude irrelevant, repetitious, immaterial, or privileged information or evidence[-];

(b) [The presiding officer may ]consider hearsay evidence and receive documentary evidence, including copies or excerpts[-]; (c) administer oaths;

(d) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(e) record or take notes of the hearing at their discretion; and

(f) take appropriate measures to preserve the integrity of the hearing.

([5]7) [Information. ]The driver shall have access to information in the division file to the extent permitted by law.

([6]8) [Subpoenas. ]Discovery is prohibited[, but] however, the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

([7]9) [Administrative notice.] The [presiding]hearing officer has discretion to take administrative notice of:

(a) records[<del>,</del>];

(b) procedures[<del>,</del>];

(c) rules[,]; (d) policies[<del>,</del>];

(e) technical scientific facts within the [presiding]hearing officer's specialized knowledge or experience[,]; or

(f) [of] any other facts that could be judicially noticed.

(8) Presiding officer. The presiding officer may:

(a) administer oaths;

(b) issue subpoenas:

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

 (d) tape record or take notes of the hearing at his/her discretion; and

(e) take appropriate measures to preserve the integrity of the hearing.]

# R708-35-9. Findings, Conclusions, Recommendations, and Orders.

(1) [Within a reasonable period of time after the close of the hearing, the presiding officer will issue a written decision that may include findings of fact, conclusions of law, and a recommendation]Statements reflecting findings of fact, conclusions of law, and recommendations may be written on forms approved by the division.

(2) [Statements reflecting findings of fact, conclusions of law, and recommendation may be written on a form that is approved by the division. The completed form will be transmitted to the central office of the division as soon as possible for the preparation of an order that complies with Subsection 63G-4-203(1)]Within a reasonable period after the close of the hearing, the hearing officer shall issue an order that complies with Subsection 63G-4-203(1)(i).

(3) [As provided in Subsection 53-3-216(3), t]The order will be mailed to the [last known address of the driver]driver's address on file with the division.

[ (4) The order shall advise the driver of his/her right to seek a copy of written findings, conclusions, and recommendation of the presiding officer, and these will be made available to the driver only upon written request.]

#### R708-35-10. Reconsideration.

(1) In accordance with Section 63G-4-302 a driver may file a request for reconsideration of the order within 20 days after receiving it.

(2) If the division does not issue an amended order within 20 days after receiving the request for reconsideration[ $_{7}$ ] the request for reconsideration shall be considered denied[ $_{7}$  and].

(3) [\*]The driver may seek judicial review in accordance with Section 63G-4-402.

#### **KEY:** adjudicative proceedings

Date of Last Change: 2023[October 6, 1997]

Notice of Continuation: December 16, 2021

Authorizing, and Implemented or Interpreted Law: [53 3-104]41-12a-303.2; 41-12-503, 41-12a-511; 53-3-209; 53-3-220; 53-3-221; 53-3-221(6)(v); 53-3-229; 53-3-1007(2)(b); 53-3-1007(2)(c); 63G-4-203(1)

NOTICE OF PROPOSED RULE				
TYPE OF FILING: Amendment				
Rule or Section Number:R708-41Filing ID: 55802				

# **Agency Information**

1. Department:	Public Safety
Agency:	Driver License
Room number:	Suite 2600

Street address:	4315 S 2700 W, 2nd Floor			
City, state and zip:	Taylorsville, UT 84129			
Mailing address:	PO Box	144501		
City, state and zip:	Salt Lake City, UT 84114-4501			
Contact persons:				
Name:	Phone:	Email:		
Kim Gibb	801- 556- 8198	kgibb@utah.gov		
Tara Zamora	801- 964- 4483	tarazamora@utah.gov		
Britani Flores	801- 884- 8313	bflores@utah.gov		

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

#### **General Information**

#### 2. Rule or section catchline:

R708-41. Requirements for Acceptable Documentation, Storage and Maintenance

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

The purpose of this rule is to implement legislative changes for S.B. 70 from the 2023 General Session, and to add a term to describe the condition which the Division of Driver License (Division) may decline to accept a document.

# 4. Summary of the new rule or change:

This rule filing allows for a participant in the Safe at Home Program to use an assigned address issued under the program to satisfy proof of residency requirements to apply for a driving privilege or identification card.

A new term has been added to Subsection R708-41-10(1) which will allow the Division to decline to accept a document that has been damaged for the purposes of obtaining a driving privilege or identification card.

Formatting has been updated throughout this rule for consistency with the Rulewriting Manual for Utah standards.

# **Fiscal Information**

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

# A) State budget:

This rule change is not expected to have any impact on the state budget because this rule is utilizing resources already in place and is simply adding a new form to provide proof of residency required to apply for a driving privilege or identification card.

# B) Local governments:

This rule change is not expected to have any impact on local governments because this rule is utilizing resources already in place and is simply adding a new form to provide proof of residency required to apply for a driving privilege or identification card.

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

This rule change is not expected to have any impact on small businesses because this rule is utilizing resources already in place and is simply adding a new form to provide proof of residency required to apply for a driving privilege or identification card.

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

This rule change is not expected to have any impact on non-small businesses because this rule is utilizing resources already in place and is simply adding a new form to provide proof of residency required to apply for a driving privilege or identification card.

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

This rule change is not expected to have any impact on persons other than small businesses, non-small businesses, state, or local entities because this rule is utilizing resources already in place and is simply adding a new form to provide proof of residency required to apply for a driving privilege or identification card.

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 associated with this rule.

This rule change is not adding or changing any processes already in place.

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 Public Safety, Jess L. Anderson, 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 53-3-104

# 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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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	Christopher Caras, Division	Date:	09/27/2023
and title:	Director		

# **R708.** Public Safety, Driver License. **R708-41.** Requirements for Acceptable Documentation, Storage<u></u>, and Maintenance.

# R708-41-1. Purpose.

The purpose of this rule is to:

(1) define acceptable documentation for:

(a) a driver license certificate or -identification card;

(b) honorable or general discharge from the United States military; and

(c) establishing homelessness as verified by the Department of Workforce Services to prove residency and obtain a fee waiver for an identification card; and

(2) establish procedures for storage and maintenance of those documents pursuant to Title 53, Chapter 3, Uniform Driver License Act.

#### R708-41-2. Authority.

This rule is authorized by Section 53-3-104.

#### R708-41-3. Definitions.

(1) Terms used in this rule are defined in Section 53-3-102.(2) In addition:

(a) <u>"acceptable document" means an original document</u>, or a copy of an original document certified by the issuing agency, that the division shall accept for determining the validity of information submitted for a license certificate or identification card application;

(b) "alternate document" means a document that may be accepted when the applicant cannot present the necessary documents to establish identity or date of birth as required for a license certificate or identification card application;

(c) "covered humanitarian parolee" means a person who is a citizen and national of Afghanistan who has been paroled into the United States between July 31, 2021, and September 30, 2022, and certain immediate family members who have been paroled into the United States after September 30, 2022;

(d) "DHS" means the Department of Homeland Security;

(e) "exception process" means a written, defined process for persons who are unable to present [all]the necessary documents and must rely on alternate documents to establish identity, date of birth, or US citizenship;

(f) "identity document" means an original, governmentissued document that contains identifying information about the subject of the document;

(g) "full legal name evidence" means the name established on an identity document;

(h) "ITIN" means an individual tax identification number;

(i) "ITIN evidence" means an official document used to verify an individual's assigned individual tax identification number;

(j) "lawful presence or status" means that an individual's presence in the United States does not violate state or federal law;

(k) "lawful presence or status evidence" means a document issued by the federal government or approved by DHS, or the division director or designee, that shows legal presence of an individual;

(l) "SAVE" means the Systematic Alien Verification for Entitlements system;

(m) "SAVE verification" means verification of a document issued by the federal government through DHS, SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security;

(n) "SSN" means a social security number issued by the Social Security Administration;

(o) "SSN evidence" means an official document used to verify an individual's social security number;

(p) "SSOLV" means the social security online verification system;

(q) "Utah residence address" means the place where an individual has a fixed permanent home and principal establishment in Utah and where the individual voluntarily resides, that is not for a special or temporary purpose;

(r) "Utah residence address evidence" means a document that displays the applicant's name and principal Utah residence address;

(s) "veteran indicator" means the word VETERAN added to a driver license certificate or identification card during the application process at the applicant's request upon the applicant providing proof of an honorable discharge or general discharge under honorable conditions from the United States military.

#### **R708-41-4.** Acceptable Forms of Identity Documents.

(1) <u>The division has identified the following documents as</u> [A]acceptable forms of identity documents[-include the following]:

(a) a valid, unexpired United States passport or passport card;

(b) a certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's state of birth;

(c) Consular Report of Birth Abroad forms FS-240, DS-1350 or FS-545, issued by the United States Department of State;

(d) a valid, unexpired Permanent Resident Card;

(e) a valid, unexpired Conditional Permanent Resident Card;

(f) a Temporary Stamp Visa or Temporary Admittance Document form I-551;

(g) a Certificate of Naturalization issued by DHS, form N-550 or form N-570;

(h) a Certificate of Citizenship, form N-560 or form N-561, issued by DHS;

(i) a regular driver license, commercial driver license, or identification card that has been issued by the Utah Driver License Division on or after January 1, 2010, which is only acceptable for renewal or duplicate certificates and may provide evidence of both lawful presence and identity;

(j) an unexpired Employment Authorization Document, or EAD, issued by DHS, form I-766, or form I-688B verified through the SAVE system;

(k) an unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE;

(l) a foreign birth certificate or unexpired foreign passport, including a certified translation if the document is not in English; or

(m) alternate documents may be accepted if approved by DHS or the division director or designee.

(2) <u>Individuals applying for a driving privilege card are</u> required to submit[In addition to] one of the identity documents listed in Subsection R708-41-4(1), [individuals applying for a driving privilege card will be required to show]in addition to one of the following:

- (a) church records;
- (b) court records;
- (c) driver license;
- (d) employee identification card;
- (e) insurance identification card;
- (f) matricular consular card issued in Utah;
- (g) Mexican voter registration card;
- (h) school records;
- (i) Utah DPC; or

(j) other evidence considered acceptable by the division director or designee.

R708-41-5. Acceptable Forms of Lawful Presence or Status Evidence.

<u>The division has identified the following documents as</u> [A]acceptable forms of lawful presence or status evidence:[-include ]

(1) documents listed in Subsections R708-41-4(1)(a) through R708-41-4(1)(i):[-in addition to the following:]

([4]2) a document issued by the federal government that verifies lawful entrance into the United States verified through SAVE;

([2]3) unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the federal government;

([3]4) pending or approved application for asylum in the United States;

([4]5) admission into the United States as a refugee;

([5]6) pending or approved application for temporary protected status in the United States;

([6]7) approved deferred action status;

([7]8) pending application for adjustment of status to legal permanent resident or conditional resident; or

([8]9) proof of covered humanitarian parolee status.

# **R708-41-6**. Acceptable Forms of Social Security Number Evidence.

(1) The division has identified the social security card issued by the federal government that has been signed by the applicant as an [A]acceptable form[s] of SSN evidence.[-include the following:]

(2) [if the social security eard is not available, t]The applicant may present one of the following documents that [contain]displays\_the applicant's name and SSN\_if the social security card under Subsection (1) is not available:

(a) W-2 form;

(b) SSA-1099 form;

(c) non SSA-1099 form;

(d) pay stub showing the applicant's name and full SSN;

(e) ineligibility letter from the Social Security Administration; or

(f) other documents approved by DHS or the division director or designee.

# R708-41-7. Acceptable Forms of Individual Tax Identification Number (ITIN) Evidence.

<u>The division has identified the following documents as</u> [A]acceptable forms of ITIN evidence[<u>include the following</u>]:

(1) an ITIN card issued by the Internal Revenue Service; or

(2) a document or letter from the Internal Revenue Service verifying the ITIN.

# R708-41-8. Acceptable Forms of Utah Residence Address Evidence.

(1) <u>The division has identified the following documents as</u> [A]acceptable forms of Utah residence[<u>address include the</u> following]:

(a) bank statement;

- (b) court documents;
- (c) current mortgage or rental contract;
- (d) major credit card bill;

(e) property tax notice statement or receipt;

- (f) school transcript;
- (g) utility bill;
- (h) vehicle title;[-or]

(i) [other documents acceptable to the division upon review.]proof of enrollment in the Safe at Home Program; or

(j) other documents acceptable to the division upon review.
 (2) <u>The division may review [R]residency evidence dated</u> over 90 days [may be reviewed by the division ]before acceptance.

 $(3)(\underline{a})$  An individual using a letter of verification of homelessness verified by the Department of Workforce Services may be eligible for a waiver of the fee for an identification card.

(b) The <u>division shall accept the</u> verification letter [shall also be]as acceptable evidence for Utah residency.

(4)(a) The division may authorize the sponsoring agency of an[Under unique situations that require an] individual [to be]under temporary care, custody, or treatment of a government, public, or private business, [the division may authorize the sponsoring agency ]to sign an affidavit verifying the residence of the applicant.

(b) [Upon approval of the division director or designee, the]<u>The</u> division shall recognize the sponsoring agency's address as the Utah residence address of the applicant, upon approval of the division director or designee.

#### R708-41-9. Acceptable Forms to Obtain Veteran Indicator.

[<del>(1)</del>]<u>The division has identified the following documents</u> as [A]acceptable proof of an honorable discharge or general discharge under honorable conditions from the United States military[<u>include the following</u>]:

 $\left(\left[\frac{1}{2}\right]\right)$  DD214, certificate of release or discharge of duty;

([b]2) DD256, honorable discharge certificate;

([e]3) DD257, general discharge certificate;

([d]4) NGB22, report of separation and record of service;

([e]5) other documents approved by the division director or designee.

#### **R708-41-10.** Document Requirements.

(1) <u>The division may choose not to accept a[Any]</u> document submitted under this rule if the document appears to be:

(a)	[that has been or appears to have been ]duplicated[,];
(b)	traced over[,];

107	
(c)	mutilated[-]:

(d) defaced[<del>,</del>];

or

(e) tampered with[,];

- (f) damaged;[-or]
- (g) altered in any manner; or

(h) illegible[-that is not legible may not be accepted for licensing and identification card purposes.]

(2) [Documents-]An applicant shall ensure documents submitted under this rule[shall] display the applicant's full legal name[-]: and

(3)(a) [Any name variation from the original or certified documents must be accompanied by]An applicant submitting documents under this rule with any variation of the name on an original or certified document shall also submit the legal authorizing documentation[, except the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division.]

(b) The division may consider the name established on the division's database to be the full legal name of the applicant unless otherwise determined by the division.

(4) [Upon application for any license certificate or identification card, a ]An applicant for any license certificate or identification card requesting a change of the applicant's full legal name must submit [be accompanied by ]an acceptable document that authorizes the name change.

(5) <u>The issuing agency of a document shall certify [A]any</u> copy of an original document[<u>must be certified by the issuing agency</u>].

#### R708-41-11. Exceptions.

<u>The division may not apply [</u>T]this rule [<del>does not apply</del>]when issuing driver license certificates or identification cards in support of federal, state, or local criminal justice agencies or other programs that require special licensing or identification or safeguard the persons or in support of their official duties.

#### R708-41-12. Document Storage.

[ Documents provided to the division by an applicant during a license certificate or identification card application process as proof of identity, proof of lawful presence, proof of SSN, or ineligibility to obtain a SSN, ITIN, address verification, or proof of name change will be imaged and stored in a secure database with controlled access. Except that at the applicant's request the information on a United States birth certificate may be written on the license or identification eard application rather than scanning the document.]

(1) The division shall image, and store documents submitted by an applicant during a license or identification card application process that was provided for proof of:

(a) identity;

(b) lawful presence;

(c) SSN;

(d) ineligibility to obtain an SSN;

(e) ITIN;

(f) address verification; and

(g) proof of name change.

(2) The division may write the information displayed on a United States birth certificate on the license or identification card application rather than scanning the document, at the request of the applicant.

KEY: acceptable documents, identification cards, license certificates, limited-term license certificates Date of Last Change: <u>2023[May 24, 2022]</u> Notice of Continuation: March 3, 2020 Authorizing, and Implemented or Interpreted Law: 53-3-104;

53-3-205; 53-3-214; 53-3-410; 53-3-804

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment				
Rule or SectionR708-46Filing ID:Number:55804				

# Agency Information

Agency information					
1. Department:	Public Safety				
Agency:	Driver Li	cense			
Room number:	Suite 26	Suite 2600			
Street address:	4315 S 2700 W, 2nd Floor				
City, state and zip:	Taylorsville, UT 84129				
Mailing address:	PO Box	144501			
City, state and zip:	Salt Lake City, UT 84114-4501				
Contact persons:					
Name:	Phone:	Email:			
Kim Gibb	801- 556- 8198	kgibb@utah.gov			
Tara Zamora	801- 964- 4483	tarazamora@utah.gov			
Britani Flores	801- 884- 8313	bflores@utah.gov			

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

# **General Information**

2. Rule or section catchline:

R708-46. Refugee, Asylee, or Covered Humanitarian Parolee Knowledge Test in Applicant's Native Language

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

This rule filing is necessary to implement H.B. 141 which passed in the 2023 General Session.

# 4. Summary of the new rule or change:

This rule updates the rule catchline to reflect current statutory language.

This rule filing allows an individual to apply for a Utah class D driving privilege for the first time and upon the first renewal in a language of the individual's choice. If the individual's preferred language is not available, they may choose to take the knowledge test with a qualified translator at the individual's cost.

Updates in formatting and wording have been made in compliance with the Rulewriting Manual for Utah standards.

# **Fiscal Information**

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

# A) State budget:

This rule filing is expected to have a direct fiscal cost to the Driver License Division (Division).

The Division will need to enact programming changes to add new languages and will need to pay an annual fee to maintain and make updates to the languages that have been added. A one-time cost for programming updates of \$10,380 and \$60,000 of ongoing maintenance costs is expected.

# B) Local governments:

This rule filing is not expected to have any fiscal impact on any local governments because there are no local governments involved in the implementation of this rule or process.

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

This rule filing is not expected to have any fiscal impact on any small businesses because there are no small businesses involved in the implementation of this rule or process.

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

This rule filing is not expected to have any fiscal impact on any non-small businesses because there are no non-small businesses involved in the implementation of this rule or process.

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 expected to be an indirect non-fiscal benefit to persons other than small businesses, non-small businesses, state, or local government entities. Individuals may experience an indirect fiscal benefit by being able to apply for a class D driving privilege for the first time and the first renewal in their chosen language.

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

This rule filing is expected to cost the Division a one time programming cost of \$10,380 and an ongoing maintenance cost of \$60,000.

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 Impact Table

narratives above.)

Fiscal Cost	FY2024	FY2025	FY2026
State Government	\$70,380	\$60,000	\$60,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$70,380	\$60,000	\$60,000
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
Net Fiscal Benefits	(\$70,380)	(\$60,000)	(\$60,000)

this table. Inestimable impacts will be included in

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

The Commissioner of the Department of Public Safety, Jess L. Anderson, 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 53-3-206

# 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 11/14/2023 until:

9.	This	rule	change	MAY	11/21/2023
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 he	ad	Christopher	Date:	09/27/2023
or designe	е	Caras, Division		
and title:		Director		

#### **R708.** Public Safety, Driver License.

R708-46. [<del>Refugee, Asylee, or Covered Humanitarian Parolee</del>]Knowledge Test in [<del>Applicant's</del>]<u>Individual's</u> [<del>Native</del>]<u>Preferred</u> Language.

# R708-46-1. Purpose.

The purpose of this rule is to establish the procedures and requirements for [T]the Driver License Division [shall allow an applicant who is a refugee, pending asylee, approved asylee, or eovered humanitarian parolee, and is applying for a limited term driver license to take the knowledge test on traffic laws in the person's native language]to administer the knowledge test in an individual's preferred language.

#### R708-46-2. Authority.

This rule is authorized by Section 53-3-206.

#### R708-46-3. Definitions.

Terms used in this rule are found in Section 53-3-102.
 In addition:

[<u>(a)</u> "applicant" means an applicant with a refugee, approved asylee, pending asylee, or covered humanitarian parolee status;]

([b]a) "approved asylee" means a person who has an approved application for asylum in the United States;

([e]b) "covered humanitarian parolee" means a person who is a citizen and national of Afghanistan who has been paroled into the United States between July 31, 2021, and September 30, 2022, and certain immediate family members who have been paroled into the United States after September 30, 2022;

 $([\underline{d}]\underline{c})$  "pending asylee" means a person's status is an authorized stay, or permission to stay and work in the United States;

([e]d) "qualified [interpreter]translator" means an interpreter that has a contract approved through the Utah Division of State Purchasing and General Services to provide interpreter services; and

 $([\mathtt{f}]\underline{e})~$  "refugee" means a person who has entered into the United States in refugee status.

#### R708-46-4. Requirements.

(1) [The first time an applicant applies for a limited term license certificate, they may]The division may administer the knowledge test in an individual's preferred language, if the individual is:

(a) [take the knowledge test in their native language]a refugee, pending asylee, approved asylee, or a covered humanitarian parolee applying for a limited-term license certificate;[-or]

(b) [take the knowledge test with the assistance of a qualified interpreter.]an individual applying for a limited-term license certificate; or

(c) an individual applying for a class D license certificate.

(2) The first time an [applicant]individual applies for a [renewal of a ]limited-term or a class D license certificate [and is required to take the knowledge test for renewal in accordance with Section 53-3-214,]they may:

(a) take the knowledge test in their [native]preferred language; or

(b) <u>if the individual's preferred language is not available</u>, take the knowledge test with the assistance of a qualified [<u>interpreter]translator</u>.

(3) The [second]first time an [applicant]individual applies for a renewal of a limited-term<u>or class D</u> license certificate, [they shall be required to pass a knowledge test of traffic laws in English]and is required to take the knowledge test for renewal in accordance with Section 53-3-214, they may:[-]

(a) take the knowledge test in their preferred language; or (b) if the individual's preferred language is not available, take the knowledge test with the assistance of a qualified translator.

(4) The second time an individual applies for a renewal of a limited-term or class D license certificate, they shall be required to pass a knowledge test of traffic laws in English.

#### R708-46-5. Procedures.

(1) The [applicant]individual must schedule an appointment to apply for:

(a) an original limited-term or class D license; or

(b) a first renewal of a limited-term or class D license using the on[-]line scheduler.

(2) If the [applicant]individual chooses to take the knowledge test with the assistance of a qualified [interpreter]translator, the [applicant]individual must arrange and pay for a qualified [interpreter]translator to accompany them for the test.

(3) <u>The division shall post [A]a</u> link to the list of qualified [<u>interpreters]translators</u> [<u>shall be posted</u>]on the Driver License Division's website.

KEY: limited-term driver license; knowledge test; refugee; asylee; covered humanitarian parolee

Date of Last Change: <u>2023[June 22, 2022]</u>

Notice of Continuation: May 10, 2021

Authorizing, and Implemented or Interpreted Law: 53-3-206

# NOTICE OF PROPOSED RULE

TYPE OF FILING: Repeal and Reenact				
Rule or Section Number:	R708-48	Filing ID: 55756		

#### **Agency Information**

1. Department:	Public Safety
Agency:	Driver License
Room number:	Suite 2600
Street address:	4315 S 2700 W, 2nd Floor
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 144501
City, state and zip:	Salt Lake City, UT 84114-4501

Contact persons:			
Phone:	Email:		
801- 556- 8198	kgibb@utah.gov		
801- 964- 4483	tarazamora@utah.gov		
801- 884- 8313	bflores@utah.gov		
	Phone:           801-           556-           8198           801-           964-           4483           801-           884-		

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

# General Information

2. Rule or section catchline:

R708-48. Ignition Interlock System Program

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

This rule filing is necessary to implement H.B. 62 from the 2023 General Session.

In addition, this rule has been edited to allow conformity with current industry standards and allows the Division of Driver License (Division) to better regulate the Ignition Interlock Systems Program.

#### 4. Summary of the new rule or change:

This rule filing is necessary to implement provisions of H.B. 62 (2023) that requires individuals to appear for monitoring of their ignition interlock systems every 60 days or more often if required by the courts.

H.B. 62 (2023) also requires the ignition interlock system providers to collect and report information on all start attempts where the individual had a measurable amount of alcohol in their system or failed to appear for scheduled monitoring of the ignition interlock system.

This rule has been edited from the current version to reorganize the order of existing sections for better flow.

New sections have been added so that information existing in other sections may be better organized.

Information has been added to clarify requirements for providers, as well as the procedure to obtain and renew a provider license.

A section has been added to list the requirements for a service center location and the procedures for obtaining and renewing a service center license.

The inspection and audit section has been clarified with new information the Division may look for during an audit or inspection. Information has been added to the requirements for an installer and the procedures for obtaining and renewing an installer license.

Information has been added to the contracts and documentation section to clarify the contracts between the providers and clients and to require certain serial numbers of the devices to be included.

Information has been added to the records section to include certain serial numbers from the devices to be included on client records, specifies the location of client records, and adds information concerning breaches in data.

Information regarding what is to be reported to the Division has been added to the reporting section.

A section for access to the Utah State Portal has been added so information regarding this from the existing rule can be in one section as opposed to throughout the existing rule.

Information has been added to reasons the Division may deny, cancel, or revoke a license, as well as information regarding the probation process.

A section has been added to address individuals who attempt to start a vehicle with a measurable breath alcohol content or who fail to appear for scheduled monitoring of their installed ignition interlock systems.

These individuals will have their ignition interlock requirement extended for an additional 60 days for reports of violations of Subsections 53-3-1007(2)(b) and 53-3-1007(2)(c) in a given 60 day reporting period.

#### **Fiscal Information**

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

#### A) State budget:

This rule filing may cost the Division a one time programming cost of \$69,640 for FY2023 and an ongoing cost of \$88,400 for a full time program coordinator beginning FY2024.

The Division has included an estimated 3% COLA and benefits increase for a total of \$91,794 for FY2025 and \$95,318 for FY2026.

The Division estimated the amounts for programming based on an estimate of 665 billable hours from a DTS business analyst for a total of \$69,640, and the salary for a full time program coordinator was calculated at a mid-range salary for the position.

#### B) Local governments:

This rule filing is not expected to have any impact on local governments because the proposed changes do not affect any processes or require any involvement from local governments.

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

This rule filing may have an inestimable direct fiscal cost to 40 small businesses registered with the Division as certified ignition interlock system providers.

This rule is requiring providers and installers to have a designated waiting area that is not in view of the installation area in the service center, to implement security measures to ensure unlicensed people are not able to gain access to proprietary materials or client files, to create a visual barrier for installations not done in a garage or building, to perform monitoring of the system every 60 days or more frequently as ordered by the court or Division, to update their contracts, to mediate and rectify any data breaches, to possibly require programming changes in order to report failed attempts to start vehicle with a BAC of .020 and failures to appear for monitoring, and to have installers submit a fingerprint card every other year upon renewal of license.

The fiscal costs for small business are inestimable because:

The Division is not able to determine if all providers would need to make changes to existing service centers to create a designated waiting area that prohibits installation process viewing.

In the event changes to service centers do need to be made, the Division would not be able to determine how much those changes would cost.

The Division is not able to determine what it would cost to provide security measures to ensure unlicensed people are not able to gain access to proprietary materials or client files.

The Division is not outlining what security measures will need to be in place, this is at the discretion of the providers, but must be adequate to prevent access.

The Division is not able to determine what it would cost to create a visual barrier for installations not done in a garage or building.

The Division is not outlining what type of barrier must be used, it just must be adequate to prevent non-licensed people from viewing the installation process.

The Division is not able to determine what if any costs would be associated with updating their contracts to include the new requirements. This rule does not outline the process required to update their contracts. The Division also does not have any knowledge of how providers contracts are updated.

The Division is not able to determine what it might cost to remediate and rectify any data breaches. The Division is not outlining what type of remediation will need to be done, that is up to the discretion of the providers.

The Division is not able to determine what it might cost to complete programming changes to transmit the new required information to the Division. This is something that might already be possible with existing programming, as they are able to add information to a notes and comments section.

The cost of fingerprints from BCI is \$15, however the Division is not able to determine what this might cost installers depending on when their licenses may expire as they are only required to complete this step every other year.

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

This rule filing may have an inestimable direct fiscal cost to one non-small business registered with the Division as a certified ignition interlock system provider.

This rule is requiring providers and installers to have a designated waiting area that is not in view of the installation area in the service center, to implement security measures to ensure unlicensed people are not able to gain access to proprietary materials or client files, to create a visual barrier for installations not done in a garage or building, to perform monitoring of the system every 60 days or more frequently as ordered by the court or Division, to update their contracts, to mediate and rectify any data breaches, to possibly require programming changes in order to report failed attempts to start vehicle with a BAC of .020 and failures to appear for monitoring, and to have installers submit a fingerprint card every other year upon renewal of license.

The fiscal costs for non-small businesses are inestimable because:

The Division is not able to determine if all providers would need to make changes to existing service centers to create a designated waiting area that prohibits installation process viewing.

In the event changes to service centers do need to be made, the division would not be able to determine how much those changes would cost.

The Division is not able to determine what it would cost to provide security measures to ensure unlicensed people are not able to gain access to proprietary materials or client files. The Division is not outlining what security measures will need to be in place, this is at the discretion of the providers, but must be adequate to prevent access.

The Division is not able to determine what it would cost to create a visual barrier for installations not done in a garage

or building. The Division is not outlining what type of barrier must be used, it just must be adequate to prevent non-licensed people from viewing the installation process.

The Division is not able to determine what if any costs would be associated with updating their contracts to include the new requirements. This rule does not outline the process required to update their contracts. The Division also does not have any knowledge of how providers contracts are updated.

The Division is not able to determine what it might cost to remediate and rectify any data breaches. The Division is not outlining what type of remediation will need to be done, that is up to the discretion of the providers.

The Division is not able to determine what it might cost to complete programming changes to transmit the new required information to the division. This is something that might already be possible with existing programming, as they are able to add information to a notes and comments section.

The cost of fingerprints from BCI is \$15, however the Division is not able to determine what this might cost installers depending on when their licenses may expire as they are only required to complete this step every other year.

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 filing may have a direct fiscal cost to approximately 15,263 persons other than small businesses, non-small businesses, state, or local governments.

Members of the public who attempt to start a vehicle with a measurable breath alcohol content or who fail to appear for scheduled monitoring of their installed ignition interlock system will have their ignition interlock requirement extended for an additional 60 days for violations of Subsections 53-3-1007(2)(b) and 53-3-1007(2)(c) in a given 60 day reporting period.

This could result in more fees to extend their contract with a provider of ignition interlock systems. This cost is inestimable because the Division is not able to predict who might attempt to start their vehicles with a measurable breath alcohol content while they have an installed ignition interlock system or who may fail to appear for scheduled monitoring of their ignition interlock system.

In addition, the fees associated with an ignition interlock installation are set and determined by each provider and not by the Division, as a result, the Division is not able to determine what it would cost to extend a contract with a provider. There are approximately 15,263 members of the public that are currently required to have an ignition interlock system installed on their vehicles. This number is subject to change as additional members of the public may obtain a violation that would require an ignition interlock to be installed in their vehicles and as the requirement to have an ignition interlock ends for other individuals. This rule filing may have an inestimable indirect fiscal cost to these individuals.

Members of the public who are required to have an ignition interlock system installed in their vehicle may see an increase in fees from ignition interlock system providers that may have incurred a cost increase to implement the changes this rule filing requires. This increase may be passed down to members of the public in the form of increased fees to have the systems installed and monitored.

The fiscal cost is inestimable because the Division is not able to determine what, if any cost, may be passed down to the system providers from the manufacturers which in turn could mean an increase in the form of fees for members of the public.

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

This rule filing may cost the Division a one-time programming cost of \$69,640 for FY2023 and an ongoing cost of \$88,400 for a full-time program coordinator.

The Division has included an estimated 3% COLA and benefits increase for a total of \$91,794 for FY2025 and \$95,318 for FY2026.

The fiscal costs for the other affected persons are inestimable due to variables the Division is not able to predict or estimate.

**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	\$88,400	\$91,794	\$95,318	
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	(\$88,400)	(\$91,794)	(\$95,318)

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

The Commissioner of the Department of Public Safety, Jess L. Anderson, 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 53-3-1004 Section 53-3-1007

#### 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 11/14/2023 until:

9.	This	rule	change	MAY	11/21/2023
bec	ome e	effect	ive 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	Christopher	Date:	09/19/2023
or designee	Caras, Division		
and title:	Director		

**R708.** Public Safety, Driver License.

R708-48. Ignition Interlock System Program. [<del>R708-48-1. Authority.</del>

This rule is authorized by Sections 53-3-1004 and 53-3-1007.

#### R708-48-2. Purpose.

The purpose of this rule is to set standards governing the administration and enforcement of the Ignition Interlock System Program in accordance with Title 53, Chapter 3, Part 10.

#### R708-48-3. Definitions.

(1) Terms used in this rule are defined in Section 53-3-1002.

(2) In addition:

(a) "act of moral turpitude" means conduct which:

 (i) is done knowingly contrary to justice, honesty or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another property;

(b) "business" means an ignition interlock system business established to install, remove and maintain ignition interlock systems as specified in R708-31 Ignition Interlock Systems and includes both the business' primary location and any branch offices;

(c) "department" means the Department of Public Safety ereated in Section 53-1-103;

(d) "division" means the Driver License Division created in Section 53-3-103;

(e) "install" means any service provided by an ignition interlock installer including the installation or removal of an ignition interlock system and the performance of any type of maintenance or service on an ignition interlock system; and

(f) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year.

#### **R708-48-4.** Requirements for Licensure of Providers.

(1) A provider shall:

moral turpitude;

(a) be responsible for the oversight of all installers employed by the business;

 (b) maintaining all records of the business, including client records and personnel files for all installers employed by the business;

(c) insure the security of all client records and personal data on any forms, receipts or contracts used by the business;

 (d) allow the division to conduct inspections and audits of the business and its records;

 (e) furnish any records of the business to the division upon request;

 (f) train any installers who will be working at the business on how to properly install an ignition interlock system and provide the installers with a certificate of completion;

(g) complete and require all installers who will be working at the business to complete any training administered by the division; (h) not be convicted of or have been found by the division to have engaged in conduct which constitutes a felony or crime of  (i) not knowingly employ an installer who has been convicted of or who has been found by the division to have engaged in conduct which constitutes a felony or crime of moral turpitude;

 (j) post signs on the business to identify the business by the name listed on the provider's license application;

 (k) conspicuously display at the business a copy of the provider's license and business license;

(l) not be employed by more than one business at a time;

(m) insure that the business does not operate from the same facility or location as another business;

(n) notify the division when the provider is no longer working at a business:

 (o) surrender the provider's license to the division within five days if the provider is no longer working at the business or the provider's license is denied, cancelled or revoked;

(p) obtain and maintain a \$50,000 surety bond for the business that shall:

(i) protect against liability to third persons;

(ii) be continuous in form and run concurrently with the license period; and

 (iii) provide for notice to the division in the event of cancellation of the surety bond.

(q) ensure that a business, located in a municipality having a population of 50,000 or more, is not located within 1500 feet of a facility in which vehicle registrations or driver licenses are issued to the public, unless the business was established in that location prior to the establishment of the facility in which vehicle registrations or driver licenses are issued to the public;

 (r) not solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public;
 (s) seek approval from the division before moving the business;

 (t) insure that the business' facilities and buildings comply with federal, state, and local building, fire, safety and health codes;

(u) not use any logos, letterhead, documents, driver license or vehicle plate license recreations of the department, the division or the Utah State Tax Commission, Division of Motor Vehicles, in their advertising, however a business may display on its premises a sign reading, "This Ignition Interlock System Provider is licensed by the State of Utah."

 (v) notify the division in writing of any changes to residential or mailing address of anyone who works at the business; and

(w) notify the division in writing if any employee is no longer employed by the business.

#### R708-48-5. Procedure to Obtain and Renew a Provider License.

(1) To apply for or renew a provider license, an applicant shall submit a completed provider application packet to the division at 4501 South 2700 West, Salt Lake City, Utah.

(2) The packet shall include:

 (a) a completed provider application form provided by the division, which has been signed and notarized by the applicant and all other required parties;

(b) an application or renewal fee, along with any branch office fees, which shall be made payable to the department;

(c) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints and a check or money order made payable to the Utah Bureau of Criminal Identification to cover the fee associated with a criminal history background check;  (d) samples of all forms, receipts, and contracts used in the eourse of operation of the business;

(e) a schedule of fees to be charged by the business for each service performed by the business;

(f) a description of how the business shall be operated, which shall include:

(i) a description of how the provider will meet the requirements of Title 53, Chapter 3, Part 10 and R708-48;

(ii) a detailed installer training plan; and

(iii) copies of all training materials that will be used;

(g) evidence of a \$50,000 surety bond for the business that shall:

(i) protect against liability to third persons;

(ii) be continuous in form and run concurrently with the license period; and

(iii) provide for notice to the division in the event of cancellation of the surety bond.

 (h) a copy of the business license for the business as required by the municipality or county in which the business is located; and

(i) evidence of two years prior experience in operating a business.

(3) When seeking to renew a provider license, the provider shall:

(a) submit all of the items listed in R708-48-5(2)(a) through (c);

(b) submit an updated copy of the items listed in R708-48-5(2)(d) through (f) if the business has made any changes to these items since the provider applied for or renewed the provider license; and

(c) not be required to submit the items listed in R708-48-5(2)(g) through (i).

(4) Upon receipt of a completed provider application packet, the division shall review all of the materials submitted by the applicant to determine if the applicant meets the requirements in Title 53, Chapter 3, Part 10 and R708-48.

(5) If the division determines that the application packet contains all of the necessary information, the division shall conduct a site inspection of the business before a license may be granted.

(6)(a) If the business passes the division's inspection and meets all of the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the applicant shall be granted a provider license.

(b) A provider license is not transferable.

(c) If a provider license is lost or destroyed, the provider may obtain a duplicate of the license by submitting the following to the division:

(i) a notarized affidavit which describes the date the license was lost or destroyed and the surrounding circumstances; and

(ii) a duplicate license fee.

(7) If the applicant does not meet the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the application shall be denied and the applicant shall be issued a notice of denial with information regarding the reason for denial and process by which the applicant may appeal the division's decision.

#### R708-48-6. Requirements for an Installer.

(1) A licensed installer shall:

(a) possess a valid installer license when working as an installer;

(b) only be allowed to work under the supervision of the specific provider listed on the installer's license application;

 (c) complete training for ignition interlock systems offered by the provider of the business for which they will be employed;

 (d) complete any training administered by the division; and
 (e) not be convicted of or have been found by the division to have engaged in conduct which constitutes a felony or a crime of moral turpitude;

#### R708-48-7. Procedure to Obtain and Renew an Installer License.

(1) To apply for or renew an installer license, an applicant shall submit a completed installer application packet to the division at 4501 South 2700 West, Salt Lake City, Utah.

(2) The packet shall include:

 (a) a completed installer application form provided by the division, which has been signed and notarized by the applicant and all other required parties;

(b) an application or renewal fee, which shall be made payable to the department;

(c) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints and a check or money order made payable to the Utah Bureau of Criminal Identification to cover the fee associated with a criminal history background check; and

(d) a signed agreement verifying that the applicant has read and understands all of the laws and rules that are applicable to the ignition interlock system program.

(3) Upon receipt of a completed installer application packet, the division shall review all of the materials submitted by the applicant to determine if the applicant meets the requirements in Title 53, Chapter 3, Part 10 and R708-48.

(4)(a) If the applicant meets all of the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the applicant shall be granted an installer license.

(b) Installer licenses are not transferable.

(c) If an installer license is lost or destroyed, the provider may obtain a duplicate of the license by submitting the following to the division:

(i) a notarized affidavit which describes the date the license was lost or destroyed and the surrounding circumstances; and

(ii) the duplicate license fee.

(5) If the applicant does not meet the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the application shall be denied and the applicant shall be issued a notice of denial with information regarding the reason for denial and process by which the applicant may appeal the division's decision.

#### **R708-48-8. Business Inspection and Audit Procedures.**

(1) The division shall conduct inspections and audits of a business and its records to verify compliance with Title 53, Chapter 3, Part 10 and R708-48.

(2)(a) The premises and records of the business shall be available to the division immediately upon request for the purpose of an inspection or audit.

(b) If it becomes necessary to remove records from the business for audit purposes, the division shall provide a receipt to the business which will include:

(i) the name and location of the provider;

(ii) the location of the business;

(iii) the date that records are removed;

(iv) a description of what records are removed;

(v) the signature of an authorized representative of the business; and

(vi) the signature of a division representative.

(c) Upon return of the records, the receipt shall be updated with:

(i) the date the records were returned;

(ii) the signature of an authorized representative of the business who is receiving the records; and

 (iii) the signature of the division representative returning the records.

(d) The division shall hold the records for the minimum amount of time necessary so an audit may occur without creating an unnecessary hardship or inconvenience to the business.

 (3)(a) A division representative shall prepare a written report of all inspections and audits.

(b) A copy of these reports shall be maintained by the division for ten years.

(c) Following a business inspection or audit, the division shall notify the business of the division's findings by sending a:

 (i) letter to the business indicating any problems, concerns or violations found during the inspection or audit along with an action plan detailing expectations regarding correction of the items identified; or

(ii) notice of agency action.

#### R708-48-9. Contracts.

(1)(a) A written contract approved by the division shall be executed by both the client and an authorized representative of the business before the business may render any services to a client.

(b) If a client is under 18 years of age, the contract shall also be signed by a parent or legal guardian prior to any service.

(c) A copy of the contract shall be given to the client and the original retained by the business.

(d) The contract shall contain:

(i) the client's:

(A) full legal name;

(B) date of birth;

(C) driver license number;

(D) license plate number;

(E) full residential address; and

(F) full mailing address;

(ii) a description of the services to be provided by the business;

(iii) a break down of the costs associated with all services provided; and

(iv) any requests made by the client.

(2) The client shall be given a receipt upon payment of any fees.

#### R708-48-10. Records.

 (1) All of the business' records shall be kept accurately and completely.

(2) The business shall maintain the following client records for a period of four years after the contractual obligation with the client has concluded:

(a) documentation of any service provided to a client which include:

(i) the client's:

(A) name;

(B) date of birth;

(C) driver license number;

(ii) license plate number;

(iii) type of service provided;

(iv) exact date the service was performed:

(v) name of the installer and installer ID number; and

 (vi) ignition interlock device serial number and name of manufacturer;

(b) original copies of client contracts;

(c) original copies of receipts, and

(3) The business' administrative records shall be maintained for the life of the business, including:

(a) business plans;

(b) licenses;

(c) training records;

(d) personnel records; and

(e) surety bond information.

(4) Records of the business shall be updated within 24 hours of service.

(5) All ignition interlock system installations and removals must be reported electronically to the division in a manner specified by the division within 24 hours, and shall include the following:

(a) the client's:

(i) hane, (ii) date of birth

(iii) driver license number;

(b) license plate number;

(c) ignition interlock device serial number and name of

manufacturer; and

(d) date of installation or removal.

 (6) Each provider shall review the records of the business at least annually for completeness and accuracy.

(7) If any records that the business is required to maintain are lost or destroyed, the provider shall be immediately file an affidavit with the division which states:

(a) the date the record was lost or destroyed; and

(b) the circumstances surrounding the loss or destruction.

**R708-48-11.** Grounds for the Denial, Cancellation or Revocation of a Provider or Installer License.

(1) A provider or installer may be denied, cancelled or revoked for any of the following:

(a) failure to comply with any of the provisions of Title 53, Chapter 3, Part 10, 41-6a-518, or R708-48; or

 (b) falsification of any records or other required information relating to the Ignition Interlock System program.

(2)(a) In determining whether denial, cancellation or revocation is appropriate, the division shall consider the provider's or installer's involvement and the severity of the violation.

(b) In lieu of cancelling or revoking a license, the division may elect to place the provider or installer on probation if warranted by the nature of the violation.

#### **R708-48-12.** Adjudicative Proceedings.

(1) All adjudicative proceedings set forth in this section shall be conducted informally as provided in Section 63G-4-202.

(2) The division shall initiate agency action against an provider or installer with a notice of agency action in accordance with Section 63G-4-201.

(3)(a) An ignition interlock system provider or ignition interlock system installer who receives a notice of agency action indicating that the division intends to deny, cancel or revoke a license may request a hearing by filing a written request for hearing with the division within 10 calendar days from the date the notice of agency action is issued.

(b) If a timely request for hearing is filed, the agency action shall be stayed until the division's hearing officer issues a written decision.

(c) A hearing shall be held before the division's hearing officer within 30 calendar days from the day that the division receives the written request for hearing, unless agreed to by the parties.

(d) At the hearing, the provider or installer shall have an opportunity to demonstrate why the division should not take agency action.

(c) The hearing officer shall issue a written decision within 10 business days after the hearing in accordance with Section 63G-4-203.

(f) The written decision of the hearing officer shall constitute final agency action and is subject to judicial review in accordance with Section 63G-4-402.]

#### R708-48-1. Purpose.

This rule governs the licensing and regulation of the Ignition Interlock System Program.

#### R708-48-2. Authority.

This rule is authorized by Sections 53-3-1004 and 53-3-1007.

#### R708-48-3. Definitions.

(1) Terms used in this rule are defined in Sections 41-6a-518, 53-3-102, and 53-3-1002.

(2) In addition:

(a) "act of moral turpitude" means conduct which:

 (i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification, fraud, or deception; or (iii) contains an element of harm or injury directed to another person or another's property;

(b) "business" means a service center;

(c) "certificate of calibration" means a document prepared by the technician showing the details and results of the calibration process;

(d) "captured data" means data or images downloaded or sent from a system;

(e) "ignition interlock system activities" means installation, inspection, monitoring, service, and removal of the system, but does not include internal system repair;

(f) "install" means any service provided by an ignition interlock installer including the installation or removal of an ignition interlock system and the performance of any type of maintenance or service on an ignition interlock system;

(g) "monitoring" means the calibration and maintenance of the system to ensure proper function and use, and the downloading of any captured data from the system;

(h) "removal" means the removal of a system;

(i) "service center" means a physical location designated by the manufacturer, and approved by the division, where systems are installed, inspected, monitored, calibrated, maintained, and removed;

(j) "service interval" means the time between system monitoring; and

(k) "system" means an ignition interlock system.

#### **<u>R708-48-4.</u>** Requirements for Providers.

A provider shall:

(1) be responsible for the oversight of the ignition interlock system activities that are performed at the service center, and each installer employed by the business;

(2) maintain any records including:

(a) client records;

(b) contracts;

(c) personnel files including division issued installer licenses for each installer; and

(d) any documentation concerning an ignition interlock business transaction;

(3) ensure the security of any client records and personal data on any forms, receipts, or contracts;

(4) program the systems to have a service interval of 60 days, unless a shorter interval is ordered as a term of probation by the court:

(5) perform service within three business days of the 60 day service interval;

(6) restart the service interval on the date of service if the system malfunctions and requires service before the expiration of the 60 day service interval;

(7) allow the division to conduct scheduled and unscheduled inspections and audits;

(8) grant access to business databases to the division;

(9) furnish any records of the business to the division upon request;

(10) provide in-person training on system activities to each installer including annual re-training;

(11) maintain training files for each installer including dates of completion:

(12) finish any training administered or required by the division;

(13) require each installer to finish any training administered or required by the division;

(14) not be convicted of or have been found by the division, or any entity of the state, to have engaged in conduct that constitutes a felony, crime, or act of moral turpitude;

(15) not knowingly employ an installer who has been convicted of, or who has been found by the division to have engaged in, conduct that constitutes a felony, crime, or act of moral turpitude; (16) post signs to identify the business by the name listed

on the provider's license application; (17) conspicuously display a copy of the provider's license

issued by the division, and business license issued by the city or municipality;

(18) ensure the service center does not operate from the same facility or location as another service center;

(19) surrender the provider's license to the division within five days if:

(a) the provider listed on the license is no longer working at the business; or

(b) the provider license is denied, canceled, or revoked;

(20) provide and maintain a \$50,000 surety bond that is:

(a) continuous in form and run concurrently with the license period;

(b) protects against liability to third persons; and

(c) requires that the insurer provide notice to the division within five days if the surety bond is canceled;

(21) notify the division in writing:

(a) within five business days of any changes to the residential or mailing address of any employee licensed by the division;

(b) within five business days if anyone licensed by the division is no longer employed by the business;

(c) within 30 days of receiving notice of any license relating to systems that have been denied, canceled, or revoked in another state or jurisdiction; (d) within five days in the event the provider learns of any litigation in which it is a party defendant; and

(e) within five days after being served a summons, complaint, or other pleadings in a case that involves services provided, and which has been filed in any federal or state court or administrative agency and shall deliver copies of these documents to the division.

#### <u>R708-48-5.</u> Procedure to Apply for and Renew a Provider <u>License.</u>

(1) An applicant shall complete an application for a new or renewal of a provider license and mail it to the division at Box 144501 Salt Lake City, Utah 84114.

(2) The application packet under Subsection (1) shall include:

(a) a provider application form provided by the division, which has been signed by the applicant and any other required parties;

(b) an application or renewal fee, which shall be made payable to the department;

(c) a copy of any business license for each service center issued by the municipality or county where the service center is located, or a statement that a business license is not required in that location:

(d) samples of any forms, receipts, and contracts used in the course of operation of the business;

(e) a schedule of fees to be charged by the business for each service performed by the business;

(f) a description of how the business shall be operated, which shall include:

(i) a description of how the provider will meet the requirements of Title 53, Chapter 3, Part 10, Ignition Interlock System Program Act, and Rule R708-48;

(ii) a detailed installer training plan;

(iii) a detailed client training plan on how to use and maintain the system; and

(iv) copies of any training materials that will be used;

(g) evidence of a \$50,000 surety bond for the business that shall:

(i) be continuous in form and run concurrently with the license period;

(ii) protect against liability to third persons; and

(iii) require the insurer to provide notice to the division if the surety bond is canceled; and

(h) evidence of two years of experience in operating a business.

(3) If the division determines the provider has submitted a complete application, a division representative shall conduct a service center site inspection.

(4) An applicant submitting an application for an initial or new provider license shall submit each of the items listed in Subsections R708-48-5(2)(a) through (h) in addition to:

(a) one FBI applicant fingerprint card with the applicant's legible fingerprints; and

(b) a check or money order made payable to the Utah Bureau of Criminal Identification to cover the cost of a background check.

(5) An applicant submitting an application under this rule shall provide original documents, photocopies of documents may not be submitted.

(6) A provider may not transfer their license.

(7) A provider may obtain a duplicate provider license by submitting a written request and a duplicate license fee to the division.

(8) The division may not process an application if any requirement is not met.

(9) A provider shall submit a new application in the event of a change in ownership.

**R708-48-6.** Requirements of a Service Center Location.

(1) A provider shall ensure a service center location: (a) is not located within 1500 feet of a facility in which vehicle registrations or driver licenses are issued to the public unless the location was established before the establishment of the facility in which vehicle registrations or driver licenses are issued to the public;

(b) does not solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a:

(i) building in which vehicle registrations or driver licenses are issued to the public; or

(ii) a court building;

(c) is compliant with federal, state, and local building, fire, safety, and health codes:

(d) does not display any logos, driver license, or vehicle license plate recreations of the department, the division, the Utah State Tax Commission, or Division of Motor Vehicles, in their advertising; and

(e) does not use any letterhead, advertising, or other printed matter in any manner representing that the provider or service center is recommended, endorsed by, or is an instrumentality of the federal government, a state, or any political subdivision of a state.

(2) The division shall approve any changes in location of the service center in writing before moving.

(3) A licensed installer shall be on the premises during all advertised or posted business hours.

(4) A provider shall designate a waiting area that is not in view of the installation area for individuals who are not licensed installers.

(5) Providers shall take adequate security measures to ensure that individuals not licensed under this rule cannot gain access to proprietary materials or client files.

(6) An installer completing an installation or removal of a system outside of a garage or building shall complete the installation or removal behind a visual barrier that is sufficient to shield the process from anyone not licensed under this rule.

#### <u>**R708-48-7.**</u> **Procedure to Apply for or Renew a Service Center** <u>License.</u>

(1) An applicant shall complete an application for a service center license and mail it to the division at Box 144501 Salt Lake City, Utah 84114.

(2) The packet under Subsection (1) shall include:

(a) an application form provided by the division, which has been signed by the applicant and any other required parties:

(b) an application or renewal fee, which shall be made payable to the department; and

(c) a copy of the license to operate in the city or municipality where the service center is located, or a statement that a license is not required in that location.

(3) A division representative:

(a) shall inspect the location before approval of the license; and (b) may make any recommendations for changes to become fully compliant for licensure.

(4) A provider may not transfer a service center license.

(5) A provider may obtain a duplicate service center license by submitting a written request and a duplicate license fee to the <u>division</u>.

(6) The division may not process an application if any requirement is not met.

#### **R708-48-8.** Inspection and Audit Procedures.

(1) The division shall conduct inspections and audits to verify compliance with Title 53, Chapter 3, Part 10, Ignition Interlock System Program Act, and this rule.

(2) The provider shall make the premises and records of the service center available to the division immediately upon request during normal business hours for an inspection or audit.

(3) The division shall provide a receipt to the business if it becomes necessary to remove records from the service center for audit purposes, which will include:

(a) the name and location of the provider;

(b) the location of the business;

(c) the date that records were removed;

(d) a description of records removed;

(e) the signature of an authorized representative of the business; and

(f) the signature of a division representative.

(4) The division may not issue a receipt for photocopies of documents.

(5) The division shall update the receipt under Subsection (3) upon return of the records, with:

(a) the date the records were returned;

(b) the signature of an authorized representative of the business who is receiving the records; and

(c) the signature of the division representative returning the records.

(6) The division shall hold the records no longer than necessary to finish an audit, inspection, or investigation.

(7) The division may not return photocopies of records.

(8) A division representative shall prepare a written report of each inspection and audit.

(9) The division shall maintain a copy of the written report for ten years.

(10) The division shall notify the business of the division's findings following a business inspection or audit, by sending:

(a) a letter to the business indicating any:

(i) problems;

(ii) concerns; or

(ii) violations found during the inspection or audit;

(b) an action plan detailing expectations regarding the correction of the items identified; or

(c) a notice of agency action.

(11) The division shall audit records of client complaints including:

(a) complaints against a provider, installer, or service center;

(b) the complaint resolution process; and

(c) complaints received by the provider, installer, and the division.

(12) The division may make recommendations based on: (a) the findings of the complaint resolution process;

(b) the number of complaints received; and

(c) the severity and type of complaints.

(13) The division may conduct announced and unannounced audits of service appointments or ignition interlock system activities.

#### **R708-48-9.** Requirements for an Installer.

(1) A licensed installer shall:

(a) only be allowed to be employed by and do work for one provider at a time;

(b) finish in-person training for systems offered by the provider of the business for which they will be employed:

(c) finish any training administered or required by the division;

(d) provide a live demonstration and a written or electronic user guide to clients on the operation and functioning of the system before leaving the installation site;

(e) not be convicted of, or have been found by any entity of the state to have engaged in conduct which constitutes a felony, or crime or act of moral turpitude;

(f) perform monitoring on each system every 60 days or more frequently as required by the court or division, to:

(i) identify the system's proper use and accuracy; and

(ii) download captured data from the system;

(g) require the client to bring the vehicle with the system installed to the service center for monitoring; and

(h) not allow the customer or any other person except a division employee, another installer or trainee, or provider to observe the installation by using a separate area or visual barrier approved by the division.

(2) An installer shall provide the client with a written report of:

(a) service performed during an installation, removal, or service, and a copy of the information sent to the division as required in Section R708-48-13; and

(b) a complete report of any ignition interlock system activity, upon request.

(3) An installer shall surrender their license to the division within five days:

(a) if the installer is no longer employed at the provider; or (b) the division has denied, canceled, or revoked the license.

(4) An installer shall notify the division in writing if they have had an installer license denied, canceled, or revoked in another state or jurisdiction within 30 days of receiving notice of the action.

### <u>R708-48-10.</u> Procedure to Apply for and Renew an Installer License.

(1) An applicant for a new or renewal of an existing installer license, shall mail a complete installer application packet to the division at Box 144501 Salt Lake City, Utah 84114.

(2) The packet under Subsection (1) shall include:

(a) an installer application form provided by the division, which has been signed by the applicant and any other required parties;

(b) an application fee or renewal fee, which shall be made payable to the department;

(c) a signed agreement verifying that the applicant has read and understands each of the laws and rules that are applicable to Title 53, Chapter 3, Part 10, Ignition Interlock System Program Act;

(d) one FBI applicant fingerprint card with the applicant's legible fingerprints with initial application and upon renewal; and

(e) a check or money order made payable to the Utah Bureau of Criminal Identification to cover the cost of a background check.

(3) The applicant shall include original documents in the packet. The division may not accept photocopies of documents.

(4) An installer may not transfer their license.

(5) The installer may apply for a duplicate installer license by submitting a written request and a duplicate license fee to the division.

(6) The division may not process an application if any requirement is not met.

#### **R708-48-11.** Contracts and Documentation.

(1) A provider shall have a written contract approved by the division signed by both the client and an authorized representative of the provider before providing any services to a client.

(2) A client under 18 years of age shall also have the contract signed by a parent or legal guardian before any service is provided.

(3) A provider shall give a physical copy of the full contract signed by the representative, including the legible written name of the representative who signed, and keep the original contract.

(4) The provider shall ensure the contract contains:

(a) the client's:

(i) full legal name;

(ii) date of birth;

(iii) driver's license number;

(iv) license plate number;

(v) full legal name of the registered owner of the vehicle if different than the client;

(vi) full residential address; and

(vii) full mailing address;

(b) a description of the services to be provided by the business;

(c) a complete list of any fees and their frequency during the contract;

(d) clear language that sets forth the costs of early termination of the contract;

(e) language voiding the contract if the provider's license is denied, canceled, or revoked by the division;

(f) clearly identifies the total cost of the contract, including any expected servicing and removal costs during the contract, and early termination fees;

(g) clearly identifies all recurring monthly fees in the fees section; and

(h) system serial numbers from the:

(i) relay;

(ii) handset; and

(iii) camera.

(5) The provider shall allow the client to cancel the contract at any time, and shall clearly identify the total amount due upon cancellation including service charges, cancellation fees, and removal costs;

(6) The provider shall not automatically extended the contract due to a violation.

(7) The provider may not make the length of the contract be contingent upon the length of the ignition interlock restriction on an individual's driving privilege, or any extension of the restriction.

(8) The provider or a representative of the provider shall give the client a receipt upon payment of any fees.

(9) The installer shall provide clients with a physical copy of the installation report immediately upon installation.

(10) Clients are required to sign a Client Responsibility Form provided by the division which shall include:

(a) the client's:

(i) full legal name;

(ii) date of birth; and

(iii) driver's license number and state of issuance;

(b) the vehicle's:

(i) license plate number and state of issuance;

(ii) make and model; and

(iii) Vehicle Identification Number;

- (c) name of the system manufacturer;
- (d) installer signature;
- (e) name of the service center;

(f) date of installation; and

(g) acknowledgment of training provided by the installer to the client on the following topics:

(i) device use and function;

(ii) distracted driving while using a system;

(iii) early removal of a system;

(iv) tampering;

(v) camera technology; and

(vi) fees associated with the lease of a system.

#### R708-48-12. Records.

- (1) The provider shall maintain the following client records:
- (a) documentation of each ignition interlock system activity provided to a client which include:

(i) the client's:

(A) full legal name;

(B) date of birth;

(C) driver license number and state of issuance; and

(D) license plate number and state of issuance;

(ii) the type of service provided;

(iii) the exact date the service was performed;

(iv) the name and installer ID number of the installer who performed each service; and

(v) the name of the manufacturer and system serial number for the:

tor the.

(A) relay; (B) handset; and

(C) camera;

(C) camera;

(b) original copies of client contracts;

(c) client responsibility forms; (d) original copies of receipts and invoices;

(a) installation reports; and

(e) installation reports; and

(f) certificates of calibration with serial numbers of the: (i) relay:

(i) relay;

(ii) handset; and (iii) camera.

(2) The provider shall:

(a) store any client records in a location accessible to the

<u>division during normal business hours; and</u> (b) store active client records in a single location in the

service center.

(3) The provider may store inactive client records in a single offsite storage location after one year has elapsed since the system was removed.

(4) The provider shall maintain client records for a period of four years after the contractual obligation with the client has concluded.

(5) Each provider shall review the records of the business every six months for completeness and accuracy.

(6) The provider shall immediately file an affidavit with the division if any records the business is required to maintain are lost or destroyed which states:

(a) the date the record was lost or destroyed;

(b) the circumstances surrounding the loss or destruction; (c) the effect the loss may have on customers or the business's ability to fulfill requirements under this rule; and

(d) a description of the contents of the records lost or destroyed.

(7) In the event of a breach of data security, the provider shall:

(a) notify the division immediately after becoming aware of a breach of data security;

(b) cooperate with the state regarding recovery of data, remediation; and involvement of law enforcement;

(c) bear the cost of notifying everyone whose personal information may have been compromised;

(d) notify those individuals whose personal information may have been compromised in accordance with Title 13, Chapter 44, Protection of Personal Information Act;

(c) perform an analysis to determine the cause of the breach;

(f) produce a remediation plan to reduce the risk of incurring a similar type of breach in the future; and

(g) present the analysis and remediation plan to the division within ten days of notifying the division of the breach of data security.

(8)(a) The division has the right to adjust the plan under Subsection (6)(f), at its sole discretion.

(b) If the provider cannot produce the required analysis and plan under Subsection (6)(f) within the allotted time, the state, in its sole discretion, may perform an analysis and produce a remediation plan that the provider shall comply with, at the provider's sole cost. (9) The provider shall:

(a) ensure any customer records, state records, and information remain confidential at all times; and

(b) comply with state and federal laws, rules, and regulations concerning the confidentiality of information.

# R708-48-13. Reporting.

(1) Installers shall report to the division each time an individual has installed or removed a system from their vehicle.

(2) Providers shall report each time an individual has:

(a) attempted to start the vehicle with a measurable breath alcohol concentration greater than .020; or

(b) failed to report to the provider every 60 days, or more frequently if ordered by the court or division, for monitoring.

(3) A provider shall ensure each report submitted includes: (a) the client's:

(i) full legal name;

(ii) date of birth;

(iii) driver's license number and state of issuance;

(iv) license plate number and state of issuance; and

(v) make, model, and Vehicle Identification Number of the vehicle the system is installed in:

(b) the name of the manufacturer and serial numbers for

the: (i) relay;

(ii) handset; and

(iii) camera;

(c) the date and time of the installation, removal, and monitoring of a system;

(d) the date and time of attempts to start the vehicle with a measurable breath alcohol concentration that was prevented by the system; and

(e) the name of the person performing the installation, removal, or monitoring of a system.

(4) The provider shall submit each report to the division either through the portal or in a manner defined by the division within 24 hours or the next business day.

# R708-48-14. Access to the Utah State Portal.

(1) The division may grant access to the Utah State Portal to an installer to report ignition interlock system activities.

(2) The provider is responsible for:

(a) training each licensed installer on use of the portal; and (b) ensuring that only a licensed and trained installer has access to the login credentials.

(3) An installer who does not log into the portal at least once every 45 days will have their Utah State Portal access suspended by the division.

(4) The division shall cancel access to the portal if:

(a) a provider or installer license expires or has been denied, canceled, or revoked;

(b) a provider or installer is no longer employed by the service center;

(c) the login information has been shared or used by a person other than the installer; or

(d) a provider or installer fails to report any installation or removal.

# **R708-48-15.** Grounds for the Denial, Cancellation, or Revocation of a Provider, Service Center, or Installer License.

(1) The division may deny, suspend, or revoke a provider, service center, or installer license for any of the following reasons: (a) failure to comply with:

(i) Title 53, Chapter 3, Part 10, Ignition Interlock System Program Act;

(ii) Section 41-6a-518;

(iii) Title 13, Commerce and Trade; or

(iv) any part of this rule or Rule R708-31;

(b) intentional or unintentional omission or false statement, or any falsification of:

(i) applications; or

(ii) any records or other required information relating to Title 53, Chapter 3, Part 10, Ignition Interlock System Program Act:

(c) denial, cancellation, or revocation of their license in another state or jurisdiction;

(d) having been convicted of or having been found by any state entity to have engaged in, conduct that constitutes a felony, or any crime or act of moral turpitude; or

(e) refusing or failing to respond to a subpoena issued by the division.

(2)(a) The division shall consider the provider's or installer's earlier violations, complaints, and the quantity of the violations, when deciding whether denial, cancellation, or revocation is appropriate.

(b) In lieu of canceling or revoking a license, the division may elect to place the provider or installer on formal probation.

(4) The division shall ensure a probation document outlines the:

(a) violations;

(b) duration of probation;

(c) requirements of the licensee during the probation period; and

(d) requirements to end probation.

(5) If the division has denied, canceled, or revoked a provider license under this section, the clients of that provider may go to another provider.

#### <u>R708-48-16. Procedures Governing Informal Adjudicative</u> <u>Proceedings.</u>

(1) The division shall notify a provider or installer in writing of the decision to deny, cancel, or revoke a provider or installer license.

(2) The division shall begin an action to deny, cancel, or revoke a provider or installer license by the issuance of a notice of agency action and ensure the notice of agency action complies with Section 63G-4-201.

(3) The provider or installer is not required to respond to the notice of agency action.

(4) The division shall grant an opportunity for a hearing when the division receives a request in writing within 10 calendar days from the date the notice of agency action is issued.

(5) The division shall send written notice of a hearing at least 14 days before the date of the hearing.

(6) The division may not allow discovery, either compulsory or voluntary, before the hearing except that:

(a) each party shall have access to information relevant to the action in the division's files; and

(b) each party shall have access to any investigative information and materials permitted by law.

(7) A hearing officer shall hold a hearing within 30 calendar days from the day that the division receives the written request for hearing unless agreed to by the parties.

(8)(a) The division shall issue a written decision that shall constitute final agency action within 20 days after the date of the close of the hearing, or after the failure of a party to appear for the hearing.

(b) The division shall ensure the written decision states, the reason for the decision, notice of right to request reconsideration under Section 63G-4-302, notice of right of judicial review under Section 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

# **R708-48-17.** Interlock Restriction Extensions.

(1) The division may not extend an individual's ignition interlock restriction more than one 60 day extension for violations in a given 60 day reporting period regardless of the frequency of the electronic notifications received by the division under Subsection 53-3-1007(2).

(2) The provider submitting electronic notifications to the division under Subsection 53-3-1007(2) shall submit no more than one every 30 days and no less than one every 60 days except upon removal of an ignition interlock device.

(3) The individual may request a hearing before the division within ten days of the notice of extension regarding the extension to challenge the report.

(4) The division shall conduct the hearing in accordance with Rule R708-35. The burden of proof is on the individual to show they did not violate Subsection 53-3-1007(2)(b) or Subsection 53-3-1007(2)(c).

(5) The division may reference previous violations during a hearing under this section.

KEY: Ignition Interlock System Program Date of Last Change: <u>2023[November 19, 2012]</u> Notice of Continuation: June 7, 2022 Authorizing, and Implemented or Interpreted Law: Title 53, Chapter 3, Part 10

NOTICE OF PROPOSED RULE				
TYPE OF FILING: New				
Rule or Section Number:	R714-561	Filing ID: 55812		

# **Agency Information**

1. Department:	Public Safety		
Agency: Highway Patrol			
Building:	Calvin R	ampton Complex	
Street address:	4501 S 2	2700 W	
City, state and zip:	Salt Lake City, UT 84119-5994		
Mailing address:	: PO Box 141100		
City, state and zip:	Salt Lake City, UT 84114-1100		
Contact persons:			
Name:	Phone:	Email:	
Kim Gibb	801- 556-	kgibb@utah.gov	

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

# **General Information**

2. Rule or section catchline:

R714-561. Suicide Deterrence Grant Program

8198

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

This rule is being enacted as a result of the passage of H.B. 259 during the 2023 General Session and is authorized under Section 17-22-34.

# 4. Summary of the new rule or change:

This rule outlines the application process, eligibility criteria, and reporting requirements for a county jail that wishes to apply for funding from the Suicide Deterrence Grant Program.

#### Fiscal Information

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

# A) State budget:

The Utah Legislature appropriated \$140,000 ongoing to provide grant funding for county jails for the purchase of suicide barriers as outlined in Section 17-22-34.

The Highway Patrol does not anticipate a cost or savings to the state as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

# B) Local governments:

The Highway Patrol anticipates an inestimable cost savings to local governments as a result of the funds appropriated by the legislature.

County jails will have the ability to apply for funding from the \$140,000 ongoing appropriation in order to purchase suicide barriers. County jails will apply for approval of grant funding awards, and once approved, will be awarded funding based on the criteria outlined in Section 17-22-34(3) and this rule.

The Highway Patrol does not anticipate a cost or savings to local governments as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

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

The Highway Patrol is not aware of any small businesses that have equipment available that would satisfy the minimum standards for suicide barriers.

There may be small businesses that are able to provide this equipment, as would be identified through the application process when a county jail applies for grant funding.

Under the grant program created in Section 17-22-34, a business that is able to provide suicide barriers that meet minimum standards established in Section 17-22-34(3) and this rule, will have a potential to sell suicide barriers to county jails in the amount of up to \$140,000 in ongoing grant funding appropriated by the legislature.

The Highway Patrol does not anticipate a cost or savings to small businesses as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

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

The Highway Patrol is not aware of any non-small businesses that have equipment available that would satisfy the minimum standards for suicide barriers.

There may be non-small businesses that are able to provide this equipment, as would be identified through the application process when a county jail applies for grant funding.

Under the grant program created in Section 17-22-34, a business that is able to provide equipment that meets minimum standards established in Section 17-22-34(3) and this rule, will have a potential to sell suicide barriers to county jails in the amount of up to \$140,000 in ongoing grant funding appropriated by the legislature.

The Highway Patrol does not anticipate a cost or savings to non-small businesses as a result of this rule because it is strictly explaining how the appropriated funds will be distributed.

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

There are no anticipated costs or savings for persons other than small businesses, state, or local government entities because this rule only identifies the process for a county jail to apply for grant funding appropriated by the legislature for the purchase of suicide barriers.

**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 this rule only identifies the process for a county jail to apply for grant funding appropriated by the legislature for the purchase of suicide barriers.

**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 Public Safety, Jess L. Anderson, 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 17-22-34

# 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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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	Michael Rapich,	Date:	09/28/2023
or designee	Colonel Utah		
and title:	Highway Patrol		

#### **R714.** Public Safety, Highway Patrol.

#### <u>R714-561. Suicide Deterrence Grant Program.</u> <u>R714-561-1. Purpose.</u>

The purpose of this rule is to create a program to assist county jails through monetary grants to purchase suicide barriers on an upper level of a building to prevent an individual from falling.

#### R714-561-2. Authority.

This rule is authorized by Section 17-22-34.

#### R714-561-3. Definitions.

Terms used in this rule are found in Section 17-22-34.

### R714-561-4. Applications.

(1) A county jail applying for the funding of suicide barriers shall submit the application to the department:

(a) on a form provided by the department; and

(b) submitted no later than May 1 each year.

(2) In order receive awarded funds for the purchase of equipment, the law enforcement agency shall submit to the department a completed application form that includes:

(a) criteria listed in Subsection 17-22-34(3)(a); and (b) the total amount of funding being requested.

(b) the total amount of funding being requested.

# R714-561-5. Eligibility Criteria for Grant Funding.

In addition to the criteria established under Subsection 17-22-34(3)(b) the department may consider other relevant information to determine eligibility for grant funding such as the:

(1) total amount of funding available for disbursement;

(2) order in which applications are received;

(3) total amount of funding requested; and

(4) intended use of the funding requested.

#### <u>R714-561-6. Method and Formula for Determining a Grant</u> <u>Amount.</u>

The department shall:

(1) review timely applications submitted by law enforcement agencies;

(2) evaluate each proposal submitted with an application to determine if it meets requirements set forth under Section 17-22-34;

(3) approve funding awards equitably to law enforcement agencies that have submitted completed applications for the purchase of approved equipment; and

(d) notify each law enforcement agency that applied of:

(i) the approval or denial of the application for funding; and

(ii) the amount of funding that will be made available to the law enforcement agency for the purchase of equipment.

# R714-561-7. Grant Recipient Reporting Requirements.

County jails that receive funding shall:

(a) use the awarded resources only in the manner set forth in the agency's application;

(b) use the awarded resources only to purchase an approved suicide barrier;

(c) provide a report to the department that identifies how awarded grant funds were used, and the total cost spent;

(d) maintain records for five years sufficient to show how the funding is used; and

(e) cooperate with the department if and when the department determines it is necessary to audit agency records, and evaluate use of the funding.

#### KEY: suicide deterrence grant, suicide barrier Date of Last Change: 2023 Authorizing, and Implemented or Interpreted Law: 17-22-34

# NOTICE OF PROPOSED RULE

TTPE OF FILING. Amenument			
Rule or Section Number:	R746-8-301	Filing ID: 55757	

# Agency Information

• •			
1. Department:	Public Service Commission		
Agency:	Administration		
Building:	Heber M. Wells Building		
Street address:	160 E 300 S, 4th Floor		
City, state and zip:	Salt Lake City, UT 84111		
Mailing address:	PO Box 4558		
City, state and zip:	Salt Lake City, UT 84114-4558		
Contact persons:			
Name:	Phone: Email:		
John Delaney	801- 530- 6724	jdelaney@utah.gov	

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

#### **General Information**

# 2. Rule or section catchline:

R746-8-301. Calculation and Application of UUSF Surcharge

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

The purpose of this rule amendment is to ensure the Utah Universal Public Telecommunications Service Support Fund (UUSF) meets the fund's statutory obligations and does not incur deficits beyond those obligations.

As provided in Subsection 54-8b-15(2), the UUSF provides a funding mechanism for qualifying telecommunications carriers "to obtain specific, predictable, and sufficient funds to deploy and manage" networks for end-users of certain telecommunications services.

UUSF funding is provided by "an explicit charge assessed" – or surcharge – on each telecommunication access line or connection, pursuant to Subsection 54-8b-15(8). That surcharge is then remitted to the UUSF by telecommunications carriers who have collected the surcharge from their customers on a "per access line" basis, pursuant to Subsection 54-8b-15(9).

The "per access line" basis allows the Public Service Commission (PSC), with the assistance of the Division of Public Utilities, to estimate UUSF revenue based on the number of customers of any given telecommunications carrier. In other words, the UUSF balance is a function of the revenue collected and remitted from the surcharge based on the projected number of access lines (Subsections 54-8b-15(8) and (9)), which is then offset by the projected costs attributable to deployment and management of the applicable telecommunications networks (Subsection 54-8b-15(2)).

Accordingly, the projected "per access line" surcharge must be occasionally adjusted to meet the statutory obligations relating to the projected UUSF costs. Thus, this rule amendment increases the monthly UUSF surcharge remittal amount from \$0.36 to \$0.71 per access line.

The Division of Public Utilities recently provided its recommended UUSF distributions for calendar year 2024 (CY2024) so that regulated Utah telecommunications carriers will "obtain specific, predictable, and sufficient funds to deploy and manage" networks for end-users of certain telecommunications services, as required by Utah law.

These recommendations also noted that the recommended increased distributions in CY2024 will necessitate a surcharge increase to \$0.71 in CY2024. The PSC will be making final decisions on those CY2024 distributions before the end of 2023, and the PSC recognizes that any changes to those final distributions could impact the appropriate surcharge level.

Notwithstanding the ongoing process to approve and finalize CY2024 distributions, the PSC is submitting this rule amendment now to enable the surcharge change to take place at the appropriate time if the proposed distributions are approved.

If the PSC determines, after finalizing CY2024 distributions, that this proposed surcharge increase remains appropriate, it anticipates making this rule amendment effective on 12/29/2023, so that it will apply to all Utah access lines and connections for CY2024. The PSC expresses appreciation to the Division of Public Utilities in the Department of Commerce for providing the analysis necessary to consider and implement this rule amendment.

# 4. Summary of the new rule or change:

This amendment increases the monthly UUSF surcharge from \$0.36 to \$0.71 per access line.

The amendment makes three textual edits, revising the rule's three references to the \$0.36 surcharge to reflect the new \$0.71 surcharge.

As explained in response to Box 3 above, the increase in the surcharge is necessary to ensure the UUSF can meet statutory obligations while remaining within policy norms.

Unless public comment, or the results of the PSC proceedings to finalize CY2024 UUSF distributions, convinces the PSC to alter its plans, the PSC anticipates making this rule amendment effective on 12/29/2023.

# Fiscal Information

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

# A) State budget:

This surcharge change will increase the balance accruing in the UUSF, satisfying the performance objective set by the Utah Legislature to maintain at least three months' worth of fund distributions without incurring a deficit.

The only other impact on the state budget is the impact on state offices that are telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience an increase of \$0.35 in their monthly bill.

# B) Local governments:

The only impact on local governments will be in their capacity as telecommunications customers.

Because the surcharge is passed on by providers to customers, every telecommunications customer will experience an increase of \$0.35 in their monthly bill.

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

The only impact on small businesses will be in their capacity as telecommunications customers.

Because the surcharge is passed on by providers to customers, every telecommunications customer will experience an increase of \$0.35 in their monthly bill.

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

The only impact on non-small businesses will be in their capacity as telecommunications customers.

Because the surcharge is passed on by providers to customers, every telecommunications customer will experience an increase of \$0.35 in their monthly bill.

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*):

Affected – All customers who are billed for an access line presently pay \$0.36 per month per access line for the UUSF surcharge. That rate was implemented in July 2021, and represented a reduction of \$0.18 per access line per month – from \$0.54 to \$0.36.

Under the new \$0.71 rate, all such customers will pay \$0.35 more per month per access line. According to the Division of Public Utilities, as of 07/31/2023, 4,063,228 access lines are assessed the surcharge every month. At the current rate, this results in approximately \$1,443,600.00 being collected from such customers to fund the UUSF on a monthly basis, or approximately \$17,323,199 per year.

Based on CY2024 projections, an average of 4,279,057 access lines will be assessed for the surcharge every month. Under the new rate, approximately \$2,998,331, on average, would be collected per month, or approximately \$35,979,974 per year to fund the UUSF.

The proposed rate increase will result in an approximate average increase of \$1,554,731 per month, or \$18,656,775 per year to fund the UUSF, as compared to the current rate to fund the UUSF.

This will have a fiscal impact on Utah's regulated telecommunications providers that receive distributions from the UUSF. This rule amendment will enable the UUSF to make the distributions in CY2024 that are necessary to meet the statutory requirements. The PSC presently does not have access to the commercially sensitive information that would be necessary to determine what portion of the access lines paying the surcharge are small businesses, larger businesses, or individuals. However, this increase should affect all customers and customer classes equally on a per access line basis.

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

All telecommunications customers currently paying this surcharge will experience an increase of \$0.35 in their monthly bill.

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

Regulatory Impact Table				
Fiscal Cost	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	\$9,328,388	\$0	\$0	
Total Fiscal Cost	\$9,328,388	\$0	\$0	

Fiscal Benefits	FY2024	FY2025	FY2026
State Government	\$0	\$0	\$0
₋ocal Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Fotal Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	(\$9,328,388)	\$0	\$0

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

All telecommunications customers in Utah will experience an increase of \$0.35 on their monthly telecommunications bill.

This will enable the UUSF to satisfy the Legislative performance goal of maintaining a sufficient balance in the fund to pay three months' worth of disbursements, without incurring a deficit.

This also will enable the UUSF to meet its statutory mandate to provide a funding mechanism for Utah's qualifying regulated telecommunications carriers to "obtain specific, predictable, and sufficient funds to deploy and manage" telecommunications networks.

I appreciate the detailed analysis done by the Division of Public Utilities in the Department of Commerce that provided the PSC the necessary information. I have reviewed and approve this regulatory impact analysis. Thad LeVar, PSC Chair

# **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 54-3-1	Section 54-4-1	Section 54-8b-10
Section 54-8b-15		

# 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	12/15/2023
unti	1:				

9.	This	rule	change	MAY	12/29/2023
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	Thad LeVar, PSC	Date:	09/19/2023
or designee	Chair		
and title:			

#### **R746.** Public Service Commission, Administration.

**R746-8.** Utah Universal Public Telecommunications Service Support Fund (UUSF).

# R746-8-301. Calculation and Application of UUSF Surcharge.

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:

(a) Unless Subsection R746-8-301(3) applies, providers shall remit to the Commission [ $\frac{0.36}{0.71}$  per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(b)(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.

(c) A provider may collect the surcharge:

(i) as an explicit charge to each end-user; or

(ii) through inclusion of the surcharge within the end-user's rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(e)(i) Except as provided in Subsection R746-8-301(1)(e)(ii):

(A) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission [ $\frac{0.36}{50.71}$  per month per access line for such service, such as new access lines or connections, or recharges for existing lines or connections, purchased on or after January 1, 2018.

(B) Subsection R746-8-301(1)(e)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make a remittance for an access line under Subsection R746-8-301(1)(e)(i) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).

(C) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements. (ii) The charge described in Subsection R746-8-301(1)(a) does not apply to a prepaid wireless telecommunications service, as defined in Section 69-2-405, that is subject to the service charge described in Subsection 69-2-405(2)(b).

(iii) [\$0.36] per month is both the maximum and minimum amount of remittance necessary for any single access line.

(2)(a) A provider shall remit to the Commission no less than 98.69% of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31% of its total monthly surcharge collections to offset the costs of administering this rule.

(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), and:

(i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge;

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services; or

(iii) subject to Subsection R746-8-403(5), receives subsidization through a federal Lifeline program approved by the FCC.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

(c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to Subsections R746-8-301(3)(a)(i) and R746-8-301(3)(a)(i).

KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology

Date of Last Change: 2023[January 1, 2022]

Notice of Continuation: February 16, 2023

Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15; 54-8b-10

#### NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment			
Rule or SectionR907-80-15Filing ID:Number:55797			

#### **Agency Information**

1. Department:	Transportation	
Agency:	Administration	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	

# Mailing address: PO Box 148455

City, state and Salt Lake City, UT 84114-8455 zip:

# Contact person(s):

contact person(s).				
Name:	Phone:	Name:		
Leif Elder	801- 580- 8296	lelder@utah.gov		
Becky Lewis	801- 965- 4026	blewis@utah.gov		
James Palmer	801- 965- 4197	jimpalmer@agutah.gov		
Lori Edwards	801- 965- 4048	loriedwards@agutah.gov		

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

# **General Information**

#### 2. Rule or section catchline:

R907-80-15. Sale or Exchange Involving a Large Public Transit District

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

In Laws 2023, c. 219, § 25, eff. May 3, 2023. (S.B. 27, see line 2239), the Legislature amended Section 72-5-117 to require the Department of Transportation (Department) to make administrative rules that may provide for the transfer of real property, with or without charge, to a large public transit district under certain circumstances.

The Department proposes these changes to Rule R907-80 to meet the new statutory requirement.

#### 4. Summary of the new rule or change:

This proposed rule change adds Section R907-80-15 to Rule R907-80 to satisfy the requirement in the Legislature's 2023 amendment of Section 72-5-117.

#### **Fiscal Information**

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

# A) State budget:

There is no anticipated cost or savings to the state budget.

The change to Section 72-5-117 grants the Department authority to make administrative rules that may provide for the transfer of real property, with or without charge, to a large public transit district under certain circumstances.

The fiscal impact on the state's budget of such a rule is negligible.

B) Local gov	ernments:		
change to ha	ive a fiscal	impact on lo	s proposed ru cal government nly applies to th
C) Small business emp		s ("small busi persons):	iness" means
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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 Transportation, Carlos M. Braceras, PE, 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 72-5-117

#### **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 11/14/2023 until:

9. This rule change MAY 11/21/2023 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	Carlos M.	Date:	09/22/2023
or designee	Braceras, PE,		
and title:	Executive Director		

**R907.** Transportation, Administration.

**R907-80.** Disposition of Surplus Land.

<u>R907-80-15. Sale or Exchange Involving a Large Public Transit</u> <u>District.</u>

(1) As used in this Section R907-80-15, the following definitions apply:

(a) "Fixed guideway capital development" means the same as that term is defined in Section 72-1-102;

(b) "Large public transit district" means the same as that term is defined in Section 17B-2a-802.

(2) Notwithstanding this rule, the department may provide for the sale or exchange of real property, with or without charge, to a large public transit district if the director determines that the real property:

(a) is within the boundaries of a station area that has a station area plan certified by a metropolitan planning organization in accordance with Section 10-9a-403.1;

(b) is part of a transit-oriented development or transitsupportive development as defined in Section 17B-2a-802;

(c) is adjacent to a completed fixed guideway capital development that was overseen by the department; or

(d) will only be used by the large public transit district in a manner that the director determines will provide a benefit to the state transportation system.

(3)(a) Before selling or exchanging land under this Section R907-80-15, the department and the large public transit district will enter into an agreement to state the terms of the sale or exchange.

(b) The director must approve and sign the agreement described in Subsection R907-80-15(2)(a).

(c) Any agreement described in Subsection R907-80-15(2)(a) and related documents will include a provision specifying that the department and the large public transit district will take all steps necessary, including recording documents with the county recorder, to ensure the real property reverts to the department if the property ceases to be used for the purpose stated in the agreement.

(4) Notwithstanding contrary provisions in Rule 907-80, this Section R907-80-15 applies to the department's real property whether or not the real property is surplus.

KEY: surplus land, negotiated exchanges, public sales auctions, negotiated sales

Date of Last Change: 2023[December 1, 2020]

Notice of Continuation: April 21, 2022

Authorizing, and Implemented or Interpreted Law: 72-5-117; 72-5-111; 72-5-404

# NOTICE OF PROPOSED RULE

TYPE OF FILING:	Amendment	
Rule or Section Number:	R920-4	Filing ID: 55796

#### Agency Information

1. Department:	Transportation
Agency:	Operations, Traffic and Safety
Room no.:	Administrative Suite, 1st Floor
Building:	Calvin Rampton Bldg
Street address:	4501 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 148455
City, state and zip:	Salt Lake City, UT 84114-8455

Contact person(s):		
Name:	Phone:	Name:
Leif Elder	801- 580- 8296	lelder@utah.gov
Becky Lewis	801- 965- 4026	blewis@utah.gov
James Palmer	801- 965- 4197	jimpalmer@agutah.gov
Lori Edwards	801- 965- 4048	loriedwards@agutah.gov

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

# **General Information**

2. Rule or section catchline:

R920-4. Special Road Use or Event

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

The Legislature, during its 2023 General Session, passed S.B. 250.

Substantive changes this bill makes require the Department of Transportation (Department) to amend this rule.

# 4. Summary of the new rule or change:

S.B. 250 (2023), Public Surveillance Amendments:

1) authorizes a state or local law enforcement agency to install and use automatic license plate reader data gathered by a private entity in certain circumstances;

 allows the Department to issue a special road use permit for the use of automatic license plate reading systems on a state highway in certain circumstances;

3) requires a law enforcement agency participating in an automatic license plate reading system program to publicly post policies related to automatic license plate reading systems and special road use permits the law enforcement agency has received; and

4) defines parameters for the collection and retention of information for investigative searches and for audit purposes gathered through automatic license plate reading systems by a law enforcement agency.

This proposed rule change provides a framework the Department and law enforcement agencies will follow to apply for and receive special use and encroachment permits and makes technical changes to conform this rule to the requirements of the Rulewriting Manual for Utah.

# **Fiscal Information**

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

The Department anticipates that this proposed rule change will impact the state's budget.

The proposed changes will lead to additional permitting needed to accommodate the installation of automatic license plate reader systems (ALPRS) within the Department's right of way throughout the state.

However, the Department does not have sufficient data to calculate an accurate estimate of what the additional costs will be at this time.

# B) Local governments:

The Department anticipates that this proposed rule change will impact local governments to the extent that local governments apply for and receive special use permits for ALPRSs.

While the Department will not charge local governments or their law enforcement agencies permit application fees, local governments will experience the normal costs associated with filing permit applications.

The Department does not know how many permits for which local governments will apply and, therefore, cannot estimate the impact on local governments.

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

These proposed changes will not lead to an impact on small businesses because it does not apply to them or require anything of them.

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

These proposed changes will not lead to an impact on nonsmall businesses because it does not apply to them or require anything 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 proposed changes will not lead to an impact on Persons other than small businesses, non-small businesses, state, or local government entities because they only apply to the state and local governments.

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

No person is affected by this rule, only government entities.

There are no compliance costs for affected persons.

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

	,		
Regulatory In		)	
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 Transportation, Carlos M. Braceras, PE, 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 72-1-201	Section 72-1-212	Section 41-6a-1111
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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 11/14/2023 until:

# 9. This rule change MAY 11/21/2023 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	Carlos M.	Date:	09/22/2023
or designee	Braceras, PE,		
and title:	Executive Director		

# **R920.** Transportation, Operations, Traffic and Safety. **R920-4.** Special Road Use or Event.

R920-4-1. Purpose, Authority, Scope, and Definitions of Rule.

(1) The purposes of this rule are to:

(a) [E]ensure the right of Utahns and visitors to speak and protest in public forums and other public places owned or maintained by the Utah Department of Transportation;

(b) [E]encourage and support special events such as parades, runs and walks, bicycle races, and film-related activities, recognizing their importance to Utah's economy and to the well-being of residents of and visitors to Utah;

(c) [M]manage limited resources and multiple requests for the use of the same roadways in a responsible and content-neutral manner;

(d) [E]encourage collaboration with local governments in the review and management of [Special Road Uses]special road uses;

(e) [P]provide guidelines and an appeal process for the review of applications for special road use permits; and

(f) [S]set reasonable time, place, and manner restrictions for the safe use of roadways for free speech events, and set reasonable requirements on other special events on highways and land under the jurisdiction of the [ $\underline{P}$ ]department to protect public safety, persons, and property, and to accommodate the interests of persons not participating in the assemblies to use the roadways for travel;

(2) This rule is intended to further the following governmental interests:

(a) [Ŧ]the rights of Utahns to speak, protest, and peaceably assemble;

(b) [**T**]<u>t</u>he safety of all participants in, and spectators of, special events;

(c) [T]the safety of the [travelling]traveling public;

(d) [Ŧ]<u>t</u>he ability of emergency service providers to access and care for participants and spectators in special <u>road</u> use events, and for residents near [to-]such events<u>;</u>

(e) [**T**]<u>the management of limited resources;</u>

(f) Utah's tourism industry and its strong economy;

(g) [**T**]<u>the ability of residents and others not participating</u> in any special event, to travel on the roadways and to access private property without unreasonable disruption; and

(h)  $[\underline{\mp}]$ the protection against unreasonable financial burdens on the  $[\underline{\oplus}]$ department or the  $[\underline{\$}]$ state.

(3) The purpose of Section R920-4-16 is to:

(a) provide how a law enforcement agency may obtain a special use permit to conduct the automatic license plate reader system activity authorized under Section 41-6a-2003;and

(b) specify a procedure and conditions for applying for and granting a special use permit and an encroachment permit for installing and maintaining an automatic license plate reader system.

[(3)](4) This rule is authorized by Sections 72-1-201, 72-1-212 and 41-6a-1111[-of the Utah Code Annotated]. This rule applies to all highways and adjacent rights-of-way under the  $[\underline{\mathcal{P}}]$ department's jurisdiction.

[(4)](5) Definitions.

The following definitions shall apply for purposes of Rule 920-4:

(a)(<u>i</u>) [The-]"Applicant" means an individual, corporation, unincorporated association, [<u>L</u>]local [G]government, or other organization[<del>,</del>] seeking a [Special Event Permit]special event permit.

(ii) "Applicant" [also-]includes [any-]predecessors or successors in interest to the [A]applicant, and, if the [A]applicant is an entity, [any-]officers and principals of the [A]applicant.

(b) [A]"Day" means a calendar day, except as otherwise expressly stated in this [R]<u>r</u>ule.

(c) "Department" means the Utah Department of Transportation.

(d)(i) [A]"Free [S]speech [R]road [U]use" means a type of [Special Road Use]special road use conducted for [the purpose of ]persons expressing their political, social, religious, or other views protected by the First Amendment to the United States Constitution and Article I, Section 15, of the Utah Constitution during the event.

(ii) [A]"Free [S]speech [R]road [U]use" does not include: (A)[(i)] [S]solicitations or events which primarily propose a commercial transaction;

 $(\underline{B})[(ii)]$  [<u>B]b</u>icycle races or events;

(C)[(iii)] [F]foot races, including fun[-]\_runs, races, walks, and similar events;

 $(\underline{D})[(iv)]$  [M]motorcycle rallies, parades, and similar events; or

<u>(E)[(v)]</u>  $[\underline{U}]_{use}$  of highways and adjacent rights-of-way for [filming]motion picture or still photography.

(e) "Local [G]government" means a municipality as defined in [Utah Code ]Subsection 10-1-104(5), a county, or an institution of higher education defined in [Utah Code ]Section 53B-2-101.

(f) [A]"Short-[N]<u>n</u>otice [F]<u>f</u>ree [S]<u>speech [R]<u>road [U]use</u>" means a type of [Free Speech Road Use]<u>free speech road use</u> which arises out of, or is related to, events or other public issues which cannot be reasonably anticipated far enough in advance of the occurrence to allow compliance with the deadlines otherwise required in this [R]<u>r</u>ule. An [A]<u>applicant bears the burden of demonstrating that a proposed [Free Speech Road Use]free speech road use</u> is a [Short Notice Free Speech Road Use]<u>short notice free speech road use</u>.</u>

(g) [A-]"Special [E]event [P]permit" means a permit sought or granted by the [D]department for a [Special RoadUse]special road use.

(h) [A-]"Special [R]<u>r</u>oad [U]<u>u</u>se" means a use or event taking place on a highway or adjacent to a highway other than normal traffic or lawful pedestrian movement.

(i) [A Special Road Use]"Special road use" includes:

(A) [A]<u>a</u> demonstration, rally, vigil, picket line or similar gathering;

(B) [A]a parade or march;

(C) [A]a bicycle race or event;

(D) [A]a foot race, including a fun-run, race, walk, or similar event;

(E)  $[A]\underline{a}$  motorcycle rally, parade, ride, or similar event; and

(F) [Ŧ]<u>t</u>he use of highways and adjacent rights-of-way for [filming]motion picture or still photography.

(ii) [A]"Special [R]road [U]use" does not include:

(A) [Θ]outdoor advertising, regulated by the Protection of Highways Act, [Utah Code-]Sections 72-7-501 et seq., and [Utah Admin. Code]Rule R933-2;

(B) [ $\underline{\mathbb{F}}$ ]encroachment on, or the placement, construction, or maintenance of, roads, driveways, advertising, and utilities, regulated by [Utah Code]Section 72-7-701 et seq.[ $_{\overline{7}}$ ] and [Utah Admin. Code]Rule R930-7; and

(C)  $[\underline{T}]\underline{t}he$  sole display of unattended signs or banners on or appurtenant to the roadway.

#### R920-4-2. Permit Required for Special Road Use; Exceptions.

(1) The department will require a [A Special Event Permit]special event permit for a [shall be required for any Special Road Use]special road use. A [Special Road Use]special road use may [shall]not occupy the roadway until a permit is issued. A permit shall be obtained by submitting a completed application form to the [ $\mathcal{D}$ ]department for the particular type of [Special Road Use]special road use requested, accompanied by the fees as listed within the [ $\mathcal{D}$ ]department fee schedule and [any\_]other documents or attachments as required by this [ $\mathcal{R}$ ]rule.

(2) An [A]applicant shall send an application to the regional office in which the [Special Road Use]special road use originates. If the [Special Road Use]special road use continues through multiple [ $\square$ ]department [R]regions, the [ $\square$ ]department may designate a regional office to coordinate the application process throughout all other affected regions.

(3) <u>The department may not require a [A Special Event</u> <u>Permit]special event permit [shall not be required</u>]for activities that occur entirely on a sidewalk, crosswalk, or dedicated pedestrian passageway adjacent to or nearby a roadway <u>if[ so long as</u>]:

(a) [P]pedestrians are lawfully permitted to be present in the area;

(b) [R]<u>r</u>easonable measures are taken to ensure that the activity does not encroach upon the roadway or otherwise affect normal vehicular traffic flow; and

(c) [N]<u>n</u>on-participating pedestrians have access to the sidewalk or passageway.

#### **R920-4-3.** Timeline for Submitting Applications.

(1) Subject to the requirements of this section, [A]applicants are encouraged to submit applications for a [Special Event Permit]special event permit as far in advance as is practicable to allow sufficient time for the completion of the application, for the negotiation of [any-]conditions to the application, and for appeal, if authorized[permitted].

(2) <u>An applicant shall submit a [A-]</u>completed application for a [<u>Special Event Permit]special event permit</u> [shall be submitted ]at least 30 days before the proposed [<u>Special Road Use]special road</u> use. <u>The department may consider an application[Any applications]</u> not received by the specified deadline [<u>may be considered by the</u> <u>Department-]</u>if;

(a)  $[\underline{T}]\underline{t}he [\underline{A}]\underline{a}pplicant pays the expedited review fee as defined in Section R920-4-4:[5] and$ 

(b)  $[\underline{T}]\underline{t}$ here is sufficient time <u>for the department</u> to process the application, to coordinate with the [A]applicant, and to ensure that the [A]applicant will comply with the terms of the permit.

(3) <u>An applicant may not file an application</u>[No application may be filed] more than one year before the proposed event date.

(4) Subsection  $\underline{R920-4-3}(2)$  does not apply to:

(a) [A]<u>a</u> [Special Event Permit]special event permit for a [Short Notice Free Speech Road Use]short notice free speech road use; or

(b)  $[A]\underline{a}$  [Special Event Permit]special event permit sought by a  $[L]\underline{l}$ ocal  $[G]\underline{c}$ government for a [Special Road Use]special road use if the  $[L]\underline{l}$ ocal  $[G]\underline{c}$ government is responsible for the supervision and safety of the [Special Road Use]special road use.

#### **R920-4-4.** Fees for Filing Applications; Exceptions.

(1) An <u>applicant[application]</u> for a [Special Event Permit]special event permit shall <u>include with the application[be</u> accompanied by] the appropriate nonrefundable review fees as listed within the  $[\mathbb{P}]$ department's fee schedule. The fees are imposed as a regulatory measure and are charged only to defray the expenses of processing the application, reviewing for acceptability, and monitoring the event to ensure conformity with the intent expressed in [Section]Section R920-4-1[-above].

(2) A[<u>ny Special Event Permit] special event permit</u> <u>application</u> not received by the deadline in [ $\pm$ ]Subsection [(2) of ]R920-4-3(2) shall be accompanied [with]by a nonrefundable expedited review fee as listed within the [ $\pm$ ]department fee schedule. Payment of the expedited fee does not guarantee that the [ $\pm$ ]department will process the application.

(3)(a) Subsection  $\underline{R920-4-4}(1)$  does not apply to:

(i)[(a)] [A]a [Special Event Permit]special event permit sought by a [ $\underline{L}$ ]local [ $\underline{G}$ ]government if the [ $\underline{L}$ ]local [ $\underline{G}$ ]government is responsible for the supervision and safety of the [Special Road Use]special road use.

 $\underbrace{(ii)[(b)]}_{(b)} \quad [An]an application for a [Special Event Permit]special event permit for a [Free Speech Road Use]free speech road use if the [A]applicant demonstrates, by sufficient evidence, that the payment of the fee would affect the ability of the [A]applicant to provide for the necessities of life.$ 

(b) For purposes of Subsection R920-4-4(3)(a)(ii), if [H] an [A]applicant is an organization, the [D]department may require proof that the organization's membership is similarly unable to pay.

(4) Subsection <u>R920-4-4</u>(2) does not apply to a [Special Event Permit]special event permit for a [Short Notice Free Speech Road Use]short notice free speech road use. An application for a [Special Event Permit]special event permit for a [Short Notice Free Speech Road Use]short notice free speech road use shall pay the nonrefundable fee specified in [ $\pm$ ]Subsection <u>R920-4-4</u>(1), unless one of the exceptions in [ $\pm$ ]Subsection <u>R920-4-4</u>(3) also applies.

# **R920-4-5.** Restrictions on Special Event Permits.

(1) The [Region Permit Officer]region permit officer may [shall-]not issue a [Special Event Permit]special event permit if, in the two years preceding the date of the [A]application:

(a) [T]the [A]applicant has[had] been granted a [Special Event Permit]special event permit, and the [A]applicant:

(i)  $[\Psi]\underline{v}$  iolated a condition of the  $[\Psi]\underline{p}$  ermit; [,] or

(ii) [F]failed to take reasonable care in preventing the participants in the [Special Road Use]special road use from violating a condition of the permit; or

(b) [F]<u>the</u> [A]<u>applicant</u> engaged in a [Special Road Use]<u>special road use</u> without first securing a [Special Event Permit]<u>special event permit</u>.

(2) The [Region Permit Officer]region permit officer may [shall-]not issue a [Special Event Permit]special event permit for a [Special Road Use]special road use on an overpass above a highway[ $\tau$ ] if the [Special Road Use]special road use is intended to draw the attention of the traffic below[ $\tau$ ] and is not an incidental traversing of the overpass as part of the event path.

(3) The [Region Permit Officer]region permit officer may [shall\_]not issue a [Special Event Permit]special event permit for [any]a portion of the same roadway for a period of more than 24 continuous hours, per [Special Road Use]special road use.

(a) This [ $\underline{s}$ ]Subsection <u>R920-4-5(3)</u> does not apply to a [Special Event Permit]special event permit sought by a [ $\underline{L}$ ]local [G]government, for a [Special Road Use]special road use if the [ $\underline{L}$ ]local [G]government is responsible for the supervision and safety of the [Special Road Use]special road use.

(b) Deviations from [provisions of ]this [ $\underline{s}$ ]Subsection R920-4-5(3) may be allowed if they do not violate state and federal statutes, rules, [ $\underline{law}$ ,] or regulations, and the use will be for the public good without compromising the transportation purposes of the roadway.

(c) <u>The department may consider requests</u> for deviations [may be considered by the Department-]on an individual basis, upon justification submitted by the  $[A]_a$ pplicant.

(d) In determining whether to grant the deviation, the [Region Permit Officer]region permit officer shall consider the [P]purposes of the [R]rule as articulated in [Rule]Subsection R920-4-1(1)\_[ $_7$ ] \_The [A]applicant shall have the burden to prove that the deviation is in the public interest and will not substantially affect the ability of residents and others not participating in [any]a special event to travel on the roadways and to access private property without unreasonable disruption. The [Region Permit Officer]region permit officer may require the [A]applicant to provide additional proof, such as a traffic impact study, to satisfy the [A]applicant's burden for the deviation.

# **R920-4-6.** Applications for Special Event Permits for Non-Free Speech Road Uses.

(1)\_This section governs the standards for review of all applications for [Special Event Permits]special event permits other than those covered in Section R920-4-7.

(2) In addition to an [A]application for <u>a [Special Event</u> <u>Permit]special event permit</u>, the [Region Permit Officer]region <u>permit officer</u> shall require the [A]applicant to provide as necessary:

(a) [4]insurance coverage, waiver and release of damages and indemnification as described in <u>Section R920-4-9;</u>

(b) [A]<u>a</u> traffic control plan as described in <u>Section R920-</u> 4-10;

(c) [P]public notification as described in <u>Section R920-4-</u>11;

(d) [A]a contingency plan, as described in Section R920-4-12;

(e)  $[A]\underline{a}$  route map as described in <u>Section R920-4-13</u>; and

(f) [P]proof that the applicant has obtained [any]applicable city, county, or other governmental agency approvals or permits as described in <u>Section R920-4-14</u>.

(3)[(2)] In reviewing an[<u>y A]</u> application for <u>a [Special</u> <u>Event Permit]special event permit</u>, the [Region Permit Officer]region <u>permit officer</u> may place reasonable restrictions on the [Special Road Use]special road use. Except as provided by <u>Subsection R920-4-5(1)</u>, no such restriction shall be based on the identity of the applicant or of persons expected to participate in the [Special Road Use]special road use. The restrictions may include a[, but are not limited to]:

(a) [A-]limitation of the total time the permittee may occupy a particular portion of roadway;

(b) [A-]limitation on the particular time of day the permittee may occupy the roadway;

(c)  $[\mathbf{A}]$  limitation on the number of lanes the permittee may occupy on the roadway;

(d) [A-]limitation on the number or size of banners or signs [any-]participants may carry on the roadway; and

(e) [A-]prohibition on the use of a particular roadway and the requirement of an alternate route.

(4)[(3)] The [Region Permit Officer]region permit officer may place reasonable terms, conditions, and limitations on a [Free Speech Road Use]free speech road use as allowed by this Rule <u>R920-</u> 4 and otherwise required by law. In placing restrictions on the [Special Road Use]special road use, the [Region Permit Officer]region permit officer shall consider:

(a) [**T**]<u>the annual number of other [Special Use]special</u> <u>road use</u> events scheduled on the roadway;

(b) [P]planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;

(c) [<u>+]the nature of the roadway requested for use</u>, and the volume of traffic normally occupying the roadway at the requested time of use;

(d) [<del>T</del>]the amount of time requested for use;

(e) [<u>+]</u>the safety of [<del>all</del>]participants in special events;

(f) [T]the safety of the [travelling]traveling public;

(g) [<u>T]th</u>e ability of emergency service providers to access and care for participants and spectators in special <u>road</u> use events, and for residents near [<del>to</del>]such events; and

(h)  $[\pm]the ability of residents and others not participating in <math>[any-]a$  special event, to travel on the roadways and to access private property without unreasonable disruption; and

 (i) [<u>T]the overall economic impact on nearby businesses</u> and the traveling public resulting from the [<u>Special Road Use</u>]<u>special</u> <u>road use</u>.

(5)[(4)] [Applications for Special Event Permits governed by this section shall be processed. ]If, while processing an application governed by this Section R920-4-6, the [Region Permit Officer]region permit officer determines the application is incomplete, [he or she]the officer shall notify the [A]applicant with a notice of incomplete application [once]when the deficiency is discovered.

(6)[(5)] Once the application is complete, the [Region Permit Officer]region permit officer shall apply best efforts to provide approval, approval with conditions, or denial of the [A]application:

(a) [<u>W</u>]<u>w</u>ithin 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier; or[-]

(b) [4]in the case of an application submitted along with an expedited fee, within three business days of [its-]receipt of a complete application[-as complete].

# **R920-4-7.** Review of Applications for Special Event Permits for Free Speech Road Uses.

This section governs the standards for review of applications for [Special Event Permits]special event permits for [Free Speech Road Uses]free speech road uses.

(1) In addition to an[<u>y A]</u> application for <u>a [Special Event</u> Permit]special event permit for [Free Speech Road Use]free speech road use, the [Region Permit Officer]region permit officer shall require the [A]applicant to provide, as necessary:

(a) [A]<u>a</u> traffic control plan, as described in <u>Section R920-</u> 4-10;

(b) [P]public notification as described in Section R920-4-11;

(c) [A]a contingency plan, as described in <u>Section R920-</u> 4-12;

(d) [A]a route map, as described in Section R920-4-13; and

(c)  $[P]\underline{p}$ roof that the applicant has obtained any applicable city, county, or other governmental agency approvals or permits, as described in <u>Section R920-4-14</u>.

(2) In reviewing [any]an [A]application for [Special Event Permit]a special event permit for [Free Speech Road Use]free speech road use, the [Region Permit Officer]region permit officer may place reasonable time, place, and manner restrictions on the [Free Speech Road Use]free speech road use. No such restriction shall be based on the content of the beliefs expressed or anticipated to be expressed during the [Free Speech Road Use]free speech road use, or on factors such as the identity or appearance of persons expected to participate in the assembly.

(3) In placing reasonable time, place, and manner restrictions on the [Special Road Use]special road use, the [Region Permit Officer]region permit officer shall consider:

(a) [**T**]<u>t</u>he annual number of other [Special Use]special road use events scheduled on the roadway;

(b) [P]planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;

(c)  $[\underline{T}]\underline{t}he$  nature of the roadway requested for use, and the volume of traffic normally occupying the roadway at the requested time of use;

(d)  $[\underline{T}]$ <u>the amount of time requested for use;</u>

(e) [**T**]the safety of all participants in special events;

(f) [<u>T]</u>the safety of the [travelling]traveling public;

(g) [<u>T]th</u>e ability of emergency service providers to access and care for participants and spectators in special <u>road</u> use events, and for residents near [<del>to</del>]such event<u>s</u>; and

(h)  $[\underline{T}]\underline{t}he$  ability of residents and others not participating in  $[\underline{any}]\underline{a}$  special event, to travel on the roadways and to access other public and private property without unreasonable disruption.

(4) The [Region Permit Officer]region permit officer may place reasonable terms, conditions, and limitations on a [Free Speech Road Use]free speech road use as allowed by this Rule <u>R920-4</u>, and otherwise required by law. In placing time, place, or manner restrictions on a [Free Speech Road Use]free speech road use, the [Region Permit Officer]region permit officer shall select restrictions [that are\_]tailored to address [any\_]identified risks of harm or other articulated governmental interests. The restrictions <u>may</u> include[, but are not limited to] a:

(a) [A-]limitation of the total time the permittee may occupy a particular portion of roadway;

(b) [A]limitation on the particular time of day the permittee may occupy the roadway;

(c) [A-]limitation on the number of lanes the permittee may occupy on the roadway;

(d) [A-]limitation on the number or size of banners or signs [any-]participants may carry on the roadway; and

(c) [A]prohibition on the use of a particular roadway and the requirement of an alternate route, where other restrictions will not

protect the governmental interests affected by the [Free Speech Road Use] free speech road use, and ample alternatives for speech exist.

(5) Once the application is complete, the [Region Permit Officer]region permit officer shall apply best efforts to provide approval, approval with conditions, or denial of the Application within 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier.

(6) Applications for [Special Event Permit-]a special event permit for a [Short-Notice Free Speech Road Use]short notice free speech road use shall be processed on an expedited basis, and the [Region Permit Officer]region permit officer shall apply best efforts to provide approval, approval with conditions, or denial of the application within three business days of receipt of a complete application[its receipt as complete].

#### R920-4-8. Special Road Use Double Booking Conflict Resolution.

(1) In cases where a double booking conflict arises, the  $[\underline{P}]\underline{d}epartment$  will encourage  $[\underline{any}]\underline{a}$  secondary, or subsequent,  $[\underline{A}]\underline{a}pplicant$  to review the feasibility of collocating with the original  $[\underline{A}]\underline{a}pplicant$ . If collocating proves impracticable, the  $[\underline{P}]\underline{d}epartment$  will encourage  $[\underline{any}]\underline{a}$  secondary, or subsequent,  $[\underline{A}]\underline{a}pplicant$  to offer a viable alternative strategy that meets the needs of  $[\underline{ahl}]\underline{the}$   $[\underline{A}]\underline{a}pplicants$ , while also ensuring adequate public safety measures remain intact.

(2) For non-Free Speech [Special Road Uses]special road uses, the  $[\mathbf{D}]$ department may also rely on local agency assistance with establishing special event permitting priorities and reserves the authority to exercise [the-]discretion in giving priority consideration to an applicant based on an evaluation of historic use, potential economic benefit, and other relevant factors.

(3) In cases where none of the [aforementioned-]conflict resolution strategies listed in Subsections R920-4-8(1) and (2) prove effective in remedying a continuing dispute between multiple applicants, and the  $[\underline{P}]$ department determines that collocating is impracticable, the [Special Event Permit]special event permit will be issued based on the earliest recorded application time and date where the  $[\underline{P}]$ department has determined the  $[\underline{A}]$ applicant has fully completed all application requirements.

# **R920-4-9.** Minimum Liability Coverage, Waiver and Release of Damages Form, and Indemnification Form Completion Requirements.

(1) <u>An applicant[The Applicant]</u> for a [<u>Special Event</u> <u>Permit]special event permit</u> governed by <u>Section</u> R920-4-6 shall obtain and provide proof of liability insurance at <u>the</u> time of application naming the "State of Utah, the [<u>D]department</u> and its Employees" as an additional insured under the certificate, with a minimum \$1,000,000 coverage per occurrence and \$3,000,000 in aggregate. The name of the insured on the insurance policy and the name of the [<u>A]applicant must[shall</u>] be identical.

(2) The [A]applicant may fulfill the requirements of Subsection <u>R920-4-9</u>(1) by providing:

(a) [S]sufficient proof that the [A]applicant has secured liability insurance for the event required by another governmental entity which meets the minimum coverage requirements contained in Subsection  $\underline{R920-4-9}(1)$ :[5] and

(b)  $[\underline{T}]\underline{t}he [\underline{A}]\underline{a}pplicant has included the "State of Utah, the Department of Transportation, and its Employees" as an additional insured on the policy.$ 

(3) The [A]applicant shall complete the appropriate "Waiver and Release of Damages" and "Indemnification" forms [prior to]before permit issuance. All event participants shall also complete the "Waiver and Release of Damages" form [prior to]before participating in the permitted event.

(4) The [A]applicant is responsible for ensuring each participant completes the "Waiver and Release of Damages" form [prior to]before participating in the event. The originating [A]applicant is the custodian of all signed participant waivers, as specified in [s]Subsection R920-4-9(3)[ $_{7}$ ] and shall produce these upon demand for inspection and review by the [D]department at any time within 12 months after the completion of the event.

#### **R920-4-10.** Traffic Control Requirements and Considerations.

(1) [All\_t]Traffic control is the responsibility of the [A]applicant. The applicant shall provide an approved[A] traffic control plan, in accordance with <u>Rules\_R920-1</u>, R930-6, and [ $\mathcal{P}$ ]department Standard and Supplemental Drawings[, shall be provided] to[, and approved by, the Region Traffic Engineer] the region traffic engineer, or another authorized [ $\mathcal{P}$ ]department designee. If the [Region Traffic Engineer]region traffic engineer deems it necessary, considering the nature of the [A]applicant's [Special Road Use]special road use and the proposed event path, the [A]applicant may be required to perform and provide a traffic impact study for the [Special Road Use]special road use.

(2) Road closures will require appropriate traffic control. Appropriate traffic control may include the use of [by] uniformed state, county, or local peace officers, or a private security company, identified event staff, or physical devices, as determined by the  $[\mathbf{D}]$ department.

(3) The [Region Permit Officer]region permit officer may require an alternate route, or alternative time, if the proposed [Special Road Use]special road use occurs when traffic volumes are high, active road construction is present, an alternate event is already occupying the road, a safer route can accommodate the event, or the event poses a significant inconvenience to the traveling public.

(4)  $[All r]\underline{R}$ ailroad crossings and bridges shall be given special attention. The [A]applicant shall coordinate with the appropriate railroad representatives to ensure the event schedule does not conflict with the operation of the railroad.

(5) The  $[\underline{A}]$ applicant shall restore the  $[\underline{particular}]$ road segment <u>used</u> to its original condition, free from litter, and  $[_{\overline{2}}]$  other material changes.

(6) The  $[\underline{P}]\underline{d}epartment may monitor and ensure compliance with the terms and conditions of <math>[\underline{any}]\underline{a}$  [Special Event Permit,]special event permit and require the [A]applicant to pay a monitoring and compliance fee at the rates authorized within the  $[\underline{P}]\underline{d}epartment$ 's fee schedule.

#### **R920-4-11.** Public Notification Requirements.

(1) <u>The [As determined by the Region Permit</u> Officer,]region permit officer may require the [A]applicant [may be required ]to provide advance notification to the general public regarding the [Special Road Use]special road use, depending on the nature of the roadway being used, the time of day of the use, and the impact on the non-participating [travelling]traveling public and adjacent businesses.

(2) The [Region Permit Officer]region permit officer may require the [A]applicant to inform the general public about the date, time, affected roads, traffic impacts, an estimate of the anticipated length of delay, and other information necessary to provide reasonable notice to the public of the [Special Road Use]special road use. The methods of notification may include:

(a) [A]<u>a</u> news release distributed to all local radio stations, television stations, and newspapers that announce the event and advise residents of alternate routes and potential delays:[-]

(b) [**Ŧ**]the posting of signs, including variable message signs, along the [Special Road Use]special road use route for a reasonable period [of time prior to]before the event;

(c) [Attempts by the Applicant to personally contact ]the applicant contacting residents and businesses along the [Special Road Use]special road use route; and

(d) [<u>T]the retention of a dedicated agent or public relations</u> firm to maximize the distribution of the message.

(3) [Any s]Signs required to be posted pursuant to this rule, including [any-]variable message signs, may[shall] not advertise the event itself or [any-]private products or services.

**R920-4-12.** Contingency Plan and Participant Notification Requirements.

(1) Considering the nature of the planned [Special Road Use]special road use, the [A]applicant shall develop:

(a) [C]contingency or emergency plans; [,]

(b) [P]planned rest areas, water facilities, and trash cleanup:[7] and

(c)  $[\underline{P}]\underline{p}$  lans to ensure that participants obey the conditions of the [Special Event Permit]special event permit and all other generally applicable traffic laws, lights, and signs.

(2)[(d)] [T]the [Region Permit Officer]region permitofficer may require that the [A]applicant provide notice toparticipants, bystanders, or the public of all plans enumerated in[subsection]Subsection R920-4-12(1)[-of this Rule]. The amount ofand method of notice shall be dependent on the circumstances of the[Special Road Use]special road use.

# **R920-4-13.** Event Route Identification and Private Property Use Requirements.

The [A]applicant shall provide a detailed map showing the proposed course and direction of the event. Locations of parking areas, water stations, toilet facilities, and other appropriate information shall also be included on the map if deemed necessary by the [Region Permit Officer]region permit officer. These areas cannot be located within the state right-of-way. The applicant is responsible for obtaining appropriate permission to locate these facilities on private property.

# **R920-4-14.** Adherence to Municipal, County, or $[\theta]O$ ther Governmental Agency Permitting Requirements.

The [A]applicant shall procure [any-]applicable city, county, or other governmental agency approvals or permits.

# R920-4-15. Appeal.

(1) An [A]applicant may appeal the following determinations of a [Region Permit Officer]region permit officer:

(a) [Any]a denial of a [Special Event Permit]special event permit;

(b) [A]a denial of a deviation request as described in [Rule]Subsection R920-4-5(3)(b);

(c) [A]a determination that a proposed [Special Road Use]special road use is not a [Free Speech Road Use]free speech road use or [Short-Notice Free Speech Road Use]short notice free speech road use; and

(d) [<u>Any-]a time</u>, place, or manner restriction placed on a [<u>Special Event</u>]<u>special road use by a [Permit for a Free Speech Road</u>

Use]region permit officer that the [A]applicant believes is unreasonable or illegal.

(2) The following process shall be used for an appeal:

(a) [An]an [A]applicant may appeal [the]a determination[s] described in [subsection]Subsection R920-4-15(1)[ decision] to the [D]department's [Program Development Director,]director of program development;

(b) [Any]an appeal to the [D]department's [Program Development Director]director of program development shall be in writing and shall include:

(i) [A]a statement of the basis for the objection;[;]

(ii) [Any]supporting documents to be used in the appeal:[,] and

(iii) [A]a copy of [any]the written decision issued by the [Region Permit Officer]region permit officer.

(c) The  $[\underline{P}]\underline{d}epartment's$   $[\underline{Program Development}]$ <u>Director]director of program development</u> shall  $[\underline{make a decision]decide}$  on <u>an</u> appeal, based on the written submissions of the  $[\underline{A}]\underline{a}pplicant$ , and the  $[\underline{P}]\underline{d}epartment's$  file.

(d) The [D]department's [Program Development Director]director of program development shall concur with, modify, or overrule the decision of the [-Region Permit Officer] region permit officer. The decision shall be in writing and shall explain the reasons for the decision.

(3) Appeals shall be resolved within the following timelines:

(a) [F]for appeals brought under [subsections-]Subsection <u>R920-4-15(1)(c)</u> or (d), the [ $\square$ ]department's [<u>Program Development</u> <u>Director</u>]director of program development shall issue a decision as soon as reasonably practicable, but no later than three business days after\_receiving [the Department's Program Development Director receives-]the written appeal[-]; or

(b) [F]for all other appeals, the [D]department's [Program Development Director]director of program development shall issue a decision no later than 14 days [prior to]before the planned date of the [Special Road Use]special road use, or within 30 days after receiving the appeal[has been lodged], whichever is later.

#### **R920-4-16.** Special Use Permit for Automatic License Plate Reader System and Requirements for Local Governments and Law Enforcement Agencies.

(1) Sections R920-4-2 through R920-4-15 do not apply to this Section R920-4-16.

(2) Section 72-1-212 authorizes the department to issue a special use permit to a law enforcement agency to install an automatic license plate reader system for the purpose of capturing license plate data of vehicles traveling on a state highway, regardless of whether the device is installed on property owned by the department or the law enforcement agency.

(3) As used in this Section R920-4-16:

(a) "Automatic license plate reader system" or "ALPRS" means the same as "automatic license plate reader system" is defined in Section 41-6a-2002.

(b) "Encroachment" means the use of highway right-ofway to install or maintain an automatic license plate reader system on department property.

(c) "Law enforcement agency" means the same as that term is defined in Section 53-1-102.

(d) "Special use permit" means a permit issued under this Section R920-4-16 to authorize the installation of an ALPRS along a state highway for the purpose of capturing license plate data of vehicles traveling on a state highway, regardless of whether or not the device is installed on property owned by the department.

(4) A special use permit described under Subsection R920-4-16(2) is required before installing an ALPRS to capture the license plate data of vehicles traveling on a state highway. The department may only issue a special use permit to:

(a) a law enforcement agency with contracting authority; or

(b) a local government entity on behalf of its law enforcement agency.

(5)(a) A special use permit issued under this Section R920-4-16 also authorizes the permittee and its contractors that comply with this Section R920-4-16, to apply for an encroachment permit for any encroachment in connection with the special use permit.

(b) The department shall follow the requirements of rule Section R930-6-10 and other applicable laws when issuing an encroachment permit.

(6) A contractor or agent of a special use permittee under this Section R920-4-16 may only perform work in connection with the special use permit after the contractor or agent executes, and maintains compliance with, an authorized provider agreement that addresses liability and other department requirements related to such work.

(7) The department may not issue a special use permit unless the applicable law enforcement agency demonstrate compliance with the requirements of Section 41-6a-2003 and any other applicable state statutes.

(8)(a) Each law enforcement agency or other government entity that obtains a special use permit under this Section R920-4-16 shall file with the department a list identifying the location of each ALPRS proposed to be installed or installed, within its jurisdiction by the Global Positioning System (GPS) coordinates of each proposed or installed ALPRS.

(b) The law enforcement agency or government entity shall promptly update its list of ALPRS locations when it adds, relocates, or removes an ALPRS.

(c) The requirement to provide a list of ALPRS locations described in this Subsection R920-4-16(8) is in addition to any requirement that the department imposes to obtain an encroachment permit for each ALPRS installation.

(9)(a) A law enforcement agency or government entity that obtains an encroachment permit under this Section R920-4-16 shall indemnify the department against liability for the negligent, reckless, and wrongful acts and omissions of the government entity, its employees, its contractors, and such contractors' personnel, arising from or related to the encroachment permit and activities undertaken in connection with the encroachment permit.

(b) A third party, such as a contractor or agent engaged by a government entity or law enforcement agency, that obtains an encroachment permit under this Section R920-4-16 to install or maintain an ALPRS shall indemnify the department against liability for the negligent, reckless, and wrongful acts and omissions of the third party, its employees, its subcontractors, and such subcontractors' personnel, arising from or related to the encroachment permit and activities undertaken in connection with the encroachment permit.

(10) An ALPRS installed on a department-owned facility shall be installed in accordance with department specifications and the specific specifications required by the region in which the ALPRS is physically located. (11)(a) The department may revoke a special use permit if a local government, law enforcement agency, contractor, or agent violates a term or condition of a permit.

(b) The department may issue an order to stop work being performed immediately upon receiving notice that a condition of a special use permit or an encroachment permit is being or has been violated.

(c) If the department revokes a special use permit under this Section R920-4-16, the permit holder shall promptly stop work and operation of any ALPRS authorized under the permit used to capture license plate data of vehicles traveling on a state highway and any related equipment, whether or not the department issued an encroachment permit for installation of an ALPRS at a specific location.

(12) The department may not charge a government entity or law enforcement agency an application fee for a special use permit.

(13) To appeal a department decision related to a special use permit application under this Section R920-4-16, the entity appealing shall follow the requirements of Rule R907-1.

KEY: parades, permits, road races, special events Date of Last Change: <u>2023</u>[January 7, 2016] Notice of Continuation: June 23, 2022 Authorizing, and Implemented or Interpreted Law: 41-6a-1111; 41-22-15; 72-1-201; 72-1-212

#### NOTICE OF PROPOSED RULE

TYPE OF FILING:	Amendment	
Rule or Section Number:	R940-4	Filing ID: 55798

#### **Agency Information**

1. Department:	Transpo	rtation Commission	
Agency:	Adminis	Administration	
Room no.:	Adminis	trative Suite, 1st Floor	
Building:	Calvin R	ampton Bldg	
Street address:	4501 S 2	2700 W	
City, state and zip:	Taylorsv	ille, UT 84129	
Mailing address:	PO Box	148455	
City, state and zip:	Salt Lake City, UT 84114-8455		
Contact person(s	Contact person(s):		
Name:	Phone:	Name:	
Loif Eldor			
Leif Elder	801- 580- 8296	lelder@utah.gov	
Becky Lewis	580-	lelder@utah.gov blewis@utah.gov	

Lori Edwards 801- 965- 4048	loriedwards@agutah.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:

R940-4. Airports of Regional Significance

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

In reviewing this rule, the Department of Transportation (Department) found a Utah Code citation that must be deleted because the Legislature repealed that part of the Code.

This proposed amendment makes the needed change.

#### 4. Summary of the new rule or change:

This proposed amendment eliminates an invalid Utah Code citation.

#### **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 this proposed change is clerical in nature and will have no impact on how the Department functions or the parties to whom it applies.

#### B) Local governments:

This proposed rule change is not expected to have a fiscal impact on local governments' revenues or expenditures because it is a clerical change.

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

This proposed rule change is not expected to have a fiscal impact on small businesses because it is a clerical change.

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

This proposed rule change is not expected to have a fiscal impact on non-small businesses because it is a clerical change.

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

This proposed rule change is not expected to have a fiscal impact on persons other than small businesses, non-small businesses, state or local government entities because it is a clerical change.

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 change is clerical, with no fiscal impact on other entities.

**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 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	\$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 Transportation, Carlos M. Braceras, PE, 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 59-12-602

#### 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 11/14/2023 until:

9.	This	rule	change	MAY	11/21/2023
bed	come	effect	ive 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	Carlos M.	Date:	09/22/2023
or designee	Braceras, PE,		
and title:	Executive Director		

#### R940. Transportation Commission, Administration. R940-4. Airports of Regional Significance. R940-4-1. Purpose and Authority.

[Utah Code Ann.]Section 59-12-602 authorizes the [C]commission to establish this rule. The purpose of this rule is to define airports of regional significance.

#### R940-4-2. Definitions.

"Commission" means the Transportation Commission, [which is ]created [in]by [Utah Code Ann.]Section 72-1-301.

#### R940-4-3. Designation of Airports of Regional Significance.

[Only f]For the purposes authorized in [Utah Code-]Title 59, Chapter 12, Part 6, Tourism, Recreation, Cultural, Convention, and Airport Facilities Tax Act, [and Title 59 Chapter 12 Part 17, County Option Sales and Use Tax for Transportation Act, ]all airports identified by the Federal Aviation Administration on the National Plan of Integrated Airport Systems (NPIAS) are defined by the  $[C]_{commission}$  as airports of regional significance.

#### R940-4-4. Definition of Airports of Regional Significance.

<u>The [ $\oplus$ ]d</u>efinition of airports of regional significance [are ]is [only\_]for the purposes stated within this rule and should not be construed to apply to similar definitions for federal purposes or for [any\_]another purpose under the Utah Code. A current list of airports included on the NPIAS may be obtained through the Federal Aviation Administration's website, www.faa.gov, or by contacting the Utah Department of Transportation Division of Aeronautics.

#### KEY: airports of regional significance Date of Last Change: <u>2023[October 22, 2008]</u>

### Notice of Continuation: August 30, 2018

Authorizing, and Implemented or Interpreted Law: 59-12-602; 59-12-1702

NOTICE OF PROPOSED RULE		
TYPE OF FILING: New		
Rule or Section R940-10 Filing ID: Number: 55799		

#### Agency Information

geney memunen			
1. Department:	Transportation (	Commission	
Agency:	Administration		
Room no.:	Administrative S	Suite, 1st Floor	
Building:	Calvin Ramptor	ı Bldg	
Street address:	4501 S 2700 W		
City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box 148455	i	
City, state and zip:	Salt Lake City, UT 84114-8455		
Contact person(s	):		
Name:	Phone:	Name:	
Leif Elder	801-580-8296	lelder@utah.gov	
Becky Lewis	801-965-4026 blewis@utah.gov		
Jimmy Godin	801-965-4197	jamesjgodin@agu- tah.gov	
Lori Edwards	801-965-4048	loriedwards@agu- tah.gov	
Please address questions regarding information on			

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

#### **General Information**

#### 2. Rule or section catchline:

R940-10. Guidelines for Department Participation in Transportation Reinvestment Zones

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

The 2017 Transportation Governance and Funding Task Force considered opportunities to capture the value generated from transportation investments to help pay for the cost of the transportation infrastructure itself and further drive economic growth.

As a result of recommendations generated from the 2017 Task Force, the Legislature authorized the creation of Transportation Reinvestment Zones (TRZ) as part of the major transportation bill, S.B. 136, adopted in the 2018 Session.

The TRZ authorization was largely based on the positive experience with TRZs in Texas.

In some ways, a TRZ is similar to a Community Reinvestment Agency (CRA), capturing and leveraging the value from economic growth. However, unlike a CRA, a TRZ is intended to provide a mechanism specifically to capture the increased value generated by a transportation infrastructure project.

The purpose of this proposed rule is to establish a process for the Department of Transportation (Department) participation in a TRZ created under Section 11-13-227.

The objective of Department participation in a TRZ is to enhance the state transportation system by accelerating state highway projects or projects on local highways that are eligible for federal funds in areas where the projects are likely to stimulate increased local tax revenue that can be used to offset the cost of those projects.

#### 4. Summary of the new rule or change:

This new rule establishes a process for Department participation in a TRZ created under Section 11-13-227.

#### **Fiscal Information**

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

#### A) State budget:

The Transportation Commission (Commission) does not anticipate this new rule will have a fiscal impact on the state's budget because it provides procedures public agencies such as local governments will follow to establish a TRZ.

The Commission's role in establishing TRZs will be limited and will not require the expenditure of funds.

#### B) Local governments:

The Commission does not anticipate this new rule will have a fiscal impact on local governments because it provides procedures public agencies such as local governments will follow to establish a TRZ and does not require local governments to establish a TRZ or anything else.

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

The Commission does not anticipate this new rule will have a fiscal impact on small businesses because it provides procedures public agencies such as local governments will follow to establish a TRZ and does not require anything from small businesses.

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

The Commission does not anticipate this new rule will have a fiscal impact on non-small businesses because it provides procedures public agencies such as local governments will follow to establish a TRZ and does not require anything from non-small businesses.

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

The Commission does not anticipate this new rule will have a fiscal impact on persons other than small businesses, non-small businesses, and state or local government entities because it provides procedures public agencies such as local governments will follow to establish a TRZ and does not require anything other persons or public 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 associated with this new rule.

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

Regulatory In	-		
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 Transportation, Carlos M. Braceras, PE, 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 11 13-227

#### 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 11/14/2023 until:

9. This rule change MAY be-	11/21/2023
come 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	Carlos M.	Date:	09/22/2023
or designee	Braceras, PE,		
and title:	Executive Director		

#### R940. Transportation Commission, Administration. R940-10. Guidelines for Department Participation in

### Transportation Reinvestment Zones.

R940-10-1. Purpose and Authority.

(1) The purpose of this rule is to establish a process for state participation in a transportation reinvestment zone created under Section 11-13-227. The objective of state participation in a TRZ is to enhance the state transportation system by accelerating projects that are likely to stimulate increased local tax revenue that can be used to offset the cost of constructing those projects.

(2) The commission and department will only consider participating in a TRZ, as described in this rule, if the TRZ includes: (a) a state highway project;

(b) a project on a local highway that is eligible for federal funds; or

(c) an eligible transit project.

(3) This rule is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act and Section 72-1-201.

#### R940-10-2. Definitions.

(1) "Commission" means the Transportation Commission created in Section 72-1-301.

(2) "Department" means the Department of Transportation created in Section 72-1-201.

(3) "Eligible transit project" means a public transit capital development project that adds new capacity and for which the commission may prioritize money from the Transit Transportation Infrastructure Fund created in Section 72-2-124.

(4) "Long-Range Transportation Plan" means any one of the five plans developed by the department and the state's four MPOs that forecast the state's transportation needs for the next 20-plus years and may also be known as a regional transportation plan.

(5) "Public agency" has the same meaning as defined in Section 11-13-103.

(6) "Requesting public agency" means the public agency seeking state participation in a TRZ.

(7) "Transportation reinvestment zone" or "TRZ" has the same meaning as defined in Section 11-13-103.

(8) "TRZ agreement" means the agreement described in Section 11-13-227.

#### R940-10-3. Reviewing Requests for State Participation in a TRZ.

(1)(a) If a public agency is seeking state participation in a TRZ, the public agency shall notify the department, in writing, at the earliest available opportunity and provide the information listed in Subsection (2).

(b) The requesting public agency is encouraged to work with the department in formulating and developing the necessary information.

(2) When making the notification described in Subsection (1)(a), the requesting public agency shall provide the following information:

(a) a written description of the project, along with any engineering or technical information that may have been prepared;

(b) a statement indicating whether the project has already been programmed into the Statewide Transportation Improvement Program (STIP) or Transportation Improvement Program (TIP) and, if not, whether it is in a long-range transportation plan and the phase of the long-range plan;

(d) a statement indicating whether any environmental or other federal clearances or permits will be necessary and, if so, the status of any federal applications;

(e) a draft TRZ agreement;

(f) a written description of additional ways not mentioned in the TRZ agreement the requesting public agency will use to bring about the proposed project;

(g) a written description of why the project is needed and the benefit that the project will bring to the state transportation system and the requesting public agencies, including tax revenue projections;

(h) a map identifying the boundaries of the TRZ and the affected property owners;

(i) a map showing the project area of the project under consideration;

(j) an economic impact analysis that includes estimates of the economic benefit and increased tax revenue that will likely occur if the project is completed;

(k) cost estimates and a proposed schedule for the various phases of the proposed project; and

(1) a statement describing any conflict of interest related to the project of which the requesting public agency is aware.

(3)(a) Upon receiving a request for state participation in a TRZ, the department shall evaluate the request and all accompanying information to determine whether it complies with this rule, is complete, and is feasible.

(b) The department shall also calculate an independent cost estimate for the proposed project.

(c) The department will only notify the commission at a public meeting of a request for state participation in a TRZ if:

(i) the request complies with this rule, is complete, and is feasible;

(ii) environmental clearances are completed or highly probable; and

(iii)(A) the project is a state highway or eligible transit project that is already programmed in the Statewide Transportation Improvement Program (STIP) or the Transportation Improvement Program (TIP);

(B) the project is a state highway or eligible transit project that is part of a long-range transportation plan and the department determines that advancing the project will not defer other projects that are already prioritized and programmed in the Statewide Transportation Improvement Program (STIP) or Transportation Improvement Program (TIP); or

(C) the project is on a local highway that is eligible for federal funding.

(4) The department shall review the proposal and make a recommendation to the commission at a public meeting, including whether the commission should approve state participation in the TRZ and the justification for the department's recommendation.

(5) At any time in this process, the department may contact a requesting public agency for additional information and may incorporate amendments suggested by the requesting public agency in its evaluation.

(6)(a) The department shall notify a requesting public agency of the date, time, and location of the meeting at which the commission will hear the proposal.

(b) The department shall provide the requesting public agency with at least 30 days written notice.

#### **R940-10-4.** Factors Used to Consider Proposals.

(1) Any request for state participation in a TRZ made under this rule must be approved by the commission before the department may enter into an agreement described under Section R940-10-5.

(2) In deciding whether to approve a request for state participation in a TRZ, the commission shall take into account the following factors:

(a) whether the requested project is part of the Statewide Transportation Improvement Program (STIP), the Transportation Improvement Program (TIP), or a long-range transportation plan and, if part of a long-range transportation plan, will not delay any of the projects already included in the STIP;

 (b) the benefits of the project to the state transportation system and the requesting public agencies;

(c) the terms of the draft TRZ agreement;

(d) the estimated costs and proposed schedule of the project;

(e) level of local commitment included as part of the request, based on the amount or percentage of funding proposed by the requesting public agency;

(f) whether the proposed project is subject to a local planning initiative;

(g) whether the project will alleviate significant existing or future congestion or hazards to the traveling public or provide other substantial improvements to the transportation system;

(h) whether the request has the potential to extend department resources to other needs; and

(i) whether the proposed project fulfills a need widely recognized by the public, elected officials, and transportation planners; and

(j) land use considerations.

(3)(a) For a request that includes improvements to a surface street that approaches an interchange or ramp or for a new interchange or ramp, the requesting public agency shall commit to providing at least 50% of the costs of the project over the life of the TRZ agreement.

(b) The 50% described in Subsection (2)(a) may include the value of any additional ways not mentioned in the TRZ agreement the requesting public agency will use to bring about the proposed project.

#### R940-10-5. Record of Request and TRZ Agreements.

(1)(a) The department shall maintain a record on each TRZ participation request.

(b) Except for individual records in the file that may be classified private or protected, the contents of the file shall otherwise be public.

(2)(a) If the commission approves state participation in a TRZ, the department may enter into a TRZ agreement with the requesting public agency that will set forth the proposed project, the method of financing the project, the work that will be done, and projected timelines.

(b) Notwithstanding Subsection (2)(a), the department may not enter into a TRZ agreement until the agreement is approved and a public hearing is held in accordance with Section 11-13-227.

(3) A TRZ agreement shall include:

(a) adequate security to UDOT of receiving payment after the project is done;

(b) a statement indicating that parties of the agreement are not relieved of any state permitting requirements, including encroachment and access permits;

(c) a statement indicating that the TRZ agreement does not preclude UDOT requiring other agreements related to the proposed project;

(d) provisions to address conflicts of interest related to the proposed project;

(e) a statement indicating that the TRZ agreement does not include the work terms for the project;

(f) any indemnification clause determined necessary by the Department; and

(g) a statement that incorporates the project proposal that was approved by the Transportation Commission.

### KEY: transportation reinvestment zone, public agency, TRZ, land use

Date of Last Change: 2023

Authorizing, and Implemented or Interpreted Law: 11-13-227

#### 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 <u>November 14, 2023</u>.

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 (<u>example</u>). Deletions made to the rule appear struck out with brackets surrounding them ([<u>example</u>]). 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>February 12, 2024</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** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

#### NOTICE OF CHANGE IN PROPOSED RULE

Rule or Section Number:	R432-150	Filing ID: 55595
Date of Previous Publication:	09/01/2023	

#### Agency Information

1. Department:	Health and Human Services			
Agency:	Health C	Care Facility Licensing		
Building:	MASOB			
Street address:	195 N 19	950 W		
City, state and zip:	Salt Lake City, UT 84116			
Contact persons:	Contact persons:			
Name:	Phone:	Email:		
Janice Weinman	385- 321- 5586	jweinman@utah.gov		
Jordan Miera	801- 538- 4171	jmiera@utah.gov		

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

#### General Information

2. Rule or section catchline:

R432-150. Nursing Care Facility

#### 3. Reason for this change:

The Division of Licensing and Background Checks (DLBC) is in process of repealing two Health Care Facility rules that govern DLBC office processes and consolidating them into a new division-wide rule.

The new content being added to this rule is existing content in Rule R432-3 that only applies to Nursing Care Facilities. It is being added with no amendments to this rule while Rule R432-3 is being repealed.

(EDITOR'S NOTE: The proposed repeal of Rule R432-3 is under ID 55817 in this issue, October 15, 2023, of the Bulletin.)

#### 4. Summary of this change:

Consolidates existing rule content present in two separate rules into a singular rule. No substantive changes accompany this shift.

(EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the September 1, 2023, issue of the Utah State Bulletin, on page 190. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment 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:

There is no anticipated impact on the state budget, as this CPR simply adds existing rule content that governs nursing facilities from a repealed rule into this rule.

#### B) Local government:

There is no anticipated impact to local governments, as this CPR simply adds existing rule content that governs nursing facilities from a repealed rule into this rule.

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

There is no anticipated impact to small businesses, as this CPR simply adds existing rule content that governs nursing facilities from a repealed rule into this rule.

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

There is no anticipated impact to non-small businesses, as this CPR simply adds existing rule content that governs nursing facilities from a repealed rule into this rule.

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*):

There is no anticipated impact to other persons, as this CPR simply adds existing rule content that governs nursing facilities from a repealed rule into this rule.

F) Compliance costs for affected persons:

There is no anticipated compliance cost for affected persons, as this CPR simply adds existing rule content that governs nursing facilities from a repealed rule into this rule.

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

Regulatory Impact Table			
Fiscal Cost	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 S. 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 11/14/2023 until:

9. This rule change MAY become 11/21/2023 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	Tracy S. Gruber,	Date:	09/28/2023
or designee	Executive Director		
and title:			

R432. Health and Human Services, Health Care Facility Licensing.

R432-150. Nursing Care Facility.

R432-150-1. Authority.

Section 26B-2-202 authorizes this rule.

#### R432-150-2. Purpose.

The purpose of this rule is to establish health and safety standards to provide for the physical and psychosocial well-being of individuals receiving services in nursing care facilities.

#### R432-150-3. Construction Standard.

The licensee shall ensure the facility is constructed and maintained in accordance with Rule R432-5, Nursing Care and Pediatric Respite Care Facility Construction.

#### R432-150-4. Definitions.

(1) The definitions found in Section R432-1-3 apply to this rule.

(2) "Adult Day Care" means nonresidential care and supervision 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.

(3) "Certification in Cardiopulmonary Resuscitation (CPR)" refers to certification issued after completion of an in- person course, to include skills testing and evaluation on-site with a licensed instructor.

(4) "Chemical Restraint" means any medication administered to a resident to control or restrict the resident's physical, emotional, behavioral functioning for the convenience of staff, punishment, discipline, or as a substitute for direct resident care.

(5) "Dining Assistant" means an individual unrelated to a resident who meets the training requirements outlined in this rule to assist nursing care residents with eating and drinking.

(6) "Governing Body" means the board of trustees, owner, and individuals designated by the owner with the legal authority and ultimate responsibility for the management, control, conduct, and functioning of the health care facility or agency.

(7) "Intermediate Care" means a level of care that provides 24-hour inpatient care to residents who need licensed supervision and supportive care, but do not require continuous nursing care.

(8) "Medically-Related Social Services" means assistance provided by the licensed social worker to maintain or improve each resident's ability to control everyday physical, mental, and psychosocial needs.

(9) "Nurse Aide" means any individual, other than an individual licensed in another category, providing nursing or nurse related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(10) "Nursing Staff" means nurse aides that are in the process of becoming certified, certified nurse aides, and those individuals that are licensed, including licensed practical nurses and registered nurses, to provide nursing care in Utah.

(11) "Palatable" means food that has a pleasant and agreeable taste and is acceptable to eat.

(12) "Physical Restraint" means any physical method, physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot easily remove and restricts the resident's freedom of movement or normal access to their body.

(13) "Pre-Admission Screening Resident Review" is a preliminary assessment completed for each individual before admission to a Medicaid-certified Nursing Facility to determine whether an individual might have a mental illness or intellectual disability.

(14) "Respite" means to provide intermittent, time-limited care to give primary caretakers relief from the demands of caring for a person.

(15) "Significant Change" means a major change in a resident's status that impacts more than one area of the resident's health status.

(16) "Skilled Level of Nursing Care" means a level of care that provides 24-hour inpatient care to residents who need licensed nursing supervision. Licensed health care personnel shall closely supervise or perform the prescribed services.

(17) "Therapeutic Leave" means leave pertaining to planned medical treatment that is implemented to meet an objective that is specified in the individual plan of care.

(18) "Unnecessary Drug" means any drug used:

(a) excessive in dose;

(b) for excessive duration;

- (c) without monitoring;
- (d) without indications for its use;

(e) in the presence of adverse consequences that indicate the dose should be reduced or discontinued; or

(f) for any combination of these reasons.

#### R432-150-5. Scope of Services.

(1) For an immediate care facility, the licensee:

(a) shall provide 24-hour licensed nursing services;

(b) shall ensure nursing staff are present on the premises 24 hours a day to meet the needs of residents;

(c) shall provide at least one registered nurse either by direct employ or by contract to provide direction to nursing services;

(d) may employ a licensed practical nurse to act as the health services supervisor instead of a director of nursing if a registered nurse consultant meets regularly with the health services supervisor; and

(e) shall provide at least the following:

- (i) medical supervision;
- (ii) dietary services;
- (iii) social services; and
- (iv) recreational therapy.

(2) The licensee shall provide the following services as required in the resident care plan:

- (a) physical therapy;
- (b) occupational therapy;
- (c) speech therapy;
- (d) respiratory therapy; and
- (e) other therapies as ordered by the licensed practitioner.
- (3) For a skilled level of care nursing facility, the licensee

shall:

(a) provide 24-hour licensed nursing services;

(b) ensure nursing staff are present on the premises 24 hours a day to meet the needs of residents;

(c) ensure a licensed charge nurse is present on each shift;

(d) employ a registered nurse for at least eight consecutive hours a day, seven days a week;

(e) designate a registered nurse to serve as the director of nursing on a full-time basis;

(f) not permit a person to concurrently serve as the director of nursing and as a charge nurse; and

(g) provide services to the residents that preserve current capabilities and prevent further deterioration including the following:

(i) medical supervision;

(ii) dietary services;

(iii) physical therapy;

- (iv) social services;
- (v) recreation therapy;(vi) dental services; and
- (vi) dental services; and
- (vii) pharmacy services.

(4) The licensee shall provide the following services as required by the resident care plan:

- (a) respiratory;
- (b) occupational therapy; and
- (c) speech therapy.

(5)(a) The licensee shall ensure any respite services comply with this subsection.

(b) The licensee may provide respite services at an hourly rate or daily rate, but may not exceed 14 days for any single respite stay. A respite stay that exceeds 14 days is considered a nursing facility admission and is subject to the requirements of this rule applicable to non-respite residents.

(c) The licensee shall coordinate the delivery of respite services with the recipient, the case manager, if applicable, and the family member, or primary caretaker.

(d) The licensee shall document and coordinate with each provider agency to ensure uninterrupted service delivery.

(6) The licensee shall complete:

(a) a Level 1 Pre-admission Screening upon the persons admission for respite services;

(b) a record for each person receiving respite services;

(c) a service agreement to serve as the plan of care, that identifies the prescribed medications, physician treatment orders, need for assistance with activities of daily living, and diet orders; and

(d) written respite care policies and procedures that are available to staff.

(7) The licensee shall ensure respite care policies and procedures address the following:

(a) medication administration;

(b) notification of a responsible [party]person in the case of an emergency;

- (c) service agreement and admission criteria;
- (d) behavior management interventions;
- (e) philosophy of respite services;
- (f) post-service summary;
- (g) training and in-service requirement for employees; and
- (h) handling personal funds.

(8) The licensee shall ensure the individual receiving respite services receives a copy of the resident rights documents upon admission.

(9) The licensee shall ensure respite records contain the following:

- (a) the service agreement;
- (b) resident demographic information;

(c) nursing notes;

(d) physician treatment orders;

(e) daily staff notes;

(f) accident and injury reports;

(g) a post-service summary; and

(h) an advanced directive, if available.

(10) The licensee shall ensure retention and storage of respite records complies with Subsection R432-150-25(3).

(11) The licensee shall ensure confidentiality and release of information complies with Subsection R432-150-25(4).

(12) Hospice care may only be arranged and provided by a licensed hospice agency in accordance with Rule R432-750.

(13) A nursing care facility may provide terminal care.

#### R432-150-6. Adult Day Care Services.

(1) A licensed nursing care facility may provide adult day care without an additional license from the department.

(2) The licensee shall submit policies and procedures for adult day care to the department for approval.

(3) The governing body shall designate a qualified director to be responsible for the day-to-day program operation.

(4) The director shall maintain written records on-site for each client and staff person, that includes the following:

(a) demographic information;

(b) an emergency contact with name, address, and telephone number;

(c) client health records, including the following:

(i) record of medication including dosage and administration;

(ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment;

(d) signed client agreement and service plan; and

(e) employment file for each staff person that includes:

(i) health history;

(ii) background clearance consent and release form;

(iii) orientation completion; and

(iv) in-service requirements.

(5) The licensee shall have a written eligibility, admission, and discharge policy that includes the following:

(a) intake process;

(b) notification of responsible [party]person;

(c) reasons for admission refusal, including the director's written, signed statement;

(d) resident rights notification; and

(e) reason for discharge or dismissal.

(6) Before the licensee admits a client to the facility, the licensee shall ensure the following are addressed in writing to determine client eligibility for the program:

(a) current health status;

(b) medical history;

(c) immunizations;

(d) legal status; and

(e) psychological factors.

(7) The licensee shall ensure that the director or designee, the responsible [party]person, and the client if competent develops a written, signed client agreement that includes:

(a) rules of the program;

(b) services to be provided and cost of service, including refund policy; and

(c) arrangements regarding the following:

(i) absenteeism;

(ii) visits;

(iii) vacations;

UTAH STATE BULLETIN, October 15, 2023, Vol. 2023, No. 20

(iv) mail;

(v) gifts; and(vi) telephone calls.

(8) The licensee shall ensure the following:

(a) the director or designee develops an individual client

service plan that is implemented for the client within three days of admission to the program;

(b) the director or designee ensures the service plan includes the specification of daily activities and services; and

(c) the director or designees shall reevaluate, and change if necessary, the client's service plan at least every six months.

(9) The licensee shall maintain the following incident report documentation that outlines the actions taken, including actions taken to avoid future incident or injury following any:

(a) client death;

(b) injuries;

(c) elopement;

(d) fights or physical confrontations;

(c) situations that require the use of passive physical restraints;

(f) suspected abuse or neglect; and

(g) other situations or circumstances affecting the health, safety, or well-being of a client while in care.

(10) The director shall notify and review the incident report with the responsible [party]person no later than when the client is picked up at the end of the day.

(11) The licensee shall post and implement a daily activity schedule.

(12) The licensee shall:

(a) ensure clients are directly supervised at all times and are encouraged to participate in activities;

(b) provide at least 50 square feet of indoor floor space, excluding hallways, office, storage, kitchens, and bathrooms, per client designated for adult day care during program operational hours;

(c) maintain any indoor and outdoor areas in a clean, secure, and safe condition;

(d) provide at least one bathroom designated for client use during business hours;

(c) provide separate male and female bathrooms designed for client use if serving more than ten clients;

(f) ensure staff supervision is provided continually when clients are present;

(g) ensure one staff member provides continuous, direct supervision when eight or fewer clients are present;

(h) provide continuous, direct supervision at a ratio of one staff to every eight clients; and

(i) if one-half or more of the clients are diagnosed by a physician's assessment with Alzheimer's or other dementia, the ratio is one staff for every six clients, or fraction thereof.

#### R432-150-7. Governing Body.

(1) The licensee shall have a governing body or designated persons functioning as a governing body.

(2) The licensee shall ensure that the governing body establishes and implements policies regarding the management and operation of the facility.

(3) The governing body shall institute bylaws, policies, and procedures relative to the general operation of any licensee services including the health care of the residents and the protection of resident rights. (4) The governing body shall appoint the administrator in writing.

#### R432-150-8. Administrator.

(1) The licensee shall ensure that the administrator:

(a) holds a current license as a health facility administrator by the Utah Department of Commerce pursuant to Title 58, Chapter 15, Health Facility Administrator Act;

(b) posts the license in a place readily visible to the public;

(c) does not supervise more than one nursing care facility;

(d) has enough freedom from other responsibilities to permit attention to the management and administration of the facility;

(e) designates, in writing, the name and title of the person who has the authority and freedom to act in the best interests of resident safety and well-being to act as administrator in any temporary absence of the administrator; and

(f) is not superseded by an unlicensed administrator designee.

(2) The licensee shall ensure the administrator's responsibilities are defined in a written job description on file in the facility that includes the following responsibilities:

(a) the completion, submission, and filing of any required reports, including a monthly census report to the Division of Integrated Healthcare as required by Section R414-401-4, by the end of the succeeding month to avoid department issued sanctions, including civil money penalties, in accordance with Section R432-3-7, for failure to report the required census information;

(b) to act as a liaison between the licensee, medical and nursing staffs, and other supervisory staff of the facility;

(c) to respond to recommendations made by the quality assurance committee;

(d) to implement policies and procedures governing the operation of any functions of the facility;

(e) to review any incident, accident report, and document the action taken or reason for no action;

 $(f)\;\;to\;ensure\;that\;facility\;policies\;and\;procedures\;reflect\;$  current facility practice, and are revised and updated as needed; and

(g) secure and update contracts for required professional services that are not provided directly by the facility that document the following:

(i) the effective and expiration date of contract;

(ii) a description of goods or services provided by the contractor to the facility;

(iii) a statement that the contractor shall conform to the standards required by Utah law or rules;

(iv) a provision to terminate the contract with advance notice;

(v) the financial terms of the contract;

 $(\mathrm{vi})\,$  a copy of the business or professional license of the contractor;

(vii) a provision to report findings, observations, and recommendations to the administrator on a regular basis; and

(viii) contracts are signed, dated, and maintained for review by the department.

(3) The licensee shall ensure the administrator maintains a written transfer agreement with one or more hospitals to facilitate the transfer of residents and essential resident information that includes:

(a) criteria for transfer;

(b) method of transfer;

(c) transfer of information needed for proper care and treatment of the resident transferred;

(d) security and accountability of personal property of the resident transferred;

(e) proper notification of hospital and responsible person before transfer;

 $(f) \;$  the facility responsible for resident care during the transfer; and

(g) resident confidentiality.

#### R432-150-9. Medical Director.

(1) The licensee shall ensure that the administrator retains, by formal agreement, a licensed physician to serve as medical director or advisory physician according to resident and facility needs.

(2) The medical director or advisory physician shall:

(a) develop resident care policies and procedures including the delineation of responsibilities of attending physicians;

(b) review current resident care policies and procedures with the administrator;

(c) serve as a liaison between resident physicians and the administrator;

(d) review incident and accident reports at the request of the administrator to identify health hazards to residents and employees; and

(e) act as consultant to the director of nursing or the health services supervisor in matters relating to resident care policies.

#### R432-150-10. Staff and Personnel.

(1) The administrator shall employ personnel who are able and competent to perform their respective duties, services, and functions.

(2) The administrator, director of nursing or health services supervisor, and facility supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(3) The licensee shall monitor staff to ensure compliance with each applicable rule under Title R432.

(4) The licensee shall ensure each employee has access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(5) The licensee shall ensure each employee is licensed, certified, or registered as required by the Utah Department of Commerce, and a copy of the license, certification or registration is maintained for department review.

(6) The licensee shall:

(a) maintain staffing records, including employee performance evaluations, for the preceding 12 months;

(b) establish a personnel health program through written personnel health policies and procedures;

(c) complete a health evaluation for each employee upon hire that includes the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily;

(d) ensure a health screening and immunization component of the employee's personnel health program is included;

(e) ensure infection control includes staff immunization as necessary to prevent the spread of disease;

(f) ensure employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis is done in accordance with Rule R388-804, Special Measures for the Control of Tuberculosis, and each employee is skintested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis;

(g) exempt skin testing for each employee with a known positive reaction to skin tests;

(h) ensure any infections and communicable diseases reportable by law are reported to the local health department in accordance with Section R386-702-3;

(i) plan and document in-service training for each staff member and address the following topics annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) the reporting of resident abuse, neglect, or exploitation to the proper authorities;

(iv) prevention and control of infections;

(v) accident prevention and safety procedures including instruction in body mechanics for any employees required to lift, turn, position, or ambulate residents; and proper safety precautions when floors are wet or waxed;

(vi) proper use and documentation of restraints;

(vii) resident rights;

(viii) a basic understanding of the various types of mental illness, including symptoms, expected behaviors and intervention approaches; and

(ix) confidentiality of resident information;

(j) ensure any person who provides nursing care, including nurse aides and orderlies, works under the supervision of an RN or LPN and shall demonstrate competency and dependability in resident care:

(k) prohibit any person from working in the facility as a nurse aide for more than four months, on full-time, temporary, per diem, or other basis, unless that individual has successfully completed a State Department of Education-approved training and testing program;

(1) verify through the nurse aid registry before offering employment, that nurse aide applicants do not have a verified report of abuse, neglect, or exploitation and if such a verified report exists, the licensee may not hire the applicant;

(m) require a person to complete a new training and competency evaluation program if an individual has not performed paid nursing or nursing related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program;

(n) conduct regular performance reviews and regular inservice education to ensure that individuals used as nurse aides are competent to perform services as nurse aides; and

(o) ensure staff are available on each shift, who are CPR certified, trained in emergency procedures and basic first aid, including the Heimlich maneuver.

(7) The licensee may utilize volunteers in the daily activities of the licensee provided that volunteers are not included in the licensee's staffing plan in lieu of facility employees if the licensee ensures:

(a) volunteers are supervised and familiar with resident's rights and the licensee's policies and procedures; and

(b) volunteers who provide personal care to residents are screened according to facility policy and under the direct supervision of a qualified employee. (8) The licensee shall ensure an employee who reports suspected abuse, neglect, or exploitation is not subject to retaliation, disciplinary action, or termination by the licensee for making the report.

#### R432-150-11. Quality Assurance.

(1) The administrator shall develop and follow a welldefined quality assurance plan designed to improve resident care that:

(a) includes a system for the collection of data indicators;

(b) includes an incident reporting system to identify problems, concerns, and opportunities for improvement of resident care;

(c) implements a system to assess identified problems, concerns, and opportunities for improvement; and

(d) implements actions that are designed to eliminate identified problems and improve resident care.

(2) The licensee shall ensure the quality assurance plan includes a quality assurance committee that functions as follows:

(a) documents committee meeting minutes including any corrective actions and results;

(b) conducts quarterly meetings and reports findings, concerns and actions to the administrator and governing body; and

(c) coordinates input of data indicators from any provided services and other departments as determined by the resident plan of care and facility scope of services.

(3) The licensee shall ensure incident and accident reports:(a) are available for department and quality assurance committee review;

(b) are numbered and logged in a manner to account for each filed report; and

(c) have space for written comments by the administrator or medical director.

(4) The licensee shall ensure infection reporting is integrated into the quality assurance plan and is reported to the department in accordance with Rule R386-702, Communicable Disease Rule.

#### R432-150-12. Resident Rights.

(1) The licensee shall establish written resident rights.

(2) The licensee shall post resident rights in areas accessible to residents.

(3) The licensee shall ensure a copy of the resident rights document is available to the residents, the residents' guardian, or responsible person, and to the public and the department upon request.

(4) The licensee shall ensure that each resident admitted to the facility has the right to:

(a) be informed, at the time of admission and during the stay, of resident rights and of any rules and regulations governing resident conduct;

(b) be informed, at the time of admission and during the stay, of services available in the facility and of related charges, including any charges for services not covered by the licensee's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act;

(c) be informed by a licensed practitioner of current total health status, including current medical condition, unless medically contraindicated, the right to refuse treatment, and the right to formulate an advance directive in accordance with Section 75-2a-107;

(d) be transferred or discharged only for medical reasons, for personal welfare or that of other residents, or for nonpayment for

the stay, and to be given reasonable advance notice to ensure orderly transfer or discharge;

(e) be encouraged and assisted throughout the period of stay to exercise any rights as a resident and as a citizen, and to voice grievances and recommend changes in policies and services to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) manage personal financial affairs or to be given at least a quarterly accounting of financial transactions made on their behalf should the licensee accept their written delegation of this responsibility;

(g) be free from mental and physical abuse, and from chemical and physical restraints;

(h) be assured confidential treatment of personal and medical records, including photographs, and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or thirdparty payment contract;

(i) be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(j) not be required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(k) associate and communicate privately with persons of the resident's choice, and to send and receive personal mail unopened;

(l) meet with social, religious, and community groups and participate in activities provided that the activities do not interfere with the rights of other residents in the facility;

(m) retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(n) if married, to be assured privacy for visits by the spouse and if both are residents in the facility, to be permitted to share a room;

(o) have members of the clergy admitted at the request of the resident or responsible person at any time;

(p) allow relatives or responsible persons to visit critically ill residents at any time;

(q) be allowed privacy for visits with family, friends, clergy, social workers, or for professional or business purposes;

(r) have confidential access to telephones for both free local calls and for accommodation of long-distance calls according to facility policy;

(s) have access to the state long term care ombudsman program or representatives of the long term care ombudsman program;

(t) choose activities, schedules, and health care consistent with individual interests, assessments, and care plan;

(u) interact with members of the community both inside and outside the facility; and

(v) make choices about any aspects of life in the facility that are significant to the resident.

(5)(a) A resident has the right to organize and participate in resident and family groups in the facility.

(b) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(c) The licensee shall provide a resident or family group, if one exists, with private space.

(d) Staff or visitors may attend meetings at the group's invitation.

(e) The licensee shall designate a staff person responsible for providing assistance and responding to written requests that result from group meetings.

(f) If a resident or family group exists, the licensee shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(6) The licensee shall:

(a) accommodate resident needs and preferences, except when the health and safety of the individual or other residents may be endangered;

(b) ensure a resident is given at least a 24-hour notice before an involuntary room move is made in the facility;

(c) ensure that in an emergency when there is actual or threatened harm to others, property, or self, the 24hour notice requirement for an involuntary room move may be waived and the circumstances requiring the emergency room change are documented for department review; and

(d) make and document efforts to accommodate the resident's adjustment and choices regarding room and roommate changes.

(7) If a licensee is entrusted with residents' funds or valuables, the licensee or staff may not use resident funds or valuables or mingle them with their own and shall comply with the following:

(a) ensure residents' funds and valuables are separate, intact, and free from any liability that the licensee incurs in the use of their own or the institution's funds and valuables;

(b) maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care;

(c) ensure records of residents' funds that are maintained as a drawing account include a control account for any receipts and expenditures, an account for each resident, and supporting vouchers filed in chronological order;

(d) ensure each account is kept current with columns for debits, credits, and balance;

(e) ensure records of residents' funds and other valuables entrusted to the licensee for safekeeping include a copy of the receipt furnished to the resident or to the person responsible for the resident;

(f) deposit residents' funds not kept in the facility within five days of receipt of such funds in an interest-bearing, insured account in a local bank or savings and loan association authorized to do business in Utah;

(g) a person, firm, partnership, association, or corporation that is licensed to operate more than one health facility maintains a separate account for each facility and may not commingle resident funds from one facility with another;

(h) deposit any money over \$100 in an interest-bearing account;

(i) provide evidence of the purchase of a surety bond or other equivalent assurance to secure any resident funds, upon license renewal;

(j) surrender upon discharge any resident money and valuables that have been entrusted to the licensee in exchange for a signed receipt; and

(k) surrender any money and valuables kept within the facility upon demand and make available any money kept in an interest-bearing account within three working days.

(8) Within 30 days following the death of a resident, except in a case under investigation by the medical examiner, the licensee shall surrender any money and valuables of the resident that have been entrusted to the licensee to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. If a resident dies without a representative or known heirs, the licensee shall immediately notify the local probate court and the department in writing.

#### R432-150-13. Resident Assessment.

(1) The licensee shall, upon resident admission, obtain physician orders for the resident's immediate care.

(2) The licensee shall:

(a) complete a comprehensive assessment of each resident's needs including a description of the resident's capability to perform daily life functions and significant impairments in functional capacity that includes the following:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) physical and mental functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;

(vii) mental and psychosocial status;

(viii) discharge potential;

(ix) dental condition;

(x) activities potential;

(xi) rehabilitation potential;

(xii) cognitive status; and

(xiii) drug therapy;

(b) ensure the initial assessment is completed within 14 calendar days of admission and any revisions to the initial assessment within 21 calendar days of admission;

(c) ensure that an interdisciplinary team review any significant change in a resident's physical or mental health and the team may require a new assessment within 14 days of the condition change;

(d) complete three quarterly reviews and one full assessment in each 12-month period; and

(e) use the results of the assessment to develop, review, and revise the resident's comprehensive care plan.

(3) The licensee shall ensure each individual who completes a portion of the assessment signs and certifies the accuracy of that portion of the assessment.

(4) The licensee shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs as identified in the comprehensive assessment.

(5) The licensee shall ensure the comprehensive care plan is:

(a) developed within seven days after completion of the comprehensive assessment;

(b) prepared with input from an interdisciplinary team that includes the attending physician, the registered nurse having responsibility for the resident, and other appropriate staff in disciplines determined by the resident's needs, and with the participation of the resident, and the resident's family or guardian, to the extent practicable; and

(c) periodically reviewed and revised by a team of qualified persons at least after each assessment and as the resident's condition changes.

(6) The licensee shall ensure the services provided or arranged meet professional standards of quality and be provided by qualified persons in accordance with the resident's written care plan.

(7)(a) The licensee shall ensure a final summary of the resident's status, to include items in Subsection R432-150-13(2)(a),

is prepared at the time of discharge and is available for release to authorized persons and agencies, with the consent of the resident or representative.

(b) The licensee shall ensure the final summary includes a post-discharge care plan developed with the participation of the resident and resident's family or guardian.

(c) If the licensee discharges a resident because they cannot meet the resident's needs, the licensee shall include a detailed explanation of why the resident's needs could not be met in the final summary.

#### R432-150-14. Restraint Policy.

(1) Each resident has the right to be free from physical restraints imposed for purposes of discipline or convenience, or not required to treat the resident's medical symptoms.

(2)(a) The licensee shall have written policies and procedures regarding the proper use of restraints.

(b) The licensee shall ensure physical and chemical restraints are only used to assist residents to attain and maintain optimum levels of physical and emotional functioning.

(c) The licensee shall ensure physical and chemical restraints are not used as substitutes for direct resident care, activities, or other services.

(d) The licensee shall ensure restraints do not unduly hinder evacuation of the resident in the event of fire or other emergency.

(c) If use of a physical or a chemical restraint is implemented, the licensee shall ensure the resident, next of kin, and the legally designated representative is informed of the reasons for the restraint, the circumstances that allow the restraint to be discontinued, and the hazards of the restraint, including potential physical side effects.

(3) The licensee shall develop and implement policies and procedures that govern the use of physical and chemical restraints. The licensee shall ensure these policies promote optimal resident function in a safe, therapeutic manner and minimize adverse consequences of restraint use and incorporate and address the following:

(a) resident assessment criteria that includes:

(i) appropriateness of use;

(ii) procedures for use;

(iii) purpose and nature of the restraint;

(iv) less restrictive alternatives before the use of more restrictive measures; and

(v) behavior management and modification protocols including possible alterations to the physical environment;

(b) examples of the types of restraints and safety devices that are acceptable for the use indicated and possible resident conditions when the restraint may be used; and

(c) physical restraint guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(4) The licensee shall ensure emergency use of physical and chemical restraints comply with the following:

(a) a physician, a licensed health practitioner, the director of nursing, or the health services supervisor authorizes the emergency use of restraints;

(b) the attending physician is notified as soon as possible, but at least within 24 hours of the application of the restraints;

(c) the director of nursing or health services supervisor is notified no later than the beginning of the next day shift of the application of the restraints; and (d) the resident's record the circumstances necessitating emergency use of the restraint is documented and the resident's response.

(5) The licensee shall ensure:

(a) physical restraints are authorized in writing by a licensed practitioner and incorporated in the resident's plan of care;

(b) the interdisciplinary team reviews and documents the use of physical restraints, including simple safety devices, during each resident care conference, and upon receipt of renewal orders from the licensed practitioner;

(c) the resident care plan indicates the type of physical restraint or safety device, the length of time to be used, the frequency of release, and the type of exercise or ambulation to be provided;

(d) staff application of physical restraints ensures minimal discomfort to the resident and allow sufficient body movement for proper circulation;

(e) staff application of physical restraints do not cause injury or allow a potential for injury;

(f) leather restraints, straight jackets, or locked restraints are prohibited;

(g) chemical restraints are authorized in writing by a licensed practitioner and incorporated into the resident's plan of care in conjunction with an individualized behavior management program;

(h) the interdisciplinary team reviews and documents the use of chemical restraints during each resident care conference and upon receipt of renewal orders from the licensed practitioner;

(i) each resident receiving chemical restraints is monitored for adverse effects that significantly hinder verbal, emotional, or physical abilities; and

(j) any medication given to a resident is administered according to the requirements of professional and ethical practice and according to the policies and procedures of the facility.

(6) The licensee shall initiate gradual drug dosage reductions as outlined in Subsection R432-150-15(13)(c).

(7) The licensee shall include criteria for admission and retention of residents who require behavior management program in the facility policy.

#### R432-150-15. Quality of Care.

(1)(a) The licensee shall ensure each resident is provided the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and care plan.

(b) Necessary care and services under Subsection (1)(a) include the resident's ability to:

(i) bathe, dress, and groom;

(ii) transfer and ambulate;

(iii) use the toilet;

(iv) eat; and

(v) use speech, language, or other functional communication systems.

(c) Based on the resident's comprehensive assessment, the licensee shall ensure that:

(i) each resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrates that diminution was unavoidable;

(ii) each resident is given the treatment and services to maintain or improve their abilities; and

(iii) a resident who cannot carry out these functions receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) The licensee shall assist residents in scheduling appointments and arranging transportation for vision and hearing care as needed.

(3) The licensee's comprehensive assessment of a resident shall include an assessment of pressure sores. The licensee shall additionally ensure:

(a) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(b) a resident having pressure sores receives the necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing.

(4) The licensee's comprehensive assessment of the resident shall include an assessment of incontinence. The licensee shall additionally ensure that:

(a) a resident who is incontinent of bowel or bladder receives the treatment and services to restore as much normal functioning as possible;

(b) a resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization is necessary;

(c) a resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections; and

(d) a licensed nurse completes a written assessment to determine the resident's ability to participate in a bowel and bladder management program.

(5) The licensee shall assess each resident to ensure that:

(a) a resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(b) a resident with a limited range of motion receives treatment and services to increase range of motion or to prevent further decrease in range of motion.

(6) The licensee shall ensure that the psychosocial function of the resident remains at or above the level at the time of admission, unless the individual's clinical condition demonstrates that a reduction in psychosocial function was unavoidable and psychosocial practices adhere to the following:

(a) a resident who displays psychosocial adjustment difficulty receives treatment and services to achieve as much remotivation and reorientation as possible; and

(b) a resident whose assessment does not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction, increased withdrawn anger, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern is unavoidable.

(7) The licensee shall assess alternative feeding methods to ensure that:

(a) a resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube is unavoidable; and

(b) a resident who is fed by a naso-gastric or gastrostomy tube receives the treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(8) The licensee shall maintain the resident's environment and is free of accident hazards.

(9) The licensee shall provide each resident with supervision and assistive devices to prevent accidents.

(10) The licensee shall ensure that each resident's comprehensive assessment includes an assessment of nutritional status and nutritional practices ensure that each resident:

(a) maintains acceptable nutritional status parameters, including body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(b) receives a therapeutic diet when there is a nutritional problem.

(11) The licensee shall provide each resident with sufficient fluid intake to maintain proper hydration and health.

(12) The licensee shall ensure that residents receive proper treatment and care for the following special services:

(a) injections;

(b) parenteral and enteral fluids;

(c) colostomy, ureterostomy, or ileostomy care;

(d) tracheostomy care;

(e) tracheal suctioning;

(f) respiratory care;

(g) foot care; and

(h) prostheses care.

(13) The licensee shall ensure:

(a) each resident's drug regimen is free from unnecessary drugs;

(b) residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

(c) residents who use antipsychotic drugs receive gradual dose reductions and behavioral interventions, unless clinically contraindicated in an effort to discontinue these drugs.

(14) The licensee shall ensure the quality assurance committee monitors medication errors to ensure that:

(a) the licensee does not have medication error rates of 5% or greater; and

(b) residents are free of any significant medication errors.

#### R432-150-16. Physician Services.

(1)(a) The licensee shall ensure a physician approves, in writing, a recommendation that an individual be admitted to the nursing care facility.

(b) Each resident shall remain under the care of a physician licensed in Utah to deliver the scope of services required by the resident.

(c) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a nursing care facility pending personal review by the physician.

(2) The licensee shall provide supervision to ensure that the medical care of each resident is supervised by a physician. When a resident's attending physician is unavailable, another qualified physician shall supervise the medical care of the resident.

(3) The physician that supervises the resident's care shall:

(a) review the resident's total program of care, including medications and treatments, at each visit;

(b) write, sign, and date progress notes at each visit;

(c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants; and

(d) sign each order.

(4) The licensee shall ensure that physician visits comply with the following:

(a) the physician notifies the facility of the name of the nurse practitioner or physician assistant who is providing care to the resident at the facility;

(b) a physician sees each resident at least once every 30 days for the first 90 days after admission, and at least every 60 days thereafter;

(c) physician visits are completed within ten days of the date the visit is required;

(d) except as permitted in Subsection R432-150-16(4)(e), the physician makes each required visit; and

(c) at the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

(5) The licensee shall provide or arrange for physician services 24 hours a day in case of an emergency.

#### R432-150-17. Laboratory Services.

(1) The licensee shall provide laboratory services in accordance with the size and needs of the facility.

(2) The licensee shall comply with and maintain the Clinical Laboratory Improvement Amendments of 1988 (CLIA) inspection reports for department review.

#### R432-150-18. Pharmacy Services.

(1) The licensee shall provide, or obtain by contract, routine and emergency drugs, biologicals, and pharmaceutical services to meet each resident's physician's orders for medications.

(2) The licensee shall employ or obtain the services of a licensed pharmacist who:

(a) provides consultation on the pharmacy services in the facility;

(b) establishes a system of records of receipt and disposition of any controlled substances that documents an accurate reconciliation; and

(c) determines that drug records are in order and that an account of controlled substances is maintained and reconciled monthly.

(3)(a) A licensed pharmacist shall review the drug regimen of each resident at least monthly.

(b) The pharmacist shall provide reports of any drug regimen irregularities to the attending physician and the director of nursing or health services supervisors.

(c) The physician and director of nursing or health services supervisor shall indicate acceptance or rejection of the pharmacist's irregularity report and document any action taken.

(4) Pharmacy personnel shall ensure that labels on drugs and biologicals are in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(5)(a) The licensee shall store any drugs and biologicals in locked compartments under proper temperature controls in accordance with Subsections R432-150-18(5)(c)(iii) and (iv), and permit only authorized personnel to have access to the keys.

(b) The licensee shall provide separately locked, permanently affixed compartments for storage of controlled substances and other drugs subject to abuse, except when the licensee uses single unit dose package drug distribution systems where the quantity stored is minimal and a missing dose can be readily detected.

(c) The licensee may not store non-medication materials that are poisonous or caustic with medications.

(d) The licensee shall ensure:

(i) containers are clearly labeled;

(ii) medication intended for internal use is stored separately from medication intended for external use;

(iii) medications stored at room temperature are maintained within 59 and 80 degrees F; and

(iv) refrigerated medications are maintained within 36 and 46 degrees F.

(6) The licensee shall maintain an emergency drug supply and ensure emergency drug practices adhere to the following:

(a) emergency drug containers are sealed to prevent unauthorized use;

(b) contents of the emergency drug supply are listed on the outside of the container and the use of contents is documented by the nursing staff;

(c) the emergency drug supply is stored and located for access by the nursing staff;

(d) the pharmacist inventories the emergency drug supply monthly; and

(e) used or outdated items are replaced within 72 hours by the pharmacist.

(7) The licensee shall ensure that the pharmacy dispenses drugs and biologicals on a timely basis.

(8) The licensee shall limit the duration of a drug order in the absence of the prescriber's specific instructions.

(9) The licensee shall ensure drug references are available for any drugs used in the facility and references include generic and brand names, available strength and dosage forms, indications and side effects, and other pharmacological data.

(10) The licensee may send drugs with the resident upon discharge, if ordered by the discharging physician provided that a record of the drugs sent with the resident is documented in the resident's health record.

(11) The licensee shall ensure disposal of controlled substances are in accordance with the Pharmacy Practice Act.

#### R432-150-19. Recreation Therapy.

(1) The licensee shall provide an ongoing program of individual and group activities and therapeutic interventions designed to meet the interests, and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with the comprehensive assessment.

(2) Additionally, the licensee shall ensure:

(a) recreation therapy is provided in accordance with Title 58, Chapter 40, Recreational Therapy Practice Act; and

(b) the recreation therapy staff develops and conspicuously posts monthly resident activity calendars for residents, staff, and visitors to reference.

(3) Each licensee shall ensure sufficient space and a variety of supplies and resource equipment to meet the recreational needs and interests of the residents are provided.

(4) The licensee shall ensure storage is provided for recreational equipment and supplies.

(5) The licensee shall ensure locked storage is provided for potentially dangerous items including scissors, knives, and toxic materials.

#### R432-150-20. Pet Policy.

(1) The licensee shall develop a written policy regarding pets in accordance with local ordinances.

(2) The licensee shall ensure that the administrator or designee determines which pets may be brought into the facility and ensures that pet policy and practices adhere to the following:

(a) family members may bring pets to visit provided they have approval from the administrator and offer assurance that the pets are clean, disease free, and vaccinated;

(b) pets are not permitted in food preparation or storage areas; and

(c) pets are not permitted in any area where their presence would create a health or safety risk.

#### R432-150-21. Admission, Transfer, and Discharge.

(1) Each licensee shall develop written admission, transfer, and discharge policies and make these policies available to the public upon request.

(2) The licensee shall permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) the health or safety of an individual in the facility is endangered;

(d) the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

(e) the licensee ceases to operate the facility.

(3) The licensee shall ensure resident transfers or discharges are documented under any of the circumstances specified in Subsection R432-150-22(1), in the resident's medical record. The licensee shall ensure the transfer or discharge documentation is made by:

(a) the resident's physician if transfer or discharge is necessary under Subsections R432-150-22(1)(a) and (b); or

(b) a physician if transfer or discharge is necessary under Subsection R432-150-22(1)(c).

(4) Before the transfer or discharge of a resident, the licensee shall ensure:

(a) a written notification of the transfer or discharge and the reasons for the transfer or discharge to the resident is provided in a language and manner the resident understands, and, if known, to a family member or legal representative of the resident;

(b) the reasons are recorded in the resident's clinical record; and

(c) the notice includes the following:

(i) the reason for transfer or discharge;

(ii) the effective date of transfer or discharge;

(iii) the location where the resident is transferred or discharged; and

(iv) the name, address, and telephone number of the state and local long term care ombudsman programs.

(5)(a) Except when specified in Subsection R432-150-21[-](6)(a), the licensee shall ensure the notice of transfer or discharge required under Subsection R432-150-(21)(4), is made by the licensee at least 30 days before the resident is transferred or discharged.

(b) The licensee may issue the notice of transfer or discharge as soon as practicable before transfer or discharge if:

(i) the safety or health of individuals in the facility would be endangered if the resident is not transferred or discharged sooner;

(ii) the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(iii) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(iv) a resident has not resided in the facility for 30 days.

(c) The licensee shall ensure that the notice for nursing facility residents with developmental disabilities contains the mailing address and telephone number of the Disability Law Center that is responsible for the protection and advocacy of developmentally disabled individuals; and

(d) The licensee shall ensure that the notice for nursing facility residents who are mentally ill contains the mailing address and telephone number of the Disability Law Center who is responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) The licensee shall provide discharge planning to prepare and orient a resident to ensure safe and orderly transfer or discharge from the facility.

(7) Before a licensee transfers a resident to a hospital or allows a resident to go on therapeutic leave, the licensee shall ensure:

(a) written notification and information is provided to the resident and a family member or legal representative that specifies:

(i) the policies regarding bed-hold periods permitting a resident to return; and

(ii) the duration of the bed-hold policy, if any, and the resident is permitted to return and resume residence in the facility;

(b) written notice is provided to the resident and a family member or legal representative, that specifies the duration of the bedhold policy at the time of transfer of a resident to a hospital or for therapeutic leave;

(c) notification is provided as soon as possible following a transfer necessitated by a medical emergency; and

(d) a written policy is established and followed for when a resident whose hospitalization or therapeutic leave exceeds the bedhold period may be readmitted to the facility.

(8) The licensee shall establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for each individual regardless of pay source.

(9) The licensee shall have a written transfer agreement in effect with one or more hospitals to ensure that:

(a) residents are transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically necessary as determined by the attending physician;

(b) medical and other information needed for care and treatment of residents is exchanged between facilities including documentation of reasons for a less expensive setting; and

(c) security and accountability of personal property of the individual transferred is maintained.

#### R432-150-22. Ancillary Health Services.

(1) A licensee that provides its own radiology services shall comply with Section R432-100-23.

(2) A licensee may provide specialized rehabilitative services directly or through agreements with outside agencies or qualified therapists.

(3) A licensee that directly provides specialized rehabilitative services shall ensure:

(a) there is space and equipment provided to meet the prescribed needs of the residents;

(b) specialized rehabilitative services are only provided by therapists licensed in Utah;

(c) each therapy assistant works under the direct supervision of the licensed therapist at all times;

(d) each speech pathologist has a certificate of clinical compliance issued by the American Speech and Hearing Association;

(e) specialized rehabilitative services are only provided upon order of the attending physician;

(f) an attending physician initiates the plan of treatment;

(g) the therapist, in consultation with the nursing staff develops and implements the plan of treatment and provides an initial progress report to the attending physician within two weeks of the start of treatment, or as specified by the attending physician;

(h) the physician and therapist review the plan of treatment at least monthly unless the physician recommends an alternate schedule in writing; and

(g) delivery of any specialized rehabilitative services are documented in the resident record.

(4) The licensee shall provide or arrange for regular and emergency dental care for residents. Dental care practices include:

(a) development of oral hygiene policies and procedures with input from dentists;

(b) presentation of oral hygiene in-service programs to staff by knowledgeable persons;

(c) development of referral service for any resident who do not have a personal dentist; and

(d) arrangement for transportation to and from the dentist's office.

(5) The licensee shall ensure that medical social services are sufficient to meet the needs of the residents and provided or arranged by the nursing care facility. The licensee shall ensure that social services are under the direction of a therapist licensed in accordance with Title 58 Chapter 60 of the Mental Health Practice Act.

#### R432-150-23. Food Services.

(1) The licensee shall provide each resident with a safe, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(2) The licensee shall employ there enough staff to meet the dietary needs of the residents.

(3) For food services and practices, the licensee shall ensure:

(a) there is a dietitian employed either full-time, part-time, or on a consultant basis;

(b) the dietitian is certified in accordance with Title 58, Chapter 49, Dietitian Certification Act;

(c) if a dietitian is not employed full-time, the administrator designates a full-time person to serve as the dietetic supervisor;

(d) if the dietetic supervisor is not a certified dietitian, the licensee consults a certified dietitian at least monthly, according to the needs of the residents and documents the consultations; and

(c) the dietetic supervisor is available when the consulting dietitian visits the facility.

(4) The licensee shall develop menus that meet the nutritional needs of residents to the extent medically possible and ensure the menus are:

(a) prepared in advance;

(b) followed;

(c) different each day;

(d) posted for each day of the week;

(e) approved and signed by a certified dietitian; and

(f) cycled no less than every three weeks.

(5) The licensee shall retain documentation for at least three months for any served substitutions to the menu.

(6) The licensee shall ensure any food sanitation inspection reports of state or local health department inspections are available for department review.

(7) The licensee shall ensure the attending physician or qualified registered dietitian in consultation with the physician, orders each therapeutic diet in writing, if allowed by facility policy.

(8) The licensee shall ensure there is no more than a 14hour interval between the evening meal and breakfast, unless a substantial snack is served in the evening.

(9) The licensee shall provide special eating equipment and assistive devices for residents who need them.

(10) The licensee shall ensure the facility's food service complies with Rule R392-100.

(11) The licensee shall ensure a one-week supply of nonperishable staple foods and a three-day supply of perishable foods are maintained to complete the established menu for three meals per day, per resident.

(12) A nursing care licensee may use trained dining assistants to aid residents in eating and drinking if:

(a) a licensed practical nurse-geriatric care manager, registered nurse, advance practice registered nurse, speech pathologist, occupational therapist, or dietitian has assessed that the resident does not have complicated feeding problems, including recurrent lung aspirations, behaviors that interfere with eating, difficulty swallowing, or tube or parenteral feeding; and

(b) the service plan or plan of care documents that the resident needs assistance with eating and drinking and defines who is qualified to offer the assistance.

(13) If the nursing care facility uses a dining assistant, the licensee shall ensure that the dining assistant:

(a) has completed a training course from a departmentapproved training program;

(b) has completed a background screening pursuant to Rule R432-35; and

(c) performs duties only for those residents who do not have complicated feeding problems.

(14) A long term care licensee shall submit the following to the department to become an approved training program:

(a) a copy of the curriculum to be implemented that meets the requirements of Subsection (13); and

(b) the names and credentials of the trainers.

(15) The long term care licensee shall ensure a dietitian training program is approved by the department if it includes the following:

(a) eight hours of instruction for the dining assistant and one hour of observation by the trainer to ensure competency;

(b) feeding techniques;

(c) assistance with eating and drinking;

(d) communication and interpersonal skills;

(e) safety and emergency procedures including the Heimlich maneuver;

(f) infection control;

(g) resident rights;

(h) recognizing resident changes inconsistent with their normal behavior and the importance in reporting those changes to the supervisory nurse;

(i) special diets;

(j) documentation of type and amount of food and hydration intake;

(k) appropriate response to resident behaviors; and

(l) use of adaptive equipment.

(16) The licensee shall issue a training certificate of completion and maintain a list of the dining assistants that identifies:

(a) the training program provider;

(b) the telephone number where the licensee may verify the training; and

(c) each dining assistant's name and address.

(17) To provide dining assistant training in a departmentapproved training program, the licensee shall ensure a trainer holds a current valid license to practice as:

(a) a registered nurse, advanced practice registered nurse or licensed practical nurse-geriatric care manager pursuant to Title 58, Chapter 31b, Nurse Practice Act;

(b) a registered dietitian, pursuant to Title 58, Chapter 49, Dietitian Certification Act;

(c) a speech-language pathologist, pursuant to Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act; or

(d) an occupational therapist, pursuant to Title 58, Chapter 42a, Occupational Therapy Practice Act.

(18) The licensee may suspend a training program if the program's courses do not meet the requirements of this rule.

(19) The licensee may suspend a training program operated by a nursing care facility if:

(a) a federal or state survey reveals failure to comply with federal regulations or state rules regarding feeding or dining assistant programs;

(b) the licensee fails to provide sufficient, competent staff to respond to emergencies;

(c) the department sanctions the facility for any reason; or

(d) the department determines that the licensee is in continuous or chronic non[-]compliance under state rule or that the licensee has provided sub-standard quality of care under federal regulation.

#### R432-150-24. Medical Records.

(1) The licensee shall implement a medical records system to ensure complete and accurate retrieval and compilation of information.

(2)(a) The administrator shall designate an employee to be responsible and accountable for the processing of medical records.

(b) The administrator shall ensure that a registered record administrator (RRA) or accredited record technician (ART) directs the medical records department.

(c) If an RRA or ART is not employed at least part-time, the administrator shall consult with an RRA or ART according to the needs of the facility, and no less than semi-annually.

(3) The licensee shall ensure resident medical records are:

(a) retained, stored, and safeguarded from loss, defacement, tampering, and damage from fires and floods;

(b) protected against access by unauthorized individuals; and

(c) retained for at least seven years and medical records of minors are kept until the age of eighteen plus four years, but in no case less than seven years.

(4) The licensee shall maintain an individual medical record for each resident that contains written documentation of the following:

(a) records made by staff regarding daily care of the resident;

(b) informative progress notes by staff to record changes in the resident's condition and response to care and treatment in accordance with the care plan;

UTAH STATE BULLETIN, October 15, 2023, Vol. 2023, No. 20

(c) a pre-admission screening;

(d) an admission record with demographic information and resident identification data;

(c) a history and physical examination up-to-date at the time of the resident's admission;

(f) written and signed informed consent;

(g) orders by clinical staff members;

(h) a record of assessments, including the comprehensive resident assessment, care plan, and services provided;

(i) nursing notes;

(j) monthly nursing summaries;

(k) quarterly resident assessments;

(1) a record of medications and treatments administered;

(m) laboratory and radiology reports;

(n) a discharge summary for the resident to include a note of condition, instructions given, and referral as appropriate;

(o) a service agreement if respite services are provided;

(p) physician treatment orders;

 $(\overline{\boldsymbol{q}})$  information pertaining to incidents, accidents, and injuries; and

(r) a copy of an advanced directive, if a resident has one.

(5) The licensee shall ensure any entries into the medical record are authenticated including date, name or identifier initials, and title of the person making the entries.

(6) The licensee shall ensure resident respite records are maintained within the facility.

#### R432-150-25. Housekeeping Services.

(1) The licensee shall provide a safe, clean, comfortable environment, allowing the resident to use personal belongings to create a homelike environment.

(2) The licensee shall ensure cleaning agents, bleaches, insecticides, poisonous, dangerous, or flammable materials are stored in a locked area to prevent unauthorized access.

(3) The licensee shall:

(a) provide enough housekeeping services and personnel to maintain a clean and sanitary environment;

(b) ensure personnel engaged in housekeeping or laundry services are not engaged concurrently in food service or resident care; and

(c) develop and implement employee hygiene and infection control measures to maintain a safe, sanitary environment if housekeeping personnel also work in food services or direct patient care services.

#### R432-150-26. Laundry Services.

(1) the administrator shall designate a person to direct the facility's laundry service that has experience, training, or knowledge of the following:

(a) proper use of chemicals in the laundry;

(b) proper laundry procedures;

(c) proper use of laundry equipment;

(d) facility policies and procedures; and

(e) federal, state, and local rules and regulations.

(2) The licensee shall provide clean linens, towels, and washcloths for resident use.

(3) If the licensee contracts for laundry services, there is a signed, dated agreement that details any services provided.

(4) The licensee shall inform the resident and family of facility laundry policy for personal clothing.

(5) The licensee shall ensure:

(a) each resident's personal laundry is marked for identification;

(b) there are enough clean linen, towels, and washcloths for at least three complete changes of the facility's licensed bed capacity;

(c) there is a bedspread for each resident bed;

(d) clean linen is handled and stored in a manner to minimize contamination from surface contact or airborne deposition;

(e) soiled linen is handled, stored, and processed in a manner to prevent contamination and the spread of infections;

(f) soiled linen is sorted in a separate room by methods affording protection from contamination; and

(g) the laundry area is separate from any room where food is stored, prepared, or served.

#### R432-150-27. Maintenance Services.

(1) The licensee shall ensure that buildings, equipment, and grounds are maintained in a clean and sanitary condition and in good repair for the safety and well-being of residents, staff, and visitors.

(2) For facility maintenance services the licensee shall ensure:

(a) the administrator employs a person, qualified by experience and training, to be in charge of facility maintenance;

(b) if the licensee contracts for maintenance services, there is a signed and dated agreement that details each service provided and the contracted maintenance service meets each requirement of this section;

(c) the licensee develops and implements a written maintenance program, that includes preventive maintenance, to ensure the continued operation of the facility and sanitary practices throughout the facility;

(d) the premises are free from vermin and rodents;

(c) entrances, exits, steps, ramps, and outside walkways are maintained in a safe condition with regard to snow, ice, and other hazards;

(f) emergency lighting and heat are provided to meet the needs of residents in a facility that provides care for residents who are unable to be relocated in an emergency;

(g) functional flashlights are available for emergency use by staff;

(h) any facility equipment is tested, calibrated and maintained in accordance with manufacturer specifications;

(i) testing frequency and calibration documentation is available for department review;

(j) documentation of testing or calibration conducted by an outside agency is available for department review;

(k) any spaces within buildings that house people, machinery, equipment, approaches to buildings, and parking lots have lighting;

(l) heating, air conditioning, and ventilating systems are maintained to provide comfortable temperatures;

(m) back-flow prevention devices are maintained in operating condition and tested according to manufacturer specifications;

(n) hot water temperature controls automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents and hot water is delivered to public and resident care areas at temperatures between 105-115 degrees F;

(o) disposable and single use items are properly disposed of after use;

(p) nursing equipment and supplies are available as determined by facility policy in accordance with the needs of the residents;

(q) there is at least one first aid kit available at a specified location in the facility accompanied by a current edition of a first aid manual approved by the American Red Cross or the American Medical Association;

(r) there is at least one Occupational Safety and Health Administration (OSHA) approved spill or clean-up kit for bloodborne pathogens; and

(s) vehicles used to transport residents are:

(i) licensed with a current vehicle registration and safety inspection;

(ii) equipped with individual, size-appropriate safety restraints including seat belts that are installed and used in accordance with manufacturer specifications;

(iii) equipped with a first aid kit and current version of a first aid manual approved by the American Red Cross or the American Medical Association; and

(iv) equipped with an OSHA-approved spill or clean-up kit.

#### R432-150-28. Emergency Response and Preparedness Plan.

(1) The licensee shall ensure the safety and well-being of residents and provide for a safe environment in the event of an emergency or disaster. An emergency or disaster may include utility interruption, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2)(a) The licensee shall develop an emergency and disaster plan that is approved by the governing body.

(b) The emergency and disaster plan shall delineate:

(i) the person with decision-making authority for fiscal, medical, and personnel management;

(ii) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) assignment of personnel to specific tasks during an emergency;

(iv) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) individuals to be notified in an emergency in order of priority; and

(vi) methods of transporting and evacuating residents and staff to other locations.

(c) The licensee shall have emergency phone numbers at each nursing station with responsible staff listed in the order of priority contact.

(d) The licensee shall document resident emergencies and responses, emergency events and responses, and the location of residents and staff evacuated from the facility during an emergency.

(c) The licensee shall conduct and document simulated disaster drills semi-annually.

(3) The administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel that:

(a) delineates evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department;

(b) ensures the evacuation plan is posted in prominent locations in exit access ways throughout the building;

(c) includes fire containment procedures and how to use the facility alarm systems and signals; and

(d) ensures fire drills and fire drill documentation are completed in accordance with the State of Utah Fire Prevention Board, Rule R710-4.

#### **R432-150-29.** Alternative Sanctions for Nursing Facilities.

(1) This section applies in addition to the requirements of Rule R380-600 for certified nursing facility licensees participating in the Centers for Medicare and Medicaid (CMS) program and establishes criteria for the imposition of sanctions authorized by statute.

(2)(a) As the sole agency of the state authorized to act as the health care facilities certification agency under Section 26B-2-217, the department shall conduct on-site inspections of nursing facilities to determine compliance with federal nursing home requirements found in 42 CFR 488 (2023).

(b) When the department finds that a nursing facility licensee is out of compliance with requirements of participation in the CMS program, the department may recommend to CMS the imposition of sanctions, including federal civil money penalties (CMP).

(3)(a) For a CMS certified nursing facility licensee, the department has authority to apply the sanctions defined in the federal Omnibus Budget Reconciliation Act (OBRA) of 1987 (P.L. 100-203) and Sections 1819(h) and 1919(h) of the Social Security Act.

(b) The department may recommend termination from the Medicare or Medicaid program if a nursing facility licensee is found in chronic noncompliance with CMS participation requirements.

(4) In accordance with 42 CFR 488 (2023), the department may recommend any of the following sanctions:

(a) temporary management;

- (b) denial of payment for new admissions;
- (c) transfer of residents;

(d) closure of the facility and transfer of residents;

(e) directed plan of correction;

(f) directed in-service training;

(g) state monitoring; and

(h) civil money penalties for:

(i) the number of days a facility is out of compliance with one or more participation requirements; or

(ii) each instance that a facility is not in substantial compliance in accordance with 42 CFR 488 (2023).

(5)(a) The department shall assess interest on the unpaid balance of any CMP issued and collected by the department on behalf of CMS, beginning on the due date.

(b) The interest rate charged is the average of the bond equivalent of the federal standard as outlined in 42 CFR 488 (2023) during the period when interest is charged.

(6) The department shall apply CMPs collected under this section in accordance with Sections 1819 and 1919 of the Social Security Act to the protection of the health and property of residents.

#### R432-150-30. Annual Reporting Requirements.

(1) A nursing care facility licensee approved for a health facility license under Subsection 26B-2-222(2)(c) shall submit an annual financial report within 90 days of the end of each calendar year.

(2) The annual financial report shall contain:

(a) total of any revenue received within the calendar year;

(b) total of any Medicare inpatient revenue received within the calendar year;

(c) total of any Medicare Advantage revenue received within the calendar year; and

(d) percentage of Medicare inpatient revenue including Medicare Advantage revenue in relation to the total of any revenue received within the calendar year.

(3)(a) The department shall review the submitted reports for compliance with Subsection26B-2-222(7)(a).

(b) The department may perform financial audits as part of a review.

(c) If the department determines a facility is not in compliance with Subsection 26B-2-222(7)(a), a CMP of \$50,000 will be issued for the facility's failure to comply.

#### R432-150-[29]31. Penalties.

[Any person who violates this rule may be subject to the penalties enumerated in Sections 26B-2-208 and 26B-2-216 and Section R432-3-7.]The department may issue a penalty enumerated in Sections 26B-2-208, 26B-2-216 and Rule R380-600 to any licensee who is found to be in noncompliance with this rule.

KEY: health care facilities

Date of Last Change: 2023 Notice of Continuation: January 24, 2022

Authorizing, and Implemented or Interpreted Law: 26B-2-202

Rule or Section Number:	R590-190	Filing ID: 55510
Date of Previous Publication:	07/15/2023	

#### **Agency Information**

1. Department:	Insurance		
Agency:	Administration		
Room number:	Suite 2300		
Building:	Taylorsville State Office Building		
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City, state and zip:	Taylorsville, UT 84129		
Mailing address:	PO Box 146901		
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Steve Gooch	801- 957-	sgooch@utah.gov	

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

9322

#### **General Information**

#### 2. Rule or section catchline:

R590-190. Unfair Property, Casualty, and Title Claims Settlement Practices Rule

3. Reason for this change:

The proposed repeal and reenact is being changed to enhance insurance consumer protections.

#### 4. Summary of this change:

This filing adds two protections for consumers in Subsection R590-190-11(9). First, it requires insurers to provide rental vehicles that may reasonably be used in a manner in which a consumer previously used the damaged vehicle.

Second, it prohibits insurers from requiring consumers to rent vehicles with the promise that the insurer will reimburse them later.

(EDITOR'S NOTE: The original proposed repeal and reenact upon which this change in proposed rule (CPR) was based was published in the July 15, 2023, issue of the Utah State Bulletin, on page 39. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strikeout indicates text that has been deleted. You must view the CPR and the proposed repeal and reenact 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:

There is no anticipated cost or savings to the state budget. The change only affects automobile insurers.

#### B) Local government:

There is no anticipated cost or savings to local governments. The change only affects automobile insurers.

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

There is no anticipated cost or savings to small businesses. The change only affects automobile insurers; no automobile insurers in Utah are in the small business category.

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

There is an anticipated cost to certain non-small businesses. Automobile insurers will be affected to the extent the change requires them to pay more in automobile insurance benefits.

However, the Department of Insurance (Department) has no way to estimate the aggregate cost because the cost to each automobile insurer is based on facts exclusively in the possession of the automobile insurer. 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*):

There is no anticipated cost or savings to any other persons. The change only affects automobile insurers.

#### F) Compliance costs for affected persons:

There is a compliance cost for automobile insurers to the extent the change requires them to pay more in automobile insurance benefits.

However, the Department has no way to estimate the aggregate cost because the cost to each automobile insurer is based on facts exclusively in the possession of the automobile insurer.

**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**

Regulatory impact rable					
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 Insurance, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

#### **Citation Information**

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

Section 31A-2-201	Section 31A-21-312	Section 31A-26-301
Section 31A-26-303		

#### **Public Notice Information**

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

A) Comments will be accepted 11/14/2023 until:

## 9. This rule change MAY become 11/21/2023 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	Steve Gooch,	Date:	09/28/2023
or designee	Public Information		
and title:	Officer		

#### **R590.** Insurance, Administration.

**R590-190.** Unfair Property, Casualty, and Title Claims Settlement Practices Rule.

#### R590-190-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-21-312, 31A-26-301, and 31A-26-303.

#### R590-190-2. Purpose and Scope.

- (1) The purpose of this rule is to:
- (a) set standards for the investigation and disposition of
- property, casualty, and title claims; and
  - (b) identify an unfair claim practice.
  - (2) This rule applies to:
  - (a) a property and casualty insurer;
  - (b) a title insurer; and
  - (c) an authorized agent.

#### R590-190-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Authorized agent" means an individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim.

(2) "Claim file" means a record either in its original form or as recorded by a process that can accurately and reliably reproducer the original material regarding a claim, its investigation, adjustment, and settlement.

(3)(a) "Claimant" means a first party claimant, a third party claimant, or both.

(b) "Claimant" includes a claimant's designated legal representative and an immediate family member.

(4) "Day" means calendar day.

(5) "Documentation" means a physical or an electronic record related to a claim.

(6)(a) "First party claimant" means a person asserting a right to a benefit under a policy to which the person is a party.

(b) "First party claimant" includes a person's designated legal representative and an immediate family member.

(7) "General business practice" means a pattern of conduct in a business.

(8) "Investigation" means an activity by or on behalf of an insurer related to determining a claim under a policy.

(9) "Notice of loss" means a claimant's notice that reasonably informs an insurer of facts related to a claim.

(10) "Proof of loss" means an insured's reasonable documentation in support of a claim.

(11) "Third party claimant" means a person asserting a claim against an insured.

#### R590-190-4. File and Record Documentation.

(1) An insurer's claim file is subject to examination by the commissioner.

(2) To aid in an examination, an insurer shall:

(a) maintain claim data that is accessible and retrievable; and

(b) maintain detailed documentation in each claim file permitting reconstruction of the insurer's activities related to the claim.

#### **R590-190-5.** Misrepresentation of Policy Provisions.

(1) An insurer and its representatives shall fully disclose to a first party claimant any pertinent benefit, coverage, or other provision of a policy under which a claim is presented.

(2) An insurer is prohibited from denying a claim based on a first party claimant's failure to make the property available for inspection unless there is documentation of a breach of a policy provision in the claim file.

#### R590-190-6. Failure to Acknowledge Communication.

(1) An insurer shall acknowledge receiving a notice of loss within 15 days of receipt unless:

(a) payment is made within 15 days of a notice of loss; or

(b) the insurer reasonably explains the failure to acknowledge receipt.

(2) Notice given to an agent of an insurer is notice to the insurer.

(3) Within 15 days, an insurer shall provide a substantive response to a claimant if a response has been requested.

(4) Upon receiving a notice of loss, an insurer shall, within 15 days, provide any necessary claim forms, instructions, and reasonable assistance so that a first party claimant can comply with the policy.

#### R590-190-7. Notice of Loss.

(1) If a notice of loss is required by an insurer, it is timely if made according to the terms of the policy, this rule, and Section 31A-21-312.

(2) A notice of loss may be given by an insured to an authorized agent, authorized adjuster, or other agent of an insurer unless the insurer directs otherwise pursuant to a specific disclosure.

(3) The general business practice of an insurer when accepting a notice of loss shall be consistent for all policyholders.

#### R590-190-8. Proof of Loss.

If a proof of loss is required by an insurer, it is timely if made according to the terms of the policy, this rule, and Section 31A-21-312.

#### **R590-190-9.** Unfair Claim Settlement Practices.

The commissioner finds that the following acts or general business practices are unfair claim settlement practices and are misleading, deceptive, unfairly discriminatory, overreaching, or an unreasonable restraint on competition in settling a claim:

(1) denying or threatening to deny a claim, or rescinding, canceling, or threatening to rescind or cancel coverage under a policy for a reason that is not clearly described in a policy as a reason for denial, cancellation, or rescission;

(2) failing to provide an insured or a beneficiary a written explanation of the evidence of an investigation or the claim file materials supporting a denial of a claim based on misrepresentation or fraud on an insurance application, if misrepresentation or fraud is the basis for the denial;

(3) compensating an employee, producer, or contractor an amount based on savings to the insurer due to denying payment of a claim;

(4) failing to deliver to the department a copy of an insurer's guidelines during an investigation of a claim, if requested;

(5) refusing to pay a claim without conducting a reasonable investigation;

(6) offering a first party claimant substantially less than a claim's reasonable value as established by an independent source;

(7) making a claim payment to an insured or a beneficiary without a statement or explanation of benefits that describes the coverage under which a payment is made and how a payment amount is calculated;

(8) failing to pay a first party claim within 30 days of receiving a proof of loss if liability is reasonably clear under one coverage to influence a settlement under another portion of the insurance policy or under another insurance policy;

(9) refusing to pay a claim solely based on an insured's request unless:

(a) the insured claims sovereign, eleemosynary, diplomatic, military service, or other immunity from suit or liability with respect to the claim; or

(b) the insured is granted the right under the policy to consent to settlement of a claim;

(10) advising a claimant not to obtain the services of an attorney or suggesting a claimant will receive less money if an attorney is used to pursue a claim or advise on the merits of a claim;

(11) misleading a claimant about applicable statutes of limitation;

(12) requiring an insured to sign a release that extends beyond the occurrence or cause of action that gave rise to a claim payment; (13) deducting from a loss or claim payment made under one policy the premiums owed by the insured on another policy, unless the insured consents;

(14) failing to settle a first party claim on the basis that responsibility for payment of the claim should be assumed by others, except as provided by a policy provision;

(15) issuing a check or a draft in partial settlement of a loss or a claim under a specified coverage if the check or draft contains language that releases an insurer from total liability;

(16) refusing to provide a written basis for the denial of a claim upon demand of an insured;

(17) denying a claim for medical treatment after preauthorization is given, except in a case where an insurer obtains and provides to a claimant documentation of the pre-existing condition for which preauthorization was given or if a claimant is not eligible for coverage;

(18) refusing to pay a reasonably incurred expense to an insured if the expense resulted from a delay, prohibited by this rule, in a claim settlement or a claim payment;

(19) if an automobile insurer represents both a tort feasor and a claimant:

(a) failing to advise a claimant under any coverage that the same insurance company represents both the tort feasor and the claimant as soon as such information becomes known to the insurer; and

(b) allocating medical payments to the tort feasor's liability coverage before exhausting a claimant's personal injury protection coverage;

(20) except for a failure to pay personal injury protection expenses when due, failing to pay interest at the legal rate, as provided in Title 15, Contracts and Obligations in General, on first party and third party claim amounts that are overdue under this rule; and

(21) failing to deliver or mail the amount owed on a first party or third party claim within 30 days after the insurer receives written proof of a covered loss and its amount, except:

(a) if the insurer does not receive written proof of the entire loss, the insurer shall deliver or mail a partial amount supported by written proof or investigation within 30 days; and

(b) a payment is not overdue if the insurer has reasonable evidence to dispute its responsibility for payment.

### **R590-190-10.** Minimum Standards for Prompt, Fair, and Equitable Settlement.

(1) An insurer shall provide to a claimant a statement describing the time and way a claim shall be made and the type of proof of loss required by the insurer.

(2)(a) Within 30 days after receiving a complete proof of loss, an insurer shall complete its investigation of the claim and shall notify the first party claimant of its acceptance or denial of the claim unless the investigation cannot reasonably be completed within that time.

(b) If the insurer needs more time to determine whether the first party claim should be accepted or denied, it shall notify the first party claimant within 30 days after receipt of the proof of loss, giving the reasons more time is needed.

(c) If the investigation remains incomplete, the insurer shall, within 45 days after sending the initial notification and within every 45 days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for the investigation, unless the first party claimant is represented by legal counsel or a public adjuster.

(d) Any basis for the denial of a claim shall be noted in the insurer's claim file and promptly communicated, in writing, to the first party claimant.

(c) An insurer is prohibited from denying a claim on the grounds of a specific provision, condition, or exclusion unless reference to the provision, condition, or exclusion is included in the denial.

(3)(a) If negotiations continue for settlement of a claim with a first party claimant or a third party claimant who is not represented by legal counsel or a public adjuster, an insurer shall notify the claimant of the date on which the applicable statute of limitation or other time limit expires.

(b) The notice shall be given at least 60 days before the expiration date.

(4) An insurer is prohibited from making a statement that the rights of a third party claimant may be impaired if a form or release is not completed within a given period, unless the statement is given to notify a third party claimant of a statute of limitation.

### **R590-190-11.** Standards for Prompt, Fair, and Equitable Settlement for Automobile Insurance.

(1) If an automobile insurance policy provides for an adjustment and settlement of a total loss for a first party claimant based on actual cash value or replacement with another automobile of like kind and quality, one of the methods in this Subsection (1) shall apply.

(a)(i) An insurer may offer a replacement automobile that is comparable to the insured's automobile, with all applicable taxes, license fees, and transfer of ownership fees paid, at no cost, less any deductible provided in the policy; and

 $(\ensuremath{\vec{\mathrm{ii}}})$  an offer and any rejection shall be documented in the claim file.

(b)(i) An insurer may offer a cash settlement based on the actual cost, less any deductible provided in the policy, to purchase a comparable automobile, including all applicable taxes, license fees, and transfer of ownership fees of a comparable automobile for a cost determined in this Subsection (1)(b)(i).

(A) The cost of at least two comparable automobiles in the local market area, if an automobile was available within the last 90 days to consumers in the local market area.

(B) The cost of at least two comparable automobiles in areas proximate to the local market area, including the closest major metropolitan area in or out of the state, that were available within the last 90 days to consumers, if comparable automobiles are not available in the local market area.

(C) At least two quotes from at least two qualified dealers located within the local market area, if a comparable automobile is not available in the local market area.

(D) Any source to determine a statistically valid fair market value that meets the following criteria:

(I) the source gives primary consideration to the value of vehicles in the local market area and may consider data on vehicles outside the area;

(II) the source produces value for at least 85% of the makes and models for the last 15 model years, taking into account the value of all major options for such vehicles; and

(III) the source produces fair market value based on current data available from the area surrounding the location where the insured vehicle was principally garaged or a necessary expansion of the parameters, such as time and area, to assure statistical validity.

(ii) An insurer shall reopen its claim file and comply with the following procedures upon notice that a first party claimant cannot purchase a comparable vehicle at market value within 30 days of receiving a cash settlement payment under this Subsection (1)(b); and

(A) locate a comparable vehicle by the same manufacturer, same year, similar body style, and similar options and price range for an insured for the market value determined by the insurer at the time of settlement available through a licensed dealer or private seller;

(B) either:

(I) pay the difference between market value before applicable deductions and the cost of the comparable vehicle of like kind and quality that the insured has located; or

(II) negotiate and effectuate the purchase of the vehicle for the insured;

(C) elect to offer a replacement under Subsection (1)(a); or

(D) conclude the loss settlement under the appraisal section of the policy in force at the time of the loss.

(iii) An insurer is not required to take action under Subsection (1)(b)(ii) if its documentation to the first party claimant, at the time of settlement, included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style, and similar options in as good or better condition as the total loss vehicle that could be purchased for the market value determined by the insurer before applicable deductions.

(c) If a first party claimant automobile total loss is settled on a basis that deviates from the methods described in Subsection (1)(a) or (1)(b), the deviation shall be supported by documentation giving particulars of the automobile condition.

(i) Any deduction from the cost, including a deduction for salvage, shall be measurable, itemized, and specified as to dollar amount and shall be reasonable in amount.

(ii) The basis for the settlement shall be fully explained to the first party claimant.

(2)(a) A total loss settlement with a third party claimant shall be based on the market value or actual cost of a comparable automobile at the time of loss.

(b) Except for Subsection (1)(b)(ii), settlement procedures shall comply with Subsection (1)(b).

(3) Where liability and damages are reasonably clear, an insurer is prohibited from recommending that a third party claimant make a claim under the third party claimant's own policy solely to avoid paying a claim under the insurer's policy.

(4) An insurer is prohibited from requiring a claimant to travel an unreasonable distance to inspect a replacement automobile, to obtain a repair estimate, or to have an automobile repaired at a specific repair shop.

(5)(a) An insurer shall include a first party claimant's deductible, if any, in a subrogation demand initiated by an insurer.

(b) A subrogation recovery may be shared on a proportionate basis with a first party claimant if an agreement is reached for less than the full amount of the loss, unless the deductible amount has been otherwise recovered.

(c) A subrogation recovery shall be applied first to reimburse a first party claimant for the amount or share of the deductible if the full amount or share of the deductible has been recovered.

(d)(i) A deduction for expenses may not be made from the deductible recovery unless an outside attorney is retained to collect the recovery.

(ii) If taken, a deduction shall be a pro rata share of the allocated loss adjustment expense.

(e) If subrogation is initiated but discontinued, the insured shall be advised.

(6)(a) If an insurer prepares or approves an estimate for automobile repairs, the estimated cost shall reasonably be expected to repair the damage to the automobile.

(b) If an insurer prepares an estimate, it shall give a copy of the estimate to the claimant and may provide the claimant the names of one or more conveniently located repair shops.

(7) If the amount claimed is reduced due to betterment or depreciation, all information for the reduction shall be contained in the claim file.

(a) The deduction shall be itemized with specificity as to dollar amount and shall be reasonable.

(b) The insurer shall provide a written explanation of the deductions to the claimant upon request.

(8) If an insurer elects to repair an automobile and designates a specific repair shop for the repairs, the insurer shall cause the damaged automobile to be restored to its condition before the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period.

(i) reasonably incurred cost of transportation; or

(ii)(A) reasonably incurred rental cost of a substitute vehicle; or

(B) collision damage waiver unless the claimant has physical damage coverage available.

(b) A payment under Subsection (9)(a) shall be made for:

(i) the period the automobile is necessarily withdrawn from service to obtain parts or effect repair; or

(ii) if the automobile is a total loss and the claim has been timely made, the period from the date of loss until a reasonable settlement offer has been made by the insurer.

(c) An insurer may not refuse to pay for loss of use for the period that an insurer is examining the claim or making other determinations as to the validity of the loss, unless the delay reveals that an insurer is not liable to pay the claim.

(d) A loss of use payment shall be an amount in addition to a payment for the value of an automobile.]

(9) If coverage exists, compensation for loss of use of a damaged vehicle shall be provided to a claimant.

(a)(i) Compensation for loss of use includes:

(A) the reasonable cost incurred of substitute transportation: and

(B) the cost of a collision damage waiver.

(ii) Subsection (9)(a)(i)(B) does not apply when the claimant has physical damage coverage available.

(iii) Subject to market availability, substitute transportation is transportation that may reasonably be used in a manner in which a claimant previously used the damaged vehicle.

(b) Compensation for loss of use shall cover the period in which the vehicle is necessarily withdrawn from service to obtain parts or effect repair.

(c) If the vehicle is a total loss, compensation for loss of use shall cover the period beginning on the date of loss and continuing until the insurer has made a reasonable settlement offer.

(d) Unless the insurer is not liable to pay the claim, an insurer may not refuse to provide compensation for loss of use for the period in which the insurer is determining the validity of a claim.

(e) An insurer may not require that a claimant rent a substitute vehicle at the claimant's expense and then seek reimbursement from the insurer.

(f) Compensation for loss of use shall be provided in addition to compensation for the value of the automobile.

(10) An insurer shall fairly, equitably, and in good faith attempt to compensate a first party claimant for all losses covered by the policy based on the following standards:

(a) an offer of settlement may not be based solely on the useful life of the damaged part or vehicle;

(b) an estimate of the amount of compensation for a claimant shall include the actual wear and tear, or lack thereof, of the damaged part or vehicle;

(c) actual cash value shall consider the cost of replacement of the part or vehicle for which compensation is claimed;

(d) an actual estimate of the true useful life remaining in the part or vehicle shall be considered in establishing the amount of compensation of a claim; and

(c) actual cash value shall include taxes and other fees incurred by a claimant in replacing the part or vehicle or in compensating the claimant for the loss incurred.

(11) An insurer may not demand reimbursement of a personal injury protection payment from a first party claimant from a settlement or judgment against a third party, except as provided by law.

(12)(a) An insurer shall provide reasonable written notice to a claimant before termination of payment for automobile storage charges and claim documentation of the denial.

(b) An insurer shall provide a reasonable time for the claimant to remove the vehicle from storage before terminating a payment.

### **R590-190-12.** Unfair Claim Settlement Practices for Automobile Insurance.

The commissioner finds the following acts to be misleading, deceptive, unfairly discriminatory, overreaching, or an unreasonable restraint on competition in settling a claim:

(1) settling a claim for an amount that is less than the amount the insurer would be charged if repairs were made, unless the amount is agreed to by the claimant or provided for by the policy;

(2) refusing to settle a claim based solely upon a police agency issuing or failing to issue a traffic citation;

(3) failing to disclose all coverages for which an application for benefits is required by the insurer;

(4) failing to disclose all coverages, including loss of use, household services, and any other coverages available to the claimant;

(5) requiring a claimant to use only the insurer's claim service to perfect a claim;

(6) failing to provide to a claimant, if requested, the name and address of the salvage dealer who provided a salvage quote for the amount deducted by an insurer in a total loss settlement;

(7) refusing to disclose policy limits if requested by a claimant;

(8) using a release on the back of a check or draft that requires a claimant to release an insurer from an obligation on further claims to process a current claim if an insurer knows or reasonably should know that there may be future liability on the part of the insurer; (9) refusing to use a separate release of claim document, rather than one on the back of a check or draft, if requested to do so by a claimant;

(10) intentionally offering less money to a first party claimant than the claim is reasonably worth;

(11) refusing to offer to pay a claim based on comparative negligence without a reasonable basis for doing so; and

(12) imputing the negligence of a permissive user of a vehicle to the owner of the vehicle in a bailment situation.

## **R590-190-13.** Standards for Prompt, Fair, and Equitable Settlement for Fire and Extended Coverage Type Policies with Replacement Cost Coverage.

(1)(a) If a policy provides for the adjustment and settlement of first party losses based on replacement cost, the following apply:

(i) if a loss requires repair or replacement of an item or part, any significant physical damage incurred in making such repair or replacement not otherwise excluded by the policy shall be included in the loss; and

(ii) if a loss requires repair or replacement of items and the repaired or replaced items do not match in color, texture, or size, the insurer shall repair or replace items to conform to a reasonably uniform appearance for both interior and exterior losses.

(b) For a settlement described in Subsection (1)(a), an insured is only responsible for the applicable deductible.

(2)(a)(i) If a policy provides for an adjustment and settlement of loss on an actual cash value basis on residential fire and extended coverage, an insurer shall determine actual cash value as the replacement cost of property at the time of the loss less depreciation, if any.

(ii) Upon an insured's request, an insurer shall provide a copy of any relevant documentation from the claim file detailing each deduction for depreciation.

(b)(i) If an insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value is not required.

(ii) In a case described in Subsection (2)(b)(i), an insurer shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

#### R590-190-14. Severability.

If any provision of this rule, Rule R590-190, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance law

Date of Last Change: 2023

Notice of Continuation: April 3, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-26-301; 31A-26-303; 31A-21-312; 31A-2-308

#### 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 ([<del>example</del>]). 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:	R380-67	Filing ID: 55803	
Effective Date:	10/01/2023		

#### Agency Information

1. Department:	Health a	nd Human Services				
Agency: Administ		tration				
Building:	Cannon Health Building					
Street address:	288 N 1460 W					
City, state and zip:	Salt Lake City, UT 84116					
Mailing address:	PO Box 142004					
City, state and zip:	Salt Lake City, UT 84114-2004					
Contact persons:		Contact persons:				
Name:	Phone:	Email:				
Name: Michelle Hale	Phone: 801- 419- 8892	Email: mhale@utah.gov				

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

#### General Information

#### 2. Rule or section catchline:

R380-67. Code Blue Alert Protocols

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

Subsection 35A-16-702(4) requires the Department of Health and Human Services (DHHS) to make rules to implement Section 35A-16-7, Code Blue Alert. This rule is the result of H.B. 499 passing in the 2023 General Session.

#### 4. Summary of the new rule or change:

Following the passing of H.B. 499 (2023), Homeless Services Amendments, this rule establishes the requirements for DHHS to monitor for qualifying weather criteria and issue public and stakeholder notices that describe required actions by affected counties and relay other resources as provided by the Office of Homeless Services.

5A) The agency finds that regular rulemaking would:

E 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:

Per Section 35A-16-501 and the passing of H.B. 499 (2023), DHHS is proposing an emergency rule to enact the provisions of this rule in time for the winter response period, as defined in Section 35A-16-501 to mean the period beginning October 15 and ending April 30 of the following year. Having this rule in place ensures that DHHS maintains public health through the monitoring of qualifying weather criteria and issuing public and stakeholder notices that describe the required actions by affected counties and relay other resources as provided by the Office of Homeless Services.

#### **Fiscal Information**

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

#### A) State budget:

Implementation of Section 35A-16-7 is anticipated to cost \$24,276 to develop the administrative structure, reporting process with NWS, and configure messaging platforms.

Ongoing operations by DHHS in order to comply with Section 35A-16-7 is anticipated to cost \$28,834 to maintain the messaging platforms and daily monitoring and dissemination of code blue alerts during the winter months.

#### B) Local governments:

The implementation of this rule is the result of H.B. 499 (2023), costs or savings to local governments associated with this process were absolved in the fiscal note for H.B. 499.

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

The implementation of this rule is the result of H.B. 499 (2023), there are no costs or savings to small businesses associated with this process.

**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*):

The implementation of this rule is the result of H.B. 499 (2023), there are no costs or savings to non-small businesses associated with this process.

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

The implementation of this rule is the result of H.B. 499 (2023), there are no costs or savings persons other than small businesses, non-small businesses, state, or local government entities.

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):

There are no compliance costs associated with this rule and the implementation of H.B. 499 (2023). Tracy S. Gruber, Executive Director

#### **Citation Information**

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

Subsection	Section	Section	
26B-1-202(48)	35A-16-703	35A-16-702	

#### Agency Authorization Information

Agency head or designee	Tracy S. Gruber, Executive	Date:	09/27/2023
and title:	Director		

#### R380. Health and Human Services, Administration. R380-67. Code Blue Alert Protocols.

#### R380-67-1. Authority and Purpose.

(1) Sections 26B-1-202, 35A-16-702, and 35A-16-703 authorize this rule.

(2) This rule establishes department processes for identification of code blue events through monitoring and evaluating forecasts, alerting the public and stakeholders, and identifying the municipalities that the code blue event applies to.

#### R380-67-2. Definitions.

(1) Definitions used in this rule are defined in Section 35A-16-701.

(2) "Code Blue Event" is defined in Section 35A-16-701. (3) "Winter Response Period" is defined in Section 35A-16-501.

#### **R380-67-3.** Identification of a Code Blue Event.

(1) The department shall monitor and evaluate National Weather Services forecast data daily during the winter response period for the purpose of identifying a code blue event.

(2) A code blue event applies only to municipalities at or below 7,070 feet elevation.

#### **R380-67-4.** Code Blue Alert Communication.

(1) The department shall compile a code blue alert message with information provided by the Office of Homeless Services and the provisions that shall be in effect during the code blue alert as defined in 35A-16-703.

(2) Code blue alert message shall include the duration of the code blue alert.

(3) The department shall disseminate the code blue alert electronically, no less often than every 48 hours, to those entities listed in Subsection 35A-16-702(1).

(4) Municipalities affected by a code blue alert shall comply with provisions listed under 35A-16-703.

#### **R380-67-5.** Code Blue Alert Coordination.

(1) The Office of Homeless Services shall provide to the department prepared and updated information electronically as required by Subsection 35A-16-702(3) no less often than annually and when new information becomes available.

(2) First and second class counties shall include a process for coordinating street outreach efforts as required in 35A-16-703(5), as a part of their Winter Response Plan in accordance with Title 35A, Chapter 16, Part 5. (3) The Office of Homeless Services shall ensure homeless shelters, state and local government entities, and any other organization listed in 35A-16-703(5) comply with the provisions listed in 35A-16-703 during the code blue alert.

KEY: code blue, winter

Date of Last Change: October 1, 2023 Authorizing, and Implemented or Interpreted Law: 26B-1-202; 35A-16-702; 35A-16-703

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: R156-42a Filing ID: 50275

Rule Number:	R156-42a	Filing ID: 50275
Effective Date:	09/25/2023	

#### Agency Information

<u> </u>			
1. Department:	Commerce		
Agency:	Professional Licensing		
Building:	Heber M. Wells Building		
Street address:	160 E 300 S		
City, state and zip:	Salt Lake City, UT 84111-2316		
Mailing address:	PO Box 146741		
City, state and zip:	Salt Lake City, UT 84114-6741		
Contact persons:			
Name:	Phone:	Email:	
Jana Johansen	801- 530- 6628	janajohansen@utah.gov	
Diseas address questions recording information or			

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

#### **General Information**

2. Rule catchline:

R156-42a. Occupational Therapy Practice Act 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 42a, provides for the licensure and regulation of occupational therapists and occupational therapy assistants.

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 Board of Occupational Therapy's duties, functions and responsibilities includes recommending to the director appropriate rules.

This rule was enacted to clarify the provisions of Title 58, Chapter 42a, with respect to occupational therapists and occupational therapy assistants.

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 October 2018, the Division has received no written comments with respect to this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 42a.

This rule also 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**

or designee Division Director and title:	or designee	Mark B. Steinagel, Division Director	Date:	09/22/2023
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R156-46a	Filing ID: 53102
Effective Date:	10/02/2023	

#### **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:

R156-46a. Hearing Instrument Specialist Licensing Act 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 46a, provides for the licensure and regulation of hearing instrument specialists and hearing instrument interns.

Subsection 58-1-106(1) provides that the Division of Professional Licensing (Division) may adopt and enforce rules to administer Title 58.

This rule was enacted to clarify the provisions of Title 58, Chapter 46a, with respect to hearing instrument specialists and hearing instrument interns.

#### 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 November 2018, the Division has received no written comments.

# 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 46a.

This rule also be 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:	09/27/2023
or designee	Division Director		
and title:			

## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R307-361	Filing ID: 50635
Effective Date:	09/29/2023	

#### Agency Information

1. Department:	Environr	nental 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	
Mat Carlile	385- mcarlile@utah.gov 306- 6535		
Please address questions regarding information on this notice to the persons listed above.			

#### General Information

#### 2. Rule catchline:

R307-361. Architectural Coatings

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule was enacted under Subsection 19-2-104(1)(a). Subsection 19-2-104(1)(a) authorizes the Air Quality Board to promulgate rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source."

Rule R307-361 reduces volatile organic compound (VOC) emissions emitted from architectural coatings by establishing reasonably available control technology (RACT) requirements, as well as clarifying regulatory requirements to the industry.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no public comments since the last review of R307-361.

# 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R307-361 is needed to establish RACT controls in architectural coatings emitting VOCs, which are precursors to the formation of PM2.5.

Rule R307-361 is a component of Utah's State Implementation Plan (SIP), and cannot be removed from the SIP without EPA approval. Therefore, this rule should be continued.

#### Agency Authorization Information

Agency head or designee	Bryce C. Bird, Director	Date:	09/12/2023
and title:	Director		

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R426-1	Filing ID: 53816
Effective Date:	09/28/2023	

#### Agency Information

1. Department:	Health and Human Services		
Agency:	Population Medical Serv	Health, ices	Emergency

Room number:	2438		
Building:	Cannon	Health Building	
Street address:	288 N.14	460 W	
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box	142004	
City, state and zip:	Salt Lake City, UT 84114-2004		
Contact persons:			
Name:	Phone:	Email:	
Dean Penovich	801- 913- 2621	dpenovich@utah.gov	
Emily Sagers	385- esagers@utah.gov 270- 1224		
Please address questions regarding information on			

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

#### General Information

2. Rule catchline:

R426-1. General Definitions

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 4, Part 1, authorizes the Department of Health and Human Services (Department) to write rules to regulate Emergency Medical Services (EMS).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule outlines the definitions for EMS. It's imperative that this rule is in place. Therefore, this rule should be continued.

The Department is currently processing amendments following the recodification and consolidation of the Department's statute in the 2023 General Session.

#### **Agency Authorization Information**

Agency head	Tracy S. Gruber,	Date:	09/20/2023
or designee	Executive		
and title:	Director		

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R426-2	Filing ID: 54386
Effective Date:	09/28/2023	

#### Agency Information

1. Department:	Health and Human Services		
Agency:	Population Health, Emergency Medical Services		
Room number:	2438		
Building:	Cannon	Health Building	
Street address:	288 N 14	60 W	
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 142004		
City, state and zip:	Salt Lake City, UT 84114-2004		
Contact persons:			
Name:	Phone: Email:		
Dean Penovich	801- dpenovich@utah.gov 913- 2621		
Emily Sagers	385- esagers@utah.gov		

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

270-1224

#### General Information

#### 2. Rule catchline:

R426-2. Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews

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 4, Part 1, describes types of providers that require a designation, the application process for obtaining a designation, and minimum designation requirements.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule outlines the designation requirements for certain emergency medical service providers. It also outlines the Critical Incident Management and peer support training and details quality assurance reviews. It is imperative that the rule is in place. Therefore, this rule should be continued.

The Department of Health and Human Services (Department) is currently processing amendments following the recodification and consolidation of the Department's statute in the 2023 General Session.

#### Agency Authorization Information

Agency head	Tracy S. Gruber,	Date:	09/20/2023
or designee	Executive		
and title:	Director		

## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R426-3	Filing ID: 55026
Effective Date:	09/28/2023	

#### Agency Information

Ageney internatio				
1. Department:	Health and Human Services			
Agency:	Population Health, Emergency Medical Services			
Room number:	2438			
Building:	Cannon	Health	n Building	
Street address:	288 N 14	160 W		
City, state and zip:	Salt Lake City, UT 84116			
Mailing address:	PO Box 142004			
City, state and zip:	Salt Lake City, UT 84114-2004			
Contact persons:				
Name:	Phone:	Emai	l:	
Dean Penovich	801- 913- 2621	dpeno	ovich@uta	h.gov
Emily Sagers	385- esagers@utah.gov 270- 1224			

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

#### General Information

2. Rule catchline:

R426-3. Licensure

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 26B-4-102(5)(a) authorizes 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:

No written comments have been received.

# 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to set forth ground ambulance policies, rules, and standards adopted by the Utah Emergency Medical Services Committee, which promotes and protects the health and safety of the people of this state. It's imperative that this rule is in place. Therefore, this rule should be continued.

The Department of Health and Human Services (Department) is currently processing amendments following the recodification and consolidation of the Department's statute in the 2023 General Session.

#### **Agency Authorization Information**

Agency head or designee	Tracy S. Gruber, Executive	Date:	09/20/2023
and title:	Director		

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R426-4	Filing ID: 53578
Effective Date:	09/28/2023	

#### Agency Information

1. Department:	Health and Human Services		
Agency:	Population Health, Emergency Medical Services		
Room number:	2438		
Building:	Cannon Health Building		
Street address:	288 N 1460 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 142004		
City, state and zip:	Salt Lake City, UT 84114-2004		
Contact persons:			
Name:	Phone: Email:		
Dean Penovich	801- dpenovich@utah.gov 913- 2621		
Emily Sagers	385- esagers@utah.gov 270- 1224		
Please address questions regarding information on			

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

#### **General Information**

2. Rule catchline:

R426-4. Operations

# 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 4, Part 1, authorizes the Department of Health and Human Services (Department) to write rules to regulate Emergency Medical Services (EMS).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received.

## 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule establishes standards for the operation of licensed ground EMS providers or designated EMS. It's imperative that this rule is in place. Therefore, this rule should be continued.

The Department is currently processing amendments following the recodification and consolidation of the Department's statute in the 2023 General Session.

#### Agency Authorization Information

Agency head or designee	Tracy S. Gruber, Executive	Date:	09/20/2023
and title:	Director		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION				
Rule Number:	R426-9	R426-9 Filing ID: 51034		
Effective Date:	09/28/2023			

#### Agency Information

1. Department:	Health and Human Services		
Agency:	Population Health, Emergenc Medical Services		
Room number:	2438		
Building:	Cannon Health Building		
Street address:	288 N 1460 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 142004		
City, state and zip:	Salt Lake City, UT 84114-2004		

Contact persons:				
Name:	Phone:	Email:		
Dean Penovich	801- 913- 2621	dpenovich@utah.gov		
Emily Sagers	385- 270- 1224	esagers@utah.gov		

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

#### General Information

#### 2. Rule catchline:

R426-9. Specialty Care Systems Facility Designations

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 4, Part 1, authorizes the Department of Health and Human Services (Department) to write rules to regulate Emergency Medical Services (EMS).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule establishes requirements pursuant to statute for a statewide specialty care systems and related emergency medical systems including a statewide trauma system and trauma center designations. It's imperative that this rule is in place. Therefore, this rule should be continued.

The Department is currently processing amendments following the recodification and consolidation of the Department's statute in the 2023 General Session.

#### Agency Authorization Information

Agency head	Tracy S. Gruber,	Date:	09/20/2023
or designee	Executive		
and title:	Director		

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R426-10	Filing ID: 51035
Effective Date:	09/27/2023	

#### **Agency Information**

Agency informatio				
1. Department:	Health and Human Services			
Agency:	Population Health, Emergency Medical Services			
Room number:	2438			
Building:	Cannon	Health Building		
Street address:	288 N 14	460 W		
City, state and zip:	Salt Lake City, UT 84116			
Mailing address:	PO Box 142004			
City, state and zip:	Salt Lake City, UT 84114-2004			
Contact persons:	Contact persons:			
Name:	Phone: Email:			
Dean Penovich	801- 913- 2621	dpenovich@utah.gov		
Emily Sagers	385- esagers@utah.gov 270- 1224			
Please address questions regarding information on				

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

#### General Information

2. Rule catchline:

R426-10. Air Ambulance Licensure and Operations

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 4, Part 1, authorizes the Department of Health and Human Services (Department) to write rules to regulate Emergency Medical Services (EMS).

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is established for the licensing requirements and operations for air ambulance providers. It's imperative that this rule is in place. Therefore, this rule should be continued.

The Department is currently processing amendments following the recodification and consolidation of the Department's statute in the 2023 General Session.

#### **Agency Authorization Information**

	Tracy S. Gruber,	Date:	09/20/2023
or designee	Executive		
and title:	Director		

## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R512-41	Filing ID: 54276
Effective Date:	09/28/2023	

#### Agency Information

1. Department:	Health and Human Services			
Agency:	Child and Family Services			
Building:	MASOB			
Street address:	195 N 19	950 W		
City, state and zip:	Salt Lake City, UT 84116			
Contact persons:				
Name:	Phone:	Email:		
Carol Miller	801- carolmiller@utah.gov 557- 1772			

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

#### General Information

#### 2. Rule catchline:

R512-41. Qualifying Adoptive Families and Adoption Placement

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 80-2-302 (formerly Section 62A-4a-102) authorizes the Division of Child and Family Services (DCFS) to clarify the scope of services DCFS provides to families in Utah.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary in order for DCFS to qualify adoptive families and adoption placements. Therefore, this rule should be continued.

Proposed changes will be filed in a separate filing to bring this rule current with applicable laws and practices.

#### **Agency Authorization Information**

Agency head or designee	Tracy S. Gruber, Executive	Date:	09/22/2023
and title:	Director		

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Rule Number:	R512-75	Filing ID: 54281	
Effective Date: 09/29/2023			

#### Agency Information

Health and Human Services			
Child and Family Services			
MASOB			
195 N 19	950 W		
Salt Lake City, UT 84116			
Contact persons:			
Phone:	Email:		
801- 557- 1772	carolmiller@utah.gov		
	Child and MASOB 195 N 19 Salt Lake Phone: 801- 557-		

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

#### General Information

2. Rule catchline:

R512-75. Rules Governing Adjudication of Consumer Complaints

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Sections 26B-1-202 and 80-2-302 (formerly Section 62A-4a-102) authorizes the Division of Child and Family Services (DCFS) to clarify the scope of services DCFS provides to families in Utah.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary in order for DCFS to define consumer complaint procedures, intended to provide for the prompt and equitable resolution of a consumer complaint. Therefore, this rule should be continued.

Proposed changes will be filed in a separate filing to bring this rule current with applicable laws and practices.

#### FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

#### **Agency Authorization Information**

Agency head or designee	Tracy S. Gruber, Executive	Date:	09/27/2023
and title:	Director		

## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R512-306	Filing ID: 54248
Effective Date:	09/28/2023	

#### Agency Information

1. Department:	Health and Human Services		
Agency:	Child and Family Services		
Building:	MASOB		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Contact persons:			
Name:	Phone:	Email:	
Carol Miller	801- 557- 1772	carolmiller@utah.gov	

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

#### General Information

#### 2. Rule catchline:

R512-306. Out-of-Home Services, Transition to Adult Living Services, Education and Training Voucher Program

# 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 80-2-302 (formerly Section 62A-4a-102) authorizes the Division of Child and Family Services (DCFS) to clarify the scope of services DCFS provides to families in Utah.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received.

## 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is necessary in order for DCFS to assist individuals in out-of-home care to make a more successful transition to adulthood. The Education and Training Voucher program provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals. Therefore, this rule should be continued.

Proposed changes will be filed in a separate filing to bring this rule current with applicable laws and practices.

#### Agency Authorization Information

	, ·,	Date:	09/22/2023
or designee	Executive		
and title:	Director		

## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R657-61	Filing ID: 51772
Effective Date:	09/18/2023	

#### Agency Information

1. Department:	Natural Resources			
Agency:	Wildlife Resources			
Room number:	Suite 2110			
Building:	DNR Co	mplex		
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- stacicoons@utah.gov 450- 3093			
		negrading information on		

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

#### **General Information**

#### 2. Rule catchline:

R657-61. Valuation of Real Property Interests for Purposes of Acquisition or Disposal

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 promulgated pursuant to authority granted to the Wildlife Board in Sections 63-34-21, 23-14-18, and 23-21-1.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule: No written comments supporting or opposing Rule R657-61 were received since 2018, when this rule was last reviewed.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Rule R657-61 defines the process by which the value of real property is determined for purposes of acquisition or disposal by the Division of Wildlife Resources. Therefore, this rule should be continued.

#### Agency Authorization Information

Agency head or designee	Justin Shirley, Director	Date:	09/18/2023
and title:			

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF

CONTINUATION				
Rule Number:	R657-66	Filing ID: 51780		
Effective Date:	09/18/2023			

#### Agency Information

1. Department:	Natural Resources		
Agency:	Wildlife Resources		
Room number:	Suite 2110		
Building:	DNR Co	mplex	
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- stacicoons@utah.gov 450- 3093		
Plazea addrass a	unstions	rogarding information on	

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

#### General Information

#### 2. Rule catchline:

R657-66. Military Installation Permit Program

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Under the authority of Sections 23-14-1, 23-14-3, 23-14-18, and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

#### 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 Division of Wildlife Resources (Division) has not received any written comments regarding this rule.

Any comments received in opposition to this rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the process for taking public input.

The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and the administrative record for this rule at the Division.

# 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to establish the standards and procedures for providing hunting opportunity on military installations to military installation personnel and to members of the public. Therefore, this rule should be continued.

#### Agency Authorization Information

Agency head or designee and title:	Justin Shirley, Director	Date:	09/18/2023
and the.			

#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION Rule Number: R940-2 Filing ID: 52152 Effective Date: 09/22/2023

#### Agency Information

1. Department:	Transportation Commission
Agency:	Administration
Room no.:	Administrative Suite, 1st Floor
Building:	Calvin Rampton
Street address:	4501 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 148455
City, state and zip:	Salt Lake City, UT 84114-8455

Contact person(s):			
Phone:	Name:		
801- 580- 8296	lelder@utah.gov		
801- 965- 4026	blewis@utah.gov		
801- 965- 4197	jimpalmer@agutah.gov		
801- 965- 4048	loriedwards@agutah.gov		
	Phone: 801- 580- 8296 801- 965- 4026 801- 965- 4197 801- 965-		

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

#### General Information

#### 2. Rule catchline:

R940-2. Approval of Tollway Development Agreements

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized under Title 63G, Chapter 3; Title 63G, Chapter 6; and Sections 72-2-120, 72-6-118, and 72-6-201 et seq.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department of Transportation (Department) has not received any written comments for or against 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:

Section 72-6-118 mandates the Department make and maintain this rule. Moreover, because there have been no written comments against this rule, the Department believes the continuation of this rule is reasonable. Therefore, this rule should be continued.

#### **Agency Authorization Information**

Agency head	Carlos M.	Date:	09/22/2023
or designee	Braceras, PE,		
and title:	Executive		
	Director		

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Rule Number:	R940-4	Filing ID: 52153
Effective Date:	09/29/2023	

#### Agency Information

Agency information					
1. Department:	Transportation Commission				
Agency:	Administration				
Room no.:	Administrative Suite, 1st Floor				
Building:	Calvin Rampton				
Street address:	4501 S 2700 W				
City, state and zip:	Taylorsville, UT 84129				
Mailing address:	PO Box 148455				
City, state and zip:	Salt Lake City, UT 84114-8455				
Contact person(s):					
Name:	Phone:	Name:			
Leif Elder	801- 580- 8296	lelder@utah.gov			
Becky Lewis	801- 965- 4026	blewis@utah.gov			
James Godin	801- 573- 7181	jamesjgodin@agutah.gov			
Lori Edwards	801- 965- 4048	loriedwards@agutah.gov			
		regarding information on			

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

#### General Information

2. Rule catchline:

R940-4. Airports of Regional Significance

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized under Section 63G-3-201, which requires agencies to make and maintain rules, and Section 59-12-602, which authorizes the Transportation Commission to establish 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:

There have been no written comments received since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Because there have been no written comments since the last five-year review, the Department of Transportation wants to proceed with this rule in its current material form. Therefore, this rule should be continued.

#### Agency Authorization Information

Agency head	Carlos M.	Date:	09/29/2023
or designee	Braceras, PE,		
and title:	Executive		
	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.

<u>Corrections</u> Administration No. 55548 (Amendment) R251-703: Vehicle Direction Station Published: 08/15/2023 Effective: 09/26/2023

Environmental Quality Air Quality No. 55323 (Amendment) R307-110-13: Section IX, Control Measures for Area and Point Sources, Part D, Ozone Published: 06/01/2023 Effective: 09/13/2023

Waste Management and Radiation Control, Radiation No. 55531 (Amendment) R313-12-3: Definitions Published: 08/01/2023 Effective: 09/18/2023

No. 55532 (Amendment) R313-32-2: Clarifications or Exceptions Published: 08/01/2023 Effective: 09/18/2023

Government Operations Facilities Construction and Management No. 55458 (Repeal) R23-30: State Facility Energy Efficiency Fund Published: 07/01/2023 Effective: 09/29/2023

Records Committee No. 55612 (Amendment) R35-1: State Records Committee Appeal Hearing Procedures Published: 09/01/2023 Effective: 10/11/2023 Technology Services No. 55541 (Amendment) R895-4: Sub-Domain Naming Conventions for Executive Branch Agencies Published: 08/15/2023 Effective: 10/04/2023

Governor Economic Opportunity, Pete Suazo Utah Athletic Commission No. 55450 (Repeal) R359-1: Pete Suazo Utah Athletic Commission Act Rule Published: 06/15/2023 Effective: 09/27/2023

<u>Health and Human Services</u> Population Health, Environmental Epidemiology No. 55455 (Amendment) R386-705: Epidemiology, Health Care Associated Infection Published: 07/01/2023 Effective: 09/28/2023

Health Care Financing, Coverage and Reimbursement Policy No. 55528 (Amendment) R414-1-31: Withholding of Payments Published: 08/01/2023 Effective: 09/14/2023

No. 55503 (Amendment) R414-60: Medicaid Policy for Pharmacy Program Published: 07/15/2023 Effective: 10/11/2023

Administration (Human Services) No. 55435 (Repeal) R495-878: Americans with Disabilities Act and Civil Rights Grievance Procedures Published: 06/15/2023 Effective: 09/28/2023

#### NOTICES OF RULE EFFECTIVE DATES

Natural Resources Wildlife Resources No. 55534 (Repeal and Reenact) R657-4: Possession of Live Game Birds Published: 08/15/2023 Effective: 10/05/2023

No. 55474 (Amendment) R657-20: Falconry Published: 07/01/2023 Effective: 10/05/2023

No. 55475 (Repeal) R657-22: Commercial Hunting Areas Published: 07/01/2023 Effective: 10/05/2023

No. 55479 (Repeal) R657-46: The Use of Game Birds in Dog Field Trials and Training Published: 07/01/2023 Effective: 10/05/2023 Public Safety Emergency Management No. 55542 (New Rule) R704-4: Response, Recovery, and Post-disaster Mitigation Grant Funding Published: 08/15/2023 Effective: 09/21/2023

Highway Patrol No. 55552 (Amendment) R714-560: Technology and Equipment for Officer-Involved Critical Incident Investigation Published: 08/15/2023 Effective: 09/21/2023

No. 55587 (New Rule) R714-562: Early Intervention System Grant Program Published: 08/15/2023 Effective: 09/21/2023

#### End of the Notices of Rule Effective Dates Section