



Office of the Governor

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

October 9, 2020

Gregory Sopkin, Regional Administrator
US EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Dear Mr. Sopkin,

The state of Utah, Department of Environmental Quality (UDEQ) respectfully requests that the United States Environmental Protection Agency (EPA) parallel process the enclosed proposed revisions to Utah Rule R307-110-17, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits, and the corresponding State Implementation Plan (SIP) revision located within Subsection IX.H.12.i. Kennecott Utah Copper: Power Plant. This SIP revision is an update to Part H that was submitted to EPA on February 15, 2019, and is still under consideration by the EPA. The proposed revisions were approved by the Utah Air Quality Board on September 2, 2020, for publication, solicitation of public comment, and a public hearing. A public hearing is scheduled for November 2, 2020, and the comment period closes November 3, 2020. The parallel process of these rules will allow for a timely EPA review of the 2006 24-hr PM_{2.5} Salt Lake City, UT nonattainment area redesignation request to attainment status. In order for redesignation to occur, the EPA must approve Utah's Serious PM_{2.5} SIP elements that were not suspended with the EPA's September 27, 2019 (84 FR 51055) Clean Data Determination.

Within Utah SIP Subsection IX.H.12.i, Kennecott's Power Plant has been shut down and the units subject to the startup/shutdown provisions located at Subsection IX.H.12.i.i.C. are no longer in operation. Since these provisions were not supported within the technical support document, UDEQ proposed to remove these provisions from Part H to ensure that these limits do not delay EPA review of the PM_{2.5} Serious Area SIP and redesignation of the Salt Lake City nonattainment area to attainment. R307-110-17 is the rule that incorporates Part H into the air quality rules and must therefore be amended to update the incorporation date to reflect the changes made in Part H.

Thank you for your consideration of this important matter. Please contact Bryce Bird, Director of the Utah Division of Air Quality, at (801) 536-4064, for any further questions or clarifications..

Sincerely,

Gary R. Herbert
Governor

Enclosures

Chapter 2

Air Conservation Act

Part 1

General Provisions

19-2-101 Short title -- Policy of state and purpose of chapter -- Support of local and regional programs -- Provision of coordinated statewide program.

(1) This chapter is known as the “Air Conservation Act.”

(2) It is the policy of this state and the purpose of this chapter to achieve and maintain levels of air quality which will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.

(3) Local and regional air pollution control programs shall be supported to the extent practicable as essential instruments to secure and maintain appropriate levels of air quality.

(4) The purpose of this chapter is to:

- (a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;
- (b) provide for an appropriate distribution of responsibilities among the state and local units of government;
- (c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and
- (d) provide a framework within which air quality may be protected and consideration given to the public interest at all levels of planning and development within the state.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-102 Definitions.

As used in this chapter:

(1) “Air pollutant” means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

(2) “Air pollutant source” means private and public sources of emissions of air pollutants.

(3) “Air pollution” means the presence of an air pollutant in the ambient air in the quantities, for a duration, and under the conditions and circumstances that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property, as determined by the rules adopted by the board.

(4) “Ambient air” means that portion of the atmosphere, external to buildings, to which the general public has access.

(5) “Asbestos” means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, actinolite-tremolite, and libby amphibole.

(6) “Asbestos-containing material” means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos.

(7) “Asbestos inspection” means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing

material, whether by visual or physical examination, or by taking samples of the material.

(8) "Board" means the Air Quality Board.

(9) "Clean school bus" means the same as that term is defined in 42 U.S.C. Sec. 16091.

(10) "Director" means the director of the Division of Air Quality.

(11) "Division" means the Division of Air Quality created in Section 19-1-105.

(12) "Friable asbestos-containing material" means a material containing more than 1% asbestos, as determined using the method adopted in 40 C.F.R. Part 61, Subpart M, National Emission Standard for Asbestos, that hand pressure can crumble, pulverize, or reduce to powder when dry.

(13) "Indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard.

Amended by Chapter 154, 2015 General Session

19-2-103 Members of board -- Appointment -- Terms -- Organization -- Per diem and expenses.

(1) The board consists of the following nine members:

(a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:

(i) the executive director; or

(ii) an employee of the department designated by the executive director; and

(b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:

(i) one representative who:

(A) is not connected with industry;

(B) is an expert in air quality matters; and

(C) is a Utah-licensed physician, a Utah-licensed professional engineer, or a scientist with relevant training and experience;

(ii) two government representatives who do not represent the federal government;

(iii) one representative from the mining industry;

(iv) one representative from the fuels industry;

(v) one representative from the manufacturing industry;

(vi) one representative from the public who represents:

(A) an environmental nongovernmental organization; or

(B) a nongovernmental organization that represents community interests and does not represent industry interests; and

(vii) one representative from the public who is trained and experienced in public health.

(2) A member of the board shall:

(a) be knowledgeable about air pollution matters, as evidenced by a professional degree, a professional accreditation, or documented experience;

(b) be a resident of Utah;

(c) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and

(d) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).

(3) No more than five of the appointed members of the board shall belong to the same political

party.

(4) A majority of the members of the board may not derive any significant portion of their income from persons subject to permits or orders under this chapter.

(5)

(a) Members shall be appointed for a term of four years.

(b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.

(6) A member may serve more than one term.

(7) A member shall hold office until the expiration of the member's term and until the member's successor is appointed, but not more than 90 days after the expiration of the member's term.

(8) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(9) The board shall elect annually a chair and a vice chair from its members.

(10)

(a) The board shall meet at least quarterly.

(b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.

(c) Three days' notice shall be given to each member of the board before a meeting.

(11) Five members constitute a quorum at a meeting, and the action of a majority of members present is the action of the board.

(12) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 154, 2015 General Session

19-2-104 Powers of board.

(1) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) 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;

(b) establishing air quality standards;

(c) requiring persons engaged in operations that result in air pollution to:

(i) install, maintain, and use emission monitoring devices, as the board finds necessary;

(ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air pollutant; and

(iii) provide access to records relating to emissions which cause or contribute to air pollution;

(d)

(i) implementing:

(A) Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;

- (B) 40 C.F.R. Part 763, Asbestos; and
 - (C) 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subpart M, National Emission Standard for Asbestos; and
 - (ii) reviewing and approving asbestos management plans submitted by local education agencies under the Toxic Substances Control Act, Subchapter II, Asbestos Hazard Emergency Response, 15 U.S.C. 2601 et seq.;
 - (e) establishing a requirement for a diesel emission opacity inspection and maintenance program for diesel-powered motor vehicles;
 - (f) implementing an operating permit program as required by and in conformity with Titles IV and V of the federal Clean Air Act Amendments of 1990;
 - (g) establishing requirements for county emissions inspection and maintenance programs after obtaining agreement from the counties that would be affected by the requirements;
 - (h) with the approval of the governor, implementing in air quality nonattainment areas employer-based trip reduction programs applicable to businesses having more than 100 employees at a single location and applicable to federal, state, and local governments to the extent necessary to attain and maintain ambient air quality standards consistent with the state implementation plan and federal requirements under the standards set forth in Subsection (2);
 - (i) implementing lead-based paint training, certification, and performance requirements in accordance with 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406; and
 - (j) to implement the requirements of Section 19-2-107.5.
- (2) When implementing Subsection (1)(h) the board shall take into consideration:
- (a) the impact of the business on overall air quality; and
 - (b) the need of the business to use automobiles in order to carry out its business purposes.
- (3)
- (a) The board may:
 - (i) hold a hearing that is not an adjudicative proceeding relating to any aspect of, or matter in, the administration of this chapter;
 - (ii) recommend that the director:
 - (A) issue orders necessary to enforce the provisions of this chapter;
 - (B) enforce the orders by appropriate administrative and judicial proceedings;
 - (C) institute judicial proceedings to secure compliance with this chapter; or
 - (D) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government, or interested persons or groups; and
 - (iii) establish certification requirements for asbestos project monitors, which shall provide for experience-based certification of a person who:
 - (A) receives relevant asbestos training, as defined by rule; and
 - (B) has acquired a minimum of 1,000 hours of asbestos project monitoring related work experience.
 - (b) The board shall:
 - (i) to ensure compliance with applicable statutes and regulations:
 - (A) review a settlement negotiated by the director in accordance with Subsection 19-2-107(2)(b)(viii) that requires a civil penalty of \$25,000 or more; and
 - (B) approve or disapprove the settlement;
 - (ii) encourage voluntary cooperation by persons and affected groups to achieve the purposes

- of this chapter;
- (iii) meet the requirements of federal air pollution laws;
 - (iv) by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish work practice and certification requirements for persons who:
 - (A) contract for hire to conduct demolition, renovation, salvage, encapsulation work involving friable asbestos-containing materials, or asbestos inspections if:
 - (I) the contract work is done on a site other than a residential property with four or fewer units; or
 - (II) the contract work is done on a residential property with four or fewer units where a tested sample contained greater than 1% of asbestos;
 - (B) conduct work described in Subsection (3)(b)(iv)(A) in areas to which the general public has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard Emergency Response Act of 1986;
 - (C) conduct asbestos inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or
 - (D) conduct lead-based paint inspections in facilities subject to 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;
 - (v) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to be accredited as an inspector, management planner, abatement project designer, asbestos abatement contractor and supervisor, or an asbestos abatement worker;
 - (vi) establish certification procedures and requirements for certification of the conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax credit granted in Section 59-7-605 or 59-10-1009;
 - (vii) establish certification requirements for a person required under 15 U.S.C. 2601 et seq., Toxic Control Act, Subchapter IV - Lead Exposure Reduction, to be accredited as an inspector, risk assessor, supervisor, project designer, abatement worker, renovator, or dust sampling technician; and
 - (viii) assist the State Board of Education in adopting school bus idling reduction standards and implementing an idling reduction program in accordance with Section 41-6a-1308.
- (4) A rule adopted under this chapter shall be consistent with provisions of federal laws, if any, relating to control of motor vehicles or motor vehicle emissions.
- (5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.
- (6)
- (a) The board may not require testing for asbestos or related materials on a residential property with four or fewer units, unless:
 - (i) the property's construction was completed before January 1, 1981; or
 - (ii) the testing is for:
 - (A) a sprayed-on or painted on ceiling treatment that contained or may contain asbestos fiber;
 - (B) asbestos cement siding or roofing materials;
 - (C) resilient flooring products including vinyl asbestos tile, sheet vinyl products, resilient flooring backing material, whether attached or unattached, and mastic;

- (D) thermal-system insulation or tape on a duct or furnace; or
- (E) vermiculite type insulation materials.
- (b) A residential property with four or fewer units is subject to an abatement rule made under Subsection (1) or (3)(b)(iv) if:
 - (i) a sample from the property is tested for asbestos; and
 - (ii) the sample contains asbestos measuring greater than 1%.
- (7) The board may not issue, amend, renew, modify, revoke, or terminate any of the following that are subject to the authority granted to the director under Section 19-2-107 or 19-2-108:
 - (a) a permit;
 - (b) a license;
 - (c) a registration;
 - (d) a certification; or
 - (e) another administrative authorization made by the director.
- (8) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.
- (9) Notwithstanding Subsection (7), the board may exercise all authority granted to the board by a federally enforceable state implementation plan.

Amended by Chapter 154, 2015 General Session

19-2-105 Duties of board.

The board, in conjunction with the governing body of each county identified in Section 41-6a-1643 and other interested parties, shall order the director to perform an evaluation of the inspection and maintenance program developed under Section 41-6a-1643 including issues relating to:

- (1) the implementation of a standardized inspection and maintenance program;
- (2) out-of-state registration of vehicles used in Utah;
- (3) out-of-county registration of vehicles used within the areas required to have an inspection and maintenance program;
- (4) use of the farm truck exemption;
- (5) mechanic training programs;
- (6) emissions standards; and
- (7) emissions waivers.

Amended by Chapter 360, 2012 General Session

19-2-105.3 Clean fuel requirements for fleets.

- (1) As used in this section:
 - (a) “1990 Clean Air Act” means the federal Clean Air Act as amended in 1990.
 - (b) “Clean fuel” means:
 - (i) propane, compressed natural gas, or electricity;
 - (ii) other fuel the board determines annually on or before July 1 is at least as effective as fuels under Subsection (1)(b)(i) in reducing air pollution; and
 - (iii) other fuel that meets the clean fuel vehicle standards in the 1990 Clean Air Act.
 - (c) “Fleet” means 10 or more vehicles:
 - (i) owned or operated by a single entity as defined by board rule; and

- (ii) capable of being fueled or that are fueled at a central location.
- (d) "Fleet" does not include motor vehicles that are:
 - (i) held for lease or rental to the general public;
 - (ii) held for sale or used as demonstration vehicles by motor vehicle dealers;
 - (iii) used by motor vehicle manufacturers for product evaluations or tests;
 - (iv) authorized emergency vehicles as defined in Section 41-6a-102;
 - (v) registered under Title 41, Chapter 1a, Part 2, Registration, as farm vehicles;
 - (vi) special mobile equipment as defined in Section 41-1a-102;
 - (vii) heavy duty trucks with a gross vehicle weight rating of more than 26,000 pounds;
 - (viii) regularly used by employees to drive to and from work, parked at the employees' personal residences when they are not at their employment, and not practicably fueled at a central location;
 - (ix) owned, operated, or leased by public transit districts; or
 - (x) exempted by board rule.
- (2)
 - (a) After evaluation of reasonably available pollution control strategies, and as part of the state implementation plan demonstrating attainment of the national ambient air quality standards, the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:
 - (i) necessary to demonstrate attainment of the national ambient air quality standards in an area where they are required; and
 - (ii) reasonably cost effective when compared to other similarly beneficial control strategies for demonstrating attainment of the national ambient air quality standards.
 - (b) A vehicle retrofit to operate on compressed natural gas in accordance with Section 19-1-406 qualifies as a clean fuel vehicle under this section.
- (3) After evaluation of reasonably available pollution control strategies, and as part of a state implementation plan demonstrating only maintenance of the national ambient air quality standards, the board may by rule require fleets in specified geographical areas to use clean fuels if the board determines fleet use of clean fuels is:
 - (a) necessary to demonstrate maintenance of the national ambient air quality standards in an area where they are required; and
 - (b) reasonably cost effective as compared with other similarly beneficial control strategies for demonstrating maintenance of the national ambient air quality standards.
- (4) Rules the board makes under this section may include:
 - (a) dates by which fleets are required to convert to clean fuels under the provisions of this section;
 - (b) definitions of fleet owners or operators;
 - (c) definitions of vehicles exempted from this section by rule;
 - (d) certification requirements for persons who install clean fuel conversion equipment, including testing and certification standards regarding installers; and
 - (e) certification fees for installers, established under Section 63J-1-504.
- (5) Implementation of this section and rules made under this section are subject to the reasonable availability of clean fuel in the local market as determined by the board.

Amended by Chapter 154, 2015 General Session

19-2-106 Rulemaking authority and procedure.

- (1)
 - (a) In carrying out the duties of Section 19-2-104, the board may make rules for the purpose of administering a program under the federal Clean Air Act different than the corresponding federal regulations which address the same circumstances if:
 - (i) the board holds a public comment period, as described in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and a public hearing; and
 - (ii) the board finds that the different rule will provide reasonable added protections to public health or the environment of the state or a particular region of the state.
 - (b) The board shall consider the differences between an industry that continuously produces emissions and an industry that episodically produces emissions, and make rules that reflect those differences.
- (2) The findings described in Subsection (1)(a)(ii) shall be:
 - (a) in writing; and
 - (b) based on evidence, studies, or other information contained in the record that relates to the state of Utah and type of source involved.
- (3) In making rules, the board may incorporate by reference corresponding federal regulations.

Amended by Chapter 80, 2015 General Session

19-2-107 Director -- Appointment -- Powers.

- (1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.
- (2)
 - (a) The director shall:
 - (i) prepare and develop comprehensive plans for the prevention, abatement, and control of air pollution in Utah;
 - (ii) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter;
 - (iii) review plans, specifications, or other data relative to air pollution control equipment or any part of the air pollution control equipment;
 - (iv) under the direction of the executive director, represent the state in all matters relating to interstate air pollution, including interstate compacts and similar agreements;
 - (v) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;
 - (vi) encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;
 - (vii) encourage local units of government to handle air pollution within their respective jurisdictions on a cooperative basis and provide technical and consulting assistance to them;
 - (viii) determine by means of field studies and sampling the degree of air contamination and air pollution in all parts of the state;
 - (ix) monitor the effects of the emission of air pollutants from motor vehicles on the quality of the outdoor atmosphere in all parts of Utah and take appropriate responsive action;
 - (x) collect and disseminate information relating to air contamination and air pollution and conduct educational and training programs relating to air contamination and air pollution;

- (xi) assess and collect noncompliance penalties as required in Section 120 of the federal Clean Air Act, 42 U.S.C. Section 7420;
 - (xii) comply with the requirements of federal air pollution laws;
 - (xiii) subject to the provisions of this chapter, enforce rules through the issuance of orders, including:
 - (A) prohibiting or abating discharges of wastes affecting ambient air;
 - (B) requiring the construction of new control facilities or any parts of new control facilities or the modification, extension, or alteration of existing control facilities or any parts of new control facilities; or
 - (C) adopting other remedial measures to prevent, control, or abate air pollution; and
 - (xiv) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.
- (b) The director may:
- (i) employ full-time, temporary, part-time, and contract employees necessary to carry out this chapter;
 - (ii) subject to the provisions of this chapter, authorize an employee or representative of the department to enter at reasonable time and upon reasonable notice in or upon public or private property for the purposes of inspecting and investigating conditions and plant records concerning possible air pollution;
 - (iii) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air pollution and its causes, effects, prevention, abatement, and control, as advisable and necessary for the discharge of duties assigned under this chapter, including the establishment of inventories of pollution sources;
 - (iv) collect and disseminate information relating to air pollution and the prevention, control, and abatement of it;
 - (v) cooperate with studies and research relating to air pollution and its control, abatement, and prevention;
 - (vi) subject to Subsection (3), upon request, consult concerning the following with a person proposing to construct, install, or otherwise acquire an air pollutant source in Utah:
 - (A) the efficacy of proposed air pollution control equipment for the source; or
 - (B) the air pollution problem that may be related to the source;
 - (vii) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of this chapter;
 - (viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise a civil action initiated by the division to compel compliance with this chapter or the rules made under this chapter; or
 - (ix) subject to the provisions of this chapter, exercise all incidental powers necessary to carry out the purposes of this chapter, including certification to state or federal authorities for tax purposes that air pollution control equipment has been certified in conformity with Title 19, Chapter 12, Pollution Control Act.
- (3) A consultation described in Subsection (2)(b)(vi) does not relieve a person from the requirements of this chapter, the rules adopted under this chapter, or any other provision of law.

Amended by Chapter 154, 2015 General Session

19-2-107.5 Solid fuel burning.

- (1) The division shall create a:
 - (a) public awareness campaign, in consultation with representatives of the solid fuel burning industry, the healthcare industry, and members of the clean air community, on best wood burning practices and the effects of wood burning on air quality, specifically targeting nonattainment areas; and
 - (b) program to assist an individual to convert a dwelling to a natural gas, propane, or wood pellet heating source or a wood burning stove certified by the United States Environmental Protection Agency, as funding allows, if the individual:
 - (i) lives in a dwelling where a wood burning stove is the sole source of heat; and
 - (ii) is on the list of registered sole heating source homes.
- (2)
 - (a) The division may not impose a burning ban prohibiting burning during a specified seasonal period of time.
 - (b) Notwithstanding Subsection (2)(a), the division shall:
 - (i) allow burning:
 - (A) during local emergencies and utility outages; or
 - (B) if the primary purpose of the burning is to cook food; and
 - (ii) provide for exemptions, through registration with the division, for:
 - (A) devices that are sole sources of heat; or
 - (B) locations where natural gas service is limited or unavailable.
- (3) The division may seek private donations and federal sources of funding to supplement any funds appropriated by the Legislature to fulfill Subsection (1)(b).

Amended by Chapter 320, 2017 General Session

19-2-107.7 Water heater regulations.

- (1) As used in this section:
 - (a) "Natural gas-fired water heater" means a device that heats water by the combustion of natural gas to a thermostatically-controlled temperature not exceeding 210 degrees Fahrenheit for use external to the vessel at pressures not exceeding 160 pounds per square inch gauge.
 - (b) "Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy.
- (2) A person may not sell or purchase a natural gas-fired water heater that is manufactured after July 1, 2018 with the intent to install it in Utah if the natural gas-fired water heater exceeds the applicable nitrogen oxide emission rate limit set in Title 15A, State Construction and Fire Codes Act.
- (3) A manufacturer in Utah shall display the model number and nitrogen oxide emission rate of a water heater complying with this section on:
 - (a) the shipping carton for the water heater; and
 - (b) the permanent rating plate of each water heater unit.
- (4) This section does not apply to a water heater unit that:
 - (a) uses a fuel other than natural gas;
 - (b) is used in a recreational vehicle; or
 - (c) is manufactured in Utah for shipment and use outside of Utah.

19-2-108 Notice of construction or modification of installations required -- Authority of director to prohibit construction -- Hearings -- Limitations on authority of director -- Inspections authorized.

(1) Notice shall be given to the director by a person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air pollutants discharged, so that the installation may be expected to be a source or indirect source of air pollution, or by a person planning to install an air cleaning device or other equipment intended to control emission of air pollutants.

(2)

(a) The director may require, as a condition precedent to the construction, modification, installation, or establishment of the air pollutant source or indirect source, the submission of plans, specifications, and other information as he finds necessary to determine whether the proposed construction, modification, installation, or establishment will be in accord with applicable rules in force under this chapter.

(b) If within 90 days after the receipt of plans, specifications, or other information required under this subsection, the director determines that the proposed construction, installation, or establishment or any part of it will not be in accord with the requirements of this chapter or applicable rules or that further time, not exceeding three extensions of 30 days each, is required by the director to adequately review the plans, specifications, or other information, he shall issue an order prohibiting the construction, installation, or establishment of the air pollutant source or sources in whole or in part.

(3) In addition to any other remedies but prior to invoking any such other remedies, a person aggrieved by the issuance of an order either granting or denying a request for the construction of a new installation, shall, upon request, in accordance with the rules of the department, be entitled to a special adjudicative proceeding conducted by an administrative law judge as provided by Section 19-1-301.5.

(4) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted under Subsection (1) shall be maintained in good working order.

(5) This section does not authorize the director to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices, or equipment otherwise available.

(6)

(a) An authorized officer, employee, or representative of the director may enter and inspect any property, premise, or place on or at which an air pollutant source is located or is being constructed, modified, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and the rules adopted under it.

(b)

(i) A person may not refuse entry or access to an authorized representative of the director who requests entry for purposes of inspection and who presents appropriate credentials.

(ii) A person may not obstruct, hamper, or interfere with an inspection.

(c) If requested, the owner or operator of the premises shall receive a report setting forth all

facts found which relate to compliance status.

Amended by Chapter 154, 2015 General Session

Amended by Chapter 441, 2015 General Session

19-2-109 Air quality standards -- Hearings on adoption -- Orders of director -- Adoption of emission control requirements.

(1)

(a) The board, in adopting standards of quality for ambient air, shall conduct public hearings.

(b) Notice of any public hearing for the consideration, adoption, or amendment of air quality standards shall specify the locations to which the proposed standards apply and the time, date, and place of the hearing.

(c) The notice shall be:

(i)

(A) published at least twice in any newspaper of general circulation in the area affected; and

(B) published on the Utah Public Notice Website created in Section 63F-1-701, at least 20 days before the public hearing; and

(ii) mailed at least 20 days before the public hearing to the chief executive of each political subdivision of the area affected and to other persons the director has reason to believe will be affected by the standards.

(d) The adoption of air quality standards or any modification or changes to air quality standards shall be by order of the director following formal action of the board with respect to the standards.

(e) The order shall be published:

(i) in a newspaper of general circulation in the area affected; and

(ii) as required in Section 45-1-101.

(2)

(a) The board may establish emission control requirements by rule that in its judgment may be necessary to prevent, abate, or control air pollution that may be statewide or may vary from area to area, taking into account varying local conditions.

(b) In adopting these requirements, the board shall give notice and conduct public hearings in accordance with the requirements in Subsection (1).

Amended by Chapter 360, 2012 General Session

19-2-109.1 Operating permit required -- Emissions fee -- Implementation.

(1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:

(a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

(b) "EPA" means the federal Environmental Protection Agency.

(c) "Operating permit" means a permit issued by the director to sources of air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.

(d) "Program" means the air pollution operating permit program established under this section to comply with Title V of the 1990 Clean Air Act.

(e) "Regulated pollutant" means the same as that term is defined in Title V of the 1990 Clean Air Act and implementing federal regulations.

(2) A person may not operate a source of air pollution required to have a permit under Title V of the 1990 Clean Air Act without having obtained an operating permit from the director under procedures the board establishes by rule.

(3)

(a) Operating permits issued under this section shall be for a period of five years unless the director makes a written finding, after public comment and hearing, and based on substantial evidence in the record, that an operating permit term of less than five years is necessary to protect the public health and the environment of the state.

(b) The director may issue, modify, or renew an operating permit only after providing public notice, an opportunity for public comment, and an opportunity for a public hearing.

(c) The director shall, in conformity with the 1990 Clean Air Act and implementing federal regulations, revise the conditions of issued operating permits to incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990 Clean Air Act, if the remaining period of the permit is three or more years.

(d) The director may terminate, modify, revoke, or reissue an operating permit for cause.

(4)

(a) The board shall establish a proposed annual emissions fee that conforms with Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources required to obtain a permit. The emissions fee established under this section is in addition to fees assessed under Section 19-2-108 for issuance of an approval order.

(b) In establishing the fee the board shall comply with the provisions of Section 63J-1-504 that require a public hearing and require the established fee to be submitted to the Legislature for its approval as part of the department's annual appropriations request.

(c) The fee shall cover all reasonable direct and indirect costs required to develop and administer the program and the small business assistance program established under Section 19-2-109.2. The director shall prepare an annual report of the emissions fees collected and the costs covered by those fees under this Subsection (4).

(d) The fee shall be established uniformly for all sources required to obtain an operating permit under the program and for all regulated pollutants.

(e) The fee may not be assessed for emissions of any regulated pollutant if the emissions are already accounted for within the emissions of another regulated pollutant.

(f) An emissions fee may not be assessed for any amount of a regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(5) Emissions fees shall be based on actual emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a permit, to base the fee during the period of the permit on allowable emissions for that regulated pollutant.

(6) If the owner or operator of a source subject to this section fails to timely pay an annual emissions fee, the director may:

(a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus interest on the fee computed at 12% annually; or

(b) revoke the operating permit.

(7) The owner or operator of a source subject to this section may contest an emissions fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4, Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (7).

(a) The owner or operator shall pay the fee under protest prior to being entitled to a hearing.

Payment of an emissions fee or penalty under protest is not a waiver of the right to contest the

fee or penalty under this section.

(b) A request for a hearing under this Subsection (7) shall be made after payment of the emissions fee and within six months after the emissions fee was due.

(8) To reinstate an operating permit revoked under Subsection (6) the owner or operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

(9) All emissions fees and penalties collected by the department under this section shall be deposited in the General Fund as the Air Pollution Operating Permit Program dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by the department in developing and administering the program and the small business assistance program under Section 19-2-109.2.

(10) Failure of the director to act on an operating permit application or renewal is a final administrative action only for the purpose of obtaining judicial review by any of the following persons to require the director to take action on the permit or its renewal without additional delay:

(a) the applicant;

(b) a person who participated in the public comment process; or

(c) a person who could obtain judicial review of that action under applicable law.

Amended by Chapter 154, 2015 General Session

19-2-109.2 Small business assistance program.

(1) The division shall establish a small business stationary source technical and environmental compliance assistance program that conforms with Title V of the 1990 Clean Air Act to assist small businesses to comply with state and federal air pollution laws.

(2) There is created the Compliance Advisory Panel to advise and monitor the program created in Subsection (1). The seven panel members are:

(a) two members who are not owners or representatives of owners of small business stationary air pollution sources, selected by the governor to represent the general public;

(b) four members who are owners or who represent owners of small business stationary sources selected by leadership of the Utah Legislature as follows:

(i) one member selected by the majority leader of the Senate;

(ii) one member selected by the minority leader of the Senate;

(iii) one member selected by the majority leader of the House of Representatives; and

(iv) one member selected by the minority leader of the House of Representatives; and

(c) one member selected by the executive director to represent the Division of Air Quality, Department of Environmental Quality.

(3)

(a) Except as required by Subsection (3)(b), as terms of current panel members expire, the department shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the department shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of panel members are staggered so that approximately half of the panel is appointed every two years.

(4) Members may serve more than one term.

(5) Members shall hold office until the expiration of their terms and until their successors are appointed, but not more than 90 days after the expiration of their terms.

- (6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (7) Every two years, the panel shall elect a chair from its members.
- (8)
 - (a) The panel shall meet as necessary to carry out its duties. Meetings may be called by the chair, the director, or upon written request of three of the members of the panel.
 - (b) Three days' notice shall be given to each member of the panel prior to a meeting.
- (9) Four members constitute a quorum at a meeting, and the action of the majority of members present is the action of the panel.
- (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 154, 2015 General Session

19-2-109.3 Public access to information.

A copy of each permit application, compliance plan, emissions or compliance monitoring report, certification, and each operating permit issued under this chapter shall be made available to the public in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

19-2-110 Violations -- Notice to violator -- Corrective action orders -- Conference, conciliation, and persuasion by director -- Hearings.

- (1) Whenever the director has reason to believe that a violation of any provision of this chapter or any rule issued under it has occurred, the director may serve written notice of the violation upon the alleged violator. The notice shall specify the provision of this chapter or rule alleged to be violated, the facts alleged to constitute the violation, and may include an order that necessary corrective action be taken within a reasonable time.
- (2) Nothing in this chapter prevents the director from making efforts to obtain voluntary compliance through warning, conference, conciliation, persuasion, or other appropriate means.
- (3) Hearings may be held before an administrative law judge as provided by Section 19-1-301.

Amended by Chapter 360, 2012 General Session

19-2-112 Generalized condition of air pollution creating emergency -- Sources causing imminent danger to health -- Powers of executive director -- Declaration of emergency.

- (1)
 - (a) Title 63G, Chapter 4, Administrative Procedures Act, and any other provision of law to the contrary notwithstanding, if the executive director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the executive director, with the concurrence of the governor, shall order

persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air pollutants.

(b) The order shall fix a place and time, not later than 24 hours after its issuance, for a hearing to be held before the governor.

(c) Not more than 24 hours after the commencement of this hearing, and without adjournment of it, the governor shall affirm, modify, or set aside the order of the executive director.

(2)

(a) In the absence of a generalized condition of air pollution referred to in Subsection (1), but if the executive director finds that emissions from the operation of one or more air pollutant sources is causing imminent danger to human health or safety, the executive director may commence adjudicative proceedings under Section 63G-4-502.

(b) Notwithstanding Section 19-1-301 or 19-1-301.5, the executive director may conduct the emergency adjudicative proceeding in place of an administrative law judge.

(3) Nothing in this section limits any power that the governor or any other officer has to declare an emergency and act on the basis of that declaration.

Amended by Chapter 154, 2015 General Session

19-2-113 Variances -- Judicial review.

(1)

(a) A person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.

(b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) A variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:

(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the board may prescribe;

(b)

- (i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and
- (ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or

(c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of

a kind other than that provided for in Subsection (3)(a) or (b), it may not be granted for more than one year.

(4)

(a) A variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.

(b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.

(c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.

(d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.

(5)

(a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.

(b) A person aggrieved by the board's decision may obtain judicial review.

(c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air pollutant source is situated.

(6)

(a) The board may review a variance during the term for which it was granted.

(b) The review procedure is the same as that for an original application.

(c) The variance may be revoked upon a finding that:

(i) the nature or amount of emission has changed or increased; or

(ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.

(7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to a person or property.

Amended by Chapter 154, 2015 General Session

19-2-114 Activities not in violation of chapter or rules.

The following are not a violation of this chapter or of a rule made under it:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index for the area where the burn is to occur is above 500.

Amended by Chapter 154, 2015 General Session

19-2-115 Violations -- Penalties -- Reimbursement for expenses.

(1) As used in this section, the terms “knowingly,” “willfully,” and “criminal negligence” shall mean as defined in Section 76-2-103.

(2)

(a) A person who violates this chapter, or any rule, order, or permit issued or made under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for each violation.

(b) Subsection (2)(a) also applies to rules made under the authority of Section 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

(c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the amounts specified in that section and shall be used in accordance with that section.

(3) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person knowingly violates any of the following under this chapter:

(a) an applicable standard or limitation;

(b) a permit condition; or

(c) a fee or filing requirement.

(4) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of violation who knowingly:

(a) makes any false material statement, representation, or certification, in any notice or report required by permit; or

(b) renders inaccurate any monitoring device or method required to be maintained by this chapter or applicable rules made under this chapter.

(5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty under Section 19-2-109.1.

(6) A person who willfully violates Section 19-2-120 is guilty of a class A misdemeanor.

(7) A person who knowingly violates any requirement of an applicable implementation plan adopted by the board, more than 30 days after having been notified in writing by the director that the person is violating the requirement, knowingly violates an order issued under Subsection 19-2-110(1), or knowingly handles or disposes of asbestos in violation of a rule made under this chapter is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of violation in the case of the first offense, and not more than \$50,000 per day of violation in the case of subsequent offenses.

(8)

(a) As used in this section:

(i) “Hazardous air pollutant” means any hazardous air pollutant listed under 42 U.S.C. Sec. 7412 or any extremely hazardous substance listed under 42 U.S.C. Sec. 11002(a)(2).

(ii) “Organization” means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(iii) “Serious bodily injury” means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

- (b)
 - (i) A person is guilty of a class A misdemeanor and subject to imprisonment under Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with criminal negligence:
 - (A) releases into the ambient air any hazardous air pollutant; and
 - (B) places another person in imminent danger of death or serious bodily injury.
 - (ii) As used in this Subsection (8)(b), “person” does not include an employee who is carrying out the employee’s normal activities and who is not a part of senior management personnel or a corporate officer.
- (c) A person is guilty of a second degree felony and is subject to imprisonment under Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:
 - (i) knowingly releases into the ambient air any hazardous air pollutant; and
 - (ii) knows at the time that the person is placing another person in imminent danger of death or serious bodily injury.
- (d) If a person is an organization, it shall, upon conviction of violating Subsection (8)(c), be subject to a fine of not more than \$1,000,000.
- (e)
 - (i) A defendant who is an individual is considered to have acted knowingly under Subsections (8)(c) and (d), if:
 - (A) the defendant’s conduct placed another person in imminent danger of death or serious bodily injury; and
 - (B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.
 - (ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.
 - (iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.
- (f)
 - (i) It is an affirmative defense to prosecution under this Subsection (8) that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:
 - (A) an occupation, a business, a profession; or
 - (B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.
 - (ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (8)(f) and shall prove that defense by a preponderance of the evidence.
- (9)
 - (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law, all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.
 - (b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.
 - (c) The department shall regulate reimbursements by making rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

- (i) define qualifying environmental enforcement activities; and
- (ii) define qualifying extraordinary expenses.

Amended by Chapter 360, 2012 General Session

19-2-116 Injunction or other remedies to prevent violations -- Civil actions not abridged.

(1) Action under Section 19-2-115 does not bar enforcement of this chapter, or any of the rules adopted under it or any orders made under it by injunction or other appropriate remedy. The director has the power to institute and maintain in the name of the state any and all enforcement proceedings.

(2) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding for this purpose.

(3)

(a) In addition to any other remedy created in this chapter, the director may initiate an action for appropriate injunctive relief:

(i) upon failure of any person to comply with:

(A) any provision of this chapter;

(B) any rule adopted under this chapter; or

(C) any final order made by the board, the director, or the executive director; and

(ii) when it appears necessary for the protection of health and welfare.

(b) The attorney general shall bring injunctive relief actions on request.

(c) A bond is not required.

Amended by Chapter 360, 2012 General Session

19-2-117 Attorney general as legal advisor to board -- Duties of attorney general and county attorneys.

(1) Except as provided in Section 63G-7-902, the attorney general is the legal advisor to the board and the director and shall defend them or any of them in all actions or proceedings brought against them or any of them.

(2) The county attorney in the county in which a cause of action arises may, upon request of the board or the director, bring an action, civil or criminal, to abate a condition which exists in violation of, or to prosecute for the violation of or to enforce, this chapter or the standards, orders, or rules of the board or the director issued under this chapter.

(3) The director may bring an action and be represented by the attorney general.

(4) In the event a person fails to comply with a cease and desist order of the board or the director that is not subject to a stay pending administrative or judicial review, the director may initiate an action for, and is entitled to, injunctive relief to prevent any further or continued violation of the order.

Amended by Chapter 154, 2015 General Session

19-2-118 Violation of injunction evidence of contempt.

Failure to comply with the terms of any injunction issued under this chapter is prima facie evidence of contempt which is punishable as for other civil contempts.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-119 Civil or criminal remedies not excluded -- Actionable rights under chapter -- No liability for acts of God or other catastrophes.

(1) Existing civil or criminal remedies for a wrongful action that is a violation of the law are not excluded by this chapter.

(2) Except as provided in Sections 19-1-301 and 19-1-301.5, and rules implementing those provisions, persons other than the state or the board do not acquire actionable rights by virtue of this chapter.

(3) The liabilities imposed for violation of this chapter are not imposed for a violation caused by an act of God, war, strike, riot, or other catastrophe.

Amended by Chapter 154, 2015 General Session

19-2-120 Information required of owners or operators of air pollutant sources.

The owner or operator of a stationary air pollutant source in the state shall furnish to the director the reports required by rules made in accordance with Section 19-2-104 and any other information the director finds necessary to determine whether the source is in compliance with state and federal regulations and standards. The information shall be correlated with applicable emission standards or limitations and shall be available to the public during normal business hours at the office of the division.

Amended by Chapter 154, 2015 General Session

19-2-121 Ordinances of political subdivisions authorized.

Any political subdivision of the state may enact and enforce ordinances to control air pollution that are consistent with this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

19-2-122 Cooperative agreements between political subdivisions and department.

(1) A political subdivision of the state may enter into and perform, with other political subdivisions of the state or with the department, contracts and agreements as they find proper for establishing, planning, operating, and financing air pollution programs.

(2) The agreements may provide for an agency to:

- (a) supervise and operate an air pollution program;
- (b) prescribe the agency's powers and duties; and
- (c) fix the compensation of the agency's members and employees.

Amended by Chapter 154, 2015 General Session

19-2-128 Air Quality Policy Advisory Board created -- Composition -- Responsibility -- Terms of office -- Compensation.

(1) There is created the Air Quality Policy Advisory Board consisting of the following 10 voting members:

- (a) two members of the Senate, appointed by the president of the Senate;
 - (b) three members of the House of Representatives, appointed by the speaker of the House of Representatives;
 - (c) the director;
 - (d) one representative of industry interests, appointed by the president of the Senate;
 - (e) one representative of business or economic development interests, appointed by the speaker of the House of Representatives, who has expertise in air quality matters;
 - (f) one representative of the academic community, appointed by the governor, who has expertise in air quality matters; and
 - (g) one representative of a nongovernmental organization, appointed by the governor, who:
 - (i) represents community interests;
 - (ii) does not represent industry or business interests; and
 - (iii) has expertise in air quality matters.
- (2) The Air Quality Policy Advisory Board shall:
- (a) seek the best available science to identify legislative actions to improve air quality;
 - (b) identify and prioritize potential legislation and funding that will improve air quality; and
 - (c) make recommendations to the Legislature on how to improve air quality in the state.
- (3)
- (a) Except as required by Subsection (3)(b), members appointed under Subsections (1)(d), (e), (f), and (g) are appointed to serve four-year terms.
 - (b) Notwithstanding the requirements of Subsection (3)(a), the governor, president of the Senate, and speaker of the House of Representatives shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members are staggered so that approximately half of the advisory board is appointed every two years.
 - (c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (4) The advisory board shall elect one member to serve as chair of the advisory board for a term of one year.
- (5) Compensation for a member of the advisory board who is a legislator shall be paid in accordance with Section 36-2-2 and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.
- (6) A member of the advisory board who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (7) The department shall provide staff support for the advisory board.

Enacted by Chapter 140, 2017 General Session

19-2-129 Gasoline vapor recovery -- Penalties.

- (1) As used in this section:
- (a) "Gasoline cargo tank" means a tank that:
 - (i) is intended to hold gasoline;
 - (ii) has a capacity of 1,000 gallons or more; and

- (iii) is attached to or intended to be drawn by a motor vehicle.
 - (b) “Operator” means an individual who controls a motor vehicle:
 - (i) to which a gasoline cargo tank is attached; or
 - (ii) that draws a gasoline cargo tank.
 - (c) “Underground storage tank” means the same as that term is defined in Section 19-6-102.
- (2) The operator of a gasoline cargo tank shall comply with requirements of this section if the operator:
- (a) permits the loading of gasoline into the gasoline cargo tank; or
 - (b) loads an underground storage tank with gasoline from the gasoline cargo tank.
- (3) Except as provided in Subsection (6), the operator of a gasoline cargo tank may permit the loading of gasoline into a tank described in Subsection (2) or load an underground storage tank with gasoline from the gasoline cargo tank described in Subsection (1) only if:
- (a) emissions from the tank that dispenses 10,000 gallons or more in any one calendar month are controlled by the use of:
 - (i) a properly installed and maintained vapor collection and control system that is equipped with fittings that:
 - (A) make a vapor-tight connection; and
 - (B) prevent the release of gasoline vapors by automatically closing upon disconnection; and
 - (ii) submerged filling or bottom filling methods; and
 - (b) the resulting vapor emitted into the air does not exceed the levels described in Subsection (4).
- (4) Vapor emitted into the air as a result of the loading of a tank under Subsection (3) may not exceed 0.640 pounds per 1,000 gallons transferred.
- (5)
- (a) The department may fine an operator who violates this section:
 - (i) up to \$1,000 for a first offense; or
 - (ii) up to \$2,000 for a second offense.
 - (b) An operator who violates this section is guilty of a class C misdemeanor for a third or subsequent offense.
- (6) If a facility at which an underground storage tank is located does not have the equipment necessary for an operator of a gasoline cargo tank to comply with Subsection (3), the operator is excused from the requirements of Subsections (3) and (4) and may not be fined or penalized under Subsection (5).

Enacted by Chapter 395, 2017 General Session

Part 2

Clean Air Retrofit, Replacement, and Off-road Technology Program

19-2-201 Title.

This part is known as the “Clean Air Retrofit, Replacement, and Off-road Technology Program.”

Enacted by Chapter 295, 2014 General Session

19-2-202 Definitions.

As used in this part:

- (1) "Board" means the Air Quality Board.
- (2) "Certified" means certified by the United States Environmental Protection Agency or the California Air Resources Board to meet appropriate emission standards.
- (3) "Cost" means the total reasonable cost of a project eligible for a grant under the fund, including the cost of labor.
- (4) "Director" means the director of the Division of Air Quality.
- (5) "Division" means the Division of Air Quality, created in Subsection 19-1-105(1)(a).
- (6) "Eligible equipment" means equipment with engines, including stationary generators and pumps, operated and, if applicable, permitted in Utah.
- (7) "Eligible vehicle" means a vehicle operated and, if applicable, registered in Utah that is:
 - (a) a medium-duty or heavy-duty transit bus;
 - (b) a school bus as defined in Section 53-3-102;
 - (c) a medium-duty or heavy-duty truck with a gross vehicle weight rating of at least 16,001 GVWR;
 - (d) a locomotive; or
 - (e) another type of vehicle identified by the board in rule as being a significant potential source of air pollution, as defined in Section 19-2-102.
- (8) "Verified" means verified by the United States Environmental Protection Agency or the California Air Resources Board to reduce air emissions and meet durability requirements.

Amended by Chapter 321, 2016 General Session

19-2-203 Grants and programs -- Conditions.

- (1) The director may make grants for implementing:
 - (a) verified technologies for eligible vehicles or equipment; and
 - (b) certified vehicles, engines, or equipment.
- (2)
 - (a) The division may develop programs, including exchange, rebate, or low-cost purchase programs, to encourage replacement of:
 - (i) landscaping and maintenance equipment with equipment that is lower in emissions; and
 - (ii) other equipment or products identified by the board in rule as being a significant potential source of air pollution, as defined in Subsection 19-2-102(3).
 - (b) The division may enter into agreements with local health departments to administer the programs described in Subsection (2)(a).
- (3) As a condition for receiving the grant, a person receiving a grant under Subsection (1) or receiving a grant under this Subsection (3) shall agree to:
 - (a) provide information to the division about the vehicles, equipment, or technology acquired with the grant proceeds;
 - (b) allow inspections by the division to ensure compliance with the terms of the grant;
 - (c) permanently disable replaced vehicles, engines, and equipment from use; and
 - (d) comply with the conditions for the grant.
- (4) Grants and programs under Subsections (1) and (2) may be administered using a rebate program.

(5) Grants issued under this section may not exceed the actual cost of the project.

Enacted by Chapter 295, 2014 General Session

19-2-204 Duties and authorities -- Rulemaking.

(1) The board may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:

- (a) specifying the amount of money to be dedicated annually for grants;
- (b) specifying criteria the director shall consider in prioritizing and awarding grants, including:
 - (i) a preference for awarding a grant to an individual who has already secured some other source of funding; and
 - (ii) a limitation on the types of vehicles that are eligible for funds;
- (c) specifying the terms of a grant or exchange under Subsections 19-2-203(2), (3), and (4);
- (d) specifying the procedures to be used in the grant and exchange programs authorized in Subsections 19-2-203(2), (3), and (5); and
- (e) requiring all grant applicants to apply on forms provided by the division.

(2) The division shall:

- (a) administer funds to encourage vehicle and equipment owners and operators to reduce emissions from vehicles and equipment;
- (b) provide forms for application for a grant or exchange under Subsection 19-2-203(2) or (3); and
- (c) provide information about which vehicles, engines, or equipment are certified and which technology is verified as provided in this part.

(3) The division may inspect vehicles, equipment, or technology for which a grant was made to ensure compliance with the terms of the grant.

Enacted by Chapter 295, 2014 General Session

Part 3

Conversion to Alternative Fuel Grant Program

19-2-301 Title.

This part is known as the “Conversion to Alternative Fuel Grant Program.”

Enacted by Chapter 381, 2015 General Session

19-2-302 Definitions.

As used in this part:

(1) “Air quality standards” means vehicle emission standards equal to or greater than the standards established in bin 4 in Table S04-1 of 40 C.F.R. 86.1811-04(c)(6).

(2) “Alternative fuel” means:

- (a) propane, natural gas, or electricity; or
- (b) other fuel that the board determines, by rule, to be:
 - (i) at least as effective in reducing air pollution as the fuels listed in Subsection (2)(a); or

- (ii) substantially more effective in reducing air pollution as the fuel for which the engine was originally designed.
- (3) "Board" means the Air Quality Board.
- (4) "Clean fuel grant" means a grant awarded under this part from the Conversion to Alternative Fuel Grant Program Fund created in Section 19-1-403.3 for reimbursement for a portion of the incremental cost of an OEM vehicle or the cost of conversion equipment.
- (5) "Conversion equipment" means equipment designed to:
 - (a) allow an eligible vehicle to operate on an alternative fuel; and
 - (b) reduce an eligible vehicle's emissions of regulated pollutants, as demonstrated by:
 - (i) certification of the conversion equipment by the Environmental Protection Agency or by a state or country that has certification standards that are recognized, by rule, by the board;
 - (ii) testing the eligible vehicle, before and after the installation of the equipment, in accordance with 40 C.F.R. Part 86, Control of Emissions from New and In-Use Highway Vehicles and Engines, using all fuel the motor vehicle is capable of using;
 - (iii) for a retrofit natural gas vehicle that is retrofit in accordance with Section 19-1-406, satisfying the emission standards described in Section 19-1-406; or
 - (iv) any other test or standard recognized by board rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (6) "Cost" means the total reasonable cost of a conversion kit and the paid labor, if any, required to install it.
- (7) "Director" means the director of the Division of Air Quality.
- (8) "Division" means the Division of Air Quality, created in Subsection 19-1-105(1)(a).
- (9) "Eligible vehicle" means a:
 - (a) commercial vehicle, as defined in Section 41-1a-102;
 - (b) farm tractor, as defined in Section 41-1a-102; or
 - (c) motor vehicle, as defined in Section 41-1a-102.

Amended by Chapter 369, 2016 General Session

19-2-303 Grants and programs -- Conditions.

- (1) The director may make grants from the Conversion to Alternative Fuel Grant Program Fund created in Section 19-1-403.3 to a person who installs conversion equipment on an eligible vehicle as described in this part.
- (2) A person who installs conversion equipment on an eligible vehicle:
 - (a) may apply to the division for a grant to offset the cost of installation; and
 - (b) shall pass along any savings on the cost of conversion equipment to the owner of the eligible vehicle being converted in the amount of grant money received.
- (3) As a condition for receiving the grant, a person who installs conversion equipment shall agree to:
 - (a) provide information to the division about the eligible vehicle to be converted with the grant proceeds;
 - (b) allow inspections by the division to ensure compliance with the terms of the grant; and
 - (c) comply with the conditions for the grant.
- (4) A grant issued under this section may not exceed the lesser of 50% of the cost of the conversion system and associated labor, or \$2,500, per converted eligible vehicle.

Amended by Chapter 369, 2016 General Session

19-2-304 Duties and authorities -- Rulemaking.

(1) The board may, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:

- (a) specifying the amount of money to be dedicated annually for grants under this part;
- (b) specifying criteria the director shall consider in prioritizing and awarding grants, including a limitation on the types of vehicles that are eligible for funds;
- (c) specifying the minimum qualifications of a person who:
 - (i) installs conversion equipment on an eligible vehicle; and
 - (ii) receives a grant from the division;
- (d) specifying the terms of a grant; and
- (e) requiring all grant applicants to apply on forms provided by the division.

(2) The division shall:

- (a) administer the Conversion to Alternative Fuel Grant Program Fund to encourage eligible vehicle owners to reduce emissions from eligible vehicles; and
- (b) provide information about which conversion technology meets the requirements of this part.

(3) The division may inspect vehicles for which a grant was made to ensure compliance with the terms of the grant.

Amended by Chapter 369, 2016 General Session

19-2-305 Limitation on applying for a tax credit.

An owner of an eligible vehicle who receives the savings on the cost of conversion equipment, as described in Subsection 19-2-303(2)(b), may not claim a tax credit for the conversion under Section 59-7-605 or 59-10-1009 unless the savings are less than the tax credit authorized by those sections, in which case the owner may claim a tax credit in the amount of the difference.

Enacted by Chapter 381, 2015 General Session

Chapter 3

Utah Administrative Rulemaking Act

Part 1

General Provisions

63G-3-101 Title.

This chapter is known as the “Utah Administrative Rulemaking Act.”

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-102 Definitions.

As used in this chapter:

(1) “Administrative record” means information an agency relies upon when making a rule under this chapter including:

- (a) the proposed rule, change in the proposed rule, and the rule analysis form;
- (b) the public comment received and recorded by the agency during the public comment period;
- (c) the agency’s response to the public comment;
- (d) the agency’s analysis of the public comment; and
- (e) the agency’s report of its decision-making process.

(2) “Agency” means each state board, authority, commission, institution, department, division, officer, or other state government entity other than the Legislature, its committees, the political subdivisions of the state, or the courts, which is authorized or required by law to make rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or perform other similar actions or duties delegated by law.

(3) “Bulletin” means the Utah State Bulletin.

(4) “Catchline” means a short summary of each section, part, rule, or title of the code that follows the section, part, rule, or title reference placed before the text of the rule and serves the same function as boldface in legislation as described in Section 68-3-13.

(5) “Code” means the body of all effective rules as compiled and organized by the division and entitled “Utah Administrative Code.”

(6) “Department” means the Department of Administrative Services created in Section 63A-1-104.

(7) “Effective” means operative and enforceable.

(8) “Executive director” means the executive director of the department.

(9)

(a) “File” means to submit a document to the office as prescribed by the department.

(b) “Filing date” means the day and time the document is recorded as received by the office.

(10) “Interested person” means any person affected by or interested in a proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section 63G-3-402.

(11) “Office” means the Office of Administrative Rules created in Section 63G-3-401.

(12) “Order” means an agency action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(13) “Person” means any individual, partnership, corporation, association, governmental entity,

or public or private organization of any character other than an agency.

(14) “Publication” or “publish” means making a rule available to the public by including the rule or a summary of the rule in the bulletin.

(15) “Publication date” means the inscribed date of the bulletin.

(16) “Register” may include an electronic database.

(17)

(a) “Rule” means an agency’s written statement that:

(i) is explicitly or implicitly required by state or federal statute or other applicable law;

(ii) implements or interprets a state or federal legal mandate; and

(iii) applies to a class of persons or another agency.

(b) “Rule” includes the amendment or repeal of an existing rule.

(c) “Rule” does not mean:

(i) orders;

(ii) an agency’s written statement that applies only to internal management and that does not restrict the legal rights of a public class of persons or another agency;

(iii) the governor’s executive orders or proclamations;

(iv) opinions issued by the attorney general’s office;

(v) declaratory rulings issued by the agency according to Section 63G-4-503 except as required by Section 63G-3-201;

(vi) rulings by an agency in adjudicative proceedings, except as required by Subsection 63G-3-201(6); or

(vii) an agency written statement that is in violation of any state or federal law.

(18) “Rule analysis” means the format prescribed by the department to summarize and analyze rules.

(19) “Small business” means a business employing fewer than 50 persons.

(20) “Substantive change” means a change in a rule that affects the application or results of agency actions.

Amended by Chapter 193, 2016 General Session

Part 2

Circumstances Requiring Rulemaking - Status of Administrative Rules

63G-3-201 When rulemaking is required.

(1) Each agency shall:

(a) maintain a current version of its rules; and

(b) make it available to the public for inspection during its regular business hours.

(2) In addition to other rulemaking required by law, each agency shall make rules when agency action:

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

(b) provides or prohibits a material benefit;

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

(d) is explicitly or implicitly authorized by statute.

(3) Rulemaking is also required when an agency issues a written interpretation of a state or federal legal mandate.

- (4) Rulemaking is not required when:
- (a) agency action applies only to internal agency management, inmates or residents of a state correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a state hospital, members of the state retirement system, or students enrolled in a state education institution;
 - (b) a standardized agency manual applies only to internal fiscal or administrative details of governmental entities supervised under statute;
 - (c) an agency issues policy or other statements that are advisory, informative, or descriptive, and do not conform to the requirements of Subsections (2) and (3); or
 - (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all nonsubstantive changes in a rule with the office.
- (5)
- (a) A rule shall enumerate any penalty authorized by statute that may result from its violation, subject to Subsections (5)(b) and (c).
 - (b) A violation of a rule may not be subject to the criminal penalty of a class C misdemeanor or greater offense, except as provided under Subsection (5)(c).
 - (c) A violation of a rule may be subject to a class C misdemeanor or greater criminal penalty under Subsection (5)(a) when:
 - (i) authorized by a specific state statute;
 - (ii) a state law and programs under that law are established in order for the state to obtain or maintain primacy over a federal program; or
 - (iii) state civil or criminal penalties established by state statute regarding the program are equivalent to or less than corresponding federal civil or criminal penalties.
- (6) Each agency shall enact rules incorporating the principles of law not already in its rules that are established by final adjudicative decisions within 120 days after the decision is announced in its cases.
- (7)
- (a) Each agency may enact a rule that incorporates by reference:
 - (i) all or any part of another code, rule, or regulation that has been adopted by a federal agency, an agency or political subdivision of this state, an agency of another state, or by a nationally recognized organization or association;
 - (ii) state agency implementation plans mandated by the federal government for participation in the federal program;
 - (iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully described in the rule, and are available for public inspection; or
 - (iv) lists, tables, illustrations, or similar materials that the executive director or the executive director's designee determines are too expensive to reproduce in the administrative code.
 - (b) Rules incorporating materials by reference shall:
 - (i) be enacted according to the procedures outlined in this chapter;
 - (ii) state that the referenced material is incorporated by reference;
 - (iii) state the date, issue, or version of the material being incorporated; and
 - (iv) define specifically what material is incorporated by reference and identify any agency deviations from it.
 - (c) The agency shall identify any substantive changes in the material incorporated by reference by following the rulemaking procedures of this chapter.
 - (d) The agency shall maintain a complete and current copy of the referenced material

available for public review at the agency and at the office.

(8)

(a) This chapter is not intended to inhibit the exercise of agency discretion within the limits prescribed by statute or agency rule.

(b) An agency may enact a rule creating a justified exception to a rule.

(9) An agency may obtain assistance from the attorney general to ensure that its rules meet legal and constitutional requirements.

Amended by Chapter 181, 2017 General Session

63G-3-202 Rules having the effect of law.

(1) An agency's written statement is a rule if it conforms to the definition of a rule under Section 63G-3-102, but the written statement is not enforceable unless it is made as a rule in accordance with the requirements of this chapter.

(2) An agency's written statement that is made as a rule in accordance with the requirements of this chapter is enforceable and has the effect of law.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3 Rulemaking Procedures

63G-3-301 Rulemaking procedure.

(1) An agency authorized to make rules is also authorized to amend or repeal those rules.

(2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:

(a) the requirements of this section;

(b) consistent procedures required by other statutes;

(c) applicable federal mandates; and

(d) rules made by the department to implement this chapter.

(3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.

(4)

(a) Each agency shall file its proposed rule and rule analysis with the office.

(b) Rule amendments shall be marked with new language underlined and deleted language struck out.

(c)

(i) The office shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.

(ii) For rule amendments, only the section or subsection of the rule being amended need be printed.

(iii) If the executive director or the executive director's designee determines that the rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by reference to a copy on file with the office.

(5) Before filing a rule with the office, the agency shall conduct a thorough analysis, consistent with the criteria established by the Governor's Office of Management and Budget, of the fiscal impact a rule may have on businesses, which criteria may include:

- (a) the type of industries that will be impacted by the rule, and for each identified industry, an estimate of the total number of businesses within the industry, and an estimate of the number of those businesses that are small businesses;
- (b) the individual fiscal impact that would incur to a typical business for a one-year period;
- (c) the aggregated total fiscal impact that would incur to all businesses within the state for a one-year period;
- (d) the total cost that would incur to all impacted entities over a five-year period; and
- (e) the department head's comments on the analysis.

(6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:

- (a) establishing less stringent compliance or reporting requirements for small businesses;
- (b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) consolidating or simplifying compliance or reporting requirements for small businesses;
- (d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and
- (e) exempting small businesses from all or any part of the requirements contained in the proposed rule.

(7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).

(8) The rule analysis shall contain:

- (a) a summary of the rule or change;
- (b) the purpose of the rule or reason for the change;
- (c) the statutory authority or federal requirement for the rule;
- (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments;
 - (iii) small businesses; and
- (iv) persons other than small businesses, businesses, or local governmental entities;
- (e) the compliance cost for affected persons;
- (f) how interested persons may review the full text of the rule;
- (g) how interested persons may present their views on the rule;
- (h) the time and place of any scheduled public hearing;
- (i) the name and telephone number of an agency employee who may be contacted about the rule;
- (j) the name of the agency head or designee who authorized the rule;
- (k) the date on which the rule may become effective following the public comment period;
- (l) the agency's analysis on the fiscal impact of the rule as required under Subsection (5);
- (m) any additional comments the department head may choose to submit regarding the fiscal impact the rule may have on businesses; and

(n) if applicable, a summary of the agency's efforts to comply with the requirements of Subsection (6).

(9)

(a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:

(i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and

(ii) a summary of new substantive provisions appearing only in the enacted rule.

(b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.

(10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.

(11)

(a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.

(b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).

(12)

(a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period under Subsection (11), nor more than 120 days after the publication date.

(b) The agency shall provide notice of the rule's effective date to the office in the form required by the department.

(c) The notice of effective date may not provide for an effective date prior to the date it is received by the office.

(d) The office shall publish notice of the effective date of the rule in the next issue of the bulletin.

(e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the office within 120 days of publication.

(13)

(a) As used in this Subsection (13), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.

(b) A state agency shall initiate rulemaking proceedings no later than 180 days after the effective date of the statutory provision that specifically requires the rulemaking, except under Subsection (13)(c).

(c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency shall submit the rules to the Administrative Rules Review Committee for review within 60 days after the statute requiring the rulemaking takes effect.

(d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (13)(b), the state agency shall appear before the legislative

Administrative Rules Review Committee and provide the reasons for the delay.

Amended by Chapter 255, 2017 General Session

63G-3-302 Public hearings.

- (1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.
- (2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:
 - (a) a public hearing is required by state or federal mandate;
 - (b)
 - (i) another state agency, 10 interested persons, or an interested association having not fewer than 10 members request a public hearing; and
 - (ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.
- (3) The agency shall hold the hearing:
 - (a) before the rule becomes effective; and
 - (b) no less than seven days nor more than 30 days after receipt of the request for hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-303 Changes in rules.

- (1)
 - (a) To change a proposed rule already published in the bulletin, an agency shall file with the office:
 - (i) the text of the changed rule; and
 - (ii) a rule analysis containing a description of the change and the information required by Section 63G-3-301.
 - (b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.
 - (c) The office shall publish the rule analysis for the changed rule in the bulletin.
 - (d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.
 - (e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the office within 120 days of publication of the last change in proposed rule.
- (2) If the rule change is nonsubstantive:
 - (a) the agency need not comply with the requirements of Subsection (1); and
 - (b) the agency shall notify the office of the change in writing.
- (3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63G-3-301.

Amended by Chapter 193, 2016 General Session

63G-3-304 Emergency rulemaking procedure.

- (1) All agencies shall comply with the rulemaking procedures of Section 63G-3-301 unless an agency finds that these 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.
- (2)
 - (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the office:
 - (i) the text of the rule; and
 - (ii) a rule analysis that includes the specific reasons and justifications for its findings.
 - (b) The office shall publish the rule in the bulletin as provided in Subsection 63G-3-301(4).
 - (c) The agency shall notify interested persons as provided in Subsection 63G-3-301(10).
 - (d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.
- (3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63G-3-301.

Amended by Chapter 193, 2016 General Session

63G-3-305 Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.

- (1) Each agency shall review each of its rules within five years after the rule's original effective date or within five years after the filing of the last five-year review, whichever is later.
- (2) An agency may consider any substantial review of a rule to be a five-year review if the agency also meets the requirements described in Subsection (3).
- (3) At the conclusion of its review, and no later than the deadline described in Subsection (1), the agency shall decide whether to continue, repeal, or amend and continue the rule and comply with Subsections (3)(a) through (c), as applicable.
 - (a) If the agency continues the rule, the agency shall file with the office a five-year notice of review and statement of continuation that includes:
 - (i) a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;
 - (ii) a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and
 - (iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.
 - (b) If the agency repeals the rule, the agency shall:
 - (i) comply with Section 63G-3-301; and
 - (ii) in the rule analysis described in Section 63G-3-301, state that the repeal is the result of the agency's five-year review under this section.
 - (c) If the agency amends and continues the rule, the agency shall comply with the requirements described in Section 63G-3-301 and file with the office the five-year notice of review and statement of continuation required in Subsection (3)(a).
- (4) The office shall publish a five-year notice of review and statement of continuation in the

bulletin no later than one year after the deadline described in Subsection (1).

(5)

(a) The office shall make a reasonable effort to notify an agency that a rule is due for review at least 180 days before the deadline described in Subsection (1).

(b) The office's failure to comply with the requirement described in Subsection (5)(a) does not exempt an agency from complying with any provision of this section.

(6) If an agency finds that it will not meet the deadline established in Subsection (1):

(a) before the deadline described in Subsection (1), the agency may file one extension with the office indicating the reason for the extension; and

(b) the office shall publish notice of the extension in the bulletin in accordance with the office's publication schedule established by rule under Section 63G-3-402.

(7) An extension permits the agency to comply with the requirements described in Subsections (1) and (3) up to 120 days after the deadline described in Subsection (1).

(8)

(a) If an agency does not comply with the requirements described in Subsection (3), and does not file an extension under Subsection (6), the rule expires automatically on the day immediately after the date of the missed deadline.

(b) If an agency files an extension under Subsection (6) and does not comply with the requirements described in Subsection (3) within 120 days after the day on which the deadline described in Subsection (1) expires, the rule expires automatically on the day immediately after the date of the missed deadline.

(9) After a rule expires under Subsection (8), the office shall:

(a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer enforceable;

(b) remove the rule from the code; and

(c) notify the agency that the rule has expired.

(10) After a rule expires, an agency must comply with the requirements of Section 63G-3-301 to reenact the rule.

Amended by Chapter 193, 2016 General Session

Part 4

Office of Administrative Rules

63G-3-401 Office of Administrative Rules created -- Coordinator.

(1) There is created within the Department of Administrative Services the Office of Administrative Rules, to be administered by a coordinator.

(2) The coordinator shall hire, train, and supervise staff necessary for the office to carry out the provisions of this chapter.

Amended by Chapter 193, 2016 General Session

63G-3-402 Office of Administrative Rules -- Duties generally.

(1) The office shall:

(a) record in a register the receipt of all agency rules, rule analysis forms, and notices of

- effective dates;
 - (b) make the register, copies of all proposed rules, and rulemaking documents available for public inspection;
 - (c) publish all proposed rules, rule analyses, notices of effective dates, and review notices in the bulletin at least monthly, except that the office may publish the complete text of any proposed rule that the executive director or the executive director's designee determines is too long to print or too expensive to publish by reference to the text maintained by the office;
 - (d) compile, format, number, and index all effective rules in an administrative code, and periodically publish that code and supplements or revisions to it;
 - (e) publish a digest of all rules and notices contained in the most recent bulletin;
 - (f) publish at least annually an index of all changes to the administrative code and the effective date of each change;
 - (g) print, or contract to print, all rulemaking publications the executive director determines necessary to implement this chapter;
 - (h) distribute without charge the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature;
 - (i) distribute without charge the digest and index to state legislators, agencies, political subdivisions on request, and the Office of Legislative Research and General Counsel;
 - (j) distribute, at prices covering publication costs, all paper rulemaking publications to all other requesting persons and agencies;
 - (k) provide agencies assistance in rulemaking;
 - (l) if the department operates the office as an internal service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in Section 63A-1-114:
 - (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
 - (ii) other information or analysis requested by the Rate Committee;
 - (m) administer this chapter and require state agencies to comply with filing, publication, and hearing procedures; and
 - (n) make technological improvements to the rulemaking process, including improvements to automation and digital accessibility.
- (2) The department shall establish by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all filing, publication, and hearing procedures necessary to make rules under this chapter.
- (3) The office may after notifying the agency make nonsubstantive changes to rules filed with the office or published in the bulletin or code by:
- (a) implementing a uniform system of formatting, punctuation, capitalization, organization, numbering, and wording;
 - (b) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
 - (c) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
 - (d) updating or correcting annotations associated with a section, part, rule, or title; and
 - (e) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.
- (4) In addition, the office may make the following nonsubstantive changes with the concurrence of the agency:

- (a) eliminate duplication within rules;
 - (b) eliminate obsolete and redundant words; and
 - (c) correct defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules.
- (5) For nonsubstantive changes made in accordance with Subsection (3) or (4) after publication of the rule in the bulletin, the office shall publish a list of nonsubstantive changes in the bulletin. For each nonsubstantive change, the list shall include:
- (a) the affected code citation;
 - (b) a brief description of the change; and
 - (c) the date the change was made.
- (6) All funds appropriated or collected for publishing the office's publications shall be nonlapsing.

Amended by Chapter 193, 2016 General Session

63G-3-403 Repeal and reenactment of Utah Administrative Code.

- (1) When the executive director determines that the Utah Administrative Code requires extensive revision and reorganization, the office may repeal the code and reenact a new code according to the requirements of this section.
- (2) The office may:
- (a) reorganize, reformat, and renumber the code;
 - (b) require each agency to review its rules and make any organizational or substantive changes according to the requirements of Section 63G-3-303; and
 - (c) require each agency to prepare a brief summary of all substantive changes made by the agency.
- (3) The office may make nonsubstantive changes in the code by:
- (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;
 - (b) eliminating duplication;
 - (c) correcting defective or inconsistent section and paragraph structure in arrangement of the subject matter of rules;
 - (d) eliminating all obsolete or redundant words;
 - (e) correcting obvious errors and inconsistencies in punctuation, capitalization, numbering, referencing, and wording;
 - (f) changing a catchline to more accurately reflect the substance of each section, part, rule, or title;
 - (g) updating or correcting annotations associated with a section, part, rule, or title; and
 - (h) merging or determining priority of any amendment, enactment, or repeal to the same rule or section made effective by an agency.
- (4)
- (a) To inform the public about the proposed code reenactment, the office shall publish in the bulletin:
 - (i) notice of the code reenactment;
 - (ii) the date, time, and place of a public hearing where members of the public may comment on the proposed reenactment of the code;
 - (iii) locations where the proposed reenactment of the code may be reviewed; and
 - (iv) agency summaries of substantive changes in the reenacted code.

- (b) To inform the public about substantive changes in agency rules contained in the proposed reenactment, each agency shall:
 - (i) make the text of their reenacted rules available:
 - (A) for public review during regular business hours; and
 - (B) in an electronic version; and
 - (ii) comply with the requirements of Subsection 63G-3-301(10).
- (5) The office shall hold a public hearing on the proposed code reenactment no fewer than 30 days nor more than 45 days after the publication required by Subsection (4)(a).
- (6) The office shall distribute complete text of the proposed code reenactment without charge to:
 - (a) state-designated repositories in Utah;
 - (b) the Administrative Rules Review Committee; and
 - (c) the Office of Legislative Research and General Counsel.
- (7) The former code is repealed and the reenacted code is effective at noon on a date designated by the office that is not fewer than 45 days nor more than 90 days after the publication date required by this section.
- (8) Repeal and reenactment of the code meets the requirements of Section 63G-3-305 for a review of all agency rules.

Amended by Chapter 193, 2016 General Session

Part 5

Legislative Oversight

63G-3-501 Administrative Rules Review Committee.

- (1)
 - (a) There is created an Administrative Rules Review Committee of the following 10 permanent members:
 - (i) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and
 - (ii) five members of the House of Representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party.
 - (b) Each permanent member shall serve:
 - (i) for a two-year term; or
 - (ii) until the permanent member's successor is appointed.
 - (c)
 - (i) A vacancy exists when a permanent member ceases to be a member of the Legislature, or when a permanent member resigns from the committee.
 - (ii) When a vacancy exists:
 - (A) if the departing member is a member of the Senate, the president of the Senate shall appoint a member of the Senate to fill the vacancy; or
 - (B) if the departing member is a member of the House of Representatives, the speaker of the House of Representatives shall appoint a member of the House of Representatives to fill the vacancy.
 - (iii) The newly appointed member shall serve the remainder of the departing member's unexpired term.

- (d)
 - (i) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a)(i) as a cochair of the committee.
 - (ii) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.
- (e) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.
- (f)
 - (i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each month to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules.
 - (ii) The committee chairs may suspend the meeting requirement described in Subsection (1)(f)(i) at the committee chairs' discretion.
- (2) The office shall submit a copy of each issue of the bulletin to the committee.
- (3)
 - (a) The committee shall exercise continuous oversight of the rulemaking process.
 - (b) The committee shall examine each rule submitted by an agency to determine:
 - (i) whether the rule is authorized by statute;
 - (ii) whether the rule complies with legislative intent;
 - (iii) the rule's impact on the economy and the government operations of the state and local political subdivisions; and
 - (iv) the rule's impact on affected persons.
 - (c) To carry out these duties, the committee may examine any other issues that the committee considers necessary. The committee may also notify and refer rules to the chairs of the interim committee that has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.
 - (d) In reviewing a rule, the committee shall follow generally accepted principles of statutory construction.
- (4) When the committee reviews existing rules, the committee chairs shall invite the Senate and House chairs of the standing committee and of the appropriation subcommittee that have jurisdiction over the agency whose existing rules are being reviewed to participate as nonvoting, ex officio members with the committee.
- (5) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.
- (6) In order to accomplish the committee's functions described in this chapter, the committee has all the powers granted to legislative interim committees under Section 36-12-11.
- (7)
 - (a) The committee may prepare written findings of the committee's review of a rule and may include any recommendations, including legislative action.
 - (b) When the committee reviews a rule, the committee shall provide to the agency that enacted the rule:
 - (i) the committee's findings, if any; and
 - (ii) a request that the agency notify the committee of any changes the agency makes to the rule.
 - (c) The committee shall provide a copy of the committee's findings, if any, to:

- (i) any member of the Legislature, upon request;
 - (ii) any person affected by the rule, upon request;
 - (iii) the president of the Senate;
 - (iv) the speaker of the House of Representatives;
 - (v) the Senate and House chairs of the standing committee that has jurisdiction over the agency that made the rule; and
 - (vi) the Senate and House chairs of the appropriation subcommittee that has jurisdiction over the agency that made the rule.
- (8)
- (a) The committee may submit a report on its review of state agency rules to each member of the Legislature at each regular session.
 - (b) The report shall include:
 - (i) any findings and recommendations the committee made under Subsection (7);
 - (ii) any action an agency took in response to committee recommendations; and
 - (iii) any recommendations by the committee for legislation.

Amended by Chapter 193, 2016 General Session

63G-3-502 Legislative reauthorization of agency rules -- Extension of rules by governor.

- (1) All grants of rulemaking power from the Legislature to a state agency in any statute are made subject to the provisions of this section.
- (2)
- (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature.
 - (b) Notwithstanding the provisions of Subsection (2)(a), an agency's rules do not expire if:
 - (i) the rule is explicitly mandated by a federal law or regulation; or
 - (ii) a provision of Utah's constitution vests the agency with specific constitutional authority to regulate.
- (3)
- (a) The Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session.
 - (b) The omnibus legislation shall be substantially in the following form: "All rules of Utah state agencies are reauthorized except for the following:".
 - (c) Before sending the legislation to the governor for the governor's action, the Administrative Rules Review Committee may send a letter to the governor and to the agency explaining specifically why the committee believes any rule should not be reauthorized.
 - (d) For the purpose of this section, the entire rule, a single section, or any complete paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered by the Legislature.
- (4) The Legislature's reauthorization of a rule by legislation does not constitute legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative intent.
- (5)
- (a) If an agency believes that a rule that has not been reauthorized by the Legislature or that will be allowed to expire should continue in full force and effect and is a rule within their authorized rulemaking power, the agency may seek the governor's declaration extending the

rule beyond the expiration date.

(b) In seeking the extension, the agency shall submit a petition to the governor that affirmatively states:

(i) that the rule is necessary; and

(ii) a citation to the source of its authority to make the rule.

(c)

(i) If the governor finds that the necessity does exist, and that the agency has the authority to make the rule, the governor may declare the rule to be extended by publishing that declaration in the Administrative Rules Bulletin on or before April 15 of that year.

(ii) The declaration shall set forth the rule to be extended, the reasons the extension is necessary, and a citation to the source of the agency's authority to make the rule.

(d) If the omnibus bill required by Subsection (3) fails to pass both houses of the Legislature or is found to have a technical legal defect preventing reauthorization of administrative rules intended to be reauthorized by the Legislature, the governor may declare all rules to be extended by publishing a single declaration in the Administrative Rules Bulletin on or before June 15 without meeting requirements of Subsections (5)(b) and (c).

Renumbered and Amended by Chapter 382, 2008 General Session

Part 6

Judicial Review

63G-3-601 Interested parties -- Petition for agency action.

(1) As used in this section, "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection 63G-3-301(4), of an agency's proposed rule to implement a petition for the making, amendment, or repeal of a rule as provided in this section.

(2) An interested person may petition an agency to request the making, amendment, or repeal of a rule.

(3) The department shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition.

(4) A statement shall accompany the proposed rule, or proposed amendment or repeal of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and appropriate to the powers of the agency.

(5) Within 60 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings.

(6)

(a) If the petition is submitted to a board that has been granted rulemaking authority by the Legislature, the board shall, within 45 days of the submission of the petition, place the petition on its agenda for review.

(b) Within 80 days of the submission of the petition, the board shall either:

(i) deny the petition in writing stating its reasons for denial; or

(ii) initiate rulemaking proceedings.

(7) If the agency or board has not provided the petitioner written notice that the agency has denied the petition or initiated rulemaking proceedings within the time limitations specified in Subsection (5) or (6) respectively, the petitioner may seek a writ of mandamus in state district

court.

Amended by Chapter 181, 2017 General Session

63G-3-602 Judicial challenge to administrative rules.

(1)

(a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a complaint with the county clerk in the district court where the person resides or in the district court in Salt Lake County.

(b) Any person aggrieved by an agency's failure to comply with Section 63G-3-201 may obtain judicial review of the agency's failure to comply by filing a complaint with the clerk of the district court where the person resides or in the district court in Salt Lake County.

(2)

(a) Except as provided in Subsection (2)(b), a person seeking judicial review under this section shall exhaust that person's administrative remedies by complying with the requirements of Section 63G-3-601 before filing the complaint.

(b) When seeking judicial review of a rule, the person need not exhaust that person's administrative remedies if:

(i) less than six months has passed since the date that the rule became effective and the person had submitted verbal or written comments on the rule to the agency during the public comment period;

(ii) a statute granting rulemaking authority expressly exempts rules made under authority of that statute from compliance with Section 63G-3-601; or

(iii) compliance with Section 63G-3-601 would cause the person irreparable harm.

(3)

(a) In addition to the information required by the Utah Rules of Civil Procedure, a complaint filed under this section shall contain:

(i) the name and mailing address of the plaintiff;

(ii) the name and mailing address of the defendant agency;

(iii) the name and mailing address of any other party joined in the action as a defendant;

(iv) the text of the rule or proposed rule, if any;

(v) an allegation that the person filing the complaint has either exhausted the administrative remedies by complying with Section 63G-3-601 or met the requirements for waiver of exhaustion of administrative remedies established by Subsection (2)(b);

(vi) the relief sought; and

(vii) factual and legal allegations supporting the relief sought.

(b)

(i) The plaintiff shall serve a summons and a copy of the complaint as required by the Utah Rules of Civil Procedure.

(ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil Procedures.

(iii) The agency shall file the administrative record of the rule, if any, with its responsive pleading.

(4) The district court may grant relief to the petitioner by:

(a) declaring the rule invalid, if the court finds that:

(i) the rule violates constitutional or statutory law or the agency does not have legal

- authority to make the rule;
 - (ii) the rule is not supported by substantial evidence when viewed in light of the whole administrative record; or
 - (iii) the agency did not follow proper rulemaking procedure;
 - (b) declaring the rule nonapplicable to the petitioner;
 - (c) remanding the matter to the agency for compliance with proper rulemaking procedures or further fact-finding;
 - (d) ordering the agency to comply with Section 63G-3-201;
 - (e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action that would cause irreparable harm to the petitioner; or
 - (f) any combination of Subsections (4)(a) through (e).
- (5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may review and act on a complaint under this section whether or not the plaintiff has requested the agency review under Section 63G-3-601.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-603 Time for contesting a rule -- Statute of limitations.

- (1) A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this chapter shall commence within two years of the effective date of the rule.
- (2) A proceeding to contest any rule on the ground of not being supported by substantial evidence when viewed in light of the whole administrative record shall commence within four years of the effective date of the challenged action.
- (3) A proceeding to contest any rule on the basis that a change to the rule made under Subsection 63G-3-402(2) or (3) substantively changed the rule shall be commenced within two years of the date the change was made.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 7

Official Compilation of Administrative Rules

63G-3-701 Utah Administrative Code as official compilation of rules -- Judicial notice.

The code shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the administrative law of the state of Utah and as an authorized compilation of the administrative law of Utah. All courts shall take judicial notice of the code and its provisions.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-702 Utah Administrative Code -- Organization -- Official compilation.

- (1) The Utah Administrative Code shall be divided into three parts:
 - (a) titles, whose number shall begin with "R";
 - (b) rules; and

(c) sections.

(2) All sections contained in the code are referenced by a three-part number indicating its location in the code.

(3) The office shall maintain the official compilation of the code and is the state-designated repository for administrative rules. If a dispute arises in which there is more than one version of a rule, the latest effective version on file with the office is considered the correct, current version.

Amended by Chapter 193, 2016 General Session

R15. Administrative Services, Administrative Rules (Office of).

R15-1. Administrative Rule Hearings.

R15-1-1. Authority.

- (1) This rule establishes procedures and standards for administrative rule hearings as required by Subsection 63G-3-402(1)(a).
- (2) The procedures of this rule constitute the minimum requirements for mandatory administrative rule hearings. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R15-1-2. Definitions.

- (1) Terms used in this rule are defined in Section 63G-3-102.
- (2) In addition:
 - (a) "coordinator" means the coordinator of the Office of Administrative Rules;
 - (b) "hearing" means an administrative rule hearing; and
 - (c) "officer" means an administrative rule hearing officer.

R15-1-3. Purpose.

- (1) The purpose of this rule is to provide:
 - (a) procedures for agency hearings on proposed administrative rules or rules changes, or on the need for a rule or change;
 - (b) opportunity for public comment on rules; and
 - (c) opportunity for agency response to public concerns about rules.

R15-1-4. When Agencies Hold Hearings.

- (1) Agencies shall hold hearings as required by Subsection 63G-3-302(2).
- (2) Agencies may hold hearings:
 - (a) during the public comment period on a proposed rule, after its publication in the bulletin and prior to its effective date;
 - (b) before initiating rulemaking procedures under Title 63G, Chapter 3, to promote public input prior to a rule's publication;
 - (c) during a regular or extraordinary meeting of a state board, council, or commission, in order to avoid separate and additional meetings; or
 - (d) to hear any public petition for a rule change as provided by Section 63G-3-601.
- (3) Voluntary hearings, as described in this section, follow the procedures prescribed by this rule or any other procedures the agency may provide by rule.
- (4) Mandatory hearings, as described in this section, follow the procedures prescribed by this rule and any additional requirements of state or federal law.

(5) If an agency holds a mandatory hearing under the procedures of this rule during the public comment period described in Subsection 63G-3-301(6), no second hearing is required for the purpose of comment on the same rule or change considered at the first hearing.

R15-1-5. Hearing Procedures.

(1) Notice.

(a) An agency shall provide notice of a hearing by:

- (i) publishing the hearing date, time, place, and subject in the bulletin;
- (ii) mailing copies of the notice directly to persons who have petitioned for a hearing or rule changes under Section 63G-3-302 or 63G-3-601, respectively; and
- (iii) posting for at least 24 hours in a place in the agency's offices which is frequented by the public.

(b) If a hearing becomes mandatory after the agency has published the proposed rule in the bulletin, the agency shall notify in writing persons requesting the hearing of the time and place.

(c) An agency may provide additional notice of a hearing, and shall give further notice as may otherwise be required by law.

(2) Hearing Officer.

(a) The agency head shall appoint as hearing officer a person qualified to conduct fairly the hearing.

(b) No restrictions apply to this appointment except the officer shall know rulemaking procedure.

(c) If a state board, council, or commission is responsible for agency rulemaking, and holds a hearing, a member or the body's designee may be the hearing officer.

(3) Time. The officer shall open the hearing at the announced time and place and permit comment for a minimum of one hour. The hearing may be extended or continued to another day as necessary in the judgment of the officer.

(4) Comment.

(a) At the opening of the hearing, the officer shall explain the subject and purpose of the hearing and invite orderly, germane comment from all persons in attendance. The officer may set time limits for speakers and shall ensure equitable use of time.

(b) The agency shall have a representative at the hearing, other than the officer, who is familiar with the rule at issue and who can respond to requests for information by those in attendance.

(c) The officer shall invite written comment to be submitted at the hearing or after the hearing, within a reasonable time. Written comment shall be attached to the hearing minutes.

(d) The officer shall conduct the hearing as an open, informal, orderly, and informative meeting. Oaths, cross-examination, and rules of evidence are not required.

(5) The Hearing Record.

- (a) The officer shall cause to be recorded the name, address, and relevant affiliation of all persons speaking at the hearing, and cause an electronic or mechanical verbatim recording of the hearing to be made, or make a brief summary, of their remarks.
- (b) The hearing record consists of a copy of the proposed rule or rule change, submitted written comment, the hearing recording or summary, the list of persons speaking at the hearing, and other pertinent documents as determined by the agency.
- (c) The hearing officer shall, as soon as practicable, assemble the hearing record and transmit it to the agency for consideration.
- (d) The hearing record shall be kept with and as part of the rule's administrative record in a file available at the agency offices for public inspection.

R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.

(1) When a hearing issue requires a decision regarding rulemaking procedure, the officer shall submit a written request for a decision to the coordinator as soon as practicable after, or after recessing, the hearing, as provided in Section R15-5-6. The coordinator shall reply to the agency head as provided in Subsection R15-5-6(2). The coordinator's decision shall be included in the hearing record.

R15-1-9. Appeal and Judicial Review.

(1) Persons may appeal the decision of the agency head or the coordinator by petitioning the district court for judicial review as provided by law.

KEY: administrative law, government hearings

Date of Enactment or Last Substantive Amendment: June 1, 1996

Notice of Continuation: September 11, 2015

Authorizing, and Implemented or Interpreted Law: 63G-3-402

R15. Administrative Services, Administrative Rules (Office of).

R15-2. Public Petitioning for Rulemaking.

R15-2-1. Authority.

As required by Subsection 63G-3-601(3), this rule prescribes the form and procedures for submission, consideration, and disposition of petitions requesting the making, amendment, or repeal of an administrative rule.

R15-2-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) Other terms are defined as follows:

(a) "rule change" means:

- (i) making a new rule;
- (ii) amending, repealing, or repealing and reenacting an existing rule;
- (iii) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63G-3-303;
- (iv) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or
- (v) any combination of the above.

(b) "petitioner" means an interested person who submits a petition to an agency pursuant to Section 63G-3-601 and this rule.

R15-2-3. Petition Procedure.

(1) The petitioner shall send the petition to the head of the agency authorized by law to make the rule change requested.

(2) The agency receiving the petition shall record the date it received the petition.

R15-2-4. Petition Form.

The petition shall:

- (a) be clearly designated "petition for a rule change";
- (b) state the petitioner's name;
- (c) state the petitioner's interest in the rule, including relevant affiliation, if any;
- (d) include a statement as required by Subsection 63G-3-601(4) regarding the requested rule change;
- (e) state the approximate wording of the requested rule change;
- (f) describe the reason for the rule change;

- (g) include an address, an e-mail address when available, and telephone where the petitioner can be reached during regular business hours; and
- (h) be signed by the petitioner.

R15-2-5. Petition Consideration and Disposition.

- (1) The agency head or designee shall:
 - (a) review and consider the petition;
 - (b) write a response to the petition stating:
 - (i) that the petition is denied and reasons for denial; or
 - (ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and
 - (c) send the response to the petitioner within the time frame provided by Section 63G-3-601.
- (2) The petitioned agency may, within the time frame provided by Section 63G-3-601, interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its judgment, deems necessary to provide the petition due consideration.
- (3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.
- (4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

KEY: administrative law, open government, transparency

Date of Enactment or Last Substantive Amendment: December 25, 2006

Notice of Continuation: September 11, 2015

Authorizing, and Implemented or Interpreted Law: 63G-3-601

R15. Administrative Services, Administrative Rules (Office of).
R15-3. Administrative Rules: Scope, Content, and When Required,

R15-3-1. Authority, Purpose, and Definitions.

- (1) This rule is authorized under Subsection 63G-3-402(1) and (2).
- (2) This rule clarifies when rulemaking is required, and requirements for incorporation by reference within rules.
- (3) Terms used in this rule are defined in Section 63G-3-102.

R15-3-2. Agency Discretion.

- (1) A rule may restrict agency discretion to prevent agency personnel from exceeding their scope of employment, or committing arbitrary action or application of standards, or to provide due process for persons affected by agency actions.
- (2) A rule may authorize agency discretion that sets limits, standards, and scope of employment within which a range of actions may be applied by agency personnel. A rule may also establish criteria for granting exceptions to the standards or procedures of the rule when, in the judgment of authorized personnel, documented circumstances warrant.
- (3) An agency may have written policies which broadly prescribe goals and guidelines. Policies are not rules unless they meet the criteria for rules set forth under Section 63G-3-201(2).
- (4) Within the limits prescribed by Sections 63G-3-201 and 63G-3-602, an agency has full discretion regarding the substantive content of its rules. The office has authority over nonsubstantive content under Subsections 63G-3-402(3) and (4), and 63G-3-403(2) and (3), rulemaking procedures, and the physical format of rules for compilation in the Utah Administrative Code.

R15-3-3. Use of Incorporation by Reference in Rules.

- (1) An agency incorporating materials by reference as permitted under Subsection 63G-3-201(7) shall comply with the following standards:
 - (a) The rule shall state specifically that the cited material is "incorporated by reference."
 - (b) If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the rule.
 - (c) If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its rule through rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

- (d) In accordance with Subsection 63G-3-201(7)(c), an agency shall describe substantive changes that appear in the materials incorporated by reference as part of the "summary of rule or change" in the rule analysis.
- (2) An agency shall comply with copyright requirements when providing the office a copy of material incorporated by reference.

R15-3-4. Computer-Prohibited Material.

- (1) All rules shall be in a format that permits their compatibility with the office's computer system and compilation into the Utah Administrative Code.
- (2) Rules may not contain maps, charts, graphs, diagrams, illustrations, forms, or similar material.
- (3) The office shall issue and provide to agencies instructions and standards for formatting rules.

R15-3-5. Statutory Provisions that Require Rulemaking Pursuant to Subsection 63G-3-301(13).

For the purposes of Subsection 63G-3-301(13), the phrase "statutory provision that requires the rulemaking" means a state statutory provision that explicitly mandates rulemaking.

KEY: administrative law

Date of Enactment or Last Substantive Amendment: April 30, 2007

Notice of Continuation: September 11, 2015

Authorizing, and Implemented or Interpreted Law: 63G-3-201; 63G-3-301; 63G-3-402

R15. Administrative Services, Administrative Rules (Office of).
R15-4. Administrative Rulemaking Procedures.

R15-4-1. Authority and Purpose.

- (1) This rule establishes procedures for filing and publication of agency rules under Sections 63G-3-301, 63G-3-303, and 63G-3-304, as authorized under Subsection 63G-3-402(2).
- (2) The procedures of this rule constitute minimum requirements for rule filing and publication. Other governing statutes, federal laws, or federal regulations may require additional rule filing and publication procedures.

R15-4-2. Definitions.

- (1) Terms used in this rule are defined in Section 63G-3-102.
- (2) Other terms are defined as follows:
 - (a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the office the most recent five-year review required under Subsection 63G-3-305(3), whichever is sooner.
 - (b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63G-3-402(1)(e);
 - (c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63G-3-301(4)(b);
 - (d) "Compliance cost" means expenditures a regulated person will incur if a rule or change is made effective;
 - (e) "coordinator" means the coordinator of the Office of Administrative Rules;
 - (f) "Cost" means the aggregated expenses persons as a class affected by a rule will incur if a rule or change is made effective;
 - (g) "eRules" means the administrative rule filing application that agencies use to file rules and notices;
 - (h) "Savings" means:
 - (i) an aggregated monetary amount that will no longer be incurred by persons as a class if a rule or change is made effective;
 - (ii) an aggregated monetary amount that will be refunded or rebated if a rule or change is made effective;

- (iii) an aggregated monetary amount of anticipated revenues to be generated for state budgets, local governments, or both if a rule or change is made effective; or
- (iv) any combination of these aggregated monetary amounts.
- (i) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63G-3-301(4)(b).

R15-4-3. Publication Dates and Deadlines.

- (1) For the purposes of Subsections 63G-3-301(4) and 63G-3-303(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.
 - (a) If the first or fifteenth day is a Saturday, or a Tuesday, Wednesday, Thursday, or Friday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the previous regular business day.
 - (b) If the first or fifteenth day is a Sunday or Monday holiday, the agency shall file the rule and rule analysis by 11:59:59 p.m. on the next regular business day.
- (2) For all purposes, the official date of publication for the bulletin and digest shall be the first and fifteenth days of each month.

R15-4-4. Thirty-Day Comment Period for a Proposed Rule and a Change in Proposed Rule.

- (1) For the purposes of Sections 63G-3-301 and 63G-3-303, "30 days" shall be computed by:
 - (a) counting the day after publication of the rule as the first day; and
 - (b) counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless
 - (c) the thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the thirtieth day is the next regular business day.

R15-4-5a. Notice of the Effective Date for a Proposed Rule.

- (1)(a) Pursuant to Subsection 63G-3-301(12), upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the office of the date the rule is to become effective and enforceable.
 - (b) The agency shall notify the office after determining that the proposed rule, in the form published, shall be the final form of the rule, and after informing the office of any nonsubstantive changes in the rule as provided for in Section R15-4-6.
- (2)(a) The agency shall notify the office by filing with the office a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the office by any other form of written communication clearly identifying the proposed rule, stating the date the rule was filed with the office or published in the bulletin, and stating its effective date.

(3) The date designated as the effective date shall be:

(a) at least seven days after the comment period specified on the rule analysis; or

(b) if the agency formally extends the comment period for a proposed rule by publishing a subsequent notice in an issue of the bulletin, at least seven days after the extended comment period.

(4) The office shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for a notice of effective date for a proposed rule, nor requirement that it be published prior to the effective date.

R15-4-5b. Notice of the Effective Date for a Change in Proposed Rule.

(1)(a) Upon expiration of the 30-day period required by Section 63G-3-303, and before expiration of the 120th day after publication of a change in proposed rule, the agency promulgating the rule shall notify the office of the date the rule is to become effective and enforceable.

(b) The agency shall notify the office after determining that the rule text as published is the final form of the rule, and after informing the office of any nonsubstantive changes in the rule as provided for in Section R15-4-6.

(2)(a) The agency shall notify the office by filing with the office a Notice of Effective Date form using eRules.

(b) If the eRules Notice of Effective Date form is unavailable to the agency, the agency may notify the office by any other form of written communication clearly identifying the change in proposed rule and any rules upon which the change in proposed rule is dependent, stating the date the rules were filed with the office or published in the bulletin, and stating the effective date.

(3) The date designated as the effective date shall be:

(a) at least 30 days after the publication date of the rule in the bulletin, or

(b) if the agency designated a comment period, at least seven days after a comment period designated by the agency on the rule analysis or formally extended by publication of a subsequent notice in the bulletin.

(4) The office shall publish notice of the effective date in the next issue of the bulletin. There is no publication deadline for the notice of effective date for a change in proposed rule, nor requirement that it be published prior to the effective date.

R15-4-6. Nonsubstantive Changes in Rules.

- (1) Pursuant to Subsections 63G-3-201(4)(d) and 63G-3-303(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.
- (2) The agency proposing a change shall determine if the change is substantive or nonsubstantive according to the criteria cited in Subsection R15-4-6(1).
 - (a) The agency may seek the advice of the attorney general or the office, but the agency is responsible for compliance with the cited criteria.
- (3) Without complying with regular rulemaking procedures, an agency may make nonsubstantive changes in:
 - (a) proposed rules already published in the bulletin and digest but not made effective; or
 - (b) rules already effective.
- (4) To make a nonsubstantive change in a rule, the agency shall:
 - (a) notify the office by filing with the office the form designated for nonsubstantive changes;
 - (b) include with the notice the rule text to be changed, with changes marked as required by Section R15-4-9; and
 - (c) include with the notice the name of the agency head or designee authorizing the change.
- (5) A nonsubstantive change becomes effective on the date the office makes the change in the Utah Administrative Code.
- (6) The office shall record the nonsubstantive change and its effective date in the administrative rules register.

R15-4-7. Substantive Changes in Proposed Rules.

- (1) Pursuant to Section 63G-3-303, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.
 - (a) The procedures of this section apply if:
 - (i) the agency determines a change in the rule is necessary;
 - (ii) the change is substantive under the criteria of Subsection 63G-3-102(20);
 - (iii) the rule was published as a proposal in the bulletin and digest; and
 - (iv) the rule has not been made effective under the procedures of Subsection 63G-3-301(12) and Section R15-4-5a.
 - (b) If the rule is already effective, the agency shall comply with regular rulemaking procedures.
- (2) To make a substantive change in a proposed rule, the agency shall file with the office:
 - (a) a rule analysis, marked to indicate the agency intends to change a rule already published, and describing the change and reasons for it; and
 - (b) a copy of the proposed rule previously published in the bulletin marked to show only those changes made since the proposed rule was previously published.
- (3) The office shall publish the rule analysis in the next issue of the bulletin, subject to the publication deadlines of Section R15-4-3. The office may also publish the changed text of the rule.

(4) The agency may make a change in proposed rule effective by following the requirements of Section R15-4-5b, or may further amend the rule by following the procedures of Sections R15-4-6 or R15-4-7.

R15-4-8. Temporary 120-Day Rules.

- (1) Pursuant to Section 63G-3-304, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.
- (2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63G-3-304(1).
 - (a) The office interprets the criteria of Subsection 63G-3-304(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.
- (3) The agency shall use the same procedures for filing and publishing a temporary rule as for a permanent rule, except:
 - (a) the rule shall become effective and enforceable on the day and hour it is recorded by the office unless the agency designates a later effective date on the rule analysis;
 - (b) no comment period is necessary;
 - (c) no public hearing is necessary; and
 - (d) the rule shall expire 120 days after the rule's effective date unless the filing agency notifies the office, on the form or by memorandum, of an earlier expiration date.
- (4) A temporary rule is separate and distinct from a rule filed under regular rulemaking procedures, though the language of the two rules may be identical. To make a temporary rule permanent, the agency shall propose a separate rule for regular rulemaking.
- (5) When a temporary rule and a similar regular rule are in effect at the same time, any conflict between the provisions of the two are resolved in favor of the rule with the most recent effective date, unless the agency designates otherwise as part of the rule analysis.
- (6) A temporary rule has the full force and effect of a permanent rule while in effect, but a temporary rule is not codified in the Utah Administrative Code.

R15-4-9. Underscoring and Striking Out.

- (1)(a) Pursuant to Subsection 63G-3-301(4)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.
 - (b) Consistent with Subsection 63G-3-301(4)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.
 - (c) The struck out language shall be surrounded by brackets.
- (2) When an agency proposes to make a new rule or section, the entire proposed text shall be underscored.

- (3)(a) When an agency proposes to repeal a complete rule it shall include as part of the information provided in the rule analysis a brief summary of the deleted language and a brief explanation of why the rule is being repealed.
- (b) The agency shall include with the rule analysis a copy of the text to be deleted in one of the following formats:
 - (i) each page annotated "repealed in its entirety" or
 - (ii) the entire text struck out in its entirety and surrounded by one set of brackets.
- (c) The office shall not publish repealed rules unless space is available within the page limits of the bulletin.
- (4) When an agency fails to mark a change as described in this section, the coordinator may refuse to codify the change. When determining whether or not to codify an unmarked change, the coordinator shall consider:
 - (a) whether the unmarked change is substantive or nonsubstantive; and
 - (b) if the purpose of public notification has been adequately served.
- (5) The coordinator's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63G-3-701 and that the agency must comply with regular rulemaking procedures to make the change.

R15-4-10. Estimates of Anticipated Cost or Savings, and Compliance Cost.

- (1) Pursuant to Subsections 63G-3-301(8)(d), 63G-3-303(1)(a), 63G-3-304(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:
 - (a) estimate the incremental cost or savings and incremental compliance cost associated with the changes proposed by the rule or change;
 - (b) estimate the incremental cost or savings and incremental compliance cost in dollars, except as otherwise provided in Subsections R15-4-10(4) and (5);
 - (c) indicate that the amount is either a cost or a savings; and
 - (d) estimate the incremental cost or savings expected to accrue to "state budgets," "local governments," "small businesses," and "persons other than small businesses, businesses, or local governmental entities" as aggregated cost or savings;
- (2) In addition, an agency may:
 - (a) provide a narrative description of anticipated cost or savings, and compliance cost;
 - (b) compare anticipated cost or savings, and compliance cost figures, for the rule or change to:
 - (i) current budgeted costs associated with the existing rule,
 - (ii) figures reported on a fiscal note attached to a related legislative bill, or
 - (iii) both (i) and (ii).
- (3) If an agency chooses to provide comparison figures, it shall clearly distinguish comparison figures from the anticipated cost or savings, and compliance cost figures.

- (4) If dollar estimates are unknown or not available, or the obtaining thereof would impose a substantial unbudgeted hardship on the agency, the agency may substitute a reasoned narrative description of cost-related actions required by the rule or change, and explain the reason or reasons for the substitution.
- (5) If no cost, savings, or compliance cost is associated with the rule or change, an agency may enter "none," "no impact," or similar words in the rule analysis followed by a written explanation of how the agency estimated that there would be no impact, or how the proposed rule, or changes made to an existing rule does not apply to "state budgets," "local government," "small businesses," "persons other than small businesses, businesses, or local governmental entities," or any combination of these.
- (6) If an agency does not provide an estimate of cost, savings, compliance cost, or a reasoned narrative description of cost information; or a written explanation as part of the rule analysis in compliance with this section, the office may, after making an attempt to obtain the required information, refuse to register and publish the rule or change. If the office refuses to register and publish a rule or change, it shall:
- (a) return the rule or change to the agency with a notice indicating that the office has refused to register and publish the rule or change;
 - (b) identify the reason or reasons why the office refused to register and publish the rule or change; and
 - (c) indicate the filing deadlines for the next issue of the bulletin.

KEY: administrative law

Date of Enactment or Last Substantive Amendment: August 24, 2007

Notice of Continuation: September 11, 2015

Authorizing, and Implemented or Interpreted Law: 63G-3-301; 63G-3-303; 63G-3-304; 63G-3-402

R15. Administrative Services, Administrative Rules (Office of).

R15-5. Administrative Rules Adjudicative Proceedings.

R15-5-1. Purpose.

- (1) This rule provides the procedures for informal adjudicative proceedings governing:
 - (a) appeal and review of a decision by the office not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and
 - (b) a determination by the office whether an agency rule meets the procedural requirements of Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.
- (2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

R15-5-2. Authority.

This rule is required by Sections 63G-4-202 and 63G-4-203, and is enacted under the authority of Subsection 63G-3-402(1)(m) and Sections 63G-4-202, 63G-4-203, and 63G-4-503.

R15-5-3. Definitions.

- (1) The terms used in this rule are defined in Section 63G-4-103.
- (2) In addition:
 - (a) "coordinator" means the coordinator of the Office of Administrative Rules; and
 - (b) "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63G-3-402(1)(f).

R15-5-4. Refusal to Publish or Register a Rule or Rule Change.

- (1) The office shall not publish a proposed rule or rule change when the office determines the agency has not met the requirements of Title 63G, Chapter 3, or of Rules R15-3 or R15-4.
- (2) The office shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63G-3-301(6)(a) as interpreted in Section R15-4-5.
- (3) The office shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.

- (1) An agency may request a review of an office refusal to publish or register a rule or rule change by filing a written petition for review with the coordinator.
- (2) The coordinator shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.
- (3) The agency may appeal the decision of the coordinator by filing a written appeal to the executive director of the Department of Administrative Services within 20 days of receipt of the coordinator's decision. The executive director shall respond within 20 days affirming or reversing the coordinator's decision.

R15-5-6. Determining the Procedural Validity of a Rule.

- (1) A person may contest the procedural validity, or request a determination of whether a rule meets the requirements of Title 63G, Chapter 3, by filing a written petition with the office.
 - (a) The rule at issue may be a proposed rule or an effective rule.
 - (b) The petition must be received by the office within the two-year limit set by Section 63G-3-603.
 - (c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.
 - (d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.
 - (e) The petition shall be accompanied by any documents the office should consider in reaching its decision.
 - (f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.
- (2) The office shall respond to the petition in writing within 20 days of its receipt.
 - (a) The office shall research all records pertaining to the rule or rule change at issue.
 - (b) The response of the office shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.
- (c) The office shall send a copy of the petition and its response to the pertinent agency.
- (3) The petitioner may request reconsideration of the office's findings by filing a written request for reconsideration with the coordinator.
 - (a) The coordinator may respond to the request in writing.
 - (b) If the petitioner receives no response within 20 days, the request is denied.

R15-5-7. Remedies Resulting from an Adjudicative Proceeding.

- (1) A rule the office determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.
- (2) The office shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.

(3) A rule the office determines is procedurally valid shall be published and registered promptly.

KEY: administrative procedures, administrative law

Date of Enactment or Last Substantive Amendment: June 1, 1996

Notice of Continuation: September 11, 2015

**Authorizing, and Implemented or Interpreted Law: 63G-3-402; 63G-4-202; 63G-4-203;
63G-4-503**

TO: Air Quality Board

THROUGH: Bryce C. Bird, Executive Secretary

FROM: Catherine Wyffels, Environmental Engineer

DATE: September 2, 2020

SUBJECT: PROPOSE FOR PUBLIC COMMENT: Amendment to Utah State Implementation Plan Section IX. Part H: Emission Limits and Operating Practices, and R307-110-17, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Division of Air Quality (DAQ) is proposing to amend Section IX, Part H of the State Implementation Plan (SIP). This amendment is necessary for Environmental Protection Agency (EPA) approval of required SIP elements in order to redesignate the Salt Lake City, UT nonattainment area, to attainment status.

On February 15, 2019, DAQ submitted to EPA the Air Quality Board-approved PM_{2.5} Serious Area SIP, including Part A and Part H. EPA is in the process of reviewing the Technical Support Documentation (TSD) and emission limits in Section IX, Part H of the PM_{2.5} SIP. In order for EPA to redesignate an area from nonattainment to attainment status, the area must have a fully approved attainment SIP. Therefore, approval of the control measures in Part H is a necessary step for full approval of the PM_{2.5} Serious Area SIP.

As part of this review process, EPA reviewed the Best Available Control Technology (BACT) analyses in the TSD and the emission limits in Part H derived from these BACT analyses. EPA has indicated that it concurs with UDAQ's BACT analyses and Part H limits, with the exception of the startup, shutdown, malfunction (SSM) limits for Kennecott's Power Plant. These conditions apply to Units 4 and 5 and are intended to limit emissions from startup events. EPA found that these provisions were not sufficiently supported in the TSD and are not approvable based on the technical information included in the TSD.

In addition, there are some uncertainties related to EPA's SSM policy. SSM exemptions in SIPs is an issue that has been litigated since 2008, when a D.C. court decision found that SSM exemptions are unlawful in federal regulations. Most recently, the Sierra Club sued EPA for including SSM exemptions in the North Carolina SIP. This most recent lawsuit will be heard in the D.C. circuit and could have nationwide ramifications on SSM policies. The court is waiting for EPA to finish its reconsideration of the SSM policy before ruling on the lawsuits.

Given the uncertainty with EPA's nationwide SSM policy and the lack of supporting documentation in the TSD, EPA has stated that the SSM provisions for the Power Plant in Part H are not approvable.

Since Kennecott's Power Plant has been shut down and the units subject to these provisions are no longer in operation, UDAQ is proposing to remove these provisions from Part H to ensure that these limits do not delay EPA approval of the PM_{2.5} Serious Area SIP and redesignation to attainment. Kennecott has reviewed the proposed changes and agrees with the removal of the SSM provisions from Part H.

R307-110-17 is the rule that incorporates Part H into the air quality rules. This rule needs to be amended to update the incorporation date to reflect the changes made in Part H.

Staff Recommendation: Staff recommends that the Board propose SIP Subsection IX. Part H: Emission Limits and Operating Practices, and R307-110-17 for public comment.

Utah State Implementation Plan

Emission Limits and Operating Practices

Section IX, Part H

Adopted by the Air Quality Board
November 20, 2019

H.1 General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, PM₁₀ Requirements

- a. Except as otherwise outlined in individual conditions of this Subsection IX.H.1 listed below, the terms and conditions of this Subsection IX.H.1 shall apply to all sources subsequently addressed in Subsection IX.H.2 and IX.H.3. Should any inconsistencies exist between these two subsections, the source specific conditions listed in IX.H.2 and IX.H.3 shall take precedence.
- b. Definitions.
 - i. The definitions contained in R307-101-2, Definitions, apply to Section IX, Part H.
 - ii. Natural gas curtailment means a period of time during which the supply of natural gas to an affected facility is halted for reasons beyond the control of the facility. The act of entering into a contractual agreement with a supplier of natural gas established for curtailment purposes does not constitute a reason that is under the control of a facility for the purposes of this definition. An increase in the cost or unit price of natural gas does not constitute a period of natural gas curtailment.
- c. Recordkeeping and Reporting
 - i. Any information used to determine compliance shall be recorded for all periods when the source is in operation, and such records shall be kept for a minimum of five years. Any or all of these records shall be made available to the Director upon request, and shall include a period of two years ending with the date of the request.
 - ii. Each source shall comply with all applicable sections of R307-150 Emission Inventories.
 - iii. Each source shall submit a report of any deviation from the applicable requirements of this Subsection IX.H, including those attributable to upset conditions, the probable cause of such deviations, and any corrective actions or preventive measures taken. The report shall be submitted to the Director no later than 24-months following the deviation or earlier if specified by an underlying applicable requirement. Deviations due to breakdowns shall be reported according to the breakdown provisions of R307-107.
- d. Emission Limitations.
 - i. All emission limitations listed in Subsections IX.H.2 and IX.H.3 apply at all times, unless otherwise specified in the source specific conditions listed in IX.H.2 and IX.H.3.
 - ii. All emission limitations of PM₁₀ listed in Subsections IX.H.2 and IX.H.3 include both filterable and condensable PM, unless otherwise specified in the source

specific conditions listed in IX.H.2 and IX.H.3.

e. Stack Testing.

- i. As applicable, stack testing to show compliance with the emission limitations for the sources in Subsection IX.H.2 and I.X.H.3 shall be performed in accordance with the following:
 - A. Sample Location: The emission point shall be designed to conform to the requirements of 40 CFR 60, Appendix A, Method 1, or other EPA-approved testing methods acceptable to the Director. Occupational Safety and Health Administration (OSHA) approvable access shall be provided to the test location.
 - B. Volumetric Flow Rate: 40 CFR 60, Appendix A, Method 2, EPA Test Method No. 19 "SO₂ Removal & PM, SO₂ NO_x Rates from Electric Utility Steam Generators", or other EPA-approved testing methods acceptable to the Director.
 - C. PM: 40 CFR 60, Appendix A Methods 5, 5b, 5f, 17 or other EPA-approved testing methods acceptable to the Director.
 - D. PM₁₀: 40 CFR 51, Appendix M, Methods 201a and 202, or other EPA approved testing methods acceptable to the Director. If a method other than 201a is used, the portion of the front half of the catch considered PM₁₀ shall be based on information in Appendix B of the fifth edition of the EPA document, AP-42, or other data acceptable to the Director.
 - E. SO₂: 40 CFR 60 Appendix A, Method 6C or other EPA-approved testing methods acceptable to the Director.
 - F. NO_x: 40 CFR 60 Appendix A, Method 7E or other EPA-approved testing methods acceptable to the Director.
 - G. Calculations: To determine mass emission rates (lb/hr, etc.) the pollutant concentration as determined by the appropriate methods above shall be multiplied by the volumetric flow rate and any necessary conversion factors to give the results in the specified units of the emission limitation.
 - H. A stack test protocol shall be provided at least 30 days prior to the test. A pretest conference shall be held if directed by the Director.
 - I. The production rate during all compliance testing shall be no less than 90% of the maximum production rate achieved in the previous three (3) years. If the desired production rate is not achieved at the time of the test, the maximum production rate shall be 110% of the tested achieved rate, but not more than the maximum allowable production rate. This new allowable maximum production rate shall remain in effect until successfully tested at a higher rate. The owner/operator shall request a higher production rate when necessary. Testing at no less than 90% of the higher rate shall be conducted. A new maximum production rate (110% of the new rate) will then be allowed if the test is successful. This process may be

repeated until the maximum allowable production rate is achieved.

- f. Continuous Emission and Opacity Monitoring.

- i. For all continuous monitoring devices, the following shall apply:
 - A. Except for system breakdown, repairs, calibration checks, and zero and span adjustments required under paragraph (d) 40 CFR 60.13, the owner/operator of an affected source shall continuously operate all required continuous monitoring systems and shall meet minimum frequency of operation requirements as outlined in R307-170 and 40 CFR 60.13. Flow measurement shall be in accordance with the requirements of 40 CFR 52, Appendix E; 40 CFR 60 Appendix B; or 40 CFR 75, Appendix A.
 - B. The monitoring system shall comply with all applicable sections of R307-170; 40 CFR 13; and 40 CFR 60, Appendix B – Performance Specifications.
 - ii. Opacity observations of emissions from stationary sources shall be conducted in accordance with 40 CFR 60, Appendix A, Method 9.
- g. Petroleum Refineries.
- i. Limits at Fluid Catalytic Cracking Units (FCCU)
 - A. FCCU SO₂ Emissions
 - I. Each owner or operator of an FCCU shall comply with an SO₂ emission limit of 25 ppmvd @ 0% excess air on a 365-day rolling average basis and 50 ppmvd @ 0% excess air on a 7-day rolling average basis.
 - II. Compliance with this limit shall be determined using a CEM in accordance with IX.H.1.f.
 - B. FCCU PM Emissions
 - I. Each owner or operator of an FCCU shall comply with an emission limit of 1.0 pounds PM per 1000 pounds burn-off.
 - II. Compliance with this limit shall be determined by following the stack test protocol specified in 40 C.F.R. §60.106(b) or 40 C.F.R. §60.104a(d) to measure PM emissions on the FCCU. Each owner operator shall conduct stack tests once every three (3) years at each FCCU.
 - III. No later than January 1, 2019, each owner or operator of an FCCU subject to NSPS Ja shall install, operate and maintain a continuous parameter monitor system (CPMS) to measure and record operating parameters from the FCCU and control devices as per the requirements of 40 CFR 60.105a(b)(1). No later than January 1, 2019, each owner or operator of an FCCU not subject to NSPS Ja shall install, operate and maintain a continuous opacity monitoring system to measure and record opacity from the FCCU as per the requirements of 40 CFR 63.1572(b) and comply with the opacity limitation

as per the requirements of Table 7 to Subpart UUU of Part 63.

ii. Limits on Refinery Fuel Gas.

- A. All petroleum refineries in or affecting any PM_{2.5} nonattainment area or any PM₁₀ nonattainment or maintenance area shall reduce the H₂S content of the refinery plant gas to 60 ppm or less as described in 40 CFR 60.102a. Compliance shall be based on a rolling average of 365 days. The owner/operator shall comply with the fuel gas monitoring requirements of 40 CFR 60.107a and the related recordkeeping and reporting requirements of 40 CR 60.108a. As used herein, refinery "plant gas" shall have the meaning of "fuel gas" as defined in 40 CFR 60.101a, and may be used interchangeably.
- B. For natural gas, compliance is assumed while the fuel comes from a public utility.

iii. Sulfur Removal Units

- A. All petroleum refineries in or affecting any PM_{2.5} nonattainment area or any PM₁₀ nonattainment or maintenance area shall require:
 - I. Sulfur removal units/plants (SRUs) that are at least 95% effective in removing sulfur from the streams fed to the unit; or
 - II. SRUs that meet the SO₂ emission limitations listed in 40 CFR 60.102a(f)(1) or 60.102a(f)(2) as appropriate.
- B. The amine acid gas and sour water stripper acid gas shall be processed in the SRU(s).
- C. Compliance shall be demonstrated by daily monitoring of flows to the SRU(s). Continuous monitoring of SO₂ concentration in the exhaust stream shall be conducted via CEM as outlined in IX.H.1.f above. Compliance shall be determined on a rolling 30-day average.

iv. No Burning of Liquid Fuel Oil in Stationary Sources

- A. No petroleum refineries in or affecting any PM_{2.5} nonattainment area or any PM₁₀ nonattainment or maintenance area shall be allowed to burn liquid fuel oil in stationary sources except during natural gas curtailments or as specified in the individual subsections of Section IX, Part H.
- B. The use of diesel fuel meeting the specifications of 40 CFR 80.510 in standby or emergency equipment is exempt from the limitation of IX.H.1.g.iv.A above.

v. Requirements on Hydrocarbon Flares.

- A. All hydrocarbon flares at petroleum refineries located in or affecting any PM_{2.5} nonattainment area or any PM₁₀ nonattainment or maintenance area within the State shall be subject to the flaring requirements of NSPS Subpart Ja (40 CFR 60.100a-109a), if not already subject under the flare applicability provisions of Ja.

- B. No later than January 1, 2019, all major source petroleum refineries in or affecting any PM_{2.5} nonattainment area or an PM₁₀ nonattainment or maintenance area shall either 1) install and operate a flare gas recovery system designed to limit hydrocarbon flaring produced from each affected flare during normal operations to levels below the values listed in 40 CFR 60.103a(c), or 2) limit flaring during normal operations to 500,000 scfd for each affected flare. Flare gas recovery is not required for dedicated SRU flare and header systems, or HF flare and header systems.

H.2 Source Specific Emission Limitations in Salt Lake County PM₁₀ Nonattainment/Maintenance Area

a. Big West Oil Company

i. Source-wide PM₁₀ Cap

No later than January 1, 2019, combined emissions of PM₁₀ shall not exceed 1.037 tons per day (tpd).

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.2.a.i.B below, the default emission factors to be used are as follows:

Natural gas:

Filterable PM₁₀: 1.9 lb/MMscf

Condensable PM₁₀: 5.7 lb/MMscf

Plant gas:

Filterable PM₁₀: 1.9 lb/MMscf

Condensable PM₁₀: 5.7 lb/MMscf

Fuel Oil: The PM₁₀ emission factor shall be determined from the latest edition of AP-42 or other EPA-approved methods.

Cooling Towers: The PM₁₀ emission factor shall be determined from the latest edition of AP-42 or other EPA-approved methods.

FCC Stacks: The PM₁₀ emission factor shall be established by stack test.

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. The default emission factors listed in IX.H.2.a.i.A above apply until such time as stack testing is conducted as provided in IX.H.1.e or as outlined below:

PM₁₀ stack testing on the FCC shall be performed initially no later than January 1, 2019 and at least once every three (3) years thereafter. Stack testing shall be performed as outlined in IX.H.1.e.

C. Compliance with the source-wide PM₁₀ Cap shall be determined for each day as follows:

Total 24-hour PM_{10} emissions for the emission points shall be calculated by

adding the daily results of the PM₁₀ emissions equations listed below for natural gas, plant gas, and fuel oil combustion. These emissions shall be added to the emissions from the cooling towers, and the FCCs to arrive at a combined daily PM₁₀ emission total.

For purposes of this subsection a "day" is defined as a period of 24- hours commencing at midnight and ending at the following midnight.

Daily gas consumption shall be measured by meters that can delineate the flow of gas to the boilers, furnaces and the SRU incinerator.

The equation used to determine emissions from these units shall be as follows: Emission Factor (lb/MMscf) * Gas Consumption (MMscf/24 hrs)/(2,000 lb/ton)

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The daily PM₁₀ emissions from the FCC shall be calculated using the following equation:

$$E = FR * EF$$

Where:

E = Emitted PM₁₀

FR = Feed Rate to Unit (kbbbls/day)

EF = emission factor (lbs/kbbl), established by the most recent stack test

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

ii. Source-Wide NO_x Cap

No later than January 1, 2019, combined emissions of NO_x shall not exceed 0.80 tons per day (tpd) and 195 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.2.a.ii.B below, the default emission factors to be used are as follows:

Natural gas: shall be determined from the latest edition of AP-42 or other

EPA- approved methods.
Plant gas: assumed equal to natural gas

Diesel fuel: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

- B. The default emission factors listed in IX.H.2.a.ii.A above apply until such time as stack testing is conducted as provided in IX.H.1.e or as outlined below:

Initial NO_x stack testing on natural gas/refinery fuel gas combustion equipment above 40 MMBtu/hr has been performed. NO_x emissions for the FCC are monitored with a continuous emission monitoring system. Refinery Boilers and heaters over 40 MMBtu/hr but less than 100 MMBtu/hr are in compliance with monitoring and work practice standards of Subpart DDDDD of Part 63.

- C. Compliance with the source-wide NO_x Cap shall be determined for each day as follows:

Total 24-hour NO_x emissions shall be calculated by adding the emissions for each emitting unit. The emissions for each emitting unit shall be calculated by multiplying the hours of operation of a unit, feed rate to a unit, or quantity of each fuel combusted at each affected unit by the associated emission factor, and summing the results.

Daily plant gas consumption at the furnaces, boilers and SRU incinerator shall be measured by flow meters. The equations used to determine emissions shall be as follows:

$$\text{NO}_x = \text{Emission Factor (lb/MMscf)} * \text{Gas Consumption (MMscf/24 hrs)} / (2,000 \text{ lb/ton})$$
 Where the emission factor is derived from the fuel used, as listed in IX.H.2.a.ii.A above

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The daily NO_x emissions from the FCC shall be calculated using a CEM as outlined in IX.H.1.f

Total daily NO_x emissions shall be calculated by adding the results of the above NO_x equations for natural gas and plant gas combustion to the estimate for the FCC.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

iii. Source-Wide SO₂ Cap

No later than January 1, 2019, combined emissions of SO₂ shall not exceed 0.60 tons per day (tpd) and 140 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. The default emission factors to be used are as follows:

Natural Gas - 0.60 lb SO₂/MMscf gas

Plant Gas: The emission factor to be used in conjunction with plant gas combustion shall be determined through the use of a CEM as outlined in IX.H.1.f. .

SRUs: The emission rate shall be determined by multiplying the sulfur dioxide concentration in the flue gas by the flow rate of the flue gas. The sulfur dioxide concentration in the flue gas shall be determined by CEM as outlined in IX.H.1.f.

Fuel oil: The emission factor to be used for combustion shall be calculated based on the weight percent of sulfur, as determined by ASTM Method D-4294-89 or EPA-approved equivalent acceptable to the Director, and the density of the fuel oil, as follows:

$$EF \text{ (lb SO}_2\text{/k gal)} = \text{density (lb/gal)} * (1000 \text{ gal/k gal}) * \text{wt. \% S}/100 * (64 \text{ lb SO}_2\text{/32 lb S})$$

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. Compliance with the source-wide SO₂ Cap shall be determined for each day as follows: Total daily SO₂ emissions shall be calculated by adding the daily SO₂ emissions for natural gas and plant fuel gas combustion, to those from the FCC and SRU stacks.

The daily SO_x emission from the FCC shall be calculated using a CEM as outlined in IX.H.11.f.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all

tanks that supply combustion sources.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Results shall be tabulated for each day, and records shall be kept which include CEM readings for H₂S (averaged for each day), all meter reading (in the appropriate units), fuel oil parameters (density and wt% sulfur for each day any fuel oil is burned), and the calculated emissions.

iv. Emergency and Standby Equipment

- A. The use of diesel fuel meeting the specifications of 40 CFR 80.510 is allowed in standby or emergency equipment at all times.

v. Alternate Startup and Shutdown Requirements

- A. During any day which includes startup or shutdown of the FCCU, combined emissions of SO₂ shall not exceed 1.2 tons per day (tpd). For purposes of this subsection, a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.
- B. The total number of days which include startup or shutdown of the FCCU shall not exceed ten (10) per 12-month rolling period.

vi. No later than January 1, 2019, the owner/operator shall install the following to control emissions from the listed equipment:

Emission Unit	Control Equipment
FCCU Regenerator	Flue gas blowback "Pall Filter", quaternary cyclones with fabric filter
H-404 #1 Crude Heater	Ultra-low NO _x burners
Refinery Flares	Subpart Ja, and MACT CC flaring standards
SRU	Tail gas incinerator and redundant caustic scrubber
Product Loading Racks	Vapor recovery and vapor combustors
Wastewater Treatment System	API separator fixed cover, carbon adsorber canisters to be installed 2019.

- b. Bountiful City Light and Power: Power Plant
 - i. Emissions to the atmosphere shall not exceed the following rates and concentrations:
 - A. GT #1 (5.3 MW Turbine)
Exhaust Stack: 0.6 g NO_x/ kW-hr
 - B. GT #2 and GT #3 (each TITAN Turbine) Exhaust Stack: 7.5 lb NO_x/ hr
 - ii. Compliance to the above emission limitations shall be determined by stack test. Stack testing shall be performed as outlined in IX.H.1.e.
 - A. Initial stack tests have been performed. Each turbine shall be tested at least once per year.
 - iii. Combustion Turbine Startup / Shutdown Emission Minimization Plan
 - A. Startup begins when natural gas is supplied to the combustion turbine(s) with the intent of combusting the fuel to generate electricity. Startup conditions end within sixty (60) minutes of natural gas being supplied to the turbine(s).
 - B. Shutdown begins with the initiation of the stop sequence of a turbine until the cessation of natural gas flow to the turbine.
 - C. Periods of startup or shutdown shall not exceed two (2) hours per combustion turbine per day.

- c. Central Valley Water Reclamation Facility: Wastewater Treatment Plant
 - i. NO_x emissions from the operation of all engines at the plant shall not exceed 0.648 tons per day.
 - ii. Compliance with the emission limitation shall be determined by summing the emissions from all the engines. Emission from each engine shall be calculated from the following equation:

$$\text{Emissions (tons/day)} = (\text{Power production in kW-hrs/day}) \times (\text{Emission factor in grams/kW-hr}) \times (1 \text{ lb}/453.59 \text{ g}) \times (1 \text{ ton}/2000 \text{ lbs})$$

- A. Stack tests shall be performed in accordance with IX.H.1.e. Each engine shall be tested at least every three years from the previous test.
- B. The NO_x emission factor for each engine shall be derived from the most recent stack test.
- C. NO_x emissions shall be calculated on a daily basis.
- D. A day is equivalent to the time period from midnight to the following midnight.
- E. The number of kilowatt hours generated by each engine shall be determined by examination of electrical meters, which shall record electricity production on a continuous basis.

d. Chevron Products Company

i. Source-wide PM₁₀ Cap

No later than January 1, 2019, combined emissions of PM₁₀ shall not exceed 0.715 tons per day (tpd).

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.2.d.i.B below, the default emission factors to be used are as follows:

Natural gas:

Filterable PM₁₀: 1.9 lb/MMscf

Condensable PM₁₀: 5.7 lb/MMscf

Plant gas:

Filterable PM₁₀: 1.9 lb/MMscf

Condensable PM₁₀: 5.7 lb/MMscf

HF alkylation polymer: shall be determined from the latest edition of AP-42 (HF alkylation polymer treated as fuel oil #6) or other EPA-approved methods.

Diesel fuel: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

Cooling Towers: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

FCC Stack:

The PM₁₀ emission factors shall be based on the most recent stack test and verified by parametric monitoring as outlined in IX.H.1.g.i.B.III

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. The default emission factors listed in IX.H.2.d.i.A above apply until such time as stack testing is conducted as provided in IX.H.1.e or as outlined below:

Initial PM₁₀ stack testing on the FCC stack has been performed and shall be conducted at least once every three (3) years from the date of the last stack test. Stack testing shall be performed as outlined in IX.H.1.e.

- C. Compliance with the source-wide PM₁₀ Cap shall be determined for each day as follows:

Total 24-hour PM₁₀ emissions for the emission points shall be calculated by adding the daily results of the PM₁₀ emissions equations listed below for natural gas, plant gas, and fuel oil combustion. These emissions shall be added to the emissions from the cooling towers, and the FCC to arrive at a combined daily PM₁₀ emission total. For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The equation used to determine emissions for the boilers and furnaces shall be as follows:

Emission Factor (lb/MMscf) * Gas Consumption (MMscf/24 hrs)/(2,000 lb/ton) Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

ii. Source-wide NO_x Cap

No later than January 1, 2019, combined emissions of NO_x shall not exceed 2.1 tons per day (tpd) and 766.5 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.2.d.ii.B below, the default emission factors to be used are as follows:

Natural gas: shall be determined from the latest edition of AP-42 Plant gas: assumed equal to natural gas or other EPA-approved methods.

Alkylation polymer: shall be determined from the latest edition of AP-42 (as fuel oil #6) or other EPA-approved methods.

Diesel fuel: shall be determined from the latest edition of AP-42 or other EPA-approved methods.

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. The default emission factors listed in IX.H.2.d.ii.A above apply until such time as stack testing is conducted as provided in IX.H.1.e or as outlined below:

Initial NO_x stack testing on natural gas/refinery fuel gas combustion equipment above

100 MMBtu/hr has been performed and shall be conducted at least once every three (3) years from the date of the last stack test. At that time a new flow-weighted average emission factor in terms of: lbs/MMBtu shall be derived. Stack testing shall be performed as outlined in IX.H.1.e.

- C. Compliance with the source-wide NO_x Cap shall be determined for each day as follows:

Total 24-hour NO_x emissions shall be calculated by adding the emissions for each emitting unit. The emissions for each emitting unit shall be calculated by multiplying the hours of operation of a unit, feed rate to a unit, or quantity of each fuel combusted at each affected unit by the associated emission factor, and summing the results.

A NO_x CEM shall be used to calculate daily NO_x emissions from the FCC. Emissions shall be determined by multiplying the nitrogen dioxide concentration in the flue gas by the flow rate of the flue gas. The NO_x concentration in the flue gas shall be determined by a CEM as outlined in IX.H.1.f.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

iii. Source-wide SO₂ Cap

No later than January 1, 2019, combined emissions of SO₂ shall not exceed 1.05 tons per day (tpd) and 383.3 tons per rolling 12-month period.

A Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. The default emission factors to be used are as follows:

FCC: The emission rate shall be determined by the FCC SO₂ CEM as outlined in IX.H.1.f.

SRUs: The emission rate shall be determined by multiplying the sulfur dioxide concentration in the flue gas by the flow rate of the flue gas. The sulfur dioxide concentration in the flue gas shall be determined by CEM as outlined in IX.H.1.f.

Natural gas: $EF = 0.60 \text{ lb/MMscf}$

Fuel oil & HF Alkylation polymer: The emission factor to be used for combustion shall be calculated based on the weight percent of sulfur, as determined by ASTM Method D- 4294-89 or EPA-approved equivalent acceptable to the Director, and the density of the fuel oil, as follows:

$$EF (\text{lb SO}_2/\text{k gal}) = \text{density (lb/gal)} * (1000 \text{ gal/k gal}) * \text{wt. \% S}/100 * (64 \text{ lb SO}_2/32 \text{ lb S})$$

Plant gas: the emission factor shall be calculated from the H₂S measurement obtained from the H₂S CEM.

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. Compliance with the source-wide SO₂ Cap shall be determined for each day as follows:

Total daily SO₂ emissions shall be calculated by adding the daily SO₂ emissions for natural gas and plant fuel gas combustion, to those from the FCC and SRU stacks.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

Results shall be tabulated for each day, and records shall be kept which include CEM readings for H₂S (averaged for each one-hour period), all meter reading (in the appropriate units), fuel oil parameters (density and wt% sulfur for each day any fuel oil is burned), and the calculated emissions.

iv. Emergency and Standby Equipment and Alternative Fuels

- A. The use of diesel fuel meeting the specifications of 40 CFR 80.510 is allowed in standby or emergency equipment at all times.
- B. HF alkylation polymer may be burned in the Alky Furnace (F-36017).
- C. Plant coke may be burned in the FCC Catalyst Regenerator.

v. Compressor Engine Requirements

- A. Emissions of NO_x from each rich-burn compressor engine shall not exceed the following:
- | Engine Number | NO _x in ppmvd @ 0% O ₂ |
|---------------|--|
|---------------|--|

K35001	236
K35002	208
K35003	230

- B Initial stack testing to demonstrate compliance with the above emission limitations shall be performed no later than January 1, 2019 and at least once every three (3) years from the date of the last stack test thereafter. Stack testing shall be performed as outlined in IX.H.1.e.

vi. Flare Calculation

- A. Chevron's Flare #3 receives gases from its Isomerization unit, Reformer unit as well as its HF Alkylation Unit. The HF Alkylation Unit's flow contribution to Flare #3 will not be included in determining compliance with the flow restrictions set in IX.H.1.g.v.B

- i. No later than January 1, 2019, the owner/operator shall install the following to control emissions from the listed equipment:

Emission Unit	Control Equipment
Boilers: 5, 6, 7	Low NOx burners and flue gas recirculation (FGR)
Cooling Water Towers	High efficiency drift eliminators
Crude Furnaces F21001, F21002	Low NOx burners
Crude Oil Loading	Vapor Combustion Unit (VCU)
FCC Regenerator Stack	Vacuum gas oil hydrotreater, Electrostatic precipitator (ESP) and cyclones
Flares: Flare 1, 2	Flare gas recovery system
HDS Furnaces F64010, F64011	Low NOx burners
Reformer Compressor Drivers K35001, K35002, K35003	Selective Catalytic Reduction (SCR)
Sulfur Recovery Unit 1	Tail gas treatment unit and tail gas incineration
Sulfur Recovery Unit 2	Tail gas treatment unit and tail gas incineration
Wastewater Treatment Plant	Existing wastewater controls system of induced air flotation (IAF) and regenerative thermal oxidation (RTO)

- e. Hexcel Corporation: Salt Lake Operations
 - i. The following limits shall not be exceeded for fiber line operations:
 - A. 5.50 MMscf of natural gas consumed per day.
 - B. 0.061 MM pounds of carbon fiber produced per day.
 - C. Compliance with each limit shall be determined by the following methods:
 - I. Natural gas consumption shall be determined by examination of natural gas billing records for the plant and onsite pipe-line metering.
 - II. Fiber production shall be determined by examination of plant production records. III. Records of consumption and production shall be kept on a daily basis for all periods when the plant is in operation.
 - ii. After a shutdown and prior to startup of fiber lines 13, 14, 15, or 16, the line's baghouse(s) shall be started and remain in operation during production.
 - A. During fiber line production, the static pressure differential across the filter media shall be within the manufacturer's recommended range and shall be recorded daily.
 - B. The manometer or the differential pressure gauge shall be calibrated according to the manufacturer's instructions at least once every 12 months.

f. Holly Refining and Marketing Company

i. Source-wide PM₁₀ Cap

No later than January 1, 2019, PM₁₀ emissions from all sources shall not exceed 0.416 tons per day (tpd).

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.2.g.i.B below, the default emission factors to be used are as follows:

Natural gas or Plant gas:

non-NSPS combustion equipment: 7.65 lb

PM₁₀/MMscf NSPS combustion equipment: 0.52 lb

PM₁₀/MMscf

Fuel oil:

The filterable PM₁₀ emission factor for fuel oil combustion shall be determined based on the sulfur content of the oil as follows:

$$\text{PM}_{10} (\text{lb}/1000 \text{ gal}) = (10 * \text{wt. \% S}) + 3.22$$

The condensable PM₁₀ emission factor for fuel oil combustion shall be determined from the latest edition of AP-42.

Cooling Towers: The PM₁₀ emission factor shall be determined from the latest edition of AP-42.

FCC Wet Scrubbers:

The PM₁₀ emission factors shall be based on the most recent stack test and verified by parametric monitoring as outlined in IX.H.1.g.i.B.III. As an alternative to a continuous parameter monitor system or continuous opacity monitoring system for PM emissions from any FCCU controlled by a wet gas scrubber, as required in Subsection IX.H.1.g.i.B.III, the owner/operator may satisfy the opacity monitoring requirements from its FCC Units with wet gas scrubbers through an alternate monitoring program as approved by the EPA and acceptable to the Director.

B. The default emission factors listed in IX.H.2.f.i.A above apply until such time as stack testing is conducted as outlined below:

Initial stack testing on all NSPS combustion equipment shall be conducted no

later than January 1, 2019 and at least once every three (3) years from the date of the last stack test. At that time a new flow-weighted average emission factor in terms of: lb PM₁₀/MMBtu shall be derived. Stack testing shall be performed as outlined in

IX.H.1.e.

- C. Compliance with the source-wide PM₁₀ Cap shall be determined for each day as follows:

Total 24-hour PM₁₀ emissions for the emission points shall be calculated by adding the daily results of the PM₁₀ emissions equations listed below for natural gas, plant gas, and fuel oil combustion. These emissions shall be added to the emissions from the cooling towers and wet scrubbers to arrive at a combined daily PM₁₀ emission total.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters on all gas-fueled combustion equipment.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply fuel oil to combustion sources.

The equations used to determine emissions for the boilers and furnaces shall be as follows:

Emissions (tons/day) = Emission Factor (lb/MMscf) * Natural/Plant Gas Consumption (MMscf/day)/(2,000 lb/ton)

Emissions (tons/day) = Emission Factor (lb/kgal) * Fuel Oil Consumption (kgal/day)/(2,000 lb/ton)

Results shall be tabulated for each day, and records shall be kept which include all meter readings (in the appropriate units), and the calculated emissions.

- ii. Source-wide NO_x Cap

No later than January 1, 2019, NO_x emissions into the atmosphere from all emission points shall not exceed 347.1 tons per rolling 12-month period and 2.09 tons per day (tpd).

- A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.2.g.ii.B below, the default

emission factors to be used are as follows:

Natural gas/refinery fuel gas combustion using:

Low NO_x burners (LNB): 41 lbs/MMscf

Ultra-Low NO_x (ULNB) burners: 0.04 lbs/MMbtu

Next Generation Ultra Low NO_x burners (NGULNB): 0.10 lbs/MMbtu

Selective catalytic reduction (SCR): 0.02 lbs/MMbtu

All other combustion burners: 100 lb/MMscf

Where:

"Natural gas/refinery fuel gas" shall represent any combustion of natural gas, refinery fuel gas, or combination of the two in the associated burner.

All fuel oil combustion: 120 lbs/Kgal

- B. The default emission factors listed in IX.H.2.f.ii.A above apply until such time as stack testing is conducted as outlined in IX.H.1.e or by NSPS.
- C. Compliance with the Source-wide NO_x Cap shall be determined for each day as follows:

Total daily NO_x emissions for emission points shall be calculated by adding the results of the NO_x equations for plant gas, fuel oil, and natural gas combustion listed below. For purposes of this subsection a "day" is defined as a period of 24 hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The equations used to determine emissions for the boilers and furnaces shall be as follows:

Emissions (tons/day) = Emission Factor (lb/MMscf) * Natural Gas Consumption (MMscf/day) / (2,000 lb/ton)

Emissions (tons/day) = Emission Factor (lb/MMscf) * Plant Gas Consumption (MMscf/day) / (2,000 lb/ton)

Emissions (tons/day) = Emission Factor (lb/MMBTU) * Burner Heat Rating (BTU/hr) * 24 hours per day / (2,000 lb/ton)

Emissions (tons/day) = Emission Factor (lb/kgal) * Fuel Oil

Consumption (kgal/day)/(2,000 lb/ton)

Results shall be tabulated for each day; and records shall be kept which include

the meter readings (in the appropriate units), emission factors, and the calculated emissions.

iii. Source-wide SO₂ Cap

No later than January 1, 2019, the emission of SO₂ from all emission points (excluding routine SRU turnaround maintenance emissions) shall not exceed 110.3 tons per rolling 12-month period and 0.31 tons per day (tpd).

A. Setting of emission factors:

The emission factors listed below shall be applied to the relevant quantities of fuel combusted:

Natural gas - 0.60 lb SO₂/MMscf

Plant gas - The emission factor to be used in conjunction with plant gas combustion shall be determined through the use of a CEM which will measure the H₂S content of the fuel gas. The CEM shall operate as outlined in IX.H.1.f.

Fuel oil - The emission factor to be used in conjunction with fuel oil combustion shall be calculated based on the weight percent of sulfur, as determined by ASTM Method D-4294-89 or EPA-approved equivalent, and the density of the fuel oil, as follows:

$$(\text{lb of SO}_2/\text{kgal}) = (\text{density lb/gal}) * (1000 \text{ gal/kgal}) * (\text{wt. \%S})/100 * (64 \text{ g SO}_2/32 \text{ g S})$$

The weight percent sulfur and the fuel oil density shall be recorded for each day any fuel oil is combusted.

B. Compliance with the Source-wide SO₂ Cap shall be determined for each day as follows:

Total daily SO₂ emissions shall be calculated by adding daily results of the SO₂ emissions equations listed below for natural gas, plant gas, and fuel oil combustion. For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

The equations used to determine emissions are:

$$\text{Emissions (tons/day)} = \text{Emission Factor (lb/MMscf)} * \text{Natural Gas Consumption (MMscf/day)} / (2,000 \text{ lb/ton})$$

$$\text{Emissions (tons/day)} = \text{Emission Factor (lb/MMscf)} * \text{Plant Gas}$$

Consumption (MMscf/day)/(2,000 lb/ton)

Emissions (tons/day) = Emission Factor (lb/kgal) * Fuel Oil Consumption

(kgal/24 hrs)/(2,000 lb/ton)

For purposes of these equations, fuel consumption shall be measured as outlined below:

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

Results shall be tabulated for each day, and records shall be kept which include CEM readings for H₂S (averaged for each one-hour period), all meter reading (in the appropriate units), fuel oil parameters (density and wt% sulfur for each day any fuel oil is burned), and the calculated emissions.

iv. Emergency and Standby Equipment

- A. The use of diesel fuel meeting the specifications of 40 CFR 80.510 is allowed in standby or emergency equipment at all times.

- v. No later than January 1, 2019, the owner/operator shall install the following to control emissions from the listed equipment:

Emission Unit	Control Equipment
Process heaters and boilers	Boilers 8&11: LNB+SCR Boilers 5, 9 & 10: SCR Process heaters 20H2, 20H3 23H1, 24H1, 25H1: ULNB
Cooling water towers 10, 11	High efficiency drift eliminators
FCCU regenerator stacks	WGS with Lo-TOx
Flares	Flare gas recovery system
Sulfur recovery unit	Tail gas incineration and WGS with Lo-TOx
Wastewater treatment plant	API separators, dissolved gas floatation (DGF), moving bed bio-film reactors (MBBR)

g. Kennecott Utah Copper (KUC): Mine

i. Bingham Canyon Mine (BCM)

- A. Maximum total mileage per calendar day for diesel-powered ore and waste haul trucks shall not exceed 30,000 miles.

KUC shall keep records of daily total mileage for all periods when the mine is in operation. KUC shall track haul truck miles with a Global Positioning System or equivalent. The system shall use real time tracking to determine daily mileage.

- B. To minimize fugitive dust on roads at the mine, the owner/operator shall perform the following measures:

I. Apply water to all active haul roads as weather and operational conditions warrant except during precipitation or freezing weather conditions, and shall apply a chemical dust suppressant to active haul roads located outside of the pit influence boundary no less than twice per year.

II. Chemical dust suppressant shall be applied as weather and operational conditions warrant except during precipitation or freezing weather conditions on unpaved access roads that receive haul truck traffic and light vehicle traffic.

III. Records of water and/or chemical dust control treatment shall be kept for all periods when the BCM is in operation.

IV. KUC is subject to the requirements in the most recent federally approved Fugitive Emissions and Fugitive Dust rules.

- C. To minimize emissions at the mine, the owner/operator shall:

I. Control emissions from the in-pit crusher with a baghouse.

ii. Copperton Concentrator (CC)

- A. Control emissions from the Product Molybdenite Dryers with a scrubber during operation of the dryers.

During operation of the dryers, the static pressure differential between the inlet and outlet of the scrubber shall be within the manufacturer's recommended range and shall be recorded weekly.

The manometer or the differential pressure gauge shall be calibrated according to the manufacturer's instructions at least once per year.

h. Kennecott Utah Copper (KUC): Power Plant and Tailings Impoundment

i. Utah Power Plant

A. Boilers #1, #2, and #3 shall not operate.

B. Unit #5 shall not exceed the following emission rates to the atmosphere:

Pollutant	lb/hr	lb/event	ppmdv (15% O2 dry)
I. PM10 with duct firing: Filterable + condensable	18.8		
II. NOx: Startup/shutdown		395	2.0
III. Startup / Shutdown Limitations	:		

1. The total number of startups and shutdowns together shall not exceed 690 per calendar year.
2. The NOx emissions shall not exceed 395 lbs from each startup/shutdown event, which shall be determined using manufacturer data.
3. Definitions:
 - (i) Startup cycle duration ends when the unit achieves half of the design electrical generation capacity.
 - (ii) Shutdown duration cycle begins with the initiation of turbine shutdown sequence and ends when fuel flow to the gas turbine is discontinued.

C. Upon commencement of operation of Unit #5*, stack testing to demonstrate compliance with the emission limitations in IX.H.2.h.i.B shall be performed as follows for the following air contaminants

*Initial compliance testing for the natural gas turbine and duct burner is required. The initial test date shall be performed within 60 days after achieving the maximum heat input capacity production rate at which the affected facility will be operated and in no case later than 180 days after the initial startup of a new emission source.

The limited use of natural gas during maintenance firings and break-in firings does not constitute operation and does not require stack testing.

Pollutant	Test Frequency
I. PM10	every year
II. NOx	every year

D. The following requirements are applicable to Unit #4 annually.

- I. Only natural gas shall be used as a fuel, unless the supplier or transporter of natural gas imposes a curtailment. The power plant may then burn coal, only for the duration of the curtailment plus sufficient time to empty the coal bins following the curtailment. The Director shall be notified of the curtailment within 48 hours of when it begins and within 48 hours of when it ends.
- II. When burning natural gas the emissions to the atmosphere from the indicated emission point shall not exceed the following rates and concentrations:

Pollutant	grains/dscf	ppmdv (3% O2) 68oF, 29.92 in. Hg
1. PM10 Units #1, #2, #3 and #4		
filterable	0.004	
filterable + condensable	0.03	
2. NOx*		

*NO_x emissions from Unit #4 are limited to the more stringent limit in Part H.12.k.i.

- III. When using coal as a fuel during a curtailment of the natural gas supply, emissions to the atmosphere from the indicated emission point shall not exceed the following rates and concentrations:

Pollutant	grains/dscf	ppmdv (3% O2) 68oF, 29.92 in Hg
1. Unit #4		
(i) PM10		
filterable	0.029	
filterable + condensable	0.29	
(ii) NOx*		

*NO_x emissions from Unit #4 are limited to the more stringent limit in Part H.12.k.i.

- IV. If the units operated during the months specified above, stack testing to show compliance with the emission limitations in H.2.h.i.D.II and III shall be performed as follows for the following air contaminants:

Pollutant	Test Frequency	Initial Test
1. PM10	every year	#

Initial testing shall be performed when burning natural gas and also when burning coal as fuel. The initial test date shall be performed within 60 days after achieving the maximum heat input capacity production rate at which the affected facility will be operated and in no case later than 180 days after the initial startup of a new emission source.

The limited use of natural gas during maintenance firings and break-in firings does not constitute operation and does not require stack testing.

- E. The sulfur content of any fuel burned shall not exceed 0.66 lb of sulfur per million BTU per test.
- I. Coal increments will be collected using ASTM 2234, Type I conditions A, B, or C and systematic spacing.
 - II. Percent sulfur content and gross calorific value of the coal on a dry basis will be determined for each gross sample using ASTM D methods 2013, 3177, 3173, and 2015.
 - III. KUC shall measure at least 95% of the required increments in any one month that coal is burned in Unit #4.

ii. Tailings Impoundment

- A. No more than 50 contiguous acres or more than 5% of the total tailings area shall be permitted to have the potential for wind erosion.
 - I. Wind erosion potential is the area that is not wet, frozen, vegetated, crusted, or treated and has the potential for wind erosion.
 - II. KUC shall conduct wind erosion potential grid inspections monthly between February 15 and November 15. The results of the inspections shall be used to determine wind erosion potential.
 - III. If KUC or the Director of Utah Division of Air Quality (Director) determines that the percentage of wind erosion potential is exceeded,

KUC shall meet with the Director, to discuss additional or modified fugitive dust controls/operational practices, and an implementation schedule for such, within five working days following verbal notification by either party.

- B. If between February 15 and November 15 KUC's daily weather forecast using surrounding area meteorological data is for a wind event (a wind event is defined as wind gusts exceeding 25 mph for more than one hour) the procedures listed below shall be followed within 48 hours of issuance of the forecast. KUC shall:
 - I. Alert the Utah Division of Air Quality promptly.
 - II. Continue surveillance and coordination of appropriate measures.
- C. KUC is subject to the requirements of the most recent federally approved Fugitive Emissions and Fugitive Dust rules.

i. Kennecott Utah Copper (KUC): Smelter & Refinery

i. Smelter

A Emissions to the atmosphere from the indicated emission points shall not exceed the following rates and concentrations:

I. Main Stack (Stack No. 11)

1. PM10
 - a. 89.5 lbs/hr (filterable)
 - b. 439 lbs/hr (filterable + condensable)
2. SO2
 - a. 552 lbs/hr (3 hr. rolling average)
 - b. 422 lbs/hr (daily average)
3. NOx
 - a. 154 lbs/hr (daily average)

II. Holman Boiler

1. NOx
 - a. 14.0 lbs/hr (calendar-day average)

B. Stack testing to show compliance with the emissions limitations of Condition (A) above shall be performed as specified below:

Emission Point		Pollutant	Test Frequency
I.	Main Stack (Stack No. 11)	PM10	every year
		SO2	CEM
		NOx	CEM
II.	Holman Boiler	NOx	every three years & CEMS or alternate method according to NSPS standards

C. KUC must operate and maintain the air pollution control equipment and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction.

ii. Refinery:

- I. Emissions to the atmosphere from the indicated emission point shall not exceed the following rate:

Emission Point	Pollutant	Maximum Emission Rate
The sum of two (Tankhouse) Boilers	NOx	9.5 lbs/hr
Combined HeatPlant	NOx	5.96 lbs/hr

- II. Stack testing to show compliance with the above emission limitations shall be performed as follows:

Emission Point	Pollutant	Testing Frequency
Tankhouse Boilers	NOx	every three
years* Combined Heat Plant	NOx	every year

*Stack testing shall be performed on boilers that have operated at least 300 hours during a three-year period.

- III. KUC must operate and maintain the stationary combustion turbine, air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction.

j. PacifiCorp Energy: Gadsby Power Plant

- i. Steam Generating Unit #1:
 - A. Emissions of NO_x shall be no greater than 179 lbs/hr on a three (3) hour block average basis.
 - B. Emissions of NO_x shall not exceed 336 ppmvd (@ 3% O₂, dry)
 - C. The owner/operator shall install, certify, maintain, operate, and quality-assure a CEM consisting of NO_x and O₂ monitors to determine compliance with the NO_x limitation. The CEM shall operate as outlined in IX.H.1.f.
- ii. Steam Generating Unit #2:
 - A. Emissions of NO_x shall be no greater than 204 lbs/hr on a three (3) hour block average basis.
 - B. Emissions of NO_x shall not exceed 336 ppmvd (@ 3% O₂, dry)
 - C. The owner/operator shall install, certify, maintain, operate, and quality-assure a continuous emission monitoring system (CEMS) consisting of NO_x and O₂ monitors to determine compliance with the NO_x limitation.
- iii. Steam Generating Unit #3:
 - A. Emissions of NO_x shall be no greater than
 - I. 142 lbs/hr on a three (3) hour block average basis, applicable between November 1 and February 28/29
 - II. 203 lbs/hr on a three (3) hour block average basis, applicable between March 1 and October 31.
 - III. Emissions of NO_x shall not exceed 168 ppmvd (@ 3% O₂, dry), applicable between November 1 and February 28/29.
 - C. The owner/operator shall install, certify, maintain, operate, and quality-assure a CEM consisting of NO_x and O₂ monitors to determine compliance with the NO_x limitation. The CEM shall operate as outlined in IX.H.1.f.
- iv. Steam Generating Units #1-3:
 - A. The owner/operator shall use only natural gas as a primary fuel and No. 2 fuel oil or better as back-up fuel in the boilers. The No. 2 fuel oil may be used only during periods of natural gas curtailment and for maintenance firings. Maintenance firings shall not exceed one-percent of the annual plant Btu requirement. In addition, maintenance firings shall be scheduled

between April 1 and November 30 of any calendar year. Records of fuel oil use shall be kept and they shall show the date the fuel oil was fired, the duration in hours the fuel

oil was fired, the amount of fuel oil consumed during each curtailment, and the reason for each firing.

- v. Natural Gas-fired Simple Cycle, Catalytic-controlled Turbine Units:
 - A. Total emissions of NO_x from all three turbines shall be no greater than 600 lbs/day. For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.
 - B. Emissions of NO_x from each turbine stack shall not exceed 5 ppmvd (@ 15% O₂, dry). Emissions shall be calculated on a 30-day rolling average. This limitation applies to steady state operation, not including startup and shutdown.
 - C. The owner/operator shall install, certify, maintain, operate, and quality-assure a CEM consisting of NO_x and O₂ monitors to determine compliance with the NO_x limitation. The CEM shall operate as outlined in IX.H.1.f.
- vi. Combustion Turbine Startup / Shutdown Emission Minimization Plan
 - A. Startup begins when the fuel valves open and natural gas is supplied to the combustion turbines
 - B. Startup ends when either of the following conditions is met:
 - I. The NO_x water injection pump is operational, the dilution air temperature is greater than 600°F, the stack inlet temperature reaches 570°F, the ammonia block valve has opened and ammonia is being injected into the SCR and the unit has reached an output of ten (10) gross MW; or
 - II. The unit has been in startup for two (2) hours.
 - C. Unit shutdown begins when the unit load or output is reduced below ten (10) gross MW with the intent of removing the unit from service.
 - D. Shutdown ends at the cessation of fuel input to the turbine combustor.
 - E. Periods of startup or shutdown shall not exceed two (2) hours per combustion turbine per day.
 - F. Turbine output (turbine load) shall be monitored and recorded on an hourly basis with an electrical meter.

k. Tesoro Refining & Marketing Company

i. Source-wide PM₁₀ Cap

No later than January 1, 2019, combined emissions of PM₁₀ shall not exceed 2.25 tons per day (tpd).

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.2.k.i.B below, the default emission factors to be used are as follows:

Natural gas:

Filterable PM₁₀: 0.0019 lb/MMBtu

Condensable PM₁₀: 0.0056
lb/MMBtu

Plant gas:

Filterable PM₁₀: 0.0019 lb/MMBtu

Condensable PM₁₀: 0.0056
lb/MMBtu

Fuel Oil: The PM₁₀ emission factor shall be determined from the latest edition of AP-42 or other EPA-approved methods.

Cooling Towers: The PM₁₀ emission factor shall be determined from the latest edition of AP-42 or other EPA-approved methods.

FCC Wet Scrubber:

The PM₁₀ emission factors shall be based on the most recent stack test and verified by parametric monitoring as outlined in IX.H.1.g.i.B.III

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. The default emission factors listed in IX.H.2.k.i.A above apply until such time as stack testing is conducted as provided in IX.H.1.e or as outlined below:

Initial PM₁₀ stack testing on the FCC wet gas scrubber stack shall be conducted no later than January 1, 2019 and at least once every three (3) years thereafter. Stack testing shall be performed as outlined in IX.H.1.e.

Results from any stack testing performed at any other PM₁₀ sources in accordance

with IX.H.1.e shall be used where available.

- C. Compliance with the Source-wide PM₁₀ Cap shall be determined for each day as follows:

Total 24-hour PM₁₀ emissions for the emission points shall be calculated by adding the daily results of the PM₁₀ emissions equations listed below for natural gas, plant gas, and fuel oil combustion. These emissions shall be added to the emissions from the cooling towers and wet scrubber to arrive at a combined daily PM₁₀ emission total. For purposes of this subsection a "day" is defined as a period of 24- hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The emissions for each emitting unit shall be calculated by multiplying the hours of operation of a unit, feed rate to a unit, or quantity of each fuel combusted at each affected unit by the associated emission factor and summing the results.

ii. Source-wide NO_x Cap

No later than January 1, 2019, combined emissions of NO_x shall not exceed 2.3 tons per day (tpd) and 475 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.2.k.ii.B below, the default emission factors to be used are as follows:

Natural gas/refinery fuel gas combustion using: Low NO_x burners (LNB):

0.051 lbs/MMBtu

Ultra-Low NO_x (ULNB) burners: 0.04 lbs/MMBtu

Diesel fuel: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

B. The default emission factors listed in IX.H.2.k.ii.A above apply until such time as stack testing is conducted as provided in IX.H.1.e or as outlined below:

Initial NO_x stack testing on natural gas/refinery fuel gas combustion equipment above 100 MMBtu/hr has already been performed and shall be conducted at least once every three (3) years following the date of the last test. At that time a new flow- weighted average emission factor in terms of: lbs/MMBtu shall be derived. Stack testing shall be performed as outlined in IX.H.1.e. Stack testing is not

required for natural gas/refinery fuel gas combustion equipment with a NO_x CEMS.

- C. Compliance with the source-wide NO_x Cap shall be determined for each day as follows:

Total 24-hour NO_x emissions shall be calculated by adding the emissions for each emitting unit. The emissions for each emitting unit shall be calculated by multiplying the hours of operation of a unit, feed rate to a unit, or quantity of each fuel combusted at each affected unit by the associated emission factor, and summing the results.

A NO_x CEM shall be used to calculate daily NO_x emissions from the FCCU wet gas scrubber stack. Emissions shall be determined by multiplying the nitrogen dioxide concentration in the flue gas by the flow rate of the flue gas. The NO_x concentration in the flue gas shall be determined by a CEM as outlined in IX.H.1.f.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

iii. Source-wide SO₂ Cap

No later than January 1, 2019, combined emissions of SO₂ shall not exceed 3.8 tons per day (tpd) and 300 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. The default emission factors to be used are as follows:

Natural gas: EF = 0.0006

lb/MMBtu Propane: EF = 0.0006

lb/MMBtu

Diesel fuel: shall be determined from the latest edition of AP-42

Plant fuel gas: the emission factor shall be calculated from the H₂S measurement or from the SO₂ measurement obtained by direct

testing/monitoring.

Where mixtures of fuel are used in a unit, the above factors shall be weighted according to the use of each fuel.

- B. Compliance with the source-wide SO₂ Cap shall be determined for each day as follows: Total daily SO₂ emissions shall be calculated by adding the daily SO₂ emissions for natural gas, plant fuel gas, and propane combustion to those from the wet gas scrubber stack, and SRU.

Daily SO₂ emissions from the FCCU wet gas scrubber stack shall be determined by multiplying the SO₂ concentration in the flue gas by the flow rate of the flue gas. The SO₂ concentration in the flue gas shall be determined by a CEM as outlined in IX.H.1.f.

SRUs: The emission rate shall be determined by multiplying the sulfur dioxide concentration in the flue gas by the flow rate of the flue gas. The sulfur dioxide concentration in the flue gas shall be determined by CEM as outlined in IX.H.11.f

Daily SO₂ emissions from other affected units shall be determined by multiplying the quantity of each fuel used daily at each affected unit by the appropriate emission factor.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

Results shall be tabulated for each day, and records shall be kept which include CEM readings for H₂S (averaged for each one-hour period), all meter reading (in the appropriate units), fuel oil parameters (density and wt% sulfur for each day any fuel oil is burned), and the calculated emissions.

- C. Instead of complying with Condition IX.H.1.g.ii.A, sources may reduce the H₂S content of the refinery plant gas to 60 ppm or less or reduce SO₂ concentration from fuel gas combustion devices to 8 ppmvd at 0% O₂ or less as described in 40 CFR 60.102a. Compliance shall be based on a rolling average of 365 days. The owner/operator shall comply with the fuel gas or SO₂ emissions monitoring requirements of 40 CFR 60.107a and the related recordkeeping and reporting requirements of 40 CFR 60.108a. As used herein, refinery "plant gas" shall have the meaning of "fuel gas" as defined in 40 CFR 60.101a, and may be used interchangeably.

iv. SO₂ emissions from the SRU/TGTU/TGI shall be limited to:

- B. 1.68 tons per day (tpd) for up to 21 days per rolling 12-month period, and

C. 0.69 tpd for the remainder of the rolling 12-month period.

D. Daily sulfur dioxide emissions from the SRU/TGI/TGTU shall be determined by multiplying the SO₂ concentration in the flue gas by the mass flow of the flue gas. The sulfur dioxide concentration in the flue gas shall be determined by CEM as outlined in IX.H.1.f

v. Emergency and Standby Equipment

A. The use of diesel fuel meeting the specifications of 40 CFR 80.510 is allowed in standby or emergency equipment at all times.

vi. No later than January 1, 2019, the owner/operator shall install the following to control emissions from the listed equipment:

Emission Unit	Control Equipment
FCCU / CO Boiler	Wet Gas Scrubber, LoTOx
Furnace F-1	Ultra Low NOx Burners
Tanks	Tank Degassing Controls
North and South Flares	Flare Gas Recovery
Furnace H-101	Ultra Low NOx Burners
Truck loading rack	Vapor recovery unit
Sulfur recovery unit	Tail Gas Treatment Unit
API separator	Floating roof (single seal)

I. University of Utah: University of Utah Facilities

- i. Emissions to the atmosphere from the listed emission points in Building 303 shall not exceed the following concentrations:

Emission Point	Pollutant	ppmdv (3% O2 dry)
A. Boiler #4*	NOx	187
B. Boilers #6 & #7.	NOx	9
C. Boilers #9*.	NOx	9
D. Turbine	NOx	9
E. Turbine and WHRU Duct burner	NOx	15

*By December 31, 2019, Boiler #4 will be decommissioned and Boiler #9 will be installed and operational.

- ii. Testing to show compliance with the emissions limitations of Condition i above shall be performed as specified below:

Emission Point	Pollutant	Initial Test	Test Frequency
A. Boiler #4	NOx	*	#
B. Boilers #6 & #7	NOx	2018	#
C. Boilers #9	NOx	2020	#
D. Turbine	NOx	*	#
E. Turbine and WHRU Duct burner	NOx	*	#

* Initial tests have been performed and the next method test using EPA approved test methods shall be performed within three (3) years of the last stack test.

A compliance test shall be performed at least once every three years from the date of the last compliance test that demonstrated compliance with the emission limit(s). Compliance testing shall be performed using EPA approved test methods acceptable to the Director. The Director shall be notified, in

accordance with all applicable rules, of any compliance test that is to be

performed. Beginning January 2018, annual screening with a portable monitor must be conducted in those years that a compliance test is not performed. Screening with a portable monitor shall be performed in accordance with the portable monitor manufacturer's specifications. If screening with a portable monitor indicates a potential exceedance of the concentration limit, a compliance test must be performed within 90 days of that screening. Records shall be kept on site which indicate the date, time, and results of each screening and demonstrate that the portable monitor was operated in accordance with manufacturer's specifications.

m. Utah Municipal Power Association: West Valley Power Plant.

- i. Total emissions of NO_x from all five (5) turbines combined shall be no greater than 1050 lb of NO_x on a daily basis. For purposes of this subpart, a "day" is defined as a period of 24- hours commencing at midnight and ending at the following midnight.
- ii. Emissions of NO_x shall not exceed 5ppmdv (@ 15% O₂, dry) on a 30-day rolling average.
- iii. Total emissions of NO_x from all five (5) turbines shall include the sum of all periods in the day including periods of startup, shutdown, and maintenance.
- iv. The NO_x emission rate (lb/hr) shall be determined by CEM. The CEM shall operate as outlined in IX.H.1.f

H.3 Source Specific Emission Limitations in Utah County PM₁₀ Nonattainment/Maintenance Area

a. Brigham Young University: Main Campus

i All central heating plant units shall operate on natural gas from November 1 to February 28 each season beginning in the winter season of 2013-2014. Fuel oil may be used as backup fuel during periods of natural gas curtailment. The sulfur content of the fuel oil shall not exceed 0.0015 % by weight. BYU must maintain a fuel specification certification document from the fuel supplier with the sulfur content guarantee. Alternatively, sulfur content may be verified through testing completed by BYU or the fuel supplier using ASTM Method D-4294-10 or EPA approved equivalent acceptable to the Director.

ii. Emissions to the atmosphere from the indicated emission point shall not exceed the following rates and concentrations:

Emission Point	Pollutant	ppm (7% O ₂ dry)*		lb/hr	
A. Unit #1	NO _x	95	36	9.55	5.44
B. Unit #4	NO _x	127	36	38.5	19.2
C. Unit #6	NO _x	127	36	38.5	19.2

* Unit #1 NO_x limit is 95 ppm (9.55 lb/hr) until it operates for more than 300 hours during a rolling 12-month period, then the limit will be 36 ppm (5.44 lb/hr). The NO_x limit for units #4 and #6 is 127 ppm (38.5 lb/hr) and starting on December 31, 2018, the limit will then be 36 ppm (19.2 lb/hr).

Emission Point	Pollutant	ppm (7% O ₂ dry)		lb/hr	
D. Unit #2	NO _x	331		37.4	
	SO ₂	597		56.0	
E. Unit #3	NO _x	331		37.4	
	SO ₂	597		56.0	
F. Unit #5	NO _x	331		74.8	
	SO ₂	597		112.07	

iii. Stack testing to show compliance with the above emission limitations shall be performed as follows:

Emission Point	Pollutant	Initial test	Test Frequency
A. Unit #1	NO _x	&	every year*
B. Unit #2	NO _x	#	every year*
C. Unit #3	NO _x	#	every year*
D. Unit #4	NO _x	#	every year*
E. Unit #5	NO _x	#	every year*
F. Unit #6	NO _x	#	every year*

Stack tests shall be performed in accordance with IX.H.1.e.

& If Unit #1 is operated for more than 100 hours per rolling 12-month period, the stack test shall be performed within 60 days of exceeding 100 hours of operations. Unit #1 shall only be operated as a back-up boiler to Units #4 and #6 and shall not be operated more than 300 hours per rolling 12-month period. If Unit #1 operates more than 300 hours per rolling 12-month period, then low NO_x burners with Flue Gas Recirculation shall be installed and tested within 18 months of exceeding 300 hours of operation and the maximum NO_x concentration shall be 36 ppm.

The test shall be performed at least every 3 years based on the date of the last stack test. Units #4 and #6 shall be retested by March 1, 2018.

* A compliance test shall be performed at least once every three years from the date of the last compliance test that demonstrated compliance with the emission limit(s). Compliance testing shall be performed using EPA approved test methods acceptable to the Director. The Director shall be notified, in accordance with all applicable rules, of any compliance test that is to be performed. Beginning January 2018, annual screening with a portable monitor must be conducted in those years that a compliance test is not performed. Screening with a portable monitor shall be performed in accordance with the portable monitor manufacturer's specifications. If screening with a portable monitor indicates a potential exceedance of the concentration limit, a compliance test must be performed within 90 days of that screening. Records shall be kept on site which indicate the date, time, and results of each screening and demonstrate that the portable monitor was operated in accordance with manufacturer's specifications.

iv. Central Heating Plant Coal-Fired Boilers

A. Startup and shutdown events shall not exceed 216 hours per boiler per 12-month rolling period.

B. The sulfur content of any coal or any mixture of coals burned shall not exceed either of the following:

I. 0.54 pounds of sulfur per million BTU heat input as determined by ASTM Method D-4239-85, or EPA-approved equivalent acceptable to the Director.

II. 0.60% by weight as determined by ASTM Method D-4239-85, or EPA-approved equivalent acceptable to the Director.

For the sulfur content of coal, Brigham Young University shall either:

III. Determine the weight percent sulfur and the fuel heating value by submitting a coal sample to a laboratory, acceptable to the Director, on no less than a monthly basis; or

IV. For each delivery of coal, inspect the fuel sulfur content expressed as weight % determined by the vendor using methods of the ASTM; or

V. For each delivery of coal, inspect documentation provided by the vendor that indirectly demonstrates compliance with this provision.

b. Geneva Nitrogen Inc.: Geneva Nitrogen Plant i.

Prill Tower:

PM₁₀ emissions (filterable and condensable) shall not exceed 0.236 ton/day

PM_{2.5} emissions (filterable and condensable) shall not exceed 0.196 ton/day

A day is defined as from midnight to the following midnight.

ii. Testing

A. Stack testing shall be performed as specified below:

I. Frequency: Emissions shall be tested every three years. The test shall be performed as soon as possible and in no case later than December 31, 2017.

B. The daily limit shall be calculated by multiplying the most recent stack test results by the appropriate hours of operation for each day.

iii. Montecatini Plant:

NO_x emissions shall not exceed 30.8 lb/hr

iv. Weatherly Plant:

NO_x emissions shall not exceed 18.4 lb/hr v. Testing

A. Stack testing for NO_x shall be performed as specified below:

I. Stack testing to show compliance with the NO_x emission limitations shall be performed as specified below:

1. Testing and Frequency. Emissions shall be tested every three years using an EPA approved test method.

II. NO_x concentration (ppmdv) shall be used as an indicator to provide a reasonable assurance of compliance with the NO_x emission limitation as specified below:

1. Measurement Approach: NO_x concentration (ppmdv) shall be determined by using a continuous NO_x monitoring system.

2. Performance Criteria:

i. QA/QC Practices and Criteria: The continuous monitoring system shall be operated, calibrated, and maintained in accordance with manufacture's recommendations. Zero and span drift tests shall be conducted on a daily

basis.

III. The EPA approved method test for the Montecatini Plant shall be performed as soon as possible and in no case later than December 31, 2017, and the test for the Weatherly Plant shall be performed as soon as possible and in no case later than December 31, 2018.

vi. Start-up/Shut-down

A. Startup / Shutdown Limitations:

I. Planned shut-down and start-up events shall not exceed 50 hours per acid plant (Montecatini or Weatherly) per 12-month rolling period.

II. Total startup and shutdown events shall not exceed four hours per acid plant in any one calendar day.

- c. PacifiCorp Energy: Lake Side Power Plant
 - i. Block #1 Turbine/HRSG Stacks:
 - A. Emissions of NO_x shall not exceed 14.9 lb/hr on a 3-hr average basis
 - B. Compliance with the above conditions shall be demonstrated as follows:
 - I. NO_x monitoring shall be through use of a CEM as outlined in IX.H.1.f
 - ii. Block #2 Turbine/HRSG Stacks:
 - A. Emissions of NO_x shall not exceed 18.1 lb/hr on a 3-hr average basis
 - B. Compliance with the above conditions shall be demonstrated as follows:
 - I. NO_x monitoring shall be through use of a CEM as outlined in IX.H.1.f
 - iii. Startup / Shutdown Limitations:
 - A. Block #1:
 - I. Startup and shutdown events shall not exceed 613.5 hours per turbine per 12-month rolling period.
 - II. Total startup and shutdown events shall not exceed 14 hours per turbine in any one calendar day.
 - III. Cumulative short-term transient load excursions shall not exceed 160 hours per 12- month rolling period.
 - IV. During periods of transient load conditions, NO_x emissions from the Block #1 Turbine/HRSG Stacks shall not exceed 25 ppmvd at 15% O₂.
 - B. Block #2:
 - I. Startup and shutdown events shall not exceed 553.6 hours per turbine per 12-month rolling period.
 - II. Total startup and shutdown events shall not exceed 8 hours per turbine in any one calendar day.
 - III. Cumulative short-term transient load excursions shall not exceed 160 hours per 12- month rolling period.
 - IV. During periods of transient load conditions, NO_x emissions from the Block #2 Turbine/HRSG Stacks shall not exceed 25 ppmvd at 15% O₂.
 - C. Definitions:

I. Startup is defined as the period beginning with turbine initial firing until the unit meets the lb/hr emission limits listed in IX.H.3.c.i and ii above.

II. Shutdown is defined as the period beginning with the initiation of turbine shutdown sequence and ending with the cessation of firing of the gas turbine engine.

III. Transient load conditions are those periods, not to exceed four consecutive 15- minute periods, when the 15-minute average NO_x concentration exceeds 2.0 ppmv dry @ 15% O₂. Transient load conditions consist of the following:

1. Initiation/shutdown of combustion turbine inlet air-cooling.
2. Rapid combustion turbine load changes.
3. Initiation/shutdown of HRSG duct burners.
4. Provision of Ancillary Services and Automatic Generation Control. IV. For purposes

of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

e. Payson City Corporation: Payson City Power

i. Emissions of NO_x shall be no greater than 1.54 ton per day for all engines combined.

ii. Compliance with the emission limitation shall be determined by summing the emissions from all the engines. Emission from each engine shall be calculated from the following equation:

Emissions (tons/day) = (Power production in kW-hrs/day) x (Emission factor in grams/kW- hr) x (1 lb/453.59 g) x (1 ton/2000 lbs)

A. The NO_x emission factor for each engine shall be derived from the most recent stack test. Stack tests shall be performed in accordance with IX.H.1.e. Each engine shall be tested at least every three years from the previous test.

B. NO_x emissions shall be calculated on a daily basis.

C. A day is equivalent to the time period from midnight to the following midnight.

D. The number of kilowatt hours generated by each engine shall be recorded on a daily basis with an electrical meter.

f. Provo City Power: Power Plant

i. NO_x emissions from the operation of all engines at the plant shall not exceed 2.45 tons per day.

ii. Compliance with the emission limitation shall be determined by summing the emissions from all the engines. Emission from each engine shall be calculated from the following equation:

$$\text{Emissions (tons/day)} = (\text{Power production in kW-hrs/day}) \times (\text{Emission factor in grams/kW-hr}) \times (1 \text{ lb}/453.59 \text{ g}) \times (1 \text{ ton}/2000 \text{ lbs})$$

A. The NO_x emission factor for each engine shall be derived from the most recent stack test. Stack tests shall be performed in accordance with IX.H.1.e. Each engine shall be tested every 8,760 hours of operation or at least every three years from the previous test, whichever occurs first.

B. NO_x emissions shall be calculated on a daily basis.

C. A day is equivalent to the time period from midnight to the following midnight.

D. The number of kilowatt hours generated by each engine shall be recorded on a daily basis with an electrical meter.

g. Springville City Corporation: Whitehead Power Plant

i. NO_x emissions from the operation of all engines at the plant shall not exceed 1.68 tons per day.

ii. Internal combustion engine emissions shall be calculated from the operating data recorded by the CEM. CEM will be performed in accordance with IX.H.1.f. A day is equivalent to the time period from midnight to the following midnight. Emissions shall be calculated for NO_x for each individual engine by the following equation:

$$D = (X * K)/453.6$$

Where:

X = grams/kW-hr rate for each generator (recorded by CEM)

K = total kW-hr generated by the generator each day (recorded by output

meter) D = daily output of pollutant in lbs/day

H.4 Interim Emission Limits and Operating Practices

- a. The terms and conditions of this Subsection IX.H.4 shall apply to the sources listed in this section on a temporary basis, as a bridge between the 1991 PM₁₀ State Implementation Plan and this PM₁₀ Maintenance Plan. For all other point sources listed in IX.H.2 and IX.H.3 the limits apply upon approval by the Utah Air Quality Board of the PM₁₀ Maintenance Plan. These bridge requirements are needed to impose limits on the sources that have time delays for implementation of controls. During this timeframe, the sources listed in this section may not meet the established limits listed in IX.H.1 and IX.H.2. As the control technology for the sources listed in this section is installed and operational, the terms and conditions listed in IX.H.1 and IX.H.2 become applicable and those limits replace the limits in this subsection. In no case, shall the terms and conditions listed in this Subsection IX.H.4 extend beyond January 1, 2019.

b. Petroleum Refineries:

- i. All petroleum refineries in or affecting the PM₁₀ nonattainment/maintenance area shall, for the purpose of this PM₁₀ Maintenance Plan:
 - A. Achieve an emission rate equivalent to no more than 9.8 kg of SO₂ per 1,000 kg of coke burn- off from any Catalytic Cracking unit by use of low-SO_x catalyst or equivalent emission reduction techniques or procedures, including those outlined in 40 CFR 60, Subpart J. Unless otherwise specified in IX.H.2, compliance shall be determined for each day based on a rolling seven-day average.
 - B. Compliance Demonstrations.
 - I. Compliance with the maximum daily (24-hr) plant-wide emission limitations for PM₁₀, SO₂, and NO_x shall be determined by adding the calculated emission estimates for all fuel burning process equipment to those from any stack-tested or CEM-measured source components. NO_x and PM₁₀ emission factors shall be determined from AP-42 or from test data.

For SO_x, the emission factors are:

Natural gas: EF = 0.60

lb/MMscf Propane: EF = 0.60

lb/MMscf

Plant gas: the emission factor shall be calculated from the H₂S measurement required in IX.H.1.g.ii.A.

Fuel oils (when permitted): The emission factor shall be calculated based on the weight percent of sulfur, as determined by ASTM Method D-4294-89 or EPA- approved equivalent, and the density of the fuel oil, as follows:

$$EF (\text{lb SO}_2/\text{k gal}) = \text{density (lb/gal)} * (1000 \text{ gal/k gal}) * \text{wt. \% S}/100 * (64 \text{ lb SO}_2/32 \text{ lb S})$$

Where mixtures of fuel are used in an affected unit, the above factors shall be weighted according to the use of each fuel.

- II. Daily emission estimates for stack-tested source components shall be made by multiplying the latest stack-tested hourly emission rate times the logged hours of operation (or other relevant parameter) for that source component for each day. This shall not preclude a source from determining emissions through the use of a CEM that meets the requirements of R307-170.

c. Big West Oil Company

i. PM₁₀ Emissions

- A. Combined emissions of filterable PM₁₀ from all external combustion process equipment shall not exceed the following:

I. 0.377 tons per day, between October 1 and March 31;

II. 0.407 tons per day, between April 1 and September 30.

- B. Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

The daily primary PM₁₀ contribution from the Catalyst Regeneration System shall be calculated using the following equation:

$$\text{Emitted PM}_{10} = (\text{Feed rate to FCC in kbbl/time}) * (22 \text{ lbs/kbbl})$$

wherein the emission factor (22 lbs/kbbl) may be re-established by stack testing. Total 24-hour PM₁₀ emissions shall be calculated by adding the daily emissions from the external combustion process equipment to the estimate for the Catalyst Regeneration System.

ii. SO₂ Emissions

- A. Combined emissions of sulfur dioxide from all external combustion process equipment shall not exceed the following:

I. 2.764 tons/day, between October 1 and March 31;

II. 3.639 tons/day, between April 1 and September 30.

- B. Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

The daily SO₂ emission from the Catalyst Regeneration System shall be calculated using the following equation:

$$\text{SO}_2 = [43.3 \text{ lb SO}_2/\text{hr} / 7,688 \text{ bbl feed/day}] \times [(\text{operational feed rate in}$$

bbl/day) x (wt% sulfur in feed / 0.1878 wt%) x (operating hr/day)]

The FCC feed weight percent sulfur concentration shall be determined by the refinery laboratory every 30 days with one or more analyses. Alternatively, SO₂ emissions from the Catalyst Regeneration System may be determined using a Continuous Emissions Monitor (CEM) in accordance with IX.H.1.f.

Emissions from the SRU Tail Gas Incinerator (TGI) shall be determined for each day by multiplying the sulfur dioxide concentration in the flue gas by the mass flow of the flue gas.

Total 24-hour SO₂ emissions shall be calculated by adding the daily emissions from the external combustion process equipment to the values for the Catalyst Regeneration System and the SRU.

iii. NO_x Emissions

- A. Combined emissions of NO_x from all external combustion process equipment shall not exceed the following:
 - I. 1.027 tons per day, between October 1 and March 31;
 - II. 1.145 tons per day, between April 1 and September 30.
- B. Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

The daily NO_x emission from the Catalyst Regeneration System shall be calculated using the following equation:

$$\text{NO}_x = (\text{Flue Gas, moles/hr}) \times (180 \text{ ppm} / 1,000,000) \times (30.006 \text{ lb/mole}) \times (\text{operating hr/day})$$

wherein the scalar value (180 ppm) may be re-established by stack testing. Alternatively, NO_x emissions from the Catalyst Regeneration System may be determined using a Continuous Emissions Monitor (CEM) in accordance with IX.H.1.f.

Total 24-hour NO_x emissions shall be calculated by adding the daily emissions from gas-fired compressor drivers and the external combustion process equipment

to the value for the Catalyst Regeneration System.

d. Chevron Products Company

i. PM₁₀ Emissions

- A. Combined emissions of filterable PM₁₀ from all external combustion process equipment shall be no greater than 0.234 tons per day.

Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

ii. SO₂ Emissions

- A. Combined emissions of sulfur dioxide from gas-fired compressor drivers and all external combustion process equipment, including the FCC CO Boiler and Catalyst Regenerator, shall not exceed 0.5 tons/day.

Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

Alternatively, SO₂ emissions from the FCC CO Boiler and Catalyst Regenerator may be determined using a Continuous Emissions Monitor (CEM) in accordance with IX.H.1.f.

iii. NO_x Emissions

- A. Combined emissions of NO_x from gas-fired compressor drivers and all external combustion process equipment, including the FCC CO Boiler and Catalyst Regenerator and the SRU Tail Gas Incinerator, shall be no greater than 2.52 tons per day.

Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

Alternatively, NO_x emissions from the FCC CO Boiler and Catalyst Regenerator may be determined using a Continuous Emissions Monitor (CEM) in accordance with IX.H.1.f.

- iv. Chevron shall be permitted to combust HF alkylation polymer oil in its Alkylation unit.

e. Holly Refining and Marketing Company

i. PM₁₀ Emissions

- A. Combined emissions of filterable PM₁₀ from all combustion sources, shall be no greater than 0.44 tons per day.

Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B, or from testing as described below, by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

ii. SO₂ Emissions

- A. Combined emissions of SO₂ from all sources shall be no greater than 4.714 tons per day.

Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

Emissions from the FCC wet scrubbers shall be determined using a Continuous Emissions Monitor (CEM) in accordance with IX.H.1.f.

iii. NO_x Emissions:

- A. Combined emissions of NO_x from all sources shall be no greater than 2.20 tons per day.

Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

f. Tesoro Refining & Marketing Company

i. PM₁₀ Emissions

- A. Combined emissions of filterable PM₁₀ from gas-fired compressor drivers and all external combustion process equipment, including the FCC/CO Boiler (ESP), shall be no greater than 0.261 tons per day.

Emissions for gas-fired compressor drivers and the group of external combustion process equipment shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

ii. SO₂ Emissions

- A. Combined emissions of SO₂ from gas-fired compressor drivers and all external combustion process equipment, including the FCC/CO Boiler (ESP), shall not exceed the following:

I. November 1 through end of February: 3.699 tons/day.

II. March 1 through October 31: 4.374 tons/day.

Emissions shall be determined for each day by multiplying the appropriate emission factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group of affected units.

Emissions from the ESP stack (FCC/CO Boiler) shall be determined by multiplying the SO₂ concentration in the flue gas by the mass flow of the flue gas.

The SO₂ concentration in the flue gas shall be determined by a continuous emission monitor (CEM).

iii. NO_x Emissions

- A. Combined emissions of NO_x from gas-fired compressor drivers and all external combustion process equipment shall be no greater than 1.988 tons per day.

Emissions shall be determined for each day by multiplying the appropriate emission

factor from section IX.H.4.b.i.B by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for

the group of affected units.

H.11. General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, PM_{2.5}

- a. Except as otherwise outlined in individual conditions of this Subsection IX.H.11 listed below, the terms and conditions of this Subsection IX.H.11 shall apply to all sources subsequently addressed in Subsection IX.H.12 and 13. Should any inconsistencies exist between these subsections, the source specific conditions listed in IX.H.12 and 13 shall take precedence.
- b. Definitions:
 - i. The definitions contained in R307-101-2, Definitions, apply to Section IX, Part H.
 - ii. Natural gas curtailment means a period of time during which the supply of natural gas to an affected facility is halted for reasons beyond the control of the facility. The act of entering into a contractual agreement with a supplier of natural gas established for curtailment purposes does not constitute a reason that is under the control of a facility for the purposes of this definition. An increase in the cost or unit price of natural gas does not constitute a period of natural gas curtailment.
- c. Recordkeeping and Reporting:
 - i. Any information used to determine compliance shall be recorded for all periods when the source is in operation, and such records shall be kept for a minimum of five years. Any or all of these records shall be made available to the Director upon request.
 - ii. Each source shall comply with all applicable sections of R307-150 Emission Inventories. iii. Each source shall submit a report of any deviation from the applicable requirements of this Subsection IX.H, including those attributable to upset conditions, the probable cause of such deviations, and any corrective actions or preventive measures taken. The report shall be submitted to the Director no later than 24-months following the deviation or earlier if specified by an underlying applicable requirement. Deviations due to breakdowns shall be reported according to the breakdown provisions of R307-107.
- d. Emission Limitations:
 - i. All emission limitations listed in Subsections IX.H.12 and IX.H.13 apply at all times, unless otherwise specified in the source specific conditions listed in IX.H.12 and 13.
 - ii. All emission limitations of particulate matter (PM_{2.5}) listed in Subsections IX.H.12 and IX.H.13 include both filterable PM_{2.5} and condensable PM, unless otherwise specified in the source specific conditions listed in IX.H.12 and IX.H.13.

e. Stack Testing:

- i. As applicable, stack testing to show compliance with the emission limitations for the sources in Subsection IX.H.12 and 13 shall be performed in accordance with the following:
 - A. Sample Location: The emission point shall be designed to conform to the requirements of 40 CFR 60, Appendix A, Method 1, or other EPA-approved testing methods acceptable to the Director. Occupational Safety and Health Administration (OSHA) approvable access shall be provided to the test location.
 - B. Volumetric Flow Rate: 40 CFR 60, Appendix A, Method 2 or EPA Test Method No. 19 "SO₂ Removal & PM, SO₂, NO_x Rates from Electric Utility Steam Generators" or other EPA-approved testing methods acceptable to the Director.
 - C. PM: 40 CFR 60, Appendix A, Methods 5, 5b, 5f, 17 or other EPA approved testing methods acceptable to the Director.
 - D. PM_{2.5}: 40 CFR 51, Appendix M, 201a and 202, or other EPA approved testing methods acceptable to the Director. The back half condensables shall be used for compliance demonstration as well as for inventory purposes. If a method other than 201a is used, the portion of the front half of the catch considered PM_{2.5} shall be based on information in Appendix B of the fifth edition of the EPA document, AP-42, or other data acceptable to the Director.
 - E. SO₂: 40 CFR 60 Appendix A, Method 6C, or other EPA-approved testing methods acceptable to the Director.
 - F. NO_x: 40 CFR 60 Appendix A, Method 7E, or other EPA-approved testing methods acceptable to the Director.
 - G. VOC: 40 CFR 60 Appendix A, Method 25A or other EPA -approved testing methods acceptable to the Director.
 - H. Calculations: To determine mass emission rates (lb/hr, etc.) the pollutant concentration as determined by the appropriate methods above shall be multiplied by the volumetric flow rate and any necessary conversion factors to give the results in the specified units of the emission limitation.
 - I. A stack test protocol shall be provided at least 30 days prior to the test. A pretest conference shall be held if directed by the Director.
 - J. The production rate during all compliance testing shall be no less than 90% of the maximum production rate achieved in the previous three (3) years. If the desired

production rate is not achieved at the time of the test, the maximum production rate shall be 110% of the tested achieved rate, but not more than the maximum allowable production rate. This new allowable maximum production rate shall remain in effect until successfully tested at a higher rate. The owner/operator shall request a higher

production rate when necessary. Testing at no less than 90% of the higher rate shall be conducted. A new maximum production rate (110% of the new rate) will then be allowed if the test is successful. This process may be repeated until the maximum allowable production rate is achieved.

f. Continuous Emission and Opacity Monitoring

i. For all continuous monitoring devices, the following shall apply:

- A. Except for system breakdown, repairs, calibration checks, and zero and span adjustments required under paragraph (d) 40 CFR 60.13, the owner/operator of an affected source shall continuously operate all required continuous monitoring systems and shall meet minimum frequency of operation requirements as outlined in R307-170 and 40 CFR 60.13. Flow measurement shall be in accordance with the requirements of 40 CFR 52, Appendix E; 40 CFR 60 Appendix B; or 40 CFR 75, Appendix A.
- B. The monitoring system shall comply with all applicable sections of R307-170; 40 CFR 13; and 40 CFR 60, Appendix B – Performance Specifications.

ii. Opacity observations of emissions from stationary sources shall be conducted in accordance with 40 CFR 60, Appendix A, Method 9.

g. Petroleum Refineries.

i. Limits at Fluid Catalytic Cracking Units

A. FCCU SO₂ Emissions

- I. Each owner or operator of an FCCU shall comply with an SO₂ emission limit of 25 ppmvd @ 0% excess air on a 365-day rolling average basis and 50 ppmvd @ 0% excess air on a 7-day rolling average basis.
- II. Compliance with this limit shall be determined using a CEM in accordance with IX.H.11.f.

B. FCCU PM Emissions

- I. Each owner or operator of an FCCU shall comply with an emission limit of 1.0 pounds PM per 1000 pounds coke burn-off.
- II. Compliance with this limit shall be determined by following the stack test protocol specified in 40 C.F.R. §60.106(b) to measure PM emissions on the FCCU. Each owner operator shall conduct stack tests once every

three (3) years at each FCCU.

III. No later than January 1, 2019, each owner or operator of an FCCU subject to NSPS Ja shall install, operate and maintain a continuous parameter monitor system (CPMS) to measure and record operating parameters from the FCCU and control devices as per the requirements of 40 CFR 60.105a(b)(1). No later than January 1, 2019, each owner or operator of an FCCU not subject to NSPS Ja shall install, operate and maintain a continuous opacity monitoring system to measure and record opacity from the FCCU as per the requirements of 40 CFR 63.1572(b) and comply with the opacity limitation as per the requirements of Table 7 to Subpart UUU of Part 63.

ii. Limits on Refinery Fuel Gas

- A. All petroleum refineries in or affecting any PM_{2.5} nonattainment area or any PM₁₀ nonattainment or maintenance area shall reduce the H₂S content of the refinery plant gas to 60 ppm or less as described in 40 CFR 60.102a. Compliance shall be based on a rolling average of 365 days. The owner/operator shall comply with the fuel gas monitoring requirements of 40 CFR 60.107a and the related recordkeeping and reporting requirements of 40 CFR 60.108a. As used herein, refinery "plant gas" shall have the meaning of "fuel gas" as defined in 40 CFR 60.101a, and may be used interchangeably.
- B. For natural gas, compliance is assumed while the fuel comes from a public utility.

iii. Limits on Heat Exchangers

- A. Each owner or operator shall comply with the requirements of 40 CFR 63.654 for heat exchange systems in VOC service. The owner or operator may elect to use another EPA-approved method other than the Modified El Paso Method if approved by the Director.
 - I. The following applies in lieu of 40 CFR 63.654(b): A heat exchange system is exempt from the requirements in paragraphs 63.654(c) through (g) of this section if it meets any one of the criteria in the following paragraphs (1) through (2) of this section.
 - 1. All heat exchangers that are in VOC service within the heat exchange system that either:
 - a. Operate with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side; or
 - b. Employ an intervening cooling fluid, containing less than 10 percent by weight of VOCs, between the process and the cooling water. This

intervening fluid must serve to isolate the cooling water from the process

fluid and must not be sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for maintenance purposes.

2. The heat exchange system cools process fluids that contain less than 10 percent by weight VOCs (i.e., the heat exchange system does not contain any heat exchangers that are in VOC service).

iv. Leak Detection and Repair Requirements

- A. Each owner or operator shall comply with the requirements of 40 CFR 60.590a to 60.593a as soon as practicable.
- B. For units complying with the Sustainable Skip Period, previous process unit monitoring results may be used to determine the initial skip period interval provided that each valve has been monitored using the 500 ppm leak definition.

v. Requirements on Hydrocarbon Flares

- A. All hydrocarbon flares at petroleum refineries located in or affecting a PM_{2.5} nonattainment area or any PM₁₀ nonattainment or maintenance area shall be subject to the flaring requirements of NSPS Subpart Ja (40 CFR 60.100a–109a), if not already subject under the flare applicability provisions of Ja.
- B. No later than January 1, 2019, all major source petroleum refineries in or affecting any PM_{2.5} nonattainment area or any PM₁₀ nonattainment or maintenance area shall either 1) install and operate a flare gas recovery system designed to limit hydrocarbon flaring produced from each affected flare during normal operations to levels below the values listed in 40 CFR 60.103a(c), or 2) limit flaring during normal operations to 500,000 scfd for each affected flare. Flare gas recovery is not required for dedicated SRU flare and header systems, or HF flare and header systems.

vi. Requirements on Tank Degassing

- A. Beginning January 1, 2017, the owner or operator of any stationary tank of 40,000-gallon or greater capacity and containing or last containing any organic liquid, with a true vapor pressure equal or greater than 10.5 kPa (1.52 psia) at storage temperature (see R307-324-4(1)) shall not allow it to be opened to the atmosphere unless the emissions are controlled by exhausting VOCs contained in the tank vapor-space to a vapor control device until the organic vapor concentration is 10 percent or less of the lower explosion limit (LEL).
- B. These degassing provisions shall not apply while connecting or disconnecting

degassing equipment.

- C. The Director shall be notified of the intent to degas any tank subject to the rule. Except in an emergency situation, initial notification shall be submitted at least three (3) days prior to degassing operations. The initial notification shall include:
 - I. Start date and time;
 - II. Tank owner, address, tank location, and applicable tank permit numbers;
 - III. Degassing operator's name, contact person, telephone number;
 - IV. Tank capacity, volume of space to be degassed, and materials stored;
 - V. Description of vapor control device.

vii. No Burning of Liquid Fuel Oil in Stationary Sources

- A. No petroleum refineries in or affecting any PM_{2.5} nonattainment area or PM₁₀ nonattainment or maintenance area shall be allowed to burn liquid fuel oil in stationary sources except during natural gas curtailments or as specified in the individual subsections of Section IX, Part H.
- B. The use of diesel fuel meeting the specifications of 40 CFR 80.510 in standby or emergency equipment is exempt from the limitation of IX.H.11.g.vii.A above.

h. Catalytic Oxidation for VOC Control

i. Internal Combustion Engines

- A. Emissions from each VOC catalytic-controlled IC engine shall be routed through the oxidation catalyst system prior to being emitted to the atmosphere. The oxidation catalyst system shall be installed and operated as outlined in 40 CFR 63.6625(e).

ii. Natural Gas Combustion Turbines

- A. Emissions from each VOC catalytic-controlled combustion turbine shall be routed through the oxidation catalyst system prior to being emitted to the atmosphere. The oxidation catalyst system shall be installed and operated according to the manufacturer's emission-related written instructions and in a manner consistent with good air pollution control practice for minimizing emissions.

H.12. Source-Specific Emission Limitations in Salt Lake City – UT PM_{2.5} Nonattainment Area

- a. ATK Launch Systems Inc. Promontory
 - i. During the period November 1 to February 28/29 on days when the 24-hour average PM_{2.5} levels exceed 35 µg/m³ at the nearest real-time monitoring station, the open burning of reactive wastes with properties identified in 40 CFR 261.23 (a) (6) (7) (8) may be conducted when the 24-hour average PM_{2.5} levels exceed 35 µg/m³ at the nearest real time monitoring station in limited quantities. Limited quantities, as authorized in the facility's RCRA Subpart X permit, of time sensitive reactive wastes may be open burned when the 24-hour average PM_{2.5} levels exceed 35 µg/m³ at the nearest real-time monitoring station.
 - ii. During the period November 1 to February 28/29, on days when the 24-hour average PM_{2.5} levels exceed 35 µg/m³ at the nearest real-time monitoring station, the following shall not be tested:
 - A. Propellant, energetics, pyrotechnics, flares and other reactive compounds greater than 2,400 lbs. per day; or
 - B. Rocket motors less than 1,000,000 lbs. of propellant per motor subject to the following exception:
 - I. A single test of rocket motors less than 1,000,000 lbs. of propellant per motor is allowed on a day when the 24-hour average PM_{2.5} level exceeds 35 µg/m³ at the nearest real-time monitoring station provided notice is given to the Director of the Utah Air Quality Division. No additional tests of rocket motors less than 1,000,000 lbs. of propellant may be conducted during the inversion period until the 24-hour average PM_{2.5} level has returned to a concentration below 35 µg/m³ at the nearest real-time monitoring station.
 - C. During this period, records will be maintained identifying the size of the rocket motors tested and the 24-hour average PM_{2.5} level at the nearest real-time monitoring station on days when motor testing occur.
 - iii. Natural Gas-Fired Boilers
 - A. Building M-576
 - I. One 71 MMBTU/hr boiler shall be upgraded with low NO_x burners and flue gas recirculation by January 2016. The boiler shall be rated at a maximum of 9

ppm. The remaining boiler shall not consume more than 100,000 MCF of natural gas per rolling 12- month period unless upgraded so the NOx emission rate is no greater than 30 ppm.

II. Emissions to the atmosphere from the Cleaver Brooks 71 MMBTU/hr boiler in building M-576 shall not exceed the following concentration:

- | | | |
|----|----------------------|--------------------------|
| a. | Pollutant | ppmdv (3% O ₂ |
| | dry) NO _x | 9 |
- b. Compliance with the above emission limits shall be determined by stack test as outlined in Section IX Part H.11.e of this SIP.
- c. Subsequent to initial compliance testing, stack testing is required every three years.

B. Building M-14

I. The two 25 MMBTU/hr boiler shall be upgraded with low NO_x burners and flue gas recirculation by December 31, 2024. The boiler shall be rated at a maximum of 9 ppm.

II. Emissions to the atmosphere from the two (2) Cleaver Brooks 25 MMBTU/hr boilers in building M-14 shall not exceed the following concentrations:

- | | | |
|----|----------------------|--------------------------|
| a. | Pollutant | ppmdv (3% O ₂ |
| | dry) NO _x | 9 |
- b. Compliance with the above emission limits shall be determined by stack test as outlined in Section IX Part H.11.e of this SIP.
- c. Subsequent to initial compliance testing, stack testing is required every three years.

b. Big West Oil Refinery

i. Source-wide PM_{2.5}:

Following installation of the Flue Gas Blow Back Filter (FGF), but no later than January 1, 2019, combined emissions of PM_{2.5} (filterable+condensable) shall not exceed 0.29 tons per day and 72.5 tons per rolling 12-month period. No later than January 1, 2019, Big West Oil shall conduct stack testing to establish the ratio of filterable and condensable PM_{2.5} from the Catalyst Regeneration System.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.12.b.i.B below, the default emission factors to be used are as follows:

Natural gas:

Filterable PM_{2.5}: 1.9 lb/MMscf

Condensable PM_{2.5}: 5.7 lb/MMscf

Plant gas:

Filterable PM_{2.5}: 1.9 lb/MMscf

Condensable PM_{2.5}: 5.7 lb/MMscf

Fuel Oil: The PM_{2.5} emission factors shall be determined from the latest edition of AP-42 or other EPA-approved methods.

FCC Stacks: The PM_{2.5} emission factors shall be established by stack test.

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. The default emission factors listed in IX.H.12.b.i.A above apply until such time as stack testing is conducted as provided in IX.H.11.e or as outlined below:

PM_{2.5} stack testing on the FCC shall be performed initially no later than January 1, 2019 and at least once every three (3) years thereafter. Stack testing shall be performed as outlined in IX.H.11.e.

C. Compliance with the source-wide PM_{2.5} Cap shall be determined for each day as follows: Total 24-hour PM_{2.5} emissions for the emission points shall be calculated by adding the daily results of the PM_{2.5} emissions equations listed below for natural gas, plant gas, and fuel oil combustion. These emissions

shall be added to the emissions from the FCC to arrive at a combined daily
PM_{2.5}

emission total.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Daily gas consumption shall be measured by meters that can delineate the flow of gas to the boilers, furnaces and the SRU incinerator.

The equation used to determine emissions from these units shall be as follows: $\text{Emissions} = \text{Emission Factor (lb/MMscf)} * \text{Gas Consumption (MMscf/24 hrs)} / (2,000 \text{ lb/ton})$

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The daily $\text{PM}_{2.5}$ emissions from the FCC shall be calculated using the following equation: $E = FR * EF$

Where:

E = Emitted $\text{PM}_{2.5}$

FR = Feed Rate to Unit (kbbbls/day)

EF = emission factor (lbs/kbbl), established by the most recent stack test

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

ii. Source-wide NO_x Cap

No later than January 1, 2019, combined emissions of NO_x shall not exceed 0.80 tons per day (tpd) and 195 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.12.b.ii.B below, the default emission factors to be used are as follows:

Natural gas: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

Plant gas: assumed equal to natural gas

Diesel fuel: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

Where mixtures of fuel are used in a Unit, the above factors shall be weighted

according to the use of each fuel.

- B. The default emission factors listed in IX.H.12.b.ii.A above apply until such time as stack testing is conducted as provided in IX.H.11.e or as outlined below:

Initial NO_x stack testing on natural gas/refinery fuel gas combustion equipment above 40 MMBtu/hr has been performed NO_x emissions for the FCC are monitored with a continuous emission monitoring system. Refinery Boilers and heaters over 40 MMBtu/hr, but less than 100 MMBtu/hr, are in compliance with monitoring and work practice standards of Subpart DDDDD of Part 63.

- C. Compliance with the source-wide NO_x Cap shall be determined for each day as follows: Total 24-hour NO_x emissions shall be calculated by adding the emissions for each emitting unit. The emissions for each emitting unit shall be calculated by multiplying the hours of operation of a unit, feed rate to a unit, or quantity of each fuel combusted at each affected unit by the associated emission factor, and summing the results.

Daily plant gas consumption at the furnaces, boilers and SRU incinerator shall be measured by flow meters. The equations used to determine emissions shall be as follows:

$$\text{NO}_x = \text{Emission Factor (lb/MMscf)} * \text{Gas Consumption (MMscf/24 hrs)} / (2,000 \text{ lb/ton})$$

Where the emission factor is derived from the fuel used, as listed in IX.H.12.b.ii.A above Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The daily NO_x emissions from the FCC shall be calculated using a CEM as outlined in IX.H.11.f

Total daily NO_x emissions shall be calculated by adding the results of the above NO_x equations for natural gas and plant gas combustion to the estimate for the FCC.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

- iii. Source-wide SO₂ Cap

No later than January 1, 2019, combined emissions of SO₂ shall not exceed 0.60 tons per day and 140 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. The default emission factors to be used are as follows:

Natural Gas - 0.60 lb SO₂/MMscf gas

Plant Gas: The emission factor to be used in conjunction with plant gas combustion shall be determined through the use of a CEM as outlined in IX.H.11.f.

SRUs: The emission rate shall be determined by multiplying the sulfur dioxide concentration in the flue gas by the flow rate of the flue gas. The sulfur dioxide concentration in the flue gas shall be determined by CEM as outlined in IX.H.11.f.

Fuel oil: The emission factor to be used for combustion shall be calculated based on the weight percent of sulfur, as determined by ASTM Method D-4294-89 or EPA approved equivalent acceptable to the Director, and the density of the fuel oil, as follows:

$$EF (\text{lb SO}_2/\text{k gal}) = \text{density (lb/gal)} * (1000 \text{ gal/k gal}) * \text{wt. \% S}/100 * (64 \text{ lb SO}_2/32 \text{ lbs})$$

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. Compliance with the source-wide SO₂ Cap shall be determined for each day as follows:

Total daily SO₂ emissions shall be calculated by adding the daily SO₂ emissions for natural gas and plant fuel gas combustion, to those from the FCC and SRU stacks.

The daily SO_x emissions from the FCC shall be calculated using a CEM as outlined in IX.H.11.f

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Results shall be tabulated for each day, and records shall be kept which include

CEM readings for H₂S (averaged for each day), all meter readings (in the appropriate units), fuel oil parameters (density and wt% sulfur for each day any fuel oil is burned), and the calculated emissions.

iv. Emergency and Standby Equipment

- A. The use of diesel fuel meeting the specifications of 40 CFR 80.510 is allowed in standby or emergency equipment at all times.

v. Alternate Startup and Shutdown Requirements

- A. During any day which includes startup or shutdown of the FCCU, combined emissions of SO₂ shall not exceed 1.2 tons per day (tpd). For purposes of this subsection, a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.
- B. The total number of days which include startup or shutdown of the FCCU shall not exceed ten (10) per 12-month rolling period.

vi. No later than January 1, 2019, the owner/operator shall install the following to control emissions from the listed equipment:

Emission Unit	Control Equipment
FCCU Regenerator	Flue gas blowback "Pall Filter", quaternary cyclones with fabric filter
H-404 #1 Crude Heater	Ultra-low NO _x burners
Refinery Flares	Subpart Ja, and MACT CC flaring standards
SRU	Tail gas incinerator and redundant caustic scrubber
Product Loading Racks	Vapor recovery and vapor combustors
Wastewater Treatment System	API separator fixed cover, carbon adsorber canisters to be installed 2019.

c. Chemical Lime Company (LHoist North America)

Lime Production Kiln

- i. No later than January 1, 2019, or upon source start-up, whichever comes later, SNCR technology shall be installed on the Lime Production Kiln.
 - a. Effective January 1, 2019, or upon source start-up, whichever comes later, NO_x emissions shall not exceed 56 lb/hr. (3-hr rolling average)
 - b. Compliance with the above emissions limit shall be determined by stack testing as outlined in Section IX Part H.11.e of this SIP.
- ii. No later than January 1, 2019, or upon source start-up, whichever comes later, a baghouse control technology shall be installed and operating on the Lime Production Kiln.
 - a. Effective January 1, 2019, or upon source start-up, whichever comes later, PM emissions shall not exceed 0.12 pounds per ton (lb/ton) of stone feed. (3-hr rolling average)
 - b. Effective January 1, 2019, or upon source start-up, whichever comes later, PM_{2.5} (filterable + condensable) emissions shall not exceed 1.5 lbs/ton of stone feed. (3-hr rolling average)
 - c. Compliance with the above emission limits shall be determined by stack testing as outlined in Section IX Part H.11.e of this SIP and in accordance with 40 CFR 63 Subpart AAAAA.
- iii. An initial compliance test is required no later than January 1, 2019 (if start-up occurs on or before January 1, 2019) or within 180 days of source start-up (if start-up occurs after January 1, 2019) ***All subsequent compliance testing shall be performed at least once annually based upon the date of the last compliance test.***
- iv. Upon plant start-up kiln emissions shall be exhausted through the baghouse during all startup, shutdown, and operations of the kiln.
- v. Start-up/shut-down provisions for SNCR technology be as follows:
 - a. No ammonia or urea injection during startup until the combustion gases exiting the kiln reach the temperature when NO_x reduction is effective, and
 - b. No ammonia or urea injection during shutdown.

- c. Records of ammonia or urea injection shall be documented in an operations log.

The operations log shall include all periods of start-up/shut-down and subsequent beginning and ending times of ammonia or urea injection which documents v.a and v.b above.

d. Chevron Products Company - Salt Lake Refinery

i. Source-wide PM_{2.5} Cap

No later than January 1, 2019, combined emissions of PM_{2.5} (filterable+condensable) shall not exceed 0.305 tons per day (tpd) and 110 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.12.f.i.B below, the default emission factors to be used are as follows:

Natural gas:

Filterable PM_{2.5}: 1.9 lb/MMscf

Condensable PM_{2.5}: 5.7 lb/MMscf

Plant gas:

Filterable PM_{2.5}: 1.9 lb/MMscf

Condensable PM_{2.5}: 5.7 lb/MMscf

HF alkylation polymer: shall be determined from the latest edition of AP-42 (HF alkylation polymer treated as fuel oil #6) or other EPA-approved methods.

Diesel fuel: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

FCC Stack:

The PM_{2.5} emission factors shall be based on the most recent stack test and verified by parametric monitoring as outlined in IX.H.11.g.i.B.III

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. The default emission factors listed in IX.H.12.f.i.A above apply until such time as stack testing is conducted as provided in IX.H.11.e or as outlined below:

Initial PM_{2.5} stack testing on the FCC stack has been performed and shall be conducted at least once every three (3) years from the date of the last stack test. Stack testing shall be performed as outlined in IX.H.11.e.

- C. Compliance with the source-wide $PM_{2.5}$ Cap shall be determined for each day as follows:

Total 24-hour PM_{2.5} emissions for the emission points shall be calculated by adding the daily results of the PM_{2.5} emissions equations listed below for natural gas, plant gas, and fuel oil combustion. These emissions shall be added to the emissions from the FCC to arrive at a combined daily PM_{2.5} emission total.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The equation used to determine emissions for the boilers and furnaces shall be as follows: Emissions = Emission Factor (lb/MMscf) * Gas Consumption (MMscf/24 hrs)/(2,000 lb/ton)

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

ii. Source-wide NO_x Cap

No later than January 1, 2019, combined emissions of NO_x shall not exceed 2.1 tons per day (tpd) and 766.5 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.12.f.ii.B below, the default emission factors to be used are as follows:

Natural gas: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

Plant gas: assumed equal to natural gas

Alkylation polymer: shall be determined from the latest edition of AP-42 (as fuel oil #6) or other EPA-approved methods.

Diesel fuel: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

Where mixtures of fuel are used in a Unit, the above factors shall be weighted

according to the use of each fuel.

- B. The default emission factors listed in IX.H.12.f.ii.A above apply until such time as stack testing is conducted as provided in IX.H.11.e or as outlined below:

Initial NO_x stack testing on natural gas/refinery fuel gas combustion equipment above 100 MMBtu/hr has been performed and shall be conducted at least once every three (3) years from the date of the last stack test. At that time a new flow-weighted average emission factor in terms of: lbs/MMBtu shall be derived for each combustion type listed in IX.H.12.f.ii.A above. Stack testing shall be performed as outlined in IX.H.11.e.

- C. Compliance with the source-wide NO_x Cap shall be determined for each day as follows:

Total 24-hour NO_x emissions shall be calculated by adding the emissions for each emitting unit. The emissions for each emitting unit shall be calculated by multiplying the hours of operation of a unit, feed rate to a unit, or quantity of each fuel combusted at each affected unit by the associated emission factor, and summing the results.

A NO_x CEM shall be used to calculate daily NO_x emissions from the FCC. Emissions shall be determined by multiplying the nitrogen dioxide concentration in the flue gas by the flow rate of the flue gas. The NO_x concentration in the flue gas shall be determined by a CEM as outlined in IX.H.11.f.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions

iii. Source-wide SO₂

No later than January 1, 2019, combined emissions of SO₂ shall not exceed 1.05 tons per day (tpd) and 383.3 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. The default emission factors to be used are as follows:

FCC: The emission rate shall be determined by the FCC SO₂ CEM as outlined in IX.H.11.f.

SRUs: The emission rate shall be determined by multiplying the sulfur dioxide concentration in the flue gas by the flow rate of the flue gas. The sulfur dioxide concentration in the flue gas shall be determined by CEM as outlined in IX.H.11.f.

Natural gas: $EF = 0.60 \text{ lb/MMscf}$

Fuel oil & HF Alkylation polymer: The emission factor to be used for combustion shall be calculated based on the weight percent of sulfur, as determined by ASTM Method D-4294-89 or EPA-approved equivalent acceptable to the Director, and the density of the fuel oil, as follows:

$EF (\text{lb SO}_2/\text{k gal}) = \text{density (lb/gal)} * (1000 \text{ gal/k gal}) * \text{wt. \% S}/100 * (64 \text{ lb SO}_2/32 \text{ lb S})$

Plant gas: the emission factor shall be calculated from the H₂S measurement obtained from the H₂SCEM.

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

- B. Compliance with the source-wide SO₂ Cap shall be determined for each day as follows: Total daily SO₂ emissions shall be calculated by adding the daily SO₂ emissions for natural gas and plant fuel gas combustion, to those from the FCC and SRU stacks.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

Results shall be tabulated for each day, and records shall be kept which include CEM readings for H₂S (averaged for each one-hour period), all meter reading (in the appropriate units), fuel oil parameters (density and wt% sulfur for each day any fuel oil is burned), and the calculated emissions.

iv. Emergency and Standby Equipment and Alternative Fuels

- A. The use of diesel fuel meeting the specifications of 40 CFR 80.510 is allowed in standby or emergency equipment at all times.
- B. HF alkylation polymer may be burned in the Alky Furnace (F-36017).
- C. Plant coke may be burned in the FCC Catalyst Regenerator.

v. Compressor Engine Requirements

- A. Emissions of NO_x from each rich-burn compressor engine shall not exceed the following:

Engine Number	NO _x in ppmvd @ 0% O ₂
K35001	236
K35002	208
K35003	230

- B. Initial stack testing to demonstrate compliance with the above emission limitations shall be performed no later than January 1, 2019 and at least once every three years thereafter. Stack testing shall be performed as outlined in IX.H.11.e.

vi. Flare Calculation

- A. Chevron's Flare #3 receives gases from its Isomerization unit, Reformer unit as well as its HF Alkylation Unit. The HF Alkylation Unit's flow contribution to Flare #3 will not be included in determining compliance with the flow restrictions set in IX.H.11.g.v.B

- vii. No later than January 1, 2019, the owner/operator shall install the following to control emissions from the listed equipment:

Emission Unit	Control Equipment
Boilers: 5, 6, 7	Low NO _x burners and flue gas recirculation (FGR)
Cooling Water Towers	High efficiency drift eliminators
Crude Furnaces F21001, F21002	Low NO _x burners
Crude Oil Loading	Vapor Combustion Unit (VCU)
FCC Regenerator Stack	Vacuum gas oil hydrotreater, Electrostatic precipitator (ESP) and cyclones
Flares: Flare 1, 2	Flare gas recovery system
HDS Furnaces F64010, F64011	Low NO _x burners
Reformer Compressor Drivers K35001, K35002, K35003	Selective Catalytic Reduction (SCR)
Sulfur Recovery Unit 1	Tail gas treatment unit and tail gas incineration
Sulfur Recovery Unit 2	Tail gas treatment unit and tail gas incineration
Wastewater Treatment Plant	Existing wastewater controls system of induced air flotation (IAF) and regenerative thermal oxidation

	(RTO)
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e. Compass Minerals Ogden Inc.

- i. NO_x emissions to the atmosphere from the indicated emission point shall not exceed the following concentrations:

Emission Points	Concentration (ppm)	lb/hr
Boiler #1	9.0	1.3
Boiler #2	9.0	1.3

Compliance to the above emission limits shall be determined by stack test as outlined in Section IX Part H.11.e of this SIP. A compliance test shall be performed at least annually subsequent to the initial compliance test.

- ii. PM_{2.5} emissions (filterable+condensable) to the atmosphere from each of the following emission points shall not exceed the listed concentration and lb/hr emission rates:

Emission Unit	PM _{2.5} Emission Rate (lb/hr)	Concentration Emission Rate (grains/dscf)
AH-500	1.61	0.01
AH-502	0.74	0.04
AH-513	1.49	0.0114
BH-001	0.37	0.01
BH-002	0.47	0.01
BH-008	4.25	0.01
BH-501	1.15	0.01
BH-502	0.06	0.0053
BH-503	0.23	0.01
BH-505	0.12	0.01
AH-1555	0.39	0.01
BH-1400	2.78	0.02
AH-692	0.12	0.01
BH-1516	0.22	0.01

- A. Compliance to the above emission limits shall be determined by stack test as outlined in Section IX Part H.11.e of this SIP. Compliance testing shall be performed annually.
- B. Process emissions shall be routed through operating controls prior to being emitted to the atmosphere.
- iii. Emissions of VOC from all Magnesium Chloride Evaporators (four stacks total) shall not exceed 6.18 lb/hr.

- A. Compliance shall be determined by stack test as outlined in Section IX Part H.11.e of this SIP. Compliance testing shall be performed at least once every three years.

- B. Process emissions shall be routed through operating controls prior to being emitted to the atmosphere.

f. Hexcel Corporation: Salt Lake Operations

- i. The following limits shall not be exceeded for fiber line operations:
 - A. 5.50 MMscf of natural gas consumed per day.
 - B. 0.061 MM pounds of carbon fiber produced per day.
 - C. Compliance with each limit shall be determined by the following methods:
 - I. Natural gas consumption shall be determined by examination of natural gas billing records for the plant and onsite pipe-line metering.
 - II. Fiber production shall be determined by examination of plant production records.
 - III. Records of consumption and production shall be kept on a daily basis for all periods when the plant is in operation.
- ii. After a shutdown and prior to startup of fiber lines 13 to 16, the line's baghouse(s) and natural gas injection dual chambered regenerative thermal oxidizer shall be started and remain in operation during production.
 - A. During fiber line production, the static pressure differential across the filter media shall be within the manufacturer's recommended range and shall be recorded daily.
 - B. The manometer or the differential pressure gauge shall be calibrated according to the manufacturer's instructions at least once every 12 months.
- iii. Filter boxes will be installed on Fiber lines 13 and 14 to control PM_{2.5} emissions no later than December 31, 2019.
- iv. Ultra Low NO_x Burners with flue gas recirculation shall be installed on Fiber lines 3, 4, and 7 to control NO_x emissions no later than December 31, 2024.

A. Emission limitations for NO_x shall be as follows:

Concentration (ppm)	
Fiber Line 3	9.0
Fiber Line 4	9.0

Fiber Line 7 9.0

- B. Stack testing shall be performed at least once every (3) years based upon the date of the last compliance test and at a time when PAN is not being introduced into the burners.
- v. De-NO_x Water Direct Fired Thermal Oxidizer (DFTO) shall be installed on Fiber lines 13, 14, 15, and 16 to control NO_x emissions no later than December 31, 2024.
- vi. After a shutdown and prior to startup of the fiber lines, the residence time and temperature associated with the regenerative thermal-oxidation fume incinerators and solvent-coating fume incinerators shall be started and remain in operation during production.
- A. Unless otherwise indicated, the carbon fiber production thermal-oxidation fume incinerators the minimum temperature shall be 1,400 deg F and the residence time shall be greater than or equal to 0.5 seconds

Solvent-coating fume incinerators the minimum temperature shall be 1,450 deg F and the residence time shall be greater than or equal to 0.5 seconds

For fiber lines 6, 7, 8, 10, 11, 12, and the line associated with the Research and Development Facility, the solvent coating fume incinerators temperature shall range from 1,400 to 1,700 deg F and the residence time shall be greater than or equal to 1.0 second

Residence times shall be determined by:

$$R = V /$$

$$Q_{\max}$$

Where

R = residence time

V = interior volume of the incinerator - ft³

Q_{max} = maximum exhaust gas flow rate - ft³/second

- B. Incinerator temperatures shall be monitored with temperature sensing equipment that is capable of continuous measurement and readout of the combustion temperature. The readout shall be located such that an inspector/operator can at any time safely read the output. The measurement shall be accurate within ± 25°F at operating temperature. The measurement need not be continuously recorded. All instruments shall be calibrated against a primary standard at least once every 180 days. The calibration procedure shall be in accordance with 40 CFR 60, Appendix A, Method 2, paragraph 6.3, and 10.31, or use a type "K" thermocouple.

g. Holly Corporation: Holly Refining & Marketing Company (Holly Refinery)

i. Source-wide PM_{2.5} Cap

No later than January 1, 2019, PM_{2.5} emissions (filterable + condensable) from all combustion sources shall not exceed 47.6 tons per rolling 12-month period and 0.134 tons per day (tpd).

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.12. g.i.B below, the default emission factors to be used are as follows:

Natural gas or Plant gas:

non-NSPS combustion equipment: 7.65 lb

PM_{2.5}/MMscf NSPS combustion equipment: 0.52 lb

PM_{2.5}/MMscf

Fuel oil:

The filterable PM_{2.5} emission factor for fuel oil combustion shall be determined based on the sulfur content of the oil as follows:

$$\text{PM}_{2.5} (\text{lb}/1000 \text{ gal}) = (10 * \text{wt. \% S}) + 3$$

The condensable PM_{2.5} emission factor for fuel oil combustion shall be determined from the latest edition of AP-42.

FCC Wet Scrubbers:

The PM_{2.5} emission factors shall be based on the most recent stack test and verified by parametric monitoring as outlined in IX.H.11.g.i.B.III. As an alternative to a continuous parameter monitor system or continuous opacity monitoring system for PM emissions from any FCCU controlled by a wet gas scrubber, as required in Subsection IX.H.11.g.i.B.III, the owner/operator may satisfy the opacity monitoring requirements from its FCC Units with wet gas scrubbers through an alternate monitoring program as approved by the EPA and acceptable to the Director.

B. The default emission factors listed in IX.H.12. g.i.A above apply until such time as stack testing is conducted as outlined below:

Initial stack testing on all NSPS combustion equipment shall be conducted no later than January 1, 2019 and at least once every three years thereafter. At that time a new flow-weighted average emission factor in terms of: lb

PM_{2.5}/MMBtu shall be derived. Stack testing shall be performed as outlined in IX.H.11.e.

- C. Compliance with the source-wide PM_{2.5} Cap shall be determined for each day as follows: Total 24-hour PM_{2.5} emissions for the emission points shall be calculated by adding the daily results of the PM_{2.5} emissions equations listed below for natural gas, plant gas, and fuel oil combustion. These emissions shall be added to the emissions from the wet scrubbers to arrive at a combined daily PM_{2.5} emission total.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters on all gas-fueled combustion equipment.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply fuel oil to combustion sources.

The equations used to determine emissions for the boilers and furnaces shall be as follows:

Emissions (tons/day) = Emission Factor (lb/MMscf) * Natural/Plant Gas Consumption (MMscf/day)/(2,000 lb/ton)

Emissions (tons/day) = Emission Factor (lb/kgal) * Fuel Oil Consumption (kgal/day)/(2,000 lb/ton)

Results shall be tabulated for each day, and records shall be kept which include all meter readings (in the appropriate units), and the calculated emissions.

ii. Source-wide NO_x Cap

No later than January 1, 2019, NO_x emissions into the atmosphere from all emission points shall not exceed 347.1 tons per rolling 12-month period and 2.09 tons per day (tpd).

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted.

Unless adjusted by performance testing as discussed in IX.H.12. g.ii.B below, the default emission factors to be used are as follows:

Natural gas/refinery fuel gas combustion using:
Low NO_x burners (LNB): 41 lbs/MMscf

Ultra-Low NO_x (ULNB) burners: 0.04 lbs/MMbtu
Next Generation Ultra Low NO_x burners (NGULNB): 0.10 lbs/MMbtu
Boiler #5: 0.02 lbs/MMbtu

All other boilers with selective catalytic reduction (SCR): 0.02
lbs/MMbtu All other combustion burners: 100 lb/MMscf

Where:

"Natural gas/refinery fuel gas" shall represent any combustion of natural gas, refinery fuel gas, or combination of the two in the associated burner.

All fuel oil combustion: 120 lbs/Kgal

- B. The default emission factors listed in IX.H.12. g.ii.A above apply until such time as stack testing is conducted as outlined in IX.H.11.e or by NSPS.
- C. Compliance with the Source-wide NO_x Cap shall be determined for each day as follows: Total daily NO_x emissions for emission points shall be calculated by adding the results of the NO_x equations for plant gas, fuel oil, and natural gas combustion listed below. For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The equations used to determine emissions for the boilers and furnaces shall be as follows:

Emissions (tons/day) = Emission Factor (lb/MMscf) * Natural Gas
Consumption (MMscf/day)/(2,000 lb/ton)

Emissions (tons/day) = Emission Factor (lb/MMscf) * Plant Gas Consumption
(MMscf/day)/(2,000 lb/ton)

Emissions (tons/day) = Emission Factor (lb/MMBTU) * Burner Heat Rating
(BTU/hr) *
24 hours per day /(2,000 lb/ton)

Emissions (tons/day) = Emission Factor (lb/kgal) * Fuel Oil
Consumption (kgal/day)/(2,000 lb/ton)

Results shall be tabulated for each day; and records shall be kept which include the meter readings (in the appropriate units), emission factors, and the calculated emissions.

iii. Source-wide SO₂ Cap

No later than January 1, 2019, the emission of SO₂ from all emission points

(excluding routine SRU turnaround maintenance emissions) shall not exceed 110.3 tons per rolling 12- month period and 0.31 tons per day (tpd).

A. Setting of emission factors:

The emission factors listed below shall be applied to the relevant quantities of fuel combusted:

Natural gas - 0.60 lb SO₂/MMscf

Plant gas - The emission factor to be used in conjunction with plant gas combustion shall be determined through the use of a CEM which will measure the H₂S content of the fuel gas. The CEM shall operate as outlined in IX.H.11.f.

Fuel oil - The emission factor to be used in conjunction with fuel oil combustion shall be calculated based on the weight percent of sulfur, as determined by ASTM Method D-4294-89 or EPA-approved equivalent, and the density of the fuel oil, as follows:

$$(\text{lb of SO}_2/\text{kgal}) = (\text{density lb/gal}) * (1000 \text{ gal/kgal}) * (\text{wt. \%S})/100 * (64 \text{ g SO}_2/32 \text{ g S})$$

The weight percent sulfur and the fuel oil density shall be recorded for each day any fuel oil is combusted.

- B. Compliance with the Source-wide SO₂ Cap shall be determined for each day as follows: Total daily SO₂ emissions shall be calculated by adding daily results of the SO₂ emissions equations listed below for natural gas, plant gas, and fuel oil combustion. For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

The equations used to determine emissions are:

$$\text{Emissions (tons/day)} = \text{Emission Factor (lb/MMscf)} * \text{Natural Gas Consumption (MMscf/day)} / (2,000 \text{ lb/ton})$$

$$\text{Emissions (tons/day)} = \text{Emission Factor (lb/MMscf)} * \text{Plant Gas Consumption (MMscf/day)} / (2,000 \text{ lb/ton})$$

$$\text{Emissions (tons/day)} = \text{Emission Factor (lb/kgal)} * \text{Fuel Oil Consumption (kgal/24 hrs)} / (2,000 \text{ lb/ton})$$

For purposes of these equations, fuel consumption shall be measured as outlined below: Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

Results shall be tabulated for each day, and records shall be kept which include CEM readings for H₂S (averaged for each one-hour period), all meter reading (in the appropriate units), fuel oil parameters (density and wt% sulfur for each day any fuel oil is burned), and the calculated emissions.

iv. Emergency and Standby Equipment

- A. The use of diesel fuel meeting the specifications of 40 CFR 80.510 is allowed in standby or emergency equipment at all times.

- vi. No later than January 1, 2019, the owner/operator shall install the following to control emissions from the listed equipment:

Emission Unit	Control Equipment
Process heaters and boilers	Boilers 8&11: LNB+SCR Boilers 5, 9 & 10: SCR Process heaters 20H2, 20H3 23H1, 24H1, 25H1: ULNB
Cooling watertowers 10, 11	High efficiency drift eliminators
FCCU regenerator stacks	WGS with Lo-TOx
Flares	Flare gas recovery system
Sulfur recovery unit	Tail gas incineration and WGS with Lo-TOx
Wastewater treatment plant	API separators, dissolved gas floatation (DGF), moving bed bio-film reactors (MBBR)

h. Kennecott Utah Copper (KUC): Mine

i. Bingham Canyon Mine (BCM)

- A. Maximum total mileage per calendar day for diesel-powered ore and waste haul trucks shall not exceed 30,000 miles.

KUC shall keep records of daily total mileage for all periods when the mine is in operation. KUC shall track haul truck miles with a Global Positioning System or equivalent. The system shall use real time tracking to determine daily mileage.

- B. To minimize fugitive dust on roads at the mine, the owner/operator shall perform the following measures:

- I. Apply water to all active haul roads as weather and operational conditions warrant except during precipitation or freezing weather conditions, and shall apply a chemical dust suppressant to active haul roads located outside of the pit influence boundary no less than twice per year.
- II. Chemical dust suppressant shall be applied as weather and operational conditions warrant except during precipitation or freezing weather conditions on unpaved access roads that receive haul truck traffic and light vehicle traffic.
- III. Records of water and/or chemical dust control treatment shall be kept for all periods when the BCM is in operation.
- IV. KUC is subject to the requirements in the most recent federally approved Fugitive Emissions and Fugitive Dust rules.

- C. The In-pit crusher baghouse shall not exceed a $PM_{2.5}$ emission limit of 0.78 lbs/hr (0.007 gr/dscf). $PM_{2.5}$ monitoring shall be performed by stack testing every three years.

ii. Copperton Concentrator (CC)

- A. Control emissions from the Product Molybdenite Dryers with a scrubber during operation of the dryers.

During operation of the dryers, the static pressure differential between the inlet and outlet of the scrubber shall be within the manufacturer's recommended range and shall be recorded weekly.

The manometer or the differential pressure gauge shall be calibrated according to the manufacturer's instructions at least once per year.

The remaining heaters shall not operate more than 300 hours per rolling 12- month period unless upgraded so the NOx emission rate is no greater than 30 ppm.

i. Kennecott Utah Copper (KUC): Power Plant

i. Utah Power Plant

A. The following requirements are applicable to Unit #4:

- I. Only natural gas shall only be used as a fuel, unless the supplier or transporter of natural gas imposes a curtailment. Unit #4 may then burn coal, only for the duration of the curtailment plus sufficient time to empty the coal bins following the curtailment. The Director shall be notified of the curtailment within 48 hours of when it begins and within 48 hours of when it ends.
- II. Emissions to the atmosphere when burning natural gas shall not exceed the following rates and concentrations:

Pollutant	grains/dscf 68°F. 29.92 in Hg	ppmdv 3% O ₂	lbs/hr	lbs/MMBtu	[lbs/event]
1. PM _{2.5} :					
Filterable	0.004				
Filterable + condensable	0.03				
2. NO _x :		30	32	0.04	
[Startup / Shutdown					395

~~III. Startup / Shutdown Limitations:~~

- ~~1. The total number of startups and shutdowns together shall not exceed 690 per calendar year.~~
- ~~2. The NO_x emissions shall not exceed 395 lbs from each startup/shutdown event, which shall be determined using manufacturer data.~~
- ~~3. Definitions:~~

- ~~(i) Startup cycle duration ends when the unit achieves half of the design electrical generation capacity.~~
- ~~(ii) Shutdown duration cycle begins with the initiation of boiler shutdown and ends when fuel flow to the boiler is discontinued.]~~

- B. Upon commencement of operation of Unit #4, stack testing to demonstrate compliance with each emission limitation in IX.H.12.j.i.A and IX.H.12.j.i.B shall be performed as follows:

* Initial compliance testing for the Unit 4 boiler is required. Initial testing shall be performed when burning natural gas. The initial test shall be performed within 60 days after achieving the maximum heat input capacity production rate at which the affected facility will be operated and in no case later than 180 days after the initial

startup of a new emission source.

The limited use of natural gas during maintenance firings and break-in firings does not constitute operation and does not require stack testing.

Pollutant	Test Frequency
-----------	----------------

- | | |
|----------------------|------------|
| I. PM _{2.5} | every year |
| II. NO _x | every year |

- C. Unit #5 (combined cycle, natural gas-fired combustion turbine) shall not exceed the following emission rates to the atmosphere:

Pollutant	lbs/hr	lbs/event	ppmdv (15% O ₂ dry)
I. PM _{2.5} with duct firing: Filterable + condensable	18.8		
II. VOC:			2.0[*]
III. NO _x : [Startup / Shutdown — 395			2.0[*]

~~* Except during startup and shutdown.~~

~~IV. Startup / Shutdown Limitations:~~

~~1. The total number of startups and shutdowns together shall not exceed 690 per calendar year.~~

~~2. The NO_x emissions shall not exceed 395 lbs from each startup/shutdown event, which shall be determined using manufacturer data.~~

~~3. Definitions:~~

~~(i) Startup cycle duration ends when the unit achieves half of the design electrical generation capacity.~~

~~(ii) Shutdown duration cycle begins with the initiation of boiler shutdown and ends when fuel flow to the boiler is discontinued.]~~

- D: Upon commencement of operation of Unit #5*, stack testing to demonstrate compliance with the emission limitations in IX.H.12.m.i.B shall be performed as follows for the following air contaminants

* Initial compliance testing for the natural gas turbine and duct burner is required. The initial test shall be performed within 60 days after achieving the maximum heat input capacity production rate at which the affected facility will be operated and in no case later than 180 days after the initial startup of a new emission source.

The limited use of natural gas during maintenance firings and break-in firings does not constitute operation and does not require stack testing.

Pollutant	Test Frequency
I. PM _{2.5}	every year
II. NO _x	every year
III. VOC	every year

j. Kennecott Utah Copper: Smelter and Refinery

i. Smelter:

A. Emissions to the atmosphere from the indicated emission points shall not exceed the following rates and concentrations:

I. Main Stack (Stack No.

- 11) 1. $PM_{2.5}$
 - a. 85 lbs/hr (filterable)
 - b. 434 lbs/hr (filterable + condensable)
2. SO_2
 - a. 552 lbs/hr (3 hr. rolling average)
 - b. 422 lbs/hr (daily average)
3. NO_x 154 lbs/hr (daily average)

II. Holman Boiler

1. NO_x
 - a. 14 lbs/hr, (calendar-day average)

B. Stack testing to show compliance with the emissions limitations of Condition (A) above shall be performed as specified below:

EMISSION POINT	POLLUTANT	TEST FREQUENCY
I. Main Stack (Stack No. 11)	$PM_{2.5}$	Every Year
	SO_2	CEM
	NO_x	CEM
II. Holman Boiler	NO_x	Every three years <u>and</u> CEMS or alternate method according to applicable NSPS standards

The Holman boiler shall use an EPA approved test method every three years and in between years use or an approved CEMS or alternate method according to applicable NSPS standards.

C. During startup/shutdown operations, NO_x and SO_2 emissions are monitored by CEMS or alternate methods in accordance with applicable NSPS standards.

D. KUC must operate and maintain the air pollution control equipment and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction.

ii. Refinery:

A. Emissions to the atmosphere from the indicated emission point shall not exceed the

following rate:

EMISSION POINT	POLLUTANT	MAXIMUM EMISSION RATE
The sum of two (Tankhouse) Boilers	NO _x	9.5 lbs/hr (before December 2020)
(Upgraded Tankhouse Boiler)	NO _x	1.5 lbs/hr (After December 2020)
Combined Heat Plant	NO _x	5.96 lbs/hr

- B. Stack testing to show compliance with the above emission limitations shall be performed as follows:

EMISSION POINT	POLLUTANT	TESTING FREQUENCY
Upgraded Tankhouse Boilers	NO _x	every three years*
Combined Heat Plant	NO _x	every year

*Stack testing shall be performed on boilers that have operated more than 300 hours during a three year period.

- C. One 82 MMBTU/hr Tankhouse boiler shall be upgraded to meet a NO_x rating of 9 ppm no later than December 31, 2020. The remaining Tankhouse boiler shall not consume more than 100,000 MCF of natural gas per rolling 12- month period unless upgraded so the NO_x emission rate is no greater than 30 ppm
- D. KUC must operate and maintain the stationary combustion turbine, air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction. Records shall be kept on site which indicate the date and time of startups and shutdowns.

k. Nucor Steel Mills

- i. Emissions to the atmosphere from the indicated emission points shall not exceed the following rates:

A. Electric Arc Furnace Baghouse

I. $PM_{2.5}$

1. 17.4 lbs/hr (24 hr. average filterable)
2. 29.53 lbs/hr (24 hr. average condensable)

II. SO_2

1. 93.98 lbs/hr (3 hr. rolling average)
2. 89.0 lbs/hr (daily average)

III. NO_x 59.5 lbs/hr (calendar-day average)

IV. VOC 22.20 lbs/hr

B. Reheat Furnace #1

NO_x 15.0 lb/hr

C. Reheat Furnace #2

NO_x 8.0 lb/hr

- ii. Stack testing to show compliance with the emissions limitations of Condition (i) above shall be performed as outlined in IX.H.11.e and as specified below:

EMISSION POINT	POLLUTANT	TEST FREQUENCY
A. Electric Arc Furnace Baghouse	$PM_{2.5}$	every year
	SO_2	CEM
	NO_x	CEM
	VOC	every year
B. Reheat Furnace #1	NO_x	every year
C. Reheat Furnace #2	NO_x	every year

iii. Testing Status (To be applied to (i) and (ii) above)

- A. To demonstrate compliance with the Electric Arc Furnace stack mass emissions limits for SO_2 and NO_x of Condition (i)(A) above, Nucor shall calibrate, maintain and operate the measurement systems for continuously monitoring for SO_2 and NO_x concentrations and stack gas volumetric flow rates in the Electric Arc Furnace stack.

Such measurement systems shall meet the requirements of R307-170.

- B. For PM_{2.5} testing, 40 CFR 60, Appendix A, Method 5D, or another EPA approved method acceptable to the Director, shall be used to determine total TSP emissions. If TSP emissions are below the PM_{2.5} limit, that will constitute compliance with the PM_{2.5} limit. If TSP emissions are not below the PM_{2.5} limit, the owner/operator shall retest using EPA approved methods specified for PM_{2.5} testing, within 120 days.
- C. Startup/shutdown NO_x and SO₂ emissions are monitored by CEMS.

- I. PacifiCorp Energy: Gadsby Power Plant
 - i. Steam Generating Unit #1:
 - A. Emissions of NO_x shall be no greater than 179 lbs/hr on a three (3) hour block average basis.
 - B. Emissions of NO_x shall not exceed 336 ppm_{dv} (@ 3% O₂, dry)
 - C. The owner/operator shall install, certify, maintain, operate, and quality-assure a CEM consisting of NO_x and O₂ monitors to determine compliance with the NO_x limitation. The CEM shall operate as outlined in IX.H.11.f.
 - ii. Steam Generating Unit #2:
 - A. Emissions of NO_x shall be no greater than 204 lbs/hr on a three (3) hour block average basis.
 - B. Emissions of NO_x shall not exceed 336 ppm_{dv} (@ 3% O₂, dry)
 - C. The owner/operator shall install, certify, maintain, operate, and quality-assure a continuous emission monitoring system (CEMS) consisting of NO_x and O₂ monitors to determine compliance with the NO_x limitation.
 - iii. Steam Generating Unit #3:
 - A. Emissions of NO_x shall be no greater than
 - I. 142 lbs/hr on a three (3) hour block average basis, applicable between November 1 and February 28/29.
 - II. 203 lbs/hr on a three (3) hour block average basis, applicable between March 1 and October 31.
 - B. Emissions of NO_x shall not exceed
 - I. 168 ppm_{dv} (@ 3% O₂, dry), applicable between November 1 and February 28/29
 - II. 168 ppm_{dv} (@ 3% O₂, dry), applicable between applicable between March 1 and October 31.
 - C. The owner/operator shall install, certify, maintain, operate, and quality-assure a CEM consisting of NO_x and O₂ monitors to determine compliance with the

NO_x limitation. The CEM shall operate as outlined in IX.H.11.f.

iv. Steam Generating Units #1-3:

- A. The owner/operator shall use only natural gas as a primary fuel and No. 2 fuel oil or better as back-up fuel in the boilers. The No. 2 fuel oil may be used only during periods of natural gas curtailment and for maintenance firings. Maintenance firings shall not exceed one-percent of the annual plant Btu requirement. In addition, maintenance firings shall be scheduled between April 1 and November 30 of any calendar year. Records of fuel oil use shall be kept and they shall show the date the fuel oil was fired, the duration in hours the fuel oil was fired, the amount of fuel oil consumed during each curtailment, and the reason for each firing.

v. Natural Gas-fired Simple Cycle, Catalytic-controlled Turbine Units:

- A. Total emissions of NO_x from all three turbines shall be no greater than 600 lbs/day. For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.
- B. Emissions of NO_x from each turbine stack shall not exceed 5 ppmvd (@ 15% O₂ dry). Emissions shall be calculated on a 30-day rolling average. This limitation applies to steady state operation, not including startup and shutdown.
- C. The owner/operator shall install, certify, maintain, operate, and quality-assure a CEM consisting of NO_x and O₂ monitors to determine compliance with the NO_x limitation. The CEM shall operate as outlined in IX.H.11.f.

vi. Combustion Turbine Startup / Shutdown Emission Minimization Plan

- A. Startup begins when the fuel valves open and natural gas is supplied to the combustion turbines
- B. Startup ends when either of the following conditions is met:
 - I. The NO_x water injection pump is operational, the dilution air temperature is greater than 600°F, the stack inlet temperature reaches 570°F, the ammonia block valve has opened and ammonia is being injected into the SCR and the unit has reached an output of ten (10) gross MW; or
 - II. The unit has been in startup for two (2) hours.
- C. Unit shutdown begins when the unit load or output is reduced below ten (10) gross MW with the intent of removing the unit from service.

- D. Shutdown ends at the cessation of fuel input to the turbine combustor.
- E. Periods of startup or shutdown shall not exceed two (2) hours per combustion

turbine per day.

- F. Turbine output (turbine load) shall be monitored and recorded on an hourly basis with an electrical meter.

m. Tesoro Refining and Marketing Company: Salt Lake City Refinery

i. Source-wide PM_{2.5} Cap

No later than January 1, 2019, combined emissions of PM_{2.5} (filterable+condensable) shall not exceed 2.25 tons per day (tpd) and 179 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.12.p.i.B below, the default emission factors to be used are as follows:

Natural gas:

Filterable PM_{2.5}: 0.0019 lb/MMBtu

Condensable PM_{2.5}: 0.0056
lb/MMBtu

Plant gas:

Filterable PM_{2.5}: 0.0019 lb/MMBtu

Condensable PM_{2.5}: 0.0056
lb/MMBtu

Fuel Oil: The PM_{2.5} emission factor shall be determined from the latest edition of AP-42 or other EPA-approved methods.

FCC Wet Scrubber:

The PM_{2.5} emission factors shall be based on the most recent stack test and verified by parametric monitoring as outlined in IX.H.11.g.i.B.III

Where mixtures of fuel are used in a Unit, the above factors shall be weighted according to the use of each fuel.

B. The default emission factors listed in IX.H.12.m.i.A above apply until such time as stack testing is conducted as provided in IX.H.11.e or as outlined below:

Initial PM_{2.5} stack testing on the FCC wet gas scrubber stack shall be conducted no later than January 1, 2019 and at least once every three (3) years thereafter. Stack testing shall be performed as outlined in IX.H.11.e.

C. Compliance with the Source-wide PM_{2.5} Cap shall be determined for each day as follows: Total 24-hour PM_{2.5} emissions for the emission points shall be calculated

by adding the daily results of the $PM_{2.5}$ emissions equations listed below for natural gas, plant gas, and fuel oil combustion. These emissions shall be added to the emissions from the wet scrubber to arrive at a combined daily $PM_{2.5}$ emission total. For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

The emissions for each emitting unit shall be calculated by multiplying the hours of operation of a unit feed rate to a unit, or quantity of each fuel combusted at each affected unity by the associated emission factor, and summing the results.

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

ii. Source-wide NO_x Cap

No later than January 1, 2019, combined emissions of NO_x shall not exceed 2.3 tons per day (tpd) and 475 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. Unless adjusted by performance testing as discussed in IX.H.12.m.ii.B below, the default emission factors to be used are as follows:

Natural gas/refinery fuel gas combustion using:

Low NO_x burners (LNB): 0.051 lbs/MMBtu

Ultra-Low NO_x (ULNB) burners: 0.04 lbs/MMBtu

Diesel fuel: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

B. The default emission factors listed in IX.H.12.m.ii.A above apply unless stack testing results are available or emissions are measured by operation of a NO_x CEMS.

Initial NO_x stack testing on natural gas/refinery fuel gas combustion equipment above 100 MMBtu/hr has already been performed and shall be conducted at least once every three (3) years. At that time a new flow-weighted average emission factor in terms of: lbs/MMBtu shall be derived. Stack testing shall be performed as outlined in IX.H.11.e. Stack testing is not required for natural gas/refinery fuel gas combustion equipment with a NO_x CEMS.

C. Compliance with the source-wide NO_x Cap shall be determined for each day as

follows: Total 24-hour NO_x emissions shall be calculated by adding the emissions for each emitting unit. The emissions for each emitting unit shall be calculated by

multiplying the hours of operation of a unit, feed rate to a unit, or quantity of each fuel combusted at each affected unit by the associated emission factor, and summing the results.

A NO_x CEM shall be used to calculate daily NO_x emissions from the FCCU wet gas scrubber stack. Emissions shall be determined by multiplying the nitrogen dioxide concentration in the flue gas by the flow rate of the flue gas. The NO_x concentration in the flue gas shall be determined by a CEM as outlined in IX.H.11.f.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

For purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

Results shall be tabulated for each day, and records shall be kept which include the meter readings (in the appropriate units) and the calculated emissions.

iii. Source-wide SO_2 Cap

No later than January 1, 2019, combined emissions of SO_2 shall not exceed 3.8 tons per day (tpd) and 300 tons per rolling 12-month period.

A. Setting of emission factors:

The emission factors derived from the most current performance test shall be applied to the relevant quantities of fuel combusted. The default emission factors to be used are as follows:

Natural gas: $\text{EF} = 0.0006$

lb/MMBtu Propane: $\text{EF} = 0.0006$

lb/MMBtu

Diesel fuel: shall be determined from the latest edition of AP-42 or other EPA- approved methods.

Plant fuel gas: the emission factor shall be calculated from the H_2S measurement or from the SO_2 measurement obtained by direct testing/monitoring.

Where mixtures of fuel are used in a unit, the above factors shall be weighted according to the use of each fuel.

- B. Compliance with the source-wide SO₂ Cap shall be determined for each day as follows: Total daily SO₂ emissions shall be calculated by adding the daily SO₂

emissions for natural gas, plant fuel gas, and propane combustion to those from the wet gas scrubber stack.

Daily SO₂ emissions from the FCCU wet gas scrubber stack shall be determined by multiplying the SO₂ concentration in the flue gas by the flow rate of the flue gas.

The SO₂ concentration in the flue gas shall be determined by a CEM as outlined in IX.H.11.f.

SRUs: The emission rate shall be determined by multiplying the sulfur dioxide concentration in the flue gas by the flow rate of the flue gas. The sulfur dioxide concentration in the flue gas shall be determined by CEM as outlined in IX.H.11.f

Daily SO₂ emissions from other affected units shall be determined by multiplying the quantity of each fuel used daily at each affected unit by the appropriate emission factor.

Daily natural gas and plant gas consumption shall be determined through the use of flow meters.

Daily fuel oil consumption shall be monitored by means of leveling gauges on all tanks that supply combustion sources.

Results shall be tabulated for each day, and records shall be kept which include CEM readings for H₂S (averaged for each one-hour period), all meter reading (in the appropriate units), fuel oil parameters (density and wt% sulfur for each day any fuel oil is burned), and the calculated emissions.

- C. Instead of complying with Condition IX.H.11.g.ii.A, source may reduce the H₂S content of the refinery plant gas to 60 ppm or less or reduce SO₂ concentration from fuel gas combustion devices to 8 ppmvd at 0% O₂ or less as described in 40 CFR 60.102a. Compliance shall be based on a rolling average of 365 days. The owner/operator shall comply with the fuel gas or SO₂ emissions monitoring requirements of 40 CFR 60.107a and the related recordkeeping and reporting requirements of 40 CFR 60.108a. As used herein, refinery "plant gas" shall have the meaning of "fuel gas" as defined in 40 CFR 60.101a, and may be used interchangeably.

iv. SO₂ emissions from the SRU/TGTU/TGI shall be limited to:

- A. 1.68 tons per day (tpd) for up to 21 days per rolling 12-month period, and
- B. 0.69 tpd for the remainder of the rolling 12-month period.

- C. Daily sulfur dioxide emissions from the SRU/TGI/TGTU shall be determined by multiplying the SO₂ concentration in the flue gas by the mass flow of the flue gas. The sulfur dioxide concentration in the flue gas shall be determined by CEM as

outlined in IX.H.11.f

v. Emergency and Standby Equipment

A. The use of diesel fuel meeting the specifications of 40 CFR 80.510 is allowed in standby or emergency equipment at all times.

vi. No later than January 1, 2019, the owner/operator shall install the following to control emissions from the listed equipment:

Emission Unit	Control Equipment
FCCU / CO Boiler	Wet Gas Scrubber, LoTOx
Furnace F-1	Ultra Low NOx Burners
Tanks	Tank Degassing Controls
North and South Flares	Flare Gas Recovery
Furnace H-101	Ultra Low NOx Burners
Truck loading rack	Vapor recovery unit
Sulfur recovery unit	Tail Gas Treatment Unit
API separator	Floating roof (single seal)

n. The Procter & Gamble Paper Products Company

- i. Emissions to the atmosphere at all times from the indicated emission points shall not exceed the following rates:

Source: Paper Making Boilers (Each)

Pollutant		Oxygen Ref.	lb/hr
NO _x		3%	3.3
PM _{2.5} (Filterable and Condensables)	3%		0.9

Source: Paper Machine Process Stack

Pollutant		Oxygen Ref.	lb/hr
NO _x		3%	13.50
PM _{2.5} (Filterable and Condensables)	3%		17.95

Source: Utility Boilers (Each)

Pollutant		Oxygen Ref.	lb/hr
NO _x		3%	1.8
PM _{2.5} (Filterable and Condensables)	3%		0.74

- A. Compliance with the above emission limits shall be determined by stack test as outlined in Section IX Part H.11.e of this SIP.
- B. Subsequent to initial compliance testing, stack testing is required at a minimum of once every three years.
- ii. Boiler Startup/Shutdown Emissions Minimization Plan
- A. Startup begins when natural gas is supplied to the Boiler(s) with the intent of combusting the fuel to generate steam. Startup conditions end within thirty (30) minutes of natural gas being supplied to the boilers(s).
- B. Shutdown begins with the initiation of the stop sequence of the boiler until the cessation of natural gas flow to the boiler.

iii. Paper Machine Startup/Shutdown Emissions Minimization Plan

- A. Startup begins when natural gas is supplied to the dryer combustion equipment with the intent of combusting the fuel to heat the air to a desired temperature for the paper machine. Startup conditions end within thirty (30) minutes of natural gas

being supplied to the dryer combustion equipment.

- B. Shutdown begins with the diversion of the hot air to the dryer startup stack and then the cessation of natural gas flow to the dryer combustion equipment. Shutdown conditions end within thirty (30) minutes of hot air being diverted to the dryer startup stack.

- o. Utah Municipal Power Association: West Valley Power Plant.
 - i. Total emissions of NO_x from all five (5) catalytic-controlled turbines combined shall be no greater than 1050 lb of NO_x on a daily basis. For purposes of this subpart, a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.
 - ii. Emissions of NO_x shall not exceed 5 ppm_{dv} (@ 15% O₂, dry) on a 30-day rolling average.
 - iii. Total emissions of NO_x from all five (5) catalytic-controlled turbines shall include the sum of all periods in the day including periods of startup, shutdown, and maintenance.
 - iv. The NO_x emission rate (lb/hr) shall be determined by CEM. The CEM shall operate as outlined in IX.H.11.f.

p. University of Utah: University of Utah Facilities

- i Emissions to the atmosphere from the listed emission points in Building 303 LCHWTP shall not exceed the following concentrations:

Emissions Point	Pollutant	ppmdv (3% O2 dry)
Boiler #4* B	NOx	187
Boilers #6 & 7 B	NOx	9
Boiler #9* C	NOx	9
Turbine D	NOx	9
Turbine and WHRU Duct burner	NOx	15

*By December 31, 2019, Boiler #4 will be decommissioned and Boiler #9 will be installed and operational.

- ii. Stack testing to show compliance with the emissions limitations of Condition i above shall be performed as outlined in IX.H.11.e and as specified below:

Emissions Point	Pollutant	Initial Test	Test Frequency
Boiler #4*	NOx	*	#
Boilers #6 & 7 C	NOx	*	#
Boiler #9* C	NOx	2020	#
Turbine	NOx	*	#
Turbine and WHRU Duct Burner	NOx	*	#

Initial test already performed

* Initial tests have been performed and the next method test using EPA approved test methods shall be performed within 3 years of the last stack test. Initial compliance testing for Boiler #9 is required. The initial test date shall be performed within 60 days after achieving the maximum heat input capacity production rate at which the

affected facility will be operated and in no case later than 180 days after the initial

startup of a new emission source.

A compliance test shall be performed at least once every three years from the date of the last compliance test that demonstrated compliance with the emission limit(s). Compliance testing shall be performed using EPA approved test methods acceptable to the Director. The Director shall be notified, in accordance with all applicable rules, of any compliance test that is to be performed.

- iii. Boiler #4 in the LCHWTP shall be decommissioned and replaced by Boiler #9 by December 31, 2019.
- iv. By the end of the third quarter of calendar year 2019, Boilers #1, #3, and #4 in the UCHWTP shall be limited to a natural gas usage of 530 MMscf per calendar year.
- v. The HSC Transformation Project boilers shall be installed and operational by the end of the third quarter of calendar year 2019. The new HSC Transformation Project boilers shall be equipped with low NOx burners rated at 30 ppmvd at 3% O₂ or less.
- vi. Records shall be kept on site which indicate the date, and time of startup and shutdown.

q. Hill Air Force Base

i. Painting and Depainting Operations

A. VOC emissions from painting and depainting operations shall not exceed 0.58 tons per day (tpd).

I. No later than the 28th of each month, a rolling 30-day VOC emission average shall be calculated for the previous month.

ii. Boilers

A. The combined NO_x emissions for all boilers (except those less than 5 MMBtu/hr) shall not exceed 95 lb/hr. This limit shall not apply during periods of curtailment.

I. No later than the 28th of each month, the NO_x lb/hr emission total shall be calculated for the previous month.

B. No later than December 31, 2024, no boiler shall be operating on base with the capacity over 30 MMBtu/hr and with a manufacture date older than January 1, 1989.

H.13 Source-Specific Emission Limitations in Provo – UT PM_{2.5} Nonattainment Area

a. Brigham Young University: Main Campus

i. All central heating plant units shall operate on natural gas from November 1 to February 28 each season beginning in the winter season of 2013-2014. Fuel oil may be used as backup fuel during periods of natural gas curtailment. The sulfur content of the fuel oil shall not exceed 0.0015 % by weight. BYU must maintain a fuel specification certification document from the fuel supplier with the sulfur content guarantee. Alternatively, sulfur content may be verified through testing completed by BYU or the fuel supplier using ASTM Method D-4294-10 or EPA approved equivalent acceptable to the Director.

ii. Emissions to the atmosphere from the indicated emission point shall not exceed the following rates and concentrations:

Emission Point	Pollutant	ppm (7% O ₂ dry) *	lb/hr
A. Unit #1	NO _x	95	5.44
B. Unit #4	NO _x	127	19.2
C. Unit #6	NO _x	127	19.2

* Unit #1 NO_x limit is 95 ppm (9.55 lb/hr) until it operates for more than 300 hours during a rolling 12-month period, then the limit will be 36 ppm (5.44 lb/hr). The NO_x limit for units #4 and #6 is 127 ppm (38.5 lb/hr) and starting on December 31, 2018, the limit will then be 36 ppm (19.2 lb/hr).

Emission Point	Pollutant	ppm (7% O ₂ dry)	lb/hr
D. Unit #2	NO _x	331	37.4
	SO ₂	597	56.0
E. Unit #3	NO _x	331	37.4
	SO ₂	597	56.0
F. Unit #5	NO _x	331	74.8
	SO ₂	597	112.07

iii. Stack testing to show compliance with the above emission limitations shall be performed as follows:

EMISSION POINT	POLLUTANT	INITIAL TEST	TEST FREQUENCY
A. Unit #1	NO _x	&	every year*
B. Unit #2	NO _x	#	every year*
C. Unit #3	NO _x	#	every year*
D. Unit #4	NO _x	#	every year*
E. Unit #5	NO _x	#	every year*

every year*

& If Unit #1 is operated for more than 100 hours per rolling 12-month period, the stack test shall be performed within 60 days of exceeding 100 hours of operations. Unit #1 shall only be operated as a back-up boiler to Units #4 and #6 and shall not be operated more than 300 hours per rolling 12-month period. If Unit #1 operates more than 300 hours per rolling 12-month period, then low NO_x burners with Flue Gas Recirculation shall be installed and tested within 18 months of exceeding 300 hours of operation.

The test shall be performed at least every 3 years based on the date of the last stack test. Units #4 and #6 shall be retested by March 1, 2018.

* A compliance test shall be performed at least once every three years from the date of the last compliance test that demonstrated compliance with the emission limit(s). Compliance testing shall be performed using EPA approved test methods acceptable to the Director. The Director shall be notified, in accordance with all applicable rules, of any compliance test that is to be performed. Beginning January 2018, annual screening with a portable monitor must be conducted in those years that a compliance test is not performed. Screening with a portable monitor shall be performed in accordance with the portable monitor manufacturer's specifications. If screening with a portable monitor indicates a potential exceedance of the concentration limit, a compliance test must be performed within 90 days of that screening. Records shall be kept on site which indicate the date, time, and results of each screening and demonstrate that the portable monitor was operated in accordance with manufacturer's specifications.

iv. Central Heating Plant Coal-Fired Boilers

Records shall be kept on site which indicate the date, and time of startup and shutdown.

A. The sulfur content of any coal or any mixture of coals burned shall not exceed either of the following:

I. 0.54 pounds of sulfur per million BTU heat input as determined by ASTM Method D-4239-85, or EPA-approved equivalent acceptable to the Director.

II. 0.60% by weight as determined by ASTM Method D-4239-85, or EPA-approved equivalent acceptable to the Director.

For the sulfur content of coal, Brigham Young University shall either:

III. Determine the weight percent sulfur and the fuel heating value by submitting a coal sample to a laboratory, acceptable to the Director, on no less than a monthly basis; or

IV. For each delivery of coal, inspect the fuel sulfur content expressed as weight % determined by the vendor using methods of the ASTM; or

V. For each delivery of coal, inspect documentation provided by the vendor that indirectly demonstrates compliance with this provision.

v. Central Heating Plant Boilers

A. Records shall be kept on site which indicate the date, and time of startup and shutdown.

b. Geneva Nitrogen Inc.: Geneva Nitrogen Plant i.

Prill Tower:

PM₁₀ emissions (filterable and condensable) shall not exceed 0.236 ton/day

PM_{2.5} emissions (filterable and condensable) shall not exceed 0.196 ton/day

A day is defined as from midnight to the following midnight.

ii. Testing

A. Stack testing shall be performed as specified below:

I. Frequency: Emissions shall be tested every three years. The test shall be performed as soon as possible and in no case later than December 31, 2017.

B. The daily and rolling 12-month mass emissions shall be calculated by multiplying the most recent stack test results by the appropriate hours of operation for each day and for each rolling 12-month period.

iii. Montecatini Plant:

NO_x emissions shall not exceed 30.8 lb/hr

iv. Weatherly Plant:

NO_x emissions shall not exceed 18.4 lb/hr

v. Testing:

A. Stack testing for NO_x shall be performed as specified below:

I. Stack testing to show compliance with the NO_x emission limitations shall be performed as specified below:

1. Testing and Frequency. Emissions shall be tested every three years using an EPA approved test method.

II. NO_x concentration (ppmdv) shall be used as an indicator to provide a reasonable assurance of compliance with the NO_x emission limitation as specified below:

1. Measurement Approach: NO_x concentration (ppmdv) shall be determined by using a continuous NO_x monitoring system.

2. Performance Criteria:

i. QA/QC Practices and Criteria: The continuous monitoring system shall be operated, calibrated, and maintained in accordance with

manufacture's recommendations. Zero and span drift tests shall be conducted on a daily basis.

III. The EPA approved method test for the Montecatini Plant shall be performed as soon as possible and in no case later than December 31, 2017, and the test for the Weatherly Plant shall be performed as soon as possible and in no case later than December 31, 2018.

vi. Start-up/Shut-down

A. Startup / Shutdown Limitations:

I. Planned shut-down and start-up events shall not exceed 50 hours per acid plant (Montecatini or Weatherly) per 12-month rolling period.

II. Total startup and shutdown events shall not exceed four hours per acid plant in any one calendar day.

c. McWane Ductile - Utah

i. Emissions of VOC from the finishing paint line shall not exceed 1 ton/day.

A. Compliance with the above conditions shall be demonstrated as follows: VOC emissions at the finishing paint line shall be determined by asphalt paint consumption. Asphalt paint consumption shall be monitored by liquid level monitoring sensors on the finishing paint line bulk tanks.

B. For purposes of this section a day is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

ii. The Annealing Oven furnaces are limited to 63.29 MMBtu/hr.

iii. Emissions from the desulfurization and ductile treatment system shall be routed through the operating baghouse prior to be emitted into the atmosphere.

iv. Emissions from the Special Lining Shotblast operations shall be routed through the operating baghouse prior to being emitted into the atmosphere.

d. PacifiCorp Energy: Lake Side Power Plant

i. Block #1 Catalytic-controlled Turbine/HRSG Stacks:

A. Emissions of NO_x shall not exceed 14.9 lb/hr on a 3-hr average basis

B. Compliance with the above conditions shall be demonstrated as follows:

I. NO_x monitoring shall be through use of a CEM as outlined in IX.H.11.f

ii. Block #2 Catalytic-controlled Turbine/HRSG Stacks:

A. Emissions of NO_x shall not exceed 18.1 lb/hr on a 3-hr average basis

B. Compliance with the above conditions shall be demonstrated as follows:

I. NO_x monitoring shall be through use of a CEM as outlined in IX.H.11.f

iii. Startup / Shutdown Limitations:

A. Block #1:

I. Startup and shutdown events shall not exceed 613.5 hours per turbine per 12-month rolling period.

II. Total startup and shutdown events shall not exceed 14 hours per turbine in any one calendar day.

III. Cumulative short-term transient load excursions shall not exceed 160 hours per 12-month rolling period.

IV. During periods of transient load conditions, NO_x emissions from the Block #1 Catalytic-controlled Turbine/HRSG Stacks shall not exceed 25 ppmvd at 15% O₂. B. Block #2:

I. Startup and shutdown events shall not exceed 553.6 hours per turbine per 12-month rolling period.

II. Total startup and shutdown events shall not exceed 8 hours per turbine in any one calendar day.

III. Cumulative short-term transient load excursions shall not exceed 160 hours per 12-month rolling period.

IV. During periods of transient load conditions, NO_x emissions from the Block #2 Catalytic-controlled Turbine/HRSG Stacks shall not exceed 25 ppmvd at 15% O₂. C. Definitions:

I. Startup is defined as the period beginning with turbine initial firing until the unit meets the lb/hr emission limits listed in IX.H.13.d.i and ii above.

II. Shutdown is defined as the period beginning with the initiation of turbine shutdown sequence and ending with the cessation of firing of the gas turbine engine.

III. Transient load conditions are those periods, not to exceed four consecutive 15-minute periods, when the 15-minute average NO_x concentration exceeds 2.0 ppmv dry @ 15% O₂. Transient load conditions consist of the following:

1. Initiation/shutdown of combustion turbine inlet air-cooling.
2. Rapid combustion turbine load changes.
3. Initiation/shutdown of HRSG duct burners.
4. Provision of Ancillary Services and Automatic Generation Control. IV. For

purposes of this subsection a "day" is defined as a period of 24-hours commencing at midnight and ending at the following midnight.

e. Payson City Corporation: Payson City Power

i. Emissions of NO_x shall be no greater than 1.54 ton per day for all engines combined.

ii. Compliance with the emission limitation shall be determined by summing the emissions from all the engines. Emission from each engine shall be calculated from the following equation:

$$\text{Emissions (tons/day)} = (\text{Power production in kW-hrs/day}) \times (\text{Emission factor in grams/kW-hr}) \\ \times (1 \text{ lb}/453.59 \text{ g}) \times (1 \text{ ton}/2000 \text{ lbs})$$

A. The NO_x emission factor for each engine shall be derived from the most recent stack test. Stack tests shall be performed in accordance with IX.H.11.e. Each engine shall be tested at least every three years from the previous test.

B. NO_x emissions shall be calculated on a daily basis.

C. A day is equivalent to the time period from midnight to the following midnight.

D. The number of kilowatt hours generated by each engine shall be recorded on a daily basis with an electrical meter.

iii. All engines shall be catalytic-controlled as outlined in IX.H.11.h.

f. Provo City Power: Power Plant

i. NO_x emissions from the operation of all engines at the plant shall not exceed 2.45 tons per day.

ii. Compliance with the emission limitation shall be determined by summing the emissions from all the engines. Emission from each engine shall be calculated from the following equation:

$$\text{Emissions (tons/day)} = (\text{Power production in kW-hrs/day}) \times (\text{Emission factor in grams/kW-hr}) \times (1 \text{ lb}/453.59 \text{ g}) \times (1 \text{ ton}/2000 \text{ lbs})$$

A. The NO_x emission factor for each engine shall be derived from the most recent stack test. Stack tests shall be performed in accordance with IX.H.11.e. Each engine shall be tested every 8,760 hours of operation or at least every three years from the previous test, whichever occurs first.

B. NO_x emissions shall be calculated on a daily basis.

C. A day is equivalent to the time period from midnight to the following midnight.

D. The number of kilowatt hours generated by each engine shall be recorded on a daily basis with an electrical meter.

iii. All engines shall be catalytic-controlled as outlined in IX.H.11.h.

g. Springville City Corporation: Whitehead Power Plant

i. NO_x emissions from the operation of all engines at the plant shall not exceed 1.68 tons per day. ii.

Internal combustion engine emissions shall be calculated from the operating data recorded by the CEM as outlined in IX.H.11.f. A day is equivalent to the time period from midnight to the following midnight. Emissions of NO_x shall be calculated for each individual engine by the following equation:

$$D = (X * K)/453.6$$

Where:

X = grams/kW-hr rate for each generator (recorded by CEM)

K = total kW-hr generated by the generator each day (recorded by output meter) D =
daily output of pollutant in lbs/day

iii. All engines shall be catalytic-controlled as outlined in IX.H.11.h.

H.21. General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements

a. Except as otherwise outlined in individual conditions of this Subsection IX.H.21 listed below, the terms and conditions of this Subsection IX.H.21 shall apply to all sources subsequently addressed in Subsection IX.H.22. Should any inconsistencies exist between these two subsections, the source specific conditions listed in IX.H.22 shall take precedence.

b. The definitions contained in R307-101-2, Definitions and R307-170-4, Definitions, apply to Section IX, Part H. In addition, the following definition also applies to Section IX, Part H.21 and 22:

Boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the boiler. It is not necessary for fuel to be combusted for the entire 24-hour period.

c. The terms and conditions of R307-107-1 and R307-107-2 shall apply to all sources subsequently addressed in Subsection IX.H.22.

d. Any information used to determine compliance shall be recorded for all periods when the source is in operation, and such records shall be kept for a minimum of five years. All records required by IX.H.21.c shall be kept for a minimum of five years. Any or all of these records shall be made available to the Director upon request.

e. All emission limitations listed in Subsections IX.H.22 shall apply at all times, unless otherwise specified in the source specific conditions listed in IX.H.22. Each source shall submit a report of any deviation from the applicable requirements of Subsection

IX.H,

including those attributable to upset conditions, the probable cause of such deviations, and

any corrective actions or preventive measures taken. The report shall be submitted to the Director no later than 24-months following the deviation, or earlier, as specified by an underlying applicable requirement. Deviations due to breakdowns shall be reported according to the breakdown provisions of R307-107.

f. Stack Testing:

- i. As applicable, stack testing to show compliance with the emission limitations for the sources in Subsection IX.H.22 shall be performed in accordance with the following:
 - A. Sample Location: The testing point shall be designed to conform to the requirements of 40 CFR 60, Appendix A, Method 1, or the most recent version of the EPA- approved test method if approved by the Director.
 - B. Volumetric Flow Rate: 40 CFR 60, Appendix A, Method 2, or the most recent version of the EPA-approved test method if approved by the Director.
 - C. Particulate (PM): 40 CFR 60, Appendix A, Method 5B, or the most recent version of the EPA-approved test method if approved by the Director. A test shall consist of three runs, with each run at least 120 minutes in duration and each run collecting a minimum sample of 60 dry standard cubic feet. The back half condensables shall also be tested using Method 202. The back half condensables shall not be used for compliance demonstration but shall be used for inventory purposes.

D. Calculations: To determine mass emission rates (lb/hr, etc.) the pollutant concentration as determined by the appropriate methods above shall be multiplied by the volumetric flow rate and any necessary conversion factors to give the results in the specified units of the emission limitation.

E. A stack test protocol shall be provided at least 30 days prior to the test.

A pretest conference shall be held if directed by the Director.

g. Continuous Emission and Opacity Monitoring.

i. For all continuous monitoring devices, the following shall apply:

A. Except for system breakdown, repairs, calibration checks, and zero and span adjustments required under paragraph (d) 40 CFR 60.13, the owner/operator of an affected source shall continuously operate all required continuous monitoring systems and shall meet minimum frequency of operation requirements as outlined in R307-170 and 40 CFR 60.13.

B. The monitoring system shall comply with all applicable sections of R307-170; 40 CFR 13; and 40 CFR 60, Appendix B –Performance Specifications.

C. For any hour in which fuel is combusted in the unit, the owner/operator of each unit shall calculate the hourly average NO_x concentration in lb/MMBtu.

D. At the end of each boiler operating day, the owner/operator shall calculate and record a new 30-day rolling average emission rate in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current boiler operating day and the previous 29 successive boiler operating days.

E. An hourly average NO_x emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in R307-170, is acquired by the owner/operator

for both the pollutant concentration monitor (NO_x) and the diluent monitor (O₂ or CO₂).

H.22 Source Specific Emission Limitations: Regional Haze Requirements, Best Available Retrofit Technology

- a. PacifiCorp Hunter
 - i. Particulate Limitations on Units #1 and #2
 - A. Emissions of particulate (PM) shall not exceed 0.015 lb/MMBtu heat input from each boiler based on a 3-run test average.
 - B. Stack testing for the emission limitation shall be performed each year on each boiler.
 - C. Monitoring for PM shall be conducted in accordance with the compliance assurance monitoring requirements of 40 CFR 64 as detailed in the source's operating permit.
 - ii. NOx Limitations on Units #1 and #2
 - A. Emissions of NOx from each boiler shall not exceed 0.26 lb/MMBtu heat input for a 30-day rolling average.
 - B. Measuring of all NOx emissions shall be performed by CEM.
 - iii. NOx Limitation on Unit #3
 - A. Emissions of NOx shall not exceed 0.34 lb/MMBtu heat input for a 30- day rolling average.
 - B. Measuring of all NOx emissions shall be performed by CEM.

b. PacifiCorp Huntington

i. Particulate Limitations on Units #1 and #2

- A. Emissions of particulate (PM) shall not exceed 0.015 lb/MMBtu heat input from each boiler based on a 3-run test average.
- B. Stack testing for the emission limitation shall be performed each year on each boiler.
- C. Monitoring for PM shall be conducted in accordance with the compliance assurance monitoring requirements of 40 CFR 64 as detailed in the source's operating permit.

ii. NOx Limitations on Units #1 and #2

- A. Emissions of NOx from each boiler shall not exceed 0.26 lb/MMBtu heat input for a 30-day rolling average.
- B. Measuring of all NOx emissions shall be performed by CEM.

c. PacifiCorp Carbon

i. Conditions on Units #1 and #2

- A. The owner/operator shall permanently close and cease operation of Carbon units #1 and #2 by August 15, 2015. The owner/operator shall notify the Director of the permanent closure of the Carbon Plant by no later than September 15, 2015.
- B. The owner/operator shall request a rescission of Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 by no later than September 15, 2015.
- C. Operating Permit # 700002004 and Approval Order DAQE-AN0100810005-08 shall be rescinded by no later than December 15, 2015.

1 **R307. Environmental Quality, Air Quality.**

2 **R307-110. General Requirements: State Implementation Plan.**

3 **R307-110-17. Section IX, Control Measures for Area and Point**
4 **Sources, Part H, Emission Limits.**

5 The Utah State Implementation Plan, Section IX, Control
6 Measures for Area and Point Sources, Part H, Emission Limits and
7 Operating Practices, as most recently amended by the Utah Air
8 Quality Board on December 2[4], 2020[19], pursuant to Section 19-2-
9 104, is hereby incorporated by reference and made a part of these
10 rules.

11
12 **KEY: air pollution, PM10, PM2.5, ozone**

13 **Date of Enactment or Last Substantive Amendment: December 5, 2019**

14 **Notice of Continuation: January 27, 2017**

15 **Authorizing, and Implemented or Interpreted Law: 19-2-104**
16
17

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed September 02, 2020, 12:00 a.m. through September 15, 2020, 11:59 p.m.

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Nancy L. Lancaster, Managing Editor

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

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

Office of Administrative Rules, Salt Lake City 84114

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Utah state bulletin.

Semimonthly.

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- I. Utah. Office of Administrative Rules.

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EXECUTIVE DOCUMENTS

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

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

EXECUTIVE ORDER 2020-62

Updating the Utah COVID-19 Level of Restriction

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, on August 20, 2020, the state of emergency declared in Executive Order 2020-1 expired, and I issued Executive Order 2020-51, declaring new state of emergency due to the ongoing and evolving circumstances of the COVID-19 pandemic;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, the State must establish minimum standards to address a statewide emergency and recognizes the need for local authorities to impose directives and orders to address the unique circumstances in different locations in Utah;

WHEREAS, the Utah Department of Health has released and updated the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation, which provide a color-coded health guidance system (hereinafter, "Utah COVID-19 Level of Restriction"), to guide economic engagement while still protecting public health;

WHEREAS, on August 20, I issued Executive Order 2020-60, updating and extending the Utah COVID-19 Level of Restriction to mitigate the spread of COVID-19;

WHEREAS, the Utah Department of Health has determined that Box Elder County and Carbon County should move to Minimal Level of Restriction (Green);

WHEREAS, Utah Code § 53-2a-209(1) provides that orders issued by the governor under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, have the "full force and effect of law";

WHEREAS, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency; and

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with orders made pursuant to the Disaster Response and Recovery Act:

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. As used in this Order:
 - a. "Person" means the same as that term is defined in Utah Code § 68-3-12.5(18).
 - b. "Phased Guidelines" means the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation version 4.11.
2. The Utah COVID-19 Level of Restriction is:
 - a. Minimal Level of Restriction (Green) in Beaver County, Box Elder County, Carbon County, Daggett County, Duchesne County, Emery County, Garfield County, Kane County, Millard County, Piute County, Sevier County, Uintah County, and Wayne County; and
 - b. Low Level of Restriction (Yellow) in each area of the State not identified in Subsection (2)(a).
3. The provisions of the Phased Guidelines apply as follows:
 - a. Each person in an area identified in Subsection (2)(a) shall comply with the Minimal Level of Restriction (Green) provisions of the Phased Guidelines;
 - b. Each person in an area identified in Subsection (2)(b) shall comply with the Low Level of Restrictions (Yellow) provisions of the Phased Guidelines; and
 - c. Notwithstanding any other provision of Section (3), any reference in the Phased Guidelines to the use of a mask or face covering is adopted:
 - i. as an order for:
 - A. each individual who is acting in the capacity as an employee of a business when the individual is unable to maintain a distance of six feet from another individual; and
 - B. each individual in a healthcare setting; and
 - ii. as a strong recommendation for any individual not identified in Subsection (3)(c)(i).
4. A political subdivision desiring an exception to this Order or the Phased Guidelines or desiring to move to a different level of restriction shall submit the request and justification for the request through the applicable Local Health Department to the Utah Department of Health. The Utah Department of Health shall consult with the Office of the Governor as necessary.
5. Notwithstanding Subsections (3) or (4), a political subdivision desiring to adopt a mandatory face covering requirement may do so without prior approval from the Utah Department of Health by notifying the Utah Department of Health of their intent to adopt the requirement.
6. To the extent that any provision of this Order conflicts with a provision of Executive Order 2020-59 or Utah Public Health Order 2020-11, the provision of Executive Order 2020-59 or Utah Public Health Order 2020-11 shall control.
7. This Order supersedes Executive Order 2020-60.

This Order shall take effect immediately and shall remain in effect through September 19, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 11th day of September, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/062/EO

**PROCLAMATION
2020-8E**

WHEREAS, since the close of the 2020 General Session of the 63rd 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, Gary R. Herbert, 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 63rd Legislature of the State of Utah into the Eighth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 16th day of September 2020, at 4:30 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 2020 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 15th day of September 2020.

(State Seal)

**Gary R. Herbert
Governor**

ATTEST:

**Spencer J. Cox
Lieutenant Governor**

2020/08/E

**EXECUTIVE ORDER
2020-63**

Declaring a State of Emergency Due to the Ongoing COVID-19 Pandemic

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to the effects of the COVID-19 pandemic in Utah;

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

WHEREAS, on July 25, 2020, the United States Department of Health and Human Services renewed its January 31, 2020, determination that a nationwide public health emergency exists and has existed since January 27, 2020;

WHEREAS, on August 20, 2020, the state of emergency declared in Executive Order 2020-1 expired, and I issued Executive Order 2020-51, declaring a new state of emergency to facilitate the State's response to the ongoing and evolving effects of COVID-19 in Utah;

WHEREAS, the state of emergency declared in Executive Order 2020-51 expires today, September 19, 2020;

WHEREAS, COVID-19 continues to spread and threaten public health and safety, causing loss of life, human suffering, and economic and social disruption throughout the state;

WHEREAS, the Utah Department of Health has reported 61,775 total cases of COVID-19 and 3,444 COVID-19-related hospitalizations as of September 18, 2020;

WHEREAS, the Utah Department of Health has reported 437 COVID-19-related deaths as of September 18, 2020;

WHEREAS, the rate and number of reported COVID-19 cases are increasing, and on September 18, 2020, the Utah Department of Health a record-high number of 1,117 new cases and a seven-day average of 726 cases;

WHEREAS, COVID-19 is a new disease caused by a virus for which there is no existing vaccine;

WHEREAS, the COVID-19 pandemic requires cooperation by public health authorities, hospitals, and the general population to avoid overwhelming hospitals and causing the higher case fatality rates experienced by other countries and regions of the United States;

WHEREAS, scientific and medical knowledge concerning COVID-19 is incomplete and continues to evolve, requiring constant adaptation by elected officials and public health authorities to address the pandemic based on new information;

WHEREAS, it is imperative that state and local officials and health authorities implement measures to protect the health and safety of vulnerable individuals, including the elderly, minorities, those with underlying medical conditions, and students, educators, and their families throughout the state;

WHEREAS, Utah Code § 53-2a-206(1) provides that a state of emergency may be declared by executive order of the governor if the governor finds a "disaster" has occurred or the occurrence or threat of a disaster is imminent in any area of the state in which state government assistance is required to supplement the response and recovery efforts of the affected political subdivision or political subdivisions;

WHEREAS, Utah Code § 53-2a-102(5) provides that a "disaster" is an event that causes, or threatens to cause, loss of life, human suffering, public or private property damage, or economic or social disruption resulting from "natural phenomena," among other things;

WHEREAS, Utah Code § 53-2a-102(13) provides that "natural phenomena" include an "epidemic";

WHEREAS, I find that COVID-19 constitutes an epidemic that presents a continuing threat to public health and economic and social stability are emergency conditions sufficient to constitute a statewide disaster within the intent of the Utah Code Title 53, Chapter 2a, Disaster Response and Recovery Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, declare a statewide "State of Emergency" due to the aforesaid circumstances requiring aid, assistance, and relief available from State resources and hereby order:

1. the continued execution of the State Emergency Operations Plan;
2. assistance from State government to political subdivisions as needed and coordinated by the Utah Department of Health, the Utah Department of Public Safety, and other state agencies as necessary;
3. the continued dissemination of timely and accurate information by state agencies to the public that will mitigate the spread of COVID-19, prevent unnecessary confusion or alarm, and mitigate negative impacts to the economy;
4. the continued outreach and assistance to the populations most vulnerable to COVID-19; and
5. coordination with local authorities and the private sector to maximize access to appropriate medical care while preserving critical services for those most in need.

This Order shall take effect immediately upon the expiration or termination of the state of emergency declared in Executive Order 2020-51 and shall remain in effect through October 20, 2020, unless extended by the Utah State Legislature, or earlier if I find the threat of danger has passed or reduced to the extent that emergency conditions no longer exist.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 19th day of September, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/063/EO

EXECUTIVE ORDER
2020-64

Temporarily Reauthorizing the Suspension of Utah Administrative Code R671-302 Regarding Public Access to Board of Pardons and Parole Hearings

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to Novel Coronavirus Disease 2019 (COVID-19);

WHEREAS, on March 17, 2020, I issued Executive Order 2020-3, suspending Utah Administrative Code R671-302, which governs public access to hearings of the Board of Pardons and Parole, as necessary to address the COVID-19 pandemic;

WHEREAS, on August 20, 2020, the state of emergency declared in Executive Order 2020-1 expired, causing the termination of several executive orders necessary to address the statewide effects of the COVID-19 pandemic, including Executive Order 2020-3;

WHEREAS, on August 20, 2020, I issued Executive Order 2020-51, declaring a new state of emergency due to the ongoing and evolving effects of the COVID-19 pandemic;

WHEREAS, on August 20, 2020, I issued Executive Order 2020-52, reauthorizing the suspension of Utah Administrative Code R671-302;

WHEREAS, on this day, September 19, 2020, the state of emergency declared in Executive Order 2020-51 expires, causing the termination of several executive orders necessary to address the COVID-19 pandemic, including Executive Order 2020-52;

WHEREAS, on this day, September 19, 2020, I issued Executive Order 2020-63, declaring a new state of emergency in response to the ongoing and evolving effects of the COVID-19 pandemic throughout Utah;

WHEREAS, the facts and conditions justifying the suspension of Utah Administrative Code R671-302 persist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, COVID-19 continues to spread and threaten public health and safety, causing loss of life, human suffering, and social and economic disruption throughout Utah;

WHEREAS, strict adherence to Utah Administrative Code R671-302, News Media and Public Access to Hearings, will substantially hinder necessary action by the Utah Department of Corrections in coping with and preventing the continuing spread of COVID-19;

WHEREAS, Utah Code § 53-2a-209(3) authorizes the governor to suspend by executive order the provisions of any order, rule, or regulation of any state agency, if the strict compliance with the provisions of the order, rule, or regulation would substantially prevent, hinder, or delay necessary action in coping with an emergency or disaster;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of Utah Administrative Code R671-302, News Media and Public Access to Hearings. Effective immediately, the Utah Board of Pardons and Parole ("Board") shall restrict in-person access to Board hearings as follows:

1. At any parole revocation hearing, including an evidentiary hearing, in-person access shall be limited to: (1) a Board member; (2) a hearing officer; (3) a prison staff member; (4) an offender; (5) legal counsel for the offender; (6) an Adult Probation and Parole agent; (7) legal counsel for Adult Probation and Parole; (8) a witness; (9) a victim; (10) one representative of each victim; and (11) up to two family members of each victim.

2. At any original hearing, rehearing, special attention review hearing, or redetermination hearing, in-person access shall be limited to: (1) a Board member; (2) a hearing officer; (3) a prison staff member; (4) an offender; (5) a victim; (6) one representative of each victim; and (7) up to two family members of each victim.

3. At any pardon hearing, in-person access shall be limited to: (1) a Board member; (2) a prison staff member; (3) a pardon applicant; (4) legal counsel for the pardon applicant; (5) a victim; (6) one representative of each victim; (7) up to two family members of each victim; and (8) an authorized representative of the arresting or investigative agency, sentencing court, or prosecutor's office for each conviction being addressed.

4. At any commutation hearing, in-person access shall be limited by the Board as the Board reasonably determines is necessary to prevent or control the spread of COVID-19.

Notwithstanding the foregoing restrictions, the Board shall simultaneously transmit by electronic means hearings for public viewing and listening.

This Order shall take effect immediately upon Executive Order 2020-63 becoming effective and shall remain in effect through September 25, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 19th day of September, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/064/EO

EXECUTIVE ORDER
2020-65

Temporarily Reauthorizing the Suspension of Enforcement of Provisions of the Utah Postretirement Reemployment Restrictions Act

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to Novel Coronavirus Disease 2019 (COVID-19);

WHEREAS, on March 17, 2020, I issued Executive Order 2020-9, suspending the enforcement of certain statutes relating to postretirement reemployment, as necessary to address the COVID-19 pandemic;

WHEREAS, on August 20, 2020, the state of emergency declared in Executive Order 2020-1 expired, causing the termination of several executive orders necessary to address the COVID-19 pandemic, including Executive Order 2020-9;

WHEREAS, on August 20, 2020, I issued Executive Order 2020-51, declaring a new state of emergency due to the ongoing and evolving effects of the COVID-19 pandemic;

WHEREAS, on August 20, 2020, I issued Executive Order 2020-53, reauthorizing the the suspension of enforcement of certain statutes relating to postretirement reemployment;

WHEREAS, on this day, September 19, 2020, the state of emergency declared in Executive Order 2020-51 expires, causing the termination of several executive orders necessary to address the COVID-19 pandemic, including Executive Order 2020-53;

WHEREAS, on this day, September 19, 2020, I issued Executive Order 2020-63, declaring a new state of emergency in response to the ongoing and evolving effects of the COVID-19 pandemic in Utah;

WHEREAS, the facts and conditions justifying the suspension of enforcement of certain statutes relating to postretirement reemployment persist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, COVID-19 continues to spread and threaten public health and safety, causing loss of life, human suffering, and social and economic disruption throughout Utah;

WHEREAS, it is imperative that healthcare facilities maximize the number of capable healthcare workers to ensure Utahns impacted by COVID-19 have access to medical treatment;

WHEREAS, state and local governmental entities must have staffing sufficient to appropriately address the impacts of COVID-19;

WHEREAS, the following governmental functions are critical because they enable state and local officials to protect their communities and ensure continuity of functions essential to public health and safety: communications, emergency services and first responders, energy, financial services, food and agriculture, government facilities, healthcare and public health facilities, information technology, transportation systems, and water and wastewater systems (the "Critical Government Functions");

WHEREAS, many retirees of the Utah Retirement Systems (URS) in the state are skilled workers willing to be reemployed to meet the Critical Government Functions staffing needs of state and local governmental entities that are URS participating employers to be able to appropriately address the impacts of COVID-19;

WHEREAS, certain provision of Utah Code Title 49, Chapter 11, Part 12, Postretirement Reemployment Restrictions Act, may restrict the ability of URS participating employers to reemploy certain retirees in Utah who may help provide or expedite Critical Government Functions needed for emergency response and recovery;

WHEREAS, certain provisions of Utah Code §§ 49-11-1201 through 49-11-1208 may limit the ability of URS participating employers to have staffing sufficient to appropriately respond to the COVID-19 disaster and to ensure that Utahns have Critical Government Functions;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of the following, consistent with applicable federal law:

1. Utah Code § 49-11-1204(2), requiring cancellation of a retirement allowance for reemployment without a one-year break in service;
2. Utah Code § 49-11-1204(4)(b), to the extent it requires the participating employer to pay the amortization rate to URS;
3. Utah Code § 49-11-1206(1)(b), to the extent it requires a participating employer to immediately notify URS of the reemployment;
4. Utah Code § 49-11-1206(3), to the extent it requires a retiree to report the status of the reemployment to URS; and
5. Utah Code § 49-11-1207(1), to the extent it requires URS to take action regarding a violation of Subsection 49-11-1204(2) or (4)(b);

PROVIDED THAT, the suspensions in this Order apply only as to an individual who:

1. retired prior to March 30, 2020; and
2. becomes temporarily reemployed to ensure adequate staffing of Critical Government Functions for a URS participating employer during the state of emergency.

This Order shall take effect immediately upon Executive Order 2020-63 becoming effective and shall remain in effect through September 25, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 19th day of September, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/065/EO

EXECUTIVE ORDER
2020-66

Temporarily Reauthorizing the Suspension of Enforcement of Utah Code § 32B-5-309 Regarding Ceasing Operation of Certain Retail Licensees

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to Novel Coronavirus Disease 2019 (COVID-19);

WHEREAS, on March 17, 2020, I issued Executive Order 2020-21, suspending the enforcement of Utah Code § 32B-5-309, regarding ceasing operation of certain retail licensees, as necessary to mitigate the spread of COVID-19;

WHEREAS, on August 20, 2020, the state of emergency declared in Executive Order 2020-1 expired, causing the termination of several executive orders necessary to address the COVID-19 pandemic, including Executive Order 2020-21;

WHEREAS, on August 20, 2020, I issued Executive Order 2020-51, declaring a new state of emergency due to the ongoing and evolving effects of the COVID-19 pandemic;

EXECUTIVE DOCUMENTS

WHEREAS, on August 20, 2020, I issued Executive Order 2020-54, reauthorizing the suspension of enforcement of Utah Code § 32B-5-309;

WHEREAS, on this day, September 19, 2020, the state of emergency declared in Executive Order 2020-51 will expire, causing the termination of several executive orders necessary to address the COVID-19 pandemic, including Executive Order 2020-54;

WHEREAS, on this day, September 19, 2020, I issued Executive Order 2020-63, declaring a new state of emergency in response to the ongoing and evolving effects of the COVID-19 pandemic in Utah;

WHEREAS, the facts and conditions justifying the suspension of enforcement of Utah Code § 32B-5-309 persist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, COVID-19 continues to spread and threaten public health and safety, causing loss of life, human suffering, and social and economic disruption throughout Utah;

WHEREAS, Utah Code § 32B-5-309 prohibits certain retail licensees that serve alcoholic beverages from closing or ceasing operation for a period longer than 240 hours without notifying and receiving approval from the Department of Alcoholic Beverage Control (DABC);

WHEREAS, to mitigate the spread of COVID-19, state and local authorities have issued orders restricting the operation of businesses and restaurants, including retail licensees governed by Utah Code § 32B-5-309;

WHEREAS, the economic impact of COVID-19 and related orders has caused and is expected to cause some retail licensees governed by Utah Code § 32B-5-309 to close or cease operation for a period longer than 240 hours;

WHEREAS, enforcement of state and local health orders and Utah Code § 32B-5-309 places a significant burden on retail licensees and DABC;

WHEREAS, suspending the enforcement of provisions of Utah Code § 32B-5-309 is directly related to and necessary to address the COVID-19 pandemic;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of Utah Code § 32B-5-309.

This Order shall take effect immediately upon Executive Order 2020-63 becoming effective and shall remain in effect through September 25, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 19th day of September, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/066/EO

**EXECUTIVE ORDER
2020-67**

Temporarily Reauthorizing the Suspension of Enforcement of Statutes Relating to Telehealth Services

WHEREAS, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to Novel Coronavirus Disease 2019 (COVID-19);

WHEREAS, on March 17, 2020, I issued Executive Order 2020-23, suspending the enforcement of certain statutes regarding the suspension of enforcement of certain statutes related to the provision of telehealth services;

WHEREAS, on August 20, 2020, the state of emergency declared in Executive Order 2020-1 expired, causing the termination of several executive orders necessary to address the COVID-19 pandemic, including Executive Order 2020-23;

WHEREAS, on August 20, 2020, I issued Executive Order 2020-51, declaring a new state of emergency due to the ongoing and evolving effects of the COVID-19 pandemic;

WHEREAS, on August 20, 2020, I issued Executive Order 2020-55, reauthorizing the the suspension of enforcement of certain statutes regarding the suspension of enforcement of certain statutes related to the provision of telehealth services;

WHEREAS, on this day, September 19, 2020, the state of emergency declared in Executive Order 2020-51 expires, causing the termination of several executive orders necessary to address the COVID-19 pandemic, including Executive Order 2020-55;

WHEREAS, on this day, September 19, 2020, I issued Executive Order 2020-63, declaring a new state of emergency in response to the ongoing and evolving effects of the COVID-19 pandemic in Utah;

WHEREAS, the facts and conditions justifying the suspension of enforcement of certain statutes regarding the suspension of enforcement of certain statutes related to the provision of telehealth services;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, COVID-19 continues to spread and threaten public health and safety, causing loss of life, human suffering, and social and economic disruption throughout Utah;

WHEREAS, the Centers for Disease Control and Prevention have issued guidelines encouraging healthcare facilities to use telehealth services to reduce in-person healthcare visits and to mitigate the transmission of COVID-19 and other respiratory viruses;

WHEREAS, state and local health authorities have encouraged patients needing access to healthcare to use telehealth services when possible rather than go to a healthcare facility or doctor's office;

WHEREAS, the use of telehealth services is critical to ensure that the healthcare system is not overwhelmed and to mitigate the spread of COVID-19;

WHEREAS, Utah Code Title 26, Chapter 60, Telehealth Act governs the use of telehealth services in Utah;

WHEREAS, Utah Code §§ 26-60-102(9)(b)(ii) and 26-60-103(4)(a) may limit the ability of a healthcare provider to offer telehealth services during this state of emergency;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. Enforcement of the following statutes is suspended:
 - a. Utah Code § 26-60-102(9)(b)(ii); and
 - b. Utah Code § 26-60-103(4)(a) to the extent that it interferes with a medical provider's ability to offer telehealth services.
2. A medical provider that pursuant to this Order offers telehealth services that do not comply with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended, or the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended, shall:
 - a. inform the patient the telehealth service does not comply with those federal acts;
 - b. give the patient an opportunity to decline use of the telehealth service; and
 - c. take reasonable care to ensure security and privacy of the telehealth service.

This Order shall take effect immediately upon Executive Order 2020-63 becoming effective and shall remain in effect through September 25, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 18th day of September, 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/067/EO

EXECUTIVE ORDER
2020-68

Temporarily Extending the Suspension of Enforcement of Statutes Relating to Telehealth Services

WHEREAS, on September 19, 2020, I issued Executive Order 2020-63, declaring a new state of emergency in response to the ongoing and evolving effects of the COVID-19 pandemic in Utah;

WHEREAS, on September 19, 2020, I issued Executive Order 2020-67, temporarily reauthorizing the suspension of enforcement of certain statutes relating to telehealth services through September 25, 2020, in order to mitigate the spread of COVID-19;

WHEREAS, on September 19, 2020, I announced my intent not to suspend the enforcement of statutes pursuant to the state of emergency declared in Executive Order 2020-63 except on the recommendation of the Public Health and Economic Emergency Commission (the "Commission");

WHEREAS, the Commission has not had the opportunity to meet to make a recommendation on the continued suspension of enforcement in Executive Order 2020-67, and a temporary extension is necessary to address the state of emergency until the Commission can make a recommendation;

WHEREAS, I find that facts and conditions justifying the suspension of enforcement of certain statutes related to the provision of telehealth services continue to exist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, COVID-19 continues to spread and threaten public health and safety, causing loss of life, human suffering, and social and economic disruption throughout Utah;

WHEREAS, the use of telehealth services is critical to ensure that the healthcare system is not overwhelmed and to mitigate the spread of COVID-19;

WHEREAS, the Centers for Disease Control and Prevention have issued guidelines encouraging healthcare facilities to use telehealth services to reduce in-person healthcare visits and to mitigate the transmission of COVID-19 and other respiratory viruses;

WHEREAS, the federal Office for Civil Rights announced an enforcement discretion policy giving providers flexibility during the COVID-19 nationwide public health emergency to increase telehealth services under certain conditions;

WHEREAS, state and local health authorities have encouraged patients needing access to healthcare to use telehealth services when possible rather than go to a healthcare facility or doctor's office;

WHEREAS, healthcare providers have expressed that increased access to telehealth services has been well-received and successful, and have requested the continued suspension of enforcement of telehealth-related statutes that create overly-burdensome barriers to provide telehealth services;

WHEREAS, Utah Code Title 26, Chapter 60, Telehealth Act governs the use of telehealth services in Utah;

WHEREAS, Utah Code §§ 26-60-102(9)(b)(ii) and 26-60-103(4)(a) may limit the ability of a healthcare provider to offer telehealth services during this state of emergency;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. Enforcement of the following statutes is suspended:
 - a. Utah Code § 26-60-102(9)(b)(ii); and
 - b. Utah Code § 26-60-103(4)(a) to the extent that it interferes with a medical provider's ability to offer telehealth services.
2. A medical provider that pursuant to this Order offers telehealth services that do not comply with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended, or the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended, shall:
 - a. inform the patient the telehealth service does not comply with those federal acts;
 - b. give the patient an opportunity to decline use of the telehealth service; and
 - c. take reasonable care to ensure security and privacy of the telehealth service.

This Order shall take effect September 26, 2020, and shall remain in effect through September 29, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 25th day of September, 2020.

(State Seal)

EXECUTIVE DOCUMENTS

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/068/EO

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between September 02, 2020, 12:00 a.m., and September 15, 2020, 11:59 p.m. are included in this, the October 01, 2020, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least November 02, 2020. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through January 29, 2021, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE**TYPE OF RULE:** Amendment

Utah Admin. Code Ref (R no.):	R68-3	Filing No. 53057
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Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-3. Utah Fertilizer Act Governing Fertilizers and Soil Amendments
3. Purpose of the new rule or reason for the change:
The changes are needed to make the Utah fertilizer rule consistent with rules in most other states that companies are already following.
4. Summary of the new rule or change:
The changes remove the word "commercial" from fertilizer throughout the rule, consistent with the statute. They also clarify registration exemptions and requirements. Clarification is also made to labeling and guarantee requirements. Additional information is added to the rule regarding labeling for slowly released plant nutrients and guaranteed analysis format exemptions. This rule also now incorporates investigational allowance tables from the Association of American Plant Food Control Officials. Finally, clarification is added to the violation section of the rule.

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

There are no anticipated costs or savings to the state budget because the Department of Agriculture and Food (Department) is able to continue to manage the fertilizer program within their existing budget.

B) Local governments:

There are no anticipated costs or savings to local governments because they are not regulated or affected by the fertilizer rule.

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

There are no anticipated costs or savings to small businesses because they are already following the new requirements of this rule as the changes are consistent with other state rules.

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

There are no anticipated costs or savings to non-small businesses because they are already following the new requirements of this rule as the changes are consistent with other state rules.

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 rule changes will not create costs or savings for other persons because they are not subject to the fertilizer rule in Utah.

F) Compliance costs for affected persons:

There are no additional compliance costs for affected persons because the fees and penalties charged by the Department have not changed.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
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 approval of regulatory impact analysis:			
The Commissioner of the Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves the regulatory impact analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
These changes will make the Utah fertilizer rule more consistent with rules in other states. There is no fiscal impact on businesses because they are already following the new requirements of the rule.			
B) Name and title of department head commenting on the fiscal impacts:			
R. Logan Wilde, Commissioner			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):			
Subsection	4-2-	Section 4-13-104	
103(1)(i)			

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Investigational Allowance Tables
Publisher	Association of American Plant Food Control Officials
Date Issued	2019
Issue, or version	Official Publication No. 72

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	11/02/2020

10. This rule change MAY become effective on:	11/09/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	R. Logan Wilde, Commissioner	Date:	09/02/2020
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R68. Agriculture and Food, Plant Industry.

R68-3. Utah Fertilizer Rule~~[Act Governing Fertilizers and Soil Amendments]~~.

R68-3-1. Authority.

Promulgated under authority of Subs[S]ection 4-2-103(1)(i) and Section 4-13-104.

R68-3-2. Registration of Products.

A. ~~[All][f]~~Fertilizer or soil amendment~~[products]~~ distributed in Utah shall be ~~[officially]~~registered with the Utah Department of Agriculture and Food~~[-]~~, unless labeling shows that the product does not claim to contain any plant nutrients or beneficial plant growth properties.

1. The following are exempt from registration in Utah:
 - a. biochar;
 - b. compost;
 - c. landscape soil;

- d. mulch;
- e. nitrogen stabilizers;
- f. peat;
- g. perlite;
- h. plant inoculant;
- i. planting mix;
- j. potting soil;
- k. seed inoculant;
- l. vermicompost; or
- m. vermiculite.

[+]2. Application for registration shall be made to the [D]department upon a form[s] prescribed and provided by the [D]department. Each application [and] shall include the registrant's name, address, and other contact information prescribed on the form, as well as the following information for each product:

- [~~_____~~ a. The net weight;
- [~~_____~~ b]a. [~~F~~]the brand and grade[~~;~~];
- [~~_____~~ e]b. [~~F~~]the guaranteed analysis[~~;~~]; and
- [~~_____~~ d. The name and address and phone number of the registrant.]
- [~~_____~~ e]c. [~~F~~]the label for each product registered.
- [~~_____~~ f. Any waste derived fertilizer distributed as a single ingredient product or blended with other fertilizer ingredients must be identified as "waste derived fertilizer" by the registrant in the application for registration. "Waste derived fertilizer" shall include any commercial fertilizer that is derived from an industrial byproduct, coproduct or other material that would otherwise be disposed of if a market for reuse were not an option, but does not include fertilizers derived from biosolids or biosolids products regulated under Environmental Protection Agency Code of Federal Regulation, Section 503.]

3.[g.] The registrant of a waste-derived fertilizer shall state in the application for registration the levels of non-nutritive metals, [c]including[~~but not limited to~~] arsenic, cadmium, mercury, lead and selenium[~~).~~]. Upon request, [F]the registrant will provide a laboratory report or other documentation verifying the levels of the non-nutritive metals in the waste-derived fertilizer.

[2]4. The [Commissioner]department may require submission of the complete formula of any fertilizer or soil amendment if it shall be deemed necessary for administration of Title 4, Chapter 13, the Utah Fertilizer Act. If it appears to the [Commissioner]department that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the [a]Act, the product[s] shall be registered.

[a]5. Before registering any soil amendment, the [Commissioner]department [shall]may require evidence to substantiate the claims made for the soil amendment and proof of the value and usefulness of the soil amendment. For evidence of proof, the department may rely on experimental data, evaluation, or advice from a source that understands the conditions for which the product is intended.[Such supportive data shall accompany the application for registration and shall be obtained from one or more State Experiment Stations.] Cost for [such-]research shall be the responsibility of the applicant. Final decision concerning registration of a soil amendment shall be made by the [Commissioner]department following evaluation of [all-]evidence presented.

[3]6. The registrant is responsible for the accuracy and completeness of [all-]information submitted concerning application for registration of a fertilizer or soil amendment[~~product~~].

7. A registration fee, determined by the department pursuant to Subsection 4-2-103(2), per product, shall be paid by the applicant annually.

8. Each registration is renewable for a period of one year upon payment of the annual renewal fee, which shall be paid by December 31 of each year. If the renewal of a fertilizer or soil amendment registration is not received by December 31 of any year, an additional fee, determined by the department pursuant to Subsection 4-2-103(2), shall be assessed per product and added to the original registration fee and shall be paid by the applicant before the registration renewal for that fertilizer or soil amendment will be issued.

[~~_____~~ 4. Once a fertilizer or soil amendment is registered under the act, no further registration is required, as long as the label does not differ in any respect.]

[5]9. Whenever the name of fertilizer or soil amendment product is changed or there are changes in the product ingredients or guaranteed analysis, a new registration [shall be]is required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of [all-]changes to the [D]department as soon as they are effective. A reasonable time may be permitted to dispose of properly labeled stocks of the old product.

[~~_____~~ 6. A registration fee determined by the department pursuant to Subsection 4-2-103(2), per product shall be paid by the applicant annually.

7. Each registration is renewable for a period of one year upon payment of the annual renewal fee determined by the department pursuant to Subsection 4-2-103(2), per product which shall be paid on or before December 31 of each year. If the renewal of a fertilizer or soil amendment registration is not filed prior to January 1 of any year, an additional fee determined by the department pursuant to Subsection 4-2-103(2), shall be assessed per product and added to the original registration fee and shall be paid by the applicant before the registration renewal for that fertilizer or soil amendment shall be issued.]

[8]10. A blender[distributor] is not required to register each grade of [commercial-]fertilizer or soil amendment formulated by a consumer before mixing, but is required to [register]license the name under which the business of blending or mixing is conducted and to pay an annual blender's license fee determined by the department pursuant to Subsection 4-2-103(2). A blender's license shall expire [at midnight on]after December 31 of the year [in which-]it is issued. A blender's license is renewable for a period of one year upon the payment of an annual license renewal fee. [For Each renewal of a fertilizer or soil amendment blender's license not filed prior to January 1 of any one year, an additional fee determined by the department pursuant to Subsection 4-2-103(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license shall be issued.]If the renewal of a fertilizer or soil amendment blender license is not received by December 31 of any year, an additional fee determined by the department pursuant to Subsection 4-2-103(2), shall be assessed to and paid by the applicant before the blender license will be issued.

[~~_____~~ 9. Beginning January 1, 1991 and on a semi annual basis, fertilizer and soil amendment products sold in the State of Utah will be assessed a fee determined by the department pursuant to Subsection 4-2-103(2). This assessment shall be paid by the manufacturer or distributor on or before February 1st each year for the sales period July 1 through December 31 and again on or before August 1st each year for the sales period January 1 through June 30. The amount of assessment will be determined by records of the previous six month's sales.]

R68-3-3. Product Labeling.

[~~_____~~ A. Each container of packaged fertilizer distributed in Utah shall bear a label showing the following information:

- ~~_____~~ 1. net weight,
- ~~_____~~ 2. brand and grade,
- ~~_____~~ 3. guaranteed analysis;

NOTICES OF PROPOSED RULES

4. name and address of the registrant,
5. lot number.
- B. Each container of packaged soil amendment distributed in Utah shall bear a label showing the following:
 1. net weight,
 2. brand name,
 3. name and percentages of the soil amending ingredients,
 4. purpose of product,
 5. directions for application of product,
 6. name and address of the registrant,
 7. lot number.]

[C.]A. When any reference is made upon the label, labeling, or graphic material of a [commercial] fertilizer or soil amendment to "trace elements," "minor elements," "secondary elements," "plant foods," or similar generalized terms, each individual plant food to which such term refers [must]shall be listed upon the label.

[D. No guarantee for a plant food element may be shown upon a label which is not listed upon the application for registration of the fertilizer or soil amendment material.

E. If guarantees for secondary plant foods and trace elements are listed upon the label of a fertilizer or soil amendment, they must be represented in terms of the element, and the minimum amount of each which may be guaranteed in the labeling of any fertilizer or soil amendment product is as follows:

TABLE

Calcium (Ca)	1.00%	Copper (Cu)	0.05%
Magnesium (Mg)	0.50%	Iron (Fe)	0.10%
Sulfur (S)	1.00%	Manganese (Mn)	0.05%
Boron (B)	0.02%	Molybdenum (Mo)	0.0005%
Cobalt (Co)	0.0005%	Sodium (Na)	0.10%
Chlorine (Cl)	0.10%	Zinc (Zn)	0.05%

B. Other plant nutrients, when mentioned in any form or manner, shall be registered and shall be guaranteed. Each guarantee shall be made on the elemental basis. Sources of the elements guaranteed and proof of availability shall be provided to the department upon request. An exception is made for guarantees for those water-soluble nutrients labeled for ready to use foliar fertilizer, ready to use specialty liquid fertilizer, hydroponic or continuous liquid feed programs, and guarantees for potting, garden, and lawn soils. The minimum percentages that will be accepted for registration are as follows:

TABLE 1

Element	Minimum Concentration %
Calcium (Ca)	1.0000
Magnesium (Mg)	0.5000
Sulfur (S)	1.0000
Boron (B)	0.0200
Chlorine (Cl)	0.1000
Cobalt (Co)	0.0005
Copper (Cu)	0.0500
Iron (Fe)	0.1000
Manganese (Mn)	0.0500
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.1000
Zinc (Zn)	0.0500

Guarantees or claims for the plant nutrients listed in Table 1 are the only ones that will be accepted. Each proposed label and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the

elements listed in Table 1 that are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients of nitrogen, phosphate, and potash.

[F. No specialty fertilizer label shall bear a statement that connotes or infers the presence of a slowly available plant nutrient unless the nutrient or nutrients are identified. When a fertilizer label infers or connotes that the nitrogen is slowly available through use of "organic," "organic nitrogen," "ureaform," "long-lasting," or similar terms, the guaranteed analysis must indicate the percentage of water insoluble nitrogen in the material. When the water insoluble nitrogen is less than 15% of the total nitrogen, the label shall bear no reference to "long-lasting," "organic," or similar terms.]

C. Slowly released plant nutrients.

1. No fertilizer label shall bear a statement that implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless each slow release component is identified and guaranteed at a level of at least 15% of the total guarantee for that nutrient.

2. Types of products with slow release properties recognized are:

a. water insoluble, such as natural organics, ureaform materials, urea-formaldehyde products, isobutylidene diurea oxamine;

b. coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers;

c. occluded slow release where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and

d. products containing water soluble nitrogen, such as ureaform materials, urea-formaldehyde products, methylene urea (MDU), dimethylentriurea (DMTU), dicyanodiamide (DCD).

3. The terms, such as "water insoluble," "coated slow release," "slow release," "controlled release," "slowly available water soluble," and "occluded slow release" are accepted as descriptive of these products.

4. The department may require evidence and an acceptable testing procedure to substantiate each claim.

[G.]D. Pesticide[s] may be added to registered fertilizer[s] or soil amendment[s], provided:

1. [F]the fertilizer[s] and soil amendment[s], and [the] pesticide[s] [are]is [officially]registered[-]; and

2. [E]each [container or package containing a] fertilizer or soil amendment pesticide mixture shall have [attached]a label showing the information [stated]required in this rule[Subsection R68-3-2(2)(a) of these rules] and in Section 4-14-104.

E. Format exemptions. The department may exempt a fertilizer from any guaranteed analysis format requirement under Section 4-13-104 if the person requesting the exemption demonstrates the following to the department's satisfaction:

1. another state that has authorized sale of the fertilizer has a conflicting statute or regulation;

2. the format exemption will reconcile the conflict under Section 4-13-104;

3. the format exemption will not affect, to the detriment of purchasers in this state, any claim or disclosure related to product performance, use, purpose, efficacy, or active ingredients;

4. the format exemption will not cause the product label to be false, deceptive, or misleading in any respect;

5. the format required by the other state satisfies the objectives of Section 4-13-104; or

6. the format required by the other state does not violate applicable labeling requirements, if any, under Section 4-13-104.

R68-3-4. Deficiencies of Ingredients.

A ~~commercial~~ fertilizer shall be deemed deficient if the analysis of any nutrient[s] is below the guarantee by an ~~among~~ amount exceeding the values in the Association of American Plant Food Control Officials (AAPFCO) Investigational Allowance Tables, 2019 version, which are hereby incorporated by reference, [following schedule] or if the overall index value of the fertilizer is below 98%.

[TABLE

ALLOWABLE DEFICIENCIES

Guarantee Percent	Nitrogen Percent	Available Phosphoric Acid Percent	Potash Percent
04 or less	0.49	0.67	0.41
05	0.51	0.67	0.43
06	0.52	0.67	0.47
07	0.54	0.68	0.53
08	0.55	0.68	0.60
09	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

[R68-3-5. Values of Ingredients.

The Department shall annually publish the monetary values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizer in this state, which may be used as a basis for assessing monetary penalties for ingredient deficiencies as provided under section 4-13-106.]

R68-3-[6]5. Unlawful Acts.

A. Any person who has committed any act[s] ~~included but not limited to those listed below is~~ in violation of Title 4, Chapter 13, the Utah Fertilizer Act or rules promulgated thereunder, ~~and~~ is subject to penalties provided for in Subsection 4-2-304(1)(a). Unlawful acts include that the person:

1. ~~[M]~~made a false or fraudulent claim[s] through any media misrepresenting the effect of fertilizer[s] or soil amendment[s] offered for sale in Utah;
2. ~~[N]~~neglected or, after notice, refused to comply with the provisions of the ~~[a]~~Act, these rules, or any lawful order of the ~~[Commissioner]~~department;
3. ~~[M]~~made false or fraudulent records, invoices, or reports;
4. ~~[U]~~used fraud or misrepresentation[s] in making application for, or renewal of, a registration or license;
5. ~~[D]~~distributed ~~commercial~~ fertilizer or soil amendment[s] ~~which~~ that contains seeds or other viable plant parts or noxious weeds[-];
6. ~~[D]~~distributed any waste-derived fertilizer that was not ~~has not been~~ identified in the registration application[-]; or
7. did not store fertilizer and soil amendment in a manner that minimizes the release of fertilizer and soil amendment and protects the environment.

B. Biosolids, and compost products, separately or in any combination, shall be adulterated when they exceed the levels of metals

permitted by the United States Environmental Protection Agency (EPA) regulations under 40 CFR Part 503.

C. Dried biosolids and manure, as well as manipulated manure products, either separately or in combination, shall also be deemed adulterated when they exceed the levels of metals permitted under 40 CFR Part 503.

D. Hazardous waste derived fertilizer, as defined by the EPA, shall be adulterated when it exceeds the level of metals permitted by EPA regulations under 40 CFR Parts 261, 266, and 268.

KEY: fertilizers

Date of Enactment or Last Substantive Amendment: ~~July 25, 2008~~2020

Notice of Continuation: October 15, 2019

Authorizing, and Implemented or Interpreted Law: ~~4-2-2~~4-2-103(1)(i); 4-13-104

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R156-17b	Filing No. 53070
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Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	Salt Lake City UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Jennifer Falkenrath	801-530-7632	jzaelit@utah.gov

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

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

R156-17b. Pharmacy Practice Act Rule

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

The Division of Occupational and Professional Licensing (Division), in collaboration with the Utah State Board of Pharmacy, recommends these amendments to clarify this rule based on public comments received in response to the last filed amendments. These further amendments will better delineate operating standards for compounding and labeling requirements.

4. Summary of the new rule or change:

In Section R156-17b-102, the change deletes definitions for "mail service retail pharmacy" and "retail pharmacy", and further defines "Compounding" in accordance with 21 U.S.C Sec. 353a(e).

In Section R156-17b-203, the change amends the composition of the seven-member Advisory Pharmacy Compounding Education Committee to include a member who is a physician, and provides that a Committee designee shall attend one meeting of the Physicians Licensing Board and one meeting of the Osteopathic Physician and Surgeon's Licensing Board per calendar quarter, in addition to one meeting of the Board of Pharmacy.

In Section R156-17b-309, the change updates continuing education (CE) topic hours and removes the term "immunizations".

In Section R156-17b-614a, the change clarifies various operating standards and establishes the label requirements for compounded sterile and non-sterile medications when dispensed to a patient or patient's agent; and removes duplicate language that is referenced in USP 795 and USP 797.

The new Section R156-17b-614e establishes operating standards for compounding by reference to USP General Chapters <797>, <795>, and <825>. These operating standards will apply to any person licensed under Title 58, Chapter 17b, that engages in compounding, and to the compounding of all sterile or nonsterile compounded pharmaceuticals, antineoplastic drugs, or non-antineoplastic drugs no matter where the patient is located.

In Section R156-17b-614g, the change clarifies operating standards for a remote dispensing pharmacy by: 1) removing the list of information required on the application form (these provisions will be included in the form); 2) reformatting paragraphs to emphasize the distinction between an "RDPIC", who is the PIC for the supervising pharmacy and may not serve as the RDPIC for more than one remote dispensing pharmacy, and the "supervising pharmacist" defined in Subsection 58-17b-102(70), who is the pharmacist actually providing supervision for the remote dispensing facility at any particular time and may oversee the operations of up to two remote dispensing pharmacies simultaneously; 3) adds the term "surveillance system" to highlight the distinction between that type of system and the required telepharmacy system; 4) removes the requirement that Remote Dispensing pharmacy applications must go before the Board for Division approval; and 5) removes the requirement for the Board to review remote dispensing pharmacy applications if there will be a remote dispensing pharmacy in the same location.

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

No state agencies will be directly or indirectly affected by these amendments because the changes merely update and clarify existing statutes, rules, and references, and codify existing standards already adhered to in the industry. Therefore, these amendments are not expected to impact the state beyond a minimal cost to the Division of approximately \$75 to print and distribute the rule once the proposed amendments are made effective.

B) Local governments:

No local governments will be directly or indirectly affected by these amendments because the changes merely update and clarify existing statutes, rules, and references and codify existing standards already adhered to in the industry.

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

These amendments are not expected to impact small businesses' revenues or expenditures. These amendments are based on extensive collaboration with the Board to incorporate generally accepted professional standards common in the industry, and the changes merely update and clarify existing statutes, rules, and references, and codify existing standards already adhered to in the industry.

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

These amendments are not expected to impact non-small businesses' revenues or expenditures. These amendments are based on extensive collaboration with the Board to incorporate generally accepted professional standards common in the industry, and the changes merely update and clarify existing statutes, rules, and references, and codify existing standards already adhered to in the industry.

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

No persons are expected to be impacted by these amendments because the changes merely update and clarify existing statutes, rules, and references, and codify existing standards already adhered to in the industry.

F) Compliance costs for affected persons:

There are no compliance costs expected for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division, in collaboration with the Board of Pharmacy, proposes amendments to Rule R156-17b to clarify the rule based on public comments received in response to the last filed amendments relating to compounding. Definitions have been updated, procedures and composition of the Advisory Pharmacy Compounding Education Committee have been amended, CE requirements are addressed, a new subsection has been added to address compounding specifically, and greater explanation has been added pertaining to remote distribution. Nonsubstantive changes have also been made to support clarification.

Small Businesses (less than 50 employees):

These amendments to the rule should have no expected fiscal impact to small businesses in Utah (North American Industry Classification System (NAICS) code 446110). The full fiscal impact on small businesses is inestimable as it will depend on the individual characteristics of the delegating pharmacists and the delegatee practitioners, on the characteristics of the patients involved, and on the nature of each pharmacy.

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

These amendments will have no expected fiscal impact for non-small business in Utah (NAICS code 446110) for the same reasons as described above for small business. These costs are either inestimable, for the reasons stated, or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Chris Parker, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 58-17b-101	Subsection 58-17b-601(1)	Section 58-37-1
Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

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

On:	At:	At:
10/27/2020	8:30 AM	Heber Wells Bldg, 160 E 300 S via electronic meeting only with the Utah State Board of Pharmacy, Salt Lake City, UT. Note: Google Meeting electronic information will be on

		the Utah State Board of Pharmacy meeting agenda for the October 27, 2020 meeting date
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10. This rule change MAY become effective on:	11/09/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	Date:	09/15/2020
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R156. Commerce, Occupational and Professional Licensing.**R156-17b. Pharmacy Practice Act Rule.****R156-17b-102. Definitions.**

In addition to the definitions regarding pharmacy practice in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule the following rule definitions supplement the statutory definitions:

- (1) "Accredited by ASHP" means a program that:
 - (a) was accredited by the ASHP on the day the applicant for licensure completed the program; or
 - (b) was in ASHP candidate status on the day the applicant for licensure completed the program.
- (2) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.
- (3) "Analytical laboratory":
 - (a) means a facility in possession of prescription drugs for the purpose of analysis; and
 - (b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis, if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.
- (4) "Area of need" as used in Subsection 58-17b-612(1)(b)(i) means:
 - (a) a remote-rural hospital, as defined in Section 26-21-13.6;
 - (b) a county of the fourth, fifth, or sixth class, as classified in Section 17-50-501; or
 - (c) any area where a demonstration of need is approved by the Division in collaboration with the Board, based on any factors affecting the access of persons in that area to pharmacy resources.
- (5) "ASHP" means the American Society of Health System Pharmacists.
- (6) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has

established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist ~~between such pharmaceutical wholesaler and a manufacturer~~, as defined in Section 1504 of the Internal Revenue Code, ~~when~~ if the pharmaceutical wholesaler:

(a) has a written agreement currently in effect with the manufacturer evidencing ~~such~~ the ongoing relationship~~;~~ and

(b) ~~the pharmaceutical wholesaler~~ is listed on the manufacturer's current list of authorized distributors of record.

(7) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the pharmacy's operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(8) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies ~~that have~~ with the same common ownership and control.

(9) "Clinic" as used in Subsection 58-17b-625(3)(b) means a class B pharmacy, or a facility ~~which~~ that provides out-patient health care services whose primary practice includes the therapeutic use of drugs related to a specific patient for the purpose of:

- (a) curing or preventing the patient's disease;
- (b) eliminating or reducing the patient's disease; or
- (c) arresting or slowing a disease process.

(10) "Co-licensed partner" means a person that has the right to engage in the manufacturing or marketing of a co-licensed product.

(11) "Co-licensed product" means a device or prescription drug for which two or more persons have the right to engage in the manufacturing, marketing, or both consistent with FDA's implementation of the Prescription Drug Marketing Act as applicable.

(12) "Community pharmacy" as used in Subsection 58-17b-625(3)(b) means a class A pharmacy as defined in Subsection 58-17b-102(10).

(13) "Compounding," as defined in Section 58-17b-102(18), in accordance with 21 U.S.C. 353a(e) does not include mixing, reconstituting, or other such acts that are performed in accordance with directions contained in approved labeling provided by the product's manufacturer and other manufacturer directions consistent with that labeling.

~~(13)~~ (14) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

~~(14)~~ (15) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

~~(15)~~ (16) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

~~(16)~~ (17) "Dispense,"~~as~~ as defined in Subsection 58-17b-102(22), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

~~(17)~~ (18) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, ~~which~~ that is required under Federal law to bear the label, "Caution: Federal or State law requires dispensing by or on the order of a physician."

(~~18~~19) "DMP" means a dispensing medical practitioner licensed under Title 58, Chapter 17b, Part 8.

(~~19~~20) "DMP designee" means an individual, acting under the direction of a DMP, who:

(a)(i) holds an active health care professional license under one of the following chapters:

- (A) Chapter 67, Utah Medical Practice Act;
- (B) Chapter 68, Utah Osteopathic Medical Practice Act;
- (C) Chapter 70a, Physician Assistant Act;
- (D) Chapter 31b, Nurse Practice Act;
- (E) Chapter 16a, Utah Optometry Practice Act;
- (F) Chapter 44a, Nurse Midwife Practice Act; or
- (G) Chapter 17b, Pharmacy Practice Act; or

(ii) is a medical assistant as defined in Subsection 58-67-102(12);

(b) meets requirements established in Subsection 58-17b-803 (4)(c); and

(c) can document successful completion of a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622.

(~~20~~21) "DMPIC" means a dispensing medical practitioner licensed under Title 58, Chapter 17b, Part 8 who is designated by a dispensing medical practitioner clinic pharmacy to be responsible for activities of the pharmacy.

(~~21~~22) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(~~22~~23) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(~~23~~24) "Drugs,"[;] as used in this rule, means drugs or devices.

(~~24~~25) "Durable medical equipment" or "DME" means equipment that:

- (a) can withstand repeated use;
- (b) is primarily and customarily used to serve a medical purpose;
- (c) generally is not useful to a person in the absence of an illness or injury;
- (d) is suitable for use in a health care facility or in the home; and
- (e) may include devices and medical supplies.

(~~25~~26) "Entities under common administrative control" means an entity holds the power, actual as well as legal to influence the management, direction, or functioning of a business or organization.

(~~26~~27) "Entities under common ownership" means entity assets are held indivisibly rather than in the names of individual members.

(~~27~~28) "ExCPT,"[;] as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

(~~28~~29) "FDA" means the United States Food and Drug Administration and any successor agency.

(~~29~~30) "FDA-approved" means the federal Food, Drug, and Cosmetic Act, 21 U.S.C.A. Section 301 et seq. and regulations promulgated thereunder permit the subject drug or device to be lawfully manufactured, marketed, distributed, and sold.

(~~30~~31) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(~~31~~32) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(~~32~~33) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(~~33~~34) "Legend drug" or "prescription drug" means a ~~any~~ drug or device that has been determined to be unsafe for self-medication or a ~~any~~ drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(~~34~~35) "Long-term care facility" as used in Section 58-17b-610.7 means the same as ~~the term is~~ defined in Section 58-31b-102.

(~~35~~36) "Maintenance medications" means medications the patient takes on an ongoing basis.[

~~(36) "Mail service retail pharmacy" means a retail pharmacy located in Utah that dispenses primarily through mailing or shipping.]~~

(37)(a) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition.

(b) ~~Such~~ A manufacturer's exclusive distributor shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "[n]ormal distribution channel"[;].

(38) "Medical supplies" means items for medical use that are;

(a) suitable for use in a health care facility or in the home; and

(b) ~~that are~~ disposable or semi-disposable and ~~are~~ non-reusable.

NOTICES OF PROPOSED RULES

(39) "MPJE" means the Multistate Jurisprudence Examination.

(40) "NABP" means the National Association of Boards of Pharmacy.

(41) "NAPLEX" means North American Pharmacy Licensing Examination.

(42) "Non drug or device handling central prescription processing pharmacy" means a central prescription processing pharmacy that does not engage in compounding, packaging, labeling, dispensing, or administering of drugs or devices.

(43) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection ([20]22), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor, to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(44) "Other health care facilities" means any entity as defined in ~~[Utah Code]~~ Subsection 26-21-2(13)(a) or ~~[Utah Administrative Code]~~ Subsection R432-1-3(55).

(45) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(46) "Patient's agent" means a:

(a) relative, friend, or other authorized designee of the patient involved in the patient's care; or

(b) if requested by the patient or the individual under Subsection (40)(a), one of the following facilities:

(i) an office of a licensed prescribing practitioner in Utah;

(ii) a long-term care facility where the patient resides; or

(iii) a hospital, office, clinic or ~~[other]~~ another medical facility that provides health care services.

(47) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(48) "PIC₂" [7] as used in this rule, means the pharmacist-in-charge.

(49) "Prepackaged" or "Prepackaging" means the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment where the prepackaging occurred.

(50) "Prescription files" means ~~[all]~~ hard-copy and electronic prescriptions that includes pharmacist notes or technician

notes, clarifications or information written or attached that is pertinent to the prescription.

(51) "Professional entry degree," [7] as used in Subsection 58-17b-303(1)(f), means the professional entry degree offered by the applicant's ACPE-accredited school or college of pharmacy in the applicant's year of graduation, either a baccalaureate in pharmacy (BSPharm) or a doctorate in pharmacy (PharmD).

(52) "PTCB" means the Pharmacy Technician Certification Board.

(53) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(54) "Refill" means to fill again.

(55) "Remote dispensing pharmacist-in-charge" or "RDPIC" means the PIC of a remote dispensing pharmacy. The RDPIC shall be the PIC of the remote dispensing pharmacy's supervising pharmacy.

(56) "Remote dispensing pharmacy" means a Class A or Class B pharmacy located in Utah that serves as the originating site where a patient receiving services through a telepharmacy system is physically located and the practice of telepharmacy occurs, pursuant to Section R156-17b-614g.

(57) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist or DMP responsible for dispensing the product to a patient.

(58) "Research facility" means a facility where research takes place that has policies and procedures describing such research. [

~~(59) "Retail pharmacy" as defined in Subsection 58-17b-102(67), is further clarified to mean a pharmaceutical facility that dispenses primarily to walk-in customers, and if applicable may deliver.]~~

~~(60)~~ [59] "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy for the purpose of removing those drugs from stock and destroying them.

~~(61)~~ [60] "Self-administered hormonal contraceptive" means the same as defined in Subsection 26-62-102(9).

~~(62)~~ [61] "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

~~(63)~~ [62] "Supervising pharmacy" means the Class A or Class B pharmacy responsible for overseeing the operation of a remote dispensing pharmacy, and whose PIC is the RDPIC for the remote dispensing pharmacy, pursuant to Section R156-17b-614g.

~~(64)~~ [63] "Supervisor" means a licensed pharmacist or DMP in good standing with the Division.

~~(65)~~ [64] "Telepharmacy system" means a telecommunications and information technologies system that monitors the preparation and dispensing of prescription drugs and provides for related drug review and HIPAA-compliant patient counseling services using:

(a) asynchronous store and forward transfer as defined in Subsection 26-60-102(1);

(b) synchronous interaction as defined in Subsection 26-60-102(6); or

(c) still image capture.

~~(66)~~ [65] "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription

drug or have any authoritative control over the prescription drug's sale.

(~~67~~66) "Unauthorized personnel" means a~~ny~~ person ~~[who is]~~not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(~~68~~67) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and beyond use date for the drug.

(~~69~~68) "Unprofessional conduct,"² [;] as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(~~70~~69) The "Utah Hormonal Contraceptive Self-screening Risk Assessment Questionnaire,"³ adopted September 18, 2018, by the Division in collaboration with the Utah State Board of Pharmacy and Physicians Licensing Board, as posted on the Division's website, is the self-screening risk assessment questionnaire approved by the Division pursuant to Section 26-62-106.

(~~71~~70) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 41-NF 36), either First Supplement, dated August 1, 2018, or Second Supplement, dated December 1, 2018, which is hereby adopted and incorporated by reference.

(~~72~~71) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

(~~73~~72) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

- (a) intracompany sales or transfers;
- (b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;
- (c) the sale, purchase, or trade of a drug pursuant to a prescription;
- (d) the distribution of drug samples;
- (e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;
- (f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;
- (g) the sale, purchase or exchange of blood or blood components for transfusions;
- (h) the sale, transfer, merger or consolidation of ~~[all]~~the whole or part⁴ of the business of a pharmacy;
- (i) delivery of a prescription drug by a common carrier; or
- (j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-203. Advisory Pharmacy Compounding Education Committee Created - Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f) and Section R156-1-205, there is created the Advisory Pharmacy Compounding Education Committee ("Committee").

(2) The Committee shall ~~[be composed]~~consist of seven members, ~~[who shall be]~~diversified between:

- (a) retail pharmacy[;];
- (b) hospital pharmacy[; and];
- (c) other pharmacy specialties ~~[deemed]~~determined pertinent by the Division in collaboration with the Board; and
- (d) at least one physician.

(3) Each Committee member shall:

- (a) be licensed in good standing with the state; and
- (b) ~~[All members shall]~~have experience and knowledge of least one USP Chapter, USP <795>, USP <797>, or USP <800>.

~~(3)~~4 The Board shall nominate Committee members for appointment in accordance with R156-1-205, and if possible at least six months prior to the date of cessation of service.

~~(4)~~5 The Committee's duties and responsibilities shall be to address pharmacy compounding issues, including:

- (a) monitoring current and proposed federal standards and USP standards for pharmacy compounding; and

(b) reviewing and making recommendations to the Division and boards regarding:

- (i) ~~[regarding]~~pharmacy compounding education and training;

(e)ii) ~~[reviewing and making recommendations regarding]~~pharmacy compounding laws and rules; and

(e)iii) ~~[any]~~other pharmacy compounding issues as assigned by the Division in collaboration with the Board.

~~(5)~~6 The Committee shall meet at least once per calendar quarter, and as may be directed by the Board with the concurrence of the Division.

~~(6)~~7~~(a)~~ The Committee shall annually designate one of its members to act as chair and another member to act as vice chair, on a calendar year basis. The Committee shall elect its chair and vice chair at a meeting conducted in the last quarter of the calendar year.

~~(b)~~8 ~~[The chair, vice chair, or their]~~Each calendar quarter, a Committee designee shall attend at least one Board meeting of each of the following boards to ~~[per calendar quarter to]~~report the Committee's activities and recommendations to the Board and the Division~~[and the Board].~~

(a) the Board of Pharmacy;

(b) the Physicians Licensing Board; and

(c) the Osteopathic Physicians and Surgeons Licensing Board.

R156-17b-309. Continuing Education.

In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), the continuing education (CE) requirements for renewal or reinstatement of a pharmacist or pharmacy technician license for each two-year renewal cycle are established as follows:

(1) A pharmacist shall complete at least 30 CE hours, ~~[which]~~that shall include at minimum:

- (a) 12 hours of live or technology-enabled participation in lectures, seminars, or workshops;

- (b) 15 hours in one or more of the following topics:
 - (i) disease state management~~[f]-~~drug therapy;
 - (ii) AIDS therapy;
 - (iii) ~~[general pharmacy;~~
 - ~~(iv)-~~patient safety; or
 - (iv) immunizations;
 - (c) one hour of pharmacy law or ethics;
 - (d) if engaging in the administration of ~~[immunizations or~~
]vaccines as defined in Section R156-17b-621, two hours in ~~[immunizations or]~~vaccine-related topics, which hours may be counted as part of the 15 hours required under Subsection (1)(b);
 - (e) if engaging in the administration of prescription drugs or devices as defined in Section R156-17b-621 or R156-17b-625, two hours in topics related to the administration of those prescription drugs or devices; and
 - (f) if dispensing a self-administered hormonal contraceptive in accordance with Title 26, Chapter 62, Family Planning Access Act as defined in R156-17b-621b, two hours in topics related to hormonal contraceptive therapy.
- (2)(a) A pharmacy technician shall complete at least 20 CE hours, which shall include at minimum:
 - (i) six hours of live or technology-enabled participation at lectures, seminars, or workshops;
 - (ii) one hour of pharmacy law or ethics; and
 - (iii) if engaging in the administration of ~~[immunizations or~~
]vaccines as defined in Section R156-17b-621, two hours in ~~[immunizations or]~~vaccine-related topics.
- (b) Current PTCB or ExCPT certification shall fulfill ~~[each]~~each CE requirements for a pharmacy technician, except for ~~[immunization]~~vaccine-related topic hours that may be required under Subsection (2)(a)(iii).
- (3)(a) If a licensee first becomes licensed during the two-year renewal cycle, the licensee's required number of CE hours shall be decreased proportionately according to the date of licensure.
- (b) The Division may defer or waive each CE requirements as provided in Section R156-1-308d.
- (4) CE credit shall be recognized as follows:
 - (a) One live CE hour for attending one Utah State Board of Pharmacy meeting, up to a maximum of two CE hours during each two-year period. These hours may count as "pharmacy law or ethics" hours.
 - (b) Two CE hours for each hour of lecturing or instructing a CE course or teaching in the licensee's profession, up to a maximum of ten CE hours during each two-year period. The licensee shall document the course's content and intended audience (e.g., pharmacists, pharmacy technicians, pharmacy interns, physicians, nurses). Public service programs, such as presentations to schoolchildren or service clubs, are not eligible for CE credit.
 - (c) ~~[All]~~CE credit shall be approved by, conducted by, or under the sponsorship of one of the following:
 - (i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an ACPE-approved institution, individual, organization, association, corporation, or agency;
 - (ii) programs approved by health-related CE approval organizations, provided the CE is nationally recognized by a healthcare accrediting agency and is related to the practice of pharmacy;
 - (iii) Division training or educational presentations;
 - (iv) educational meetings that are ACPE accredited and are sponsored by the Utah Pharmacy Association, the Utah Society of

Health-System Pharmacists, or other professional organization or association; and

(v) for pharmacists, programs of certification by qualified individuals such as certified diabetes educator credentials, board certification, or other certification as approved by the Division in collaboration with the Board.

(5) A licensee shall maintain documentation sufficient to prove compliance with this section, for a period of four years after the end of the renewal cycle for which the CE is due, by:

(a) maintaining registration with the NABP e-Profile CPE Monitor plan or the NABP CPE Monitor Plus plan; and

(b) maintaining a certificate of completion or other adequate documentation for ~~[any]~~CE that cannot be tracked by the licensee's NABP plan.

R156-17b-614a. Operating Standards - Class A or Class B Pharmacy - General Operating Standards.

In accordance with Subsection 58-17b-601(1), the following operating standards apply to ~~[all]~~Class A and Class B pharmacies, ~~[which]~~and may be supplemented or amended by additional standards defined in this rule applicable to specific types of Class A and B pharmacies.

(1) The general operating standards include:

(a) A facility shall be well lighted, well ventilated, clean and sanitary~~[;]~~.

(b) ~~[if transferring]~~A facility that transfers a drug from a manufacturer's or distributor's original container to another container~~[-, the dispensing area, if any,]~~ shall have a sink with hot and cold culinary water separate and apart from ~~[any]~~restroom facilities. This sink requirement does not apply to clean rooms where sterile products are prepared. Clean rooms may not have sinks or floor drains~~[- that expose the area to an open sewer]~~.

~~_____~~(c) ~~[All]~~Required equipment shall be clean and in good operating condition~~[;]~~.

~~_____~~(~~[e]~~d) A facility shall be equipped to ~~[permit the orderly storage of]~~store prescription drugs and durable medical equipment;

~~_____~~(i) in an orderly manner ~~[to]~~that permits clear identification, separation, and easy retrieval of products; and

~~_____~~(ii) in an environment necessary to maintain the integrity of the product inventory~~[;]~~.

~~_____~~(~~[e]~~e) A facility shall be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice ~~[to be]~~conducted within that facility~~[;]~~.

~~_____~~(~~[e]~~f) A facility shall be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public ~~[health,]~~ safety~~[- and welfare;]~~.

~~_____~~(~~[f]~~g) ~~[if dispensing]~~A facility that dispenses controlled substances~~[;]~~ shall be equipped with a security system ~~[to]~~that:

(i) permits detection of entry at all times when the facility is closed; and

(ii) provides notice of unauthorized entry to an individual~~[;]~~.

~~_____~~(~~[g]~~h) A facility shall be equipped with a lock on ~~[any]~~each entrance~~[s] [to the facility]-]~~where drugs are stored~~[; and]~~.

~~_____~~(~~[h]~~i) A facility shall have a counseling area to allow for confidential patient counseling, if applicable.

(2)(a) Prescription labels for compounded sterile and non-sterile medications, when dispensed to the patient or patient's agent, shall include:

(i) the minimum information required under Section 58-17b-602;

~~(ii) generic name;~~
~~(iii) quantity or concentration of each active ingredient;~~
 and
~~(iv) labeling for sterile preparation for parenteral use shall include:~~

~~(A) the name of the diluent;~~
~~(B) assigned compounding record or lot number; and~~
~~(C) the phrase "compounded preparation."~~
~~(b) The requirements described in Subsections (2)(a)(i) and (2)(a)(iv) shall not apply to a label on the container of a drug that a health care provider administers to a patient at:~~
~~(i) a pharmaceutical administration facility; or~~
~~(ii) a hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.~~

~~(2)3) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. If a refrigerator or freezer is necessary to properly store drugs at the pharmacy, the pharmacy shall keep a daily written or electronic log of the temperature of the refrigerator or freezer on days of operation. The pharmacy shall retain each log entry for at least three years.~~

~~(3) Facilities engaged in simple, moderate or complex non-sterile or any level of sterile compounding activities shall maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable, and sterility. The following requirements shall be met:~~

~~(a) Facilities shall follow USP NF Chapter 795, compounding of non-sterile preparations, and USP NF Chapter 797 if compounding sterile preparations.~~

~~(b) Facilities may compound in anticipation of receiving prescriptions in limited amounts.~~

~~(c) Bulk active ingredients:~~

~~(i) shall be procured from a facility registered with the federal Food and Drug Administration; and~~

~~(ii) may not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness.~~

~~(d) All facilities that dispense prescriptions shall comply with the record-keeping requirements of their State Boards of Pharmacy. When a facility compounds a preparation according to the manufacturer's labeling instructions, then further documentation is not required. All other compounded preparations require further documentation as described in this section.~~

~~(e) A master formulation record shall be approved by a pharmacist or DMP for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master formulation record shall be used as the compounding record from which each batch is prepared and on which all documentation for that batch occurs. The master formulation record may be stored electronically and shall contain at a minimum:~~

~~(i) official or assigned name;~~
~~(ii) strength;~~
~~(iii) dosage form of the preparation;~~
~~(iv) calculations needed to determine and verify quantities of components and doses of active pharmaceutical ingredients;~~
~~(v) description of all ingredients and their quantities;~~
~~(vi) compatibility and stability information, including references when available;~~
~~(vii) equipment needed to prepare the preparation;~~
~~(viii) mixing instructions, which shall include:~~
~~(A) order of mixing;~~
~~(B) mixing temperatures or other environmental controls;~~

~~(C) duration of mixing; and~~
~~(D) other factors pertinent to the replication of the preparation as compounded;~~

~~(ix) sample labeling information, which shall contain, in addition to legally required information:~~

~~(A) generic name and quantity or concentration of each active ingredient;~~

~~(B) assigned beyond use date;~~

~~(C) storage conditions; and~~

~~(D) prescription or control number, whichever is applicable;~~

~~(x) container used in dispensing;~~

~~(xi) packaging and storage requirements;~~

~~(xii) description of final preparation; and~~

~~(xiii) quality control procedures and expected results.~~

~~(f) A compounding record for each batch of sterile or non-sterile pharmaceuticals shall document the following:~~

~~(i) official or assigned name;~~

~~(ii) strength and dosage of the preparation;~~

~~(iii) Master Formulation Record reference for the preparation;~~

~~(iv) names and quantities of all components;~~

~~(v) sources, lot numbers, and expiration dates of components;~~

~~(vi) total quantity compounded;~~

~~(vii) name of the person who prepared the preparation;~~

~~(viii) name of the compounder who approved the preparation;~~

~~(ix) name of the person who performed the quality control procedures;~~

~~(x) date of preparation;~~

~~(xi) assigned control, if for anticipation of use or prescription number, if patient specific, whichever is applicable;~~

~~(xii) duplicate label as described in the Master Formulation Record means the sample labeling information that is dispensed on the final product given to the patient and shall at minimum contain:~~

~~(A) active ingredients;~~

~~(B) beyond use date;~~

~~(C) storage conditions; and~~

~~(D) lot number;~~

~~(xiv) proof of the duplicate labeling information, which proof shall:~~

~~(A) be kept at the pharmacy;~~

~~(B) be immediately retrievable;~~

~~(C) include an audit trail for any altered form; and~~

~~(D) be reproduced in:~~

~~(I) the original format that was dispensed;~~

~~(II) an electronic format; or~~

~~(III) a scanned electronic version;~~

~~(xvii) description of final preparation;~~

~~(xviii) results of quality control procedures (e.g. weight range of filled capsules, pH of aqueous liquids); and~~

~~(xix) documentation of any quality control issues and any adverse reactions or preparation problems reported by the patient or caregiver.~~

~~(g) The label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:~~

~~(i) the unique lot number assigned to the batch;~~

~~(ii) all active solution and ingredient names, amounts, strengths and concentrations, when applicable;~~

~~(iii) quantity;~~

~~(iv) beyond use date and time, when applicable;~~

~~(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and~~

~~(vi) device specific instructions, where appropriate.~~

~~(h) All prescription labels for compounded sterile and non-sterile medications when dispensed to the ultimate user or agent shall bear at a minimum in addition to what is required in Section 58-17b-602 the following:~~

~~(i) generic name and quantity or concentration of each active ingredient. In the instance of a sterile preparation for parenteral use, labeling shall include the name and base solution for infusion preparation;~~

~~(ii) assigned compounding record or lot number; and~~

~~(iii) "this is a compounded preparation" or similar language.~~

~~(i) The beyond use date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;~~

~~(i) sources of drug stability information shall include the following:~~

~~(A) Trissel's "Handbook on Injectable Drugs", 17th Edition, October 31, 2012;~~

~~(B) manufacturer recommendations; and~~

~~(C) reliable, published research;~~

~~(ii) when interpreting published drug stability information, the pharmacist or DMP shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and~~

~~(iii) methods for establishing beyond use dates shall be documented; and~~

~~(j) There shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.]~~

(4) ~~[The]~~A facility shall have current ~~[and retrievable]~~ editions of the following reference publications in print or electronic format, ~~[and] that are~~ readily available to and retrievable ~~[to] by~~ facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act;

(b) R156-1, General Rule of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) R156-17b, Utah Pharmacy Practice Act Rule;

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) R156-37, Utah Controlled Substances Act Rule;

(g) Title 58, Chapter 37f, Controlled Substance Database Act;

(h) R156-37f, Controlled Substance Database Act Rule;

(i) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(j) current FDA Approved Drug Products~~[-(orange book)]~~; and

(k) any other general drug references necessary to permit practice, as dictated by the usual and ordinary scope of practice ~~[to be]~~ conducted within that facility.

(5)(a) A~~[-The]~~ facility shall maintain a current list of licensed employees involved in the practice of pharmacy at the facility, that includes:

~~(i) [-The list shall include]~~ individual licensee names~~[-]~~;

~~(ii) license classifications[-];~~

~~(iii) license numbers[-]; and~~

~~(iv) license expiration dates.~~

(b) The list shall be readily retrievable for inspection by the Division, and may be maintained in paper or electronic form.

(6) A pharmacy may not dispense a prescription drug or device to a patient unless a pharmacist or DMP is physically present and immediately available in the facility, or, for a remote dispensing pharmacy, physically present and immediately available in the facility or supervising through a telepharmacy system.

(7) Only a licensed Utah pharmacist, DMP or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(8) The facility or parent company shall maintain a record for not less than five years of the initials or identification codes that identify each dispensing pharmacist or DMP by name. The initials or identification code shall be unique to ensure that each pharmacist or DMP can be identified; therefore identical initials or identification codes shall not be used.

(9) The pharmacy facility shall maintain:

(a) copy 3 of DEA order form (Form 222) that has been properly dated, initialed, and filed;

(b) ~~[and]~~ all copies of each unaccepted or defective order form; and

(c) any attached statements or other documents.

(10) If applicable, a hard copy of ~~[the]~~a power of attorney authorizing a pharmacist, DMP, or DMP designee to sign DEA order forms (Form 222) shall be available to the Division ~~[whenever necessary]~~upon request.

(11) A pharmacist, DMP, or other responsible individual shall verify that controlled substances are listed on the suppliers' invoices and were actually received, by clearly recording their initials and the actual date of receipt of the controlled substances.

(12) The pharmacy facility shall maintain a record of suppliers' credit memos for controlled substances.

(13) A copy of the inventories required under Section R156-17b-605 shall be made available to the Division when requested.

(14) The pharmacy facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

(15) If the pharmacy does not store drugs in a locked cabinet and has a drop~~[-]~~ or false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or the pharmacy shall take other measures ~~[shall be taken]~~ to prevent unauthorized entry into the pharmacy.

R156-17b-614e. Operating Standards - Compounding.

(1) A person engaging in sterile or nonsterile compounding shall practice in accordance with all applicable federal and state laws and rules, and in accordance with the USP-NF, including:

(a) USP General Chapter <797> Pharmaceutical Compounding - Sterile Preparations;

(b) USP General Chapter <795> Pharmaceutical Compounding - Nonsterile Preparations; and

(c) USP General Chapter <825> Radiopharmaceuticals - Preparation, Compounding, Dispensing, and Repackaging.

(2) These operating standards shall apply:

(a) to any person licensed under Title 58, Chapter 17b, Pharmacy Practice Act, that engages in compounding; and

~~(b) to the compounding of all sterile or nonsterile compounded pharmaceuticals, antineoplastic drugs, or non-antineoplastic drugs, no matter where the patient is located.~~

R156-17b-614g. Operating Standards - Class A or Class B Pharmacy - Remote Dispensing Pharmacy.

In accordance with Subsections 58-17b-102(58), 58-17b-601(1), 58-17b-612(1)(b), and 58-1-301(3), the following operating standards shall apply to a remote dispensing pharmacy:

(1) A remote dispensing pharmacy shall:

(a) be a Class A or Class B pharmacy;

(b) have a Class A or Class B pharmacy serve as its supervising pharmacy to oversee its operations; and

(c) be located in an area of need as defined in Subsection R156-17b-102(4).

(2) A remote dispensing pharmacy may not perform compounding.

(3)(a) The supervising pharmacy's PIC shall serve as the remote dispensing pharmacy's RDPIC, who is responsible for all remote dispensing pharmacy operations.

(b) An RDPIC may not serve as the RDPIC for more than one remote dispensing pharmacy, unless approved by the Division in collaboration with the Board.

~~[(4) The Division in collaboration with the Board shall review each application for designation of a remote dispensing pharmacy, and grant approval based upon consideration of the totality of conditions and circumstances demonstrated by the application. The application shall be submitted by the proposed supervising pharmacy on a completed form furnished by the Division that includes:~~

~~(a) complete identifying information concerning the proposed supervising pharmacy;~~

~~(b) complete identifying information concerning the proposed RDPIC;~~

~~(c) the proposed address of the remote dispensing pharmacy, with a detailed description of how that location is in an area of need as defined in Subsection R156-17b-102(4);~~

~~(d) a description of the physical facilities in which the remote dispensing pharmacy will operate;~~

~~(e) a description of the availability of sufficient qualified licensed pharmacy technicians to staff the remote dispensing pharmacy;~~

~~(f) a description of the telepharmacy system that will be used for supervision and counseling; and~~

~~(g) a copy of the proposed policies and procedures manual for the remote dispensing pharmacy and supervising pharmacy, which shall include:~~

~~(i) protecting the confidentiality and integrity of patient information;~~

~~(ii) the conditions under which prescription drugs shall be stored, used, and accounted for;~~

~~(iii) maintaining records to identify the name(s), initial(s), or identification code(s) and specific activities of each pharmacist and pharmacy technician involved in the dispensing process;~~

~~(iv) complying with federal and state law and regulations;~~

~~(v) operation of a quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems;~~

~~(vi) annually reviewing the written policies and procedures and documenting such review;~~

~~(vii) requiring monthly in person inspections of the remote dispensing pharmacy and appropriate documentation by the RDPIC; and~~

~~(viii) any additional policies and procedures required by Subsection R156-17b-614f(2) for Central Prescription Processing.~~

~~(5) If more than one licensed pharmacy applies for designation of a remote dispensing pharmacy at a similar undesignated location, the Division in collaboration with the Board shall review all of the applications for designation, and if the location is approved, shall approve for licensure the applicant that the Division in collaboration with the Board determine is best able to serve the public interest as identified in this Section.]~~

~~[(6)4] Staffing and Supervision.~~

~~(a) At all times that a remote dispensing pharmacy is open and available to serve patients, its pharmacy technicians shall be physically or electronically supervised by a pharmacist from the supervising pharmacy, under Subsection 58-17b-102(70).~~

~~(b) In accordance with Subsections 58-17b-612(1)(b) and (d)[~~

~~(i)] a [supervising] pharmacist may [not supervise more than] oversee the operation of up to two remote dispensing pharmacies simultaneously[; and~~

~~(ii) an RDPIC may not serve as the RDPIC for more than one remote dispensing pharmacy, unless approved by the Division in collaboration with the Board].~~

~~[(b)c] Unless a pharmacist is physically present, a remote dispensing pharmacy shall be staffed by no more than two licensed pharmacy technicians.~~

~~[(e)d] Each pharmacy technician staffing a remote dispensing pharmacy shall have at least 500 hours of pharmacy technician experience.]~~

~~(d) At all times that a remote dispensing pharmacy is open and available to serve patients, all pharmacy technicians shall remain under the physical supervision or electronic supervision of a supervising pharmacist from the supervising pharmacy.]~~

~~(e) Adequate supervision by a [supervising] pharmacist of a remote dispensing pharmacy shall include maintaining uninterrupted visual supervision and auditory communication with the site, and full supervisory control of the automated system, if applicable. This supervision may not be delegated to any other person.~~

~~[(7)5] The supervising pharmacy shall maintain a surveillance system and telepharmacy system that provides for effective video and audio communication between supervising pharmacy personnel and remote dispensing pharmacy personnel and patients, that:~~

~~(a) provides an adequate number of views of the entire site;~~

~~(b) facilitates adequate pharmacist supervision;~~

~~(c) allows the appropriate exchanges of visual, verbal, and written communication for patient counseling and other matters involved in the lawful transaction or dispensing of drugs;~~

~~(d) confirms that the drug selected to fill the prescription is the same as indicated on the prescription label and prescription; and~~

~~(e) is secure and HIPAA compliant as defined in R156-17b-102(64).~~

~~[(8)6] Each component of the telepharmacy system shall be in good working order. If any component of the system is malfunctioning, the remote dispensing pharmacy shall immediately close to the public and remain closed until system corrections or repairs are completed, unless a pharmacist is present onsite.~~

NOTICES OF PROPOSED RULES

(~~9~~7) The supervising pharmacy shall develop and include in both the supervising pharmacy's and the remote dispensing pharmacy's policies and procedures a plan for continuation of pharmaceutical services by the remote dispensing pharmacy in case of an emergency interruption:

(a) The plan shall address the timely arrival at the remote dispensing pharmacy of necessary personnel, and the delivery to the remote dispensing pharmacy of necessary supplies, within a reasonable period of time following the identification of an emergency need. A ~~supervising~~ pharmacist shall be available onsite at the remote dispensing pharmacy as soon as possible after an emergency, and shall notify the Division in writing if the time exceeds 24 hours.

(b) The plan may provide for alternate methods of continuation of the services of the remote dispensing pharmacy, including personal delivery of patient prescription medications from an alternate pharmacy location or on-site pharmacist staffing at the remote dispensing pharmacy.

(~~10~~8) Facility.

(a) The remote dispensing pharmacy's security system shall allow for tracking of entries into the remote dispensing pharmacy and the RDPIC shall periodically review the record of entries.

(b) A remote dispensing pharmacy shall display a sign easily visible to the public that informs patients of the following:

- (i) that the pharmacy is a remote dispensing pharmacy;
- (ii) the location of the supervising pharmacy; and
- (iii) that at the patient's request a pharmacist will counsel the patient using audio and video communication systems.

(~~14~~9) Records and Inspections.

(a)(i) The supervising pharmacy shall maintain records of all orders entered into its information system, including orders entered from the remote dispensing pharmacy.

(ii) Electronic records shall be available to and accessible from both the remote dispensing pharmacy and the supervising pharmacy.

(iii) The original records of the controlled substance prescriptions dispensed from the remote dispensing pharmacy shall be maintained at the remote dispensing pharmacy.

(b) The remote dispensing pharmacy shall retain a recording of surveillance, excluding patient communications, for at least 45 days.

(c) The RDPIC shall over~~[-]~~see documented monthly inspections of the remote dispensing pharmacy. Documentation of such inspections shall be kept for five years, and shall include:

- (i) maintenance and reconciliation of all controlled substances;
- (ii) a perpetual inventory of Schedule II controlled substances;
- (iii) temperature logs of the refrigerator and freezer that hold medications; and
- (iv) the RDPIC's periodic review of the record of entries into the remote dispensing pharmacy.

KEY: pharmacists, licensing, pharmacies

Date of Enactment or Last Substantive Amendment: ~~January 9,~~ 2020

Notice of Continuation: September 5, 2019

Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R156-60	Filing No. 53064
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Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Jennifer Falkenrath	801-530-7632	jzaelit@utah.gov

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

General Information

2. Rule or section catchline:

R156-60. Mental Health Professional Practice Act Rule

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

The licensing boards over the professions included in the Mental Health Professionals Practice Act recommend these amendments to better delineate the relationship between mental health supervisors and their supervisees, and to ensure fairness, accountability, and attaining of supervision objectives. This filing also streamlines and updates the continuing education provisions for all of the professions under Title 58, Chapter 60, and conforms the rule to statutory amendments made by H.B. 366 passed in the 2019 General Session.

4. Summary of the new rule or change:

The amendments to Sections R156-60-102 and R156-60-302 establish definitions and criteria for a written supervision contract and supervision forms for the professions included in the Mental Health Professionals Practice Act, and add specific requirements to ensure that supervision is conducted by a qualified supervisor and appropriately documented.

The amendments to Section R156-60-105 provide consistency among the mental health and substance use disorder counselor professions by incorporating the continuing education requirements from their various practice act rules into this "umbrella" Mental Health Professional Practice Act Rule.

The amendment to Section R156-60-205 updates the rule to reference the suicide prevention course required as a condition of license renewal, and clarifies that the required suicide prevention courses can be approved, conducted, or sponsored by the various listed entities, including a mental health agency that provides mental health services.

The amendments to Section R156-60-502 add to unprofessional conduct "failing to follow the practice, guidelines and standards of the Association of Family and Conciliation Courts (AFCC) 2006" and "violating a provision of Section R156-60-302 regarding supervised training".

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The changes to Section R156-60-205 may result in a cost savings to state agencies that employ licensees and subsidize their continuing education as it allows the employing agencies to provide the suicide prevention training for their employees instead of sending them to another provider. Quantifying the savings specific to such state agencies is not possible because it will vary widely depending on the characteristics of each employer and employee. The amendment to Section R156-60-502 defining a violation of new Section R156-60-302 as unprofessional conduct is expected to have a zero net impact on state revenues and expenditures because it should not result in any additional complaints, investigations, or disciplinary actions, or any additional licensing issues. Investigations and licensing staff already spend time on these matters under existing provisions, and this definition merely coordinates with the new streamlined procedures that will allow the Division to better manage supervised training issues for these professions. No other impact to the state is expected.

B) Local governments:

The changes to Section R156-60-205 may result in a cost savings to any local government agencies that employ licensees and subsidize their continuing education, as it allows the employer to more easily provide the suicide prevention training for their employees; however, quantifying any savings is not possible because it will vary widely depending on the characteristics of each employer and employee. None of the other proposed changes are expected to impact local governments' revenues or expenditures because they will not change existing local governments' practices or procedures.

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

There are approximately 1,340 small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy and/or substance use disorder counseling who may employ those engaged in

the practice of mental health therapy and/or substance use disorder counseling, such as private or group practices, hospitals, or medical centers (North American Industry Classification System (NAICS) 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These proposed amendments may impact these small businesses. In particular, the amendments to Sections R156-60-102 and R156-60-302 codify best practices for the profession by providing direction in the process of supervised training that is required for new professionals who are learning proper techniques in a clinical setting. These amendments should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact small business revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019). The changes to Section R156-60-205 may result in a cost savings to small businesses that employ licensees and subsidize the employee's continuing education, as it allows the employer to more easily provide the suicide prevention training for their employees; however, quantifying any savings is not possible because it will vary widely depending on the characteristics of each employer and employee.

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

There are approximately 86 non-small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy and/or substance use disorder counseling who may employ those engaged in the practice of mental health therapy and/or substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These proposed amendments may impact these non-small businesses. In particular, the amendments to Sections R156-60-102 and R156-60-302 codify best practices for the profession by providing direction in the process of supervised training that is required for new professionals who are learning proper techniques in a clinical setting. These amendments should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact non-small business revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019). The changes to Section R156-60-205 may result in a cost savings to non-small businesses that employ licensees and subsidize the employee's continuing education, as it allows the employer to more easily provide the suicide prevention training for their employees; however, quantifying any savings is not possible because it will vary widely depending on the characteristics of each employer and employee.

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 amendments to Sections R156-60-102 and R156-60-302 establishing and clarifying supervision standards are expected to impact, but be fiscally neutral for, all licensees in the mental health professions under the Mental Health Professional Practice Act who are providing supervised training, and all individual licensees who will be receiving supervised training. Currently there are approximately 449 substance use disorder counselor licensees who require supervision in order to maintain licensure, and approximately 1,389 certified social worker licensees, 383 associate clinical mental health counselor licensees, and 188 associate marriage and family therapist licensees who require supervision in order to attain full licensure. The financial arrangements for supervision for the supervisors and supervisees are not expected to be impacted by the proposed amendments because the amendments only require that the supervision is documented in a written contract to ensure the supervision is done in a manner that will fulfill the statutory requirements. The rule changes simply codify best practices for the professions by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. The amendments should allow for greater efficiency in supervision and allow the supervisees to more easily obtain proper documentation of supervision hours and for the parties to handle issues between supervisors and supervisees.

The amendments to Sections R156-60-105 and R156-60-205 will affect all licensees under the Mental Health Professional Practice Act who requiring continuing education to renew their license; however, these amendments will have no fiscal impact for these persons because the amendments merely clarify existing standards and requirements.

The amendment to Section R156-60-502 defining a violation of new Section R156-60-302 as unprofessional conduct is not expected to impact these other persons as it should not result in any additional investigations or disciplinary actions; the definition encompasses existing practices and merely coordinates with the new procedures that will allow the Division to better manage supervised training issues for these persons. Further, the goal of defining unprofessional conduct is to provide a deterrent, such that there is \$0 net impact on all parties involved and minimal occasions for noncompliance, so for the typical person the amendments would have no direct or indirect fiscal impact.

F) Compliance costs for affected persons:

There are not expected to be any compliance costs for any affected persons except as described above.

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division of Occupational and Professional Licensing proposes amendments to update the Mental Health Professionals Practice Act Rule in accordance with H.B. 366 (2019) and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act. The revisions establish criteria for supervision for a substance use disorder counselor and an advanced substance use disorder counselor obtaining hours toward licensure. There are also substantive provisions that have been incorporated into the Mental Health Professional Practice Act Rule through other rule

filings connected with H.B. 366 (2019) to harmonize the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. Amendments are also made to update references and make non-substantive formatting changes for clarity.

Small Businesses (less than 50 employees):

In Utah, there are approximately 1,340 small businesses comprised of licensees practicing mental health therapy and substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These amendments together with similar rule filings connected with 2019 H.B. 366 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. Thus, all amendments as a whole should allow for greater efficiency in supervision and documentation of hours. Accordingly, no fiscal impact is expected for small businesses over and above any fiscal impact described in the Legislative fiscal note for H.B. 366 (2019) as these costs are either inestimable or there is no fiscal impact.

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

In Utah, there are approximately 86 non-small businesses comprised of establishments engaged in the practice of mental health therapy and substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These amendments together with the other rule filings connected with H.B. 366 (2019) will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. These changes will allow greater efficiency in supervision. Thus, these changes are not expected to impact non-small businesses' revenues or expenditures because they establish and clarify definitions, standards, and procedures to incorporate current requirements and update the rule to conform to statutory changes. Any fiscal impact beyond those described in the Legislative fiscal note for H.B. 366 (2019) are either inestimable or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Chris Parker, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-60-101
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Model Standards of Practice for Child Custody Evaluation of the Association of Family and Conciliation Courts (AFCC)
Publisher	Association of Family and Conciliation Courts
Date Issued	May 2006

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

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

On:	At:	At:
10/05/2020	9:00 AM	Rule hearing will be held before the Division electronically only. Meeting ID: meet.google.com/cwk-sgez-hny. Phone Numbers: (US)+1302-846-7685 PIN:165425131#

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Director	Date:	09/14/2020
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R156. Commerce, Occupational and Professional Licensing.**R156-60. Mental Health Professional Practice Act Rule.****R156-60-102. Definitions.**

In addition to the definitions regarding mental health professional practice in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, the following [or this] rule definitions supplement the statutory definitions:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 published by the American Psychiatric Association;

(b) 2015 ICD-10-CM for Physicians, Professional Edition published by the American Medical Association; or

(c) ICD-10-CM 2019: The Complete Official Draft Code Set published by the American Medical Association.

(2) "Client" or "patient" means an individual who ~~[when]~~ if competent requests, or ~~[when]~~ if not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist:

~~(a) agrees verbally or in writing to provide professional services to that individual[;]; or~~

~~(b) without an overt agreement does in fact provide professional services to that individual.~~

(3)(a) "Conversion therapy" means any practice or treatment that seeks to change the sexual orientation or gender identity of a patient or client, including mental health therapy that seeks to change, eliminate, or reduce behaviors, expressions, attractions, or feelings related to a patient or client's sexual orientation or gender identity.

(b) "Conversion therapy" does not mean a practice or treatment that does not seek to change a patient or client's sexual orientation or gender identity, including mental health therapy that:

(i) is neutral with respect to sexual orientation and gender identity;

(ii) provides assistance to a patient or client undergoing gender transition;

(iii) provides acceptance, support, and understanding of a patient or client;

(iv) facilitates a patient or client's ability to cope, social support, and identity exploration and development;

(v) addresses unlawful, unsafe, premarital, or extramarital sexual activities in a manner that is neutral with respect to sexual orientation; or

(vi) discusses with a patient or client the patient or client's moral or religious beliefs or practices.

(4) "Direct supervision" of a supervisee in training, as used in Subsections 58-60-205(1)(f), 58-60-305(1)(f), ~~[and]~~ 58-60-405(1)(f), and 58-60-502(3) means the supervisor meets with the supervisee:

~~(a) [a supervisor meeting with the supervisee] when both are physically present in the same room at the same time; or~~

~~(b) [a supervisor meeting with the supervisee] remotely via real-time electronic methods that allow for visual and audio interaction between the supervisor and supervisee, in accordance with the requirements of their supervision contract. [under the following conditions:~~

~~(i) the supervisor and supervisee shall enter into a written supervisory agreement which, at a minimum, establishes the following:~~

~~(A) frequency, duration, reason for, and objectives of electronic meetings between the supervisor and supervisee;~~

~~(B) a plan to ensure accessibility of the supervisor to the supervisee despite the physical distance between their offices;~~

~~(C) a plan to address potential conflicts between clinical recommendations of the supervisor and the representatives of the agency employing the supervisee;~~

~~(D) a plan to inform a supervisee's client or patient and employer regarding the supervisee's use of remote supervision;~~

~~(E) a plan to comply with the supervisor's duties and responsibilities as established in rule; and~~

~~(F) a plan to physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision or at a lesser frequency as approved by the Division in collaboration with the Board;~~

~~(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 100-hour direct supervision requirement; and~~

~~(iii) in evaluating a supervisory agreement, the Division shall consider whether it adequately protects the health, safety, and welfare of the public.]~~

(5) "Employee" means ~~[an individual who is or should be treated as]~~ a W-2 employee as defined by the Internal Revenue Service.

(6) "General supervision" means that the supervisor is available for consultation with the supervisee by personal face to face contact, or direct voice contact by telephone, radio, or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

(7) "On-the-job training program" means a program that:

~~(a) [is applicable] applies~~ to individuals who have completed ~~[all]~~ courses required for graduation in a degree or formal training program that would qualify for licensure under this chapter;

~~(b) starts immediately upon completion of [all] courses required for graduation;~~

~~(c) ends 45 days from the date it begins, or upon licensure, whichever is earlier, and may not be extended or used a second time;~~

~~(d) is completed while the individual is an employee of a public or private agency engaged in mental health therapy or substance use disorder counseling; and~~

~~(e) is [under supervision] supervised by a qualified individual licensed under this chapter, and [which] includes supervision meetings on at least a weekly basis [when] with the supervisee and supervisor [are] physically present in the same room at the same time.~~

(8) "Supervision contract" means a written, signed contract between a supervisor and a supervisee to complete supervised training requirements for licensure, which includes the provisions required by Subsection R156-60-302(1).

(9) "Supervision form" means the form provided by the Division to document ongoing supervision, which at minimum includes:

(a) the dates and duration of supervisory meetings;

(b) the format of supervisory meetings;

(c) the location of supervisory meetings;

(d) an evaluation of supervisee performance; and

(e) confirmation that the meetings took place.

(10) "Verification of supervision form" means the form provided by the Division to document who is providing supervision to the supervisee, which at minimum includes:

- (a) the name and license number of the supervisee;
- (b) the name and license number of the supervisor; and
- (c) the supervisee's place of employment.

R156-60-105. Continuing Education.

[A licensee, as part of the continuing education requirement, shall complete two hours of suicide prevention training that meets the requirements of this section:

- (1) The course provider shall be one of the following:
 - (a) a recognized accredited college or university;
 - (b) a county, state, or federal agency; or
 - (c) a professional association or similar body involved in mental health therapy.

(2) A course provider shall document and verify attendance and completion.

(3) The content of the course shall be relevant to mental health therapy, consistent with the laws of this state, and include one or more of the following components:

- (a) suicide concepts and facts;
- (b) suicide risk assessment, crisis intervention, and first aid;
- (c) evidence-based intervention for suicide risk;
- (d) continuity of care and follow-up services for suicide risk; and
- (e) therapeutic alliances for intervention in suicide risk.

(4) A licensee shall be responsible for maintaining competent records of completed education for a period of four years following the date of completion.

(5) Each hour of education shall consist of 50 minutes of education in the form of classroom lectures and discussion, workshops, webinars, online self-paced modules, case study review, and simulations.

(6) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no continuing education credit will be given for participation in a panel discussion.]

In accordance with Section 58-60-105, the continuing professional education (CE) requirements for each two-year renewal cycle commencing on October 1 of each even-numbered year, are established as follows:

(1) An individual licensed under Title 58, Chapter 60 shall complete at least 40 CE hours, or 20 hours for an SSW or CSW, to include:

- (a) six hours of education in ethics, law, or technology;
- (b) two hours of training in suicide prevention in accordance with Section R156-60-205; and
- (c) for a marriage and family therapist, the following required hours under this subsection shall be directly related to marriage and family therapy:

- (i) at least 15 hours of the 40 CE hours; and
- (ii) at least three hours of the six hours in ethics, law, or technology.

(2) A licensee who completes more than the required number of CE hours during a two-year renewal cycle may carry over excess hours to the next two-year renewal cycle, as follows:

- (a) for an SSW or CSW, up to five hours of the excess; and
- (b) for other licensees, up to ten hours of the excess.

(3) A licensee may not carry forward any CE hours received prior to being granted a license, including professional upgrades.

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

(5) The Division may defer or waive CE requirements in accordance with Section R156-1-308d.

(6) CE shall:

- (a) be relevant to the licensee's scope of practice;
- (b) have a method of verification of attendance and completion;

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

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

- (i) a recognized accredited college or university;
- (ii) a county, state, or federal agency;
- (iii) a professional association or similar body involved in mental health therapy;
- (iv) a mental health agency that provides mental health services; or
- (v) the Division.

(7) A licensee may recognize CE credit as follows:

- (a) for the following forms of education, one CE hour for each 50 minutes of education:
 - (i) lectures;
 - (ii) seminars;
 - (iii) conferences;
 - (iv) training sessions;
 - (v) real-time, interactive distance learning courses that are clearly documented as real-time and interactive; and
 - (vi) specialty certifications;

(b) for college or university credit courses directly related to the licensee's scope of practice, three CE hours per semester hour, or 1.5 CE hours per quarter hour;

(c) for distance learning courses that are not real-time and interactive, one hour of CE for each hour, up to a maximum of:

- (i) 15 CE hours for an LCSW;
- (ii) eight hours for an SSW or CSW;
- (iii) 15 CE hours for an MFT;
- (iv) ten CE hours for a CMHC; and
- (v) 15 CE hours for a SUDC;

(d)(i) for each hour of lecturing or instructing a CE course or teaching in a college or university in the licensee's profession, two CE hours, or one hour for an SW, up to a maximum of:

- (A) ten CE hours for an LCSW;
- (B) five CE hours for an SSW or CSW;
- (C) 14 CE hours for an MFT;
- (D) ten CE hours for a CMHC; and
- (E) ten CE hours for a SUDC;

(ii) credit may be granted for lecturing or instructing the same course up to two times;

(e) for each hour of certifiable clinical readings, one CE hour, up to a maximum of:

- (i) 15 CE hours for a MFT;
- (ii) 15 CE hours for a SUDC; and
- (iii) ten hours for a CMHC;

(f) for each hour of direct supervision of an individual completing the experience requirement for licensure in a mental health therapist classification under Title 58, Chapter 60, one CE hour, up to a maximum of:

- (i) 15 CE hours for a MFT;
- (ii) 15 CE hours for a SUDC; and
- (iii) ten hours for a CMHC;

(g) for each hour of direct supervision of an individual completing the experience requirement for licensure in a mental health therapist classification under Title 58, Chapter 60, one CE hour, up to a maximum of:

- (i) 15 CE hours for a MFT;
- (ii) 15 CE hours for a SUDC; and
- (iii) ten hours for a CMHC;

(h) for each hour of direct supervision of an individual completing the experience requirement for licensure in a mental health therapist classification under Title 58, Chapter 60, one CE hour, up to a maximum of:

- (i) 15 CE hours for a MFT;
- (ii) 15 CE hours for a SUDC; and
- (iii) ten hours for a CMHC;

(i) 14 CE hours for a MFT; and
 (ii) ten CE hours for a CMHC; and
 (g) for each hour of volunteer service on boards, committees, or in leadership roles in any state, national, or international organization for the development and improvement of the licensee's profession, one CE hour, in whole or part of which may be counted as regular credit or ethics, law, or technology credit, up to a maximum of six CE hours during each two-year period.

(8) A licensee shall maintain adequate documentation as proof of compliance with this section for a period of two years after the end of the renewal cycle for which the CE is due. At minimum, the documentation for each course taken shall include:

- (a) name of attendee;
- (b) name of course provider;
- (c) name of instructor;
- (d) date of course;
- (e) title of course;
- (f) number of CE hours;
- (g) course objectives; and
- (h) type of CE albeit a seminar, real-time interactive distance learning, teaching.

R156-60-205. Qualifications for Licensure ~~as a Clinical Social Worker, Marriage and Family Therapist, Clinical Mental Health Counselor, or Substance Use Disorder Counselor~~ and License Renewal - Suicide Prevention Course.

The minimum two-hour ~~pre-licensure~~ suicide prevention course required as a qualification for licensure by Subsections 58-60-205(1)(e)(iii) for a social worker, 58-60-305(1)(e)(iv) for a marriage and family therapist, 58-60-405(1)(e)(iv) for a clinical mental health counselor, and 58-60-506(5)(b)(ii) for a substance use disorder counselor, and the minimum two-hour suicide prevention course required as a condition of license renewal by Subsection 58-60-105(3), shall meet the following standards:

(1) The course ~~provider shall meet the requirements of this section and~~ shall be approved by, conducted by, or under the sponsorship of one of the following:

- (a) a recognized accredited college or university;
- (b) a county, state, or federal agency; ~~or~~
- (c) a professional association or similar body involved in mental health therapy; or
- (d) a mental health agency that provides mental health services.

(2) The content of the course shall be relevant to mental health therapy, suicide prevention, consistent with the laws of this state, and include one or more of the following components:

- (a) suicide concepts and facts;
- (b) suicide risk assessment, crisis intervention, and first aid;
- (c) evidence-based intervention for suicide risk;
- (d) continuity of care and follow-up services for suicide risk; and
- (e) therapeutic alliances for intervention in suicide risk.

(3) Each hour of education shall consist of 50 minutes of education in the form of classroom lectures and discussion, workshops, webinars, online self-paced modules, case study review, ~~and~~ or simulations.

(4) ~~[A]~~The course provider shall document and verify course attendance and completion.

(5)(a) An applicant for licensure ~~is responsible for submitting~~ shall submit evidence of course completion to the Division as a prerequisite for licensure.

(b) A licensee renewing their license shall maintain adequate documentation of course completion as required by Subsection R156-60-105(8).

R156-60-302. Supervised Training Requirements - Supervision Contract - Duties and Responsibilities of Supervisor and Supervisee.

The supervised training qualifications for licensure required by Subsections 58-60-204(1)(e)(ii) and (1)(f) for a social worker, Subsections 58-60-305(1)(e)(ii) and (1)(f) for a marriage and family therapist, Subsections 58-60-405(1)(d)(ii) and (1)(e) for a clinical mental health counselor, and Subsections 58-60-506(2)(c) and (5)(c) for a substance use disorder counselor, are established and clarified as follows:

- (1) Prior to beginning supervised training:
 - (a) the prospective supervisor and supervisee shall enter into a written supervision contract signed by both parties; and
 - (b) the prospective supervisor shall submit to the Division:
 - (i) a complete verification of supervision form; and
 - (ii) certification that the supervision contract meets the requirements of Section R156-60-302.

(2) A supervisee may not count any supervised training towards their supervision requirement until the Division notifies the supervisor it has received the verification of supervision form.

(3) A supervision contract shall include at least the following provisions:

- (a) duties and responsibilities of the supervisor;
- (b) duties and responsibilities of the supervisee;
- (c) a plan to ensure accessibility of the supervisor to the supervisee;
- (d) a plan for meetings between the supervisor and supervisee, addressing:
 - (i) frequency;
 - (ii) duration;
 - (iii) objectives;
 - (iv) format, such as individual or small group; and
 - (v) location, such as face-to-face or remotely;
- (e) a plan for documenting the ongoing supervision using the Division-provided supervision form, including objective and measurable circumstances where the supervisor will sign supervision forms;

(f) a plan to address potential conflicts between the clinical recommendations of the supervisor and those of the representatives of the agency employing the supervisee;

(g) remedies in the event of breach of contract by either the supervisor or supervisee, including procedures for contract termination; and

(h) if any part of the supervision will be conducted remotely, plans for:

(i) how the supervisor and supervisee will meet via real-time electronic methods allowing visual or audio interaction, and protect the security of electronic, confidential data and information;

(ii) how the supervisor will comply with the supervisor's duties and responsibilities as established in rule;

(iii) how the supervisor will physically visit the location where the supervisee practices on at least a quarterly basis during the period of supervision, or at such lesser frequency as is approved in advance by the Division in collaboration with the Board; and

(iv) how notice will be provided to the supervisee's clients or patients and employer regarding the supervisee's use of remote supervision.

(4) A supervisor shall have the following duties and responsibilities:

- (a) prior to beginning any supervised training:
 - (i) ensure that the supervisor and supervisee:
 - (A) are both appropriately licensed;
 - (B) enter into a written supervision contract together in accordance with Subsection (3);
 - (ii) submit to the Division the verification of supervision form; and
 - (iii) receive notice from the Division that it has received the supervision form;
 - (b) ensure that during the period of supervised training:
 - (i) the supervisee is employed as a W-2 employee by a public or private mental health agency;
 - (ii) the supervisor and supervisee remain appropriately licensed; and
 - (iii) the supervisor supervises no more than the maximum number of supervisees allowed by the licensee's licensing act or rule;
 - (c) comply with the terms of the supervision contract;
 - (d) maintain a relationship with the supervisee in which the supervisor is independent from control by the supervisee, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;
 - (e) be available to the supervisee for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances, including consideration of the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;
 - (f) periodically review the client records assigned to the supervisee;
 - (g) comply with the confidentiality requirements of Section 58-60-114;
 - (h) monitor the supervisee's performance for compliance with the laws, rules, standards, and ethics of the profession, and report violations to the Division; and
 - (i) upon completion of the supervised training, submit to the Division on the Division-provided supervision forms:
 - (i) documentation of the training hours completed by the supervisee; and
 - (ii) an evaluation of the supervisee with respect to the quality of the work performed and the supervisee's competency to practice in the profession.
- (5) A supervisee shall have the following duties and responsibilities:
- (a) prior to beginning any supervised training:
 - (i) enter into a written supervision contract with the supervisor in accordance with Subsection (3); and
 - (ii) ensure the required verification of supervision form is received by the Division;
 - (b) maintain required licensure;
 - (c) maintain employment as a W-2 employee with a public or private mental health agency;
 - (d) comply with the terms of the supervision contract;
 - (e) maintain a relationship with the supervisor in which the supervisor is independent from the supervisee's control, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;
 - (f) be professionally responsible for the acts and practices of the supervisee that are a part of the required supervised training;
 - (g) comply with the confidentiality requirements of Section 58-60-114; and

(h) comply with applicable laws, rules, standards, and ethics of the profession.

(6) A supervisor shall notify the Division in writing of any of the following changes, within 30 days of the change:

- (a) termination of a supervision contract; or
- (b) a change in the supervisee's placement of employment.

(7)(a) If a supervisor does not support issuance of a license to a supervisee to practice unsupervised, or if the supervisor has other concerns regarding the supervisee that the supervisor believes requires input from the Division and Board, the supervisor shall submit to the Division a written explanation outlining the supervisor's concerns.

(b) Upon receipt of written concerns from a supervisor with respect to a supervisee, the Division:

- (i) shall provide the supervisee an opportunity to respond in writing to the Division regarding the supervisor's concerns;
- (ii) shall review the written statements from the supervisor and supervisee with the Board; and

(iii) in consultation with the Board, may require the supervisee to obtain additional supervised hours, education, and training.

R156-60-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) ~~when~~ if providing services remotely:
 - (a) failing to practice according to professional standards of care in the delivery of services remotely;
 - (b) failing to protect the security of electronic, confidential data and information; or
 - (c) failing to appropriately store and dispose of electronic, confidential data and information; ~~or~~
- (2)(a) providing conversion therapy to a patient or client who is younger than 18 years old; and
 - (b) Subsection (2)(a) does not apply to:
 - (i) a clergy member or religious counselor who is acting substantially in a pastoral or religious capacity and not in the capacity of a mental health therapist; or
 - (ii) a parent or grandparent who is a mental health therapist and who is acting substantially in the capacity of a parent or grandparent and not in the capacity of a mental health therapist;
- (3) failing to follow the Model Standards of Practice for Child Custody Evaluation of the Association of Family and Conciliation Courts (AFCC) May 2006, which is incorporated by reference; or
- (4) violating a provision of Section R156-60-302 regarding supervised training.

KEY: licensing, mental health, therapists

Date of Enactment or Last Substantive Amendment: ~~January 24,~~ 2020

Notice of Continuation: February 26, 2019

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-60-101

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R156-60a

Filing No.
53065

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	Salt Lake City UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Jennifer Falkenrath	801-530-7632	jzaelit@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R156-60a. Social Worker Licensing Act Rule
3. Purpose of the new rule or reason for the change:
In accordance with H.B. 366 passed in the 2019 General Session, and recommendations made by the licensing boards over the professions included in the Mental Health Professional Practice Act, the Division of Occupational and Professional Licensing (Division) recommends these changes to better delineate the relationship between mental health supervisors and supervisees to ensure fairness, accountability, and attaining of supervision objectives, and to streamline and update the continuing education provisions to provide consistency among all of the mental health professions. There is a sister rule filing for each profession regulated under the Mental Health Professional Practice Act. (EDITOR'S NOTE: The proposed amendment to Rule R156-60b is under Filing No. 53071, the proposed amendment to Rule R156-60c is under Filing No. 53066, and the proposed amendment to Rule R156-60d is under Filing No. 53067 in this issue, October 1, 2020, of the Bulletin.)
4. Summary of the new rule or change:
The amendments to Sections R156-60a-102, R156-60a-302c, and R156-60a-302e, and the deletion of Sections R156-60a-309 and R156-60a-601, all update the rule per H.B. 366 (2019) and establish criteria for supervision for a certified social worker obtaining hours toward licensure as a licensed clinical social worker. The supervisor and the supervisee will enter into a supervision contract prior to beginning the supervision, with a sister rule filing in Rule R156-60 defining the contract and supervision procedures for all the mental health professions governed by the Mental Health Practice Act. The amendments to Section R156-60a-304 delete the continuing education provisions for social worker licensees from the Social Worker Licensing Act Rule. Its substantive provisions have been

incorporated into the Mental Health Professional Practice Act Rule via a sister rule filing, to assist in streamlining and clarifying the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. The amendments to Sections R156-60a-302a, R156-60a-302b, and R156-60a-502 update references and make nonsubstantive formatting changes for clarity. Section R156-60a-602 is renumbered to R156-60a-601. (EDITOR'S NOTE: The proposed amendment to Rule R156-60 is under Filing No. 53064 in this issue, October 1, 2020, of the Bulletin.)

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
None of these proposed changes are expected to impact state government revenues or expenditures because they only clarify interpretation of existing requirements and will not change existing state practices or procedures.
B) Local governments:
None of these proposed changes are expected to impact local governments' revenues or expenditures because they only clarify interpretation of existing requirements and will not change existing local governments' practices or procedures.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are approximately 1,340 small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy and/or substance use disorder counseling who may employ those engaged in the practice of mental health therapy and/or substance use disorder counseling, such as private or group practices, hospitals, or medical centers (North American Industry Classification System (NAICS) 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These proposed amendments may impact these small businesses. These amendments together with the sister rule filings making corresponding amendments to Sections R156-60-102 and R156-60-302 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. All amendments as a whole should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact small businesses' revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019).
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are approximately 72 non-small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy who may employ those engaged in the practice of mental health therapy and/or substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). These proposed amendments may impact these non-small businesses. These amendments together with the sister rule filings making corresponding amendments to Sections R156-60-102 and R156-60-302 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. All amendments as a whole should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact small businesses' revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019).

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 amendments establishing and clarifying supervision standards will impact the approximately 1,389 certified social worker licensees who require supervision in order to attain full licensure. However, the impact is expected to be fiscally neutral because the financial arrangements for supervision for the supervisors and supervisees will not be changed by the proposed amendments. The amendments will only codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting, and require that the supervision is documented in a written contract to ensure the supervision is done in a manner that will fulfill the statutory requirements. The amendments are expected to simply allow for greater efficiency in supervision and allow the supervisees to more easily obtain proper documentation of supervision hours.

F) Compliance costs for affected persons:

There are not expected to be any 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 Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
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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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division proposes amendments to update the Social Worker Licensing Act Rule in accordance with H.B. 366 (2019) and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act. The revisions establish criteria for supervision for a substance use disorder counselor and an advanced substance use disorder counselor obtaining hours toward licensure. There are also substantive provisions that have been incorporated into the Mental Health Professional Practice Act Rule through other rule filings connected with H.B. 366 (2019) to harmonize the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. Amendments are also made to update references and make nonsubstantive formatting changes for clarity.

Small Businesses (less than 50 employees):

In Utah, there are approximately 1,340 small businesses comprised of licensees practicing mental health therapy

and substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These amendments together with similar rule filings connected with 2019 HB 366 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. Thus, all amendments as a whole should allow for greater efficiency in supervision and documentation of hours. Accordingly, no fiscal impact is expected for small business over and above any fiscal impact described in the Legislative fiscal note for H.B. 366 (2019) as these costs are either inestimable or there is no fiscal impact.

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

In Utah, there are approximately 72 non-small businesses comprised of establishments engaged in the practice of mental health therapy and substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). These amendments together with the other rule filings connected with H.B. 366 (2019) will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. These changes will allow greater efficiency in supervision. Thus, these changes are not expected to impact non-small business revenues or expenditures because they establish and clarify definitions, standards, and procedures to incorporate current requirements and update the rule to conform to statutory changes. Any fiscal impact beyond those described in the Legislative fiscal note for H.B. 366 (2019) are either inestimable or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Chris Parker, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 58-60-201	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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Incorporations by Reference Information

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

First Incorporation

Official Title of Materials Incorporated (from title page)	Updates Code of Ethics of the National Association of Social Workers (NASW)
Publisher	National Association of Social Workers
Date Issued	2017

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:		11/02/2020
B) A public hearing (optional) will be held:		
On:	At:	At:
10/05/2020	9:00 AM	Rule hearing will be held before the Division electronically only. Meeting ID: meet.google.com/cwk-sgez-hny. Phone Numbers: (US) +1 302-846-7685 425 131#

10. This rule change MAY become effective on:	11/09/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Director	Date:	09/14/2020
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R156. Commerce, Occupational and Professional Licensing.
R156-60a. Social Worker Licensing Act Rule.
R156-60a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "ASWB" means the Association of Social Work Boards.

(2) "CSW" means a licensed certified social worker.

(3) "Clinical social work concentration and practicum", "clinical concentration and practicum", "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(~~d~~)c(ii), means a track of professional education ~~which~~ that is specifically established to prepare an individual to practice or engage in mental health therapy.

(4) "Human growth and development", as used in Subsection 58-60-205(~~4~~)3(d)(iii)(A)(II), means a course at an accredited college or university that includes an emphasis on human growth and development across the lifespan, from conception to death.

(5) "LCSW" means a licensed clinical social worker.

(6) "Social welfare policy", as used in Subsection 58-60-205(4)(d)(iii)(A)(I), means a course at an accredited college or university that includes emphasis on the following:

(a) local, state, and federal social policy and how it impacts individuals, families, and communities; and

(b) the diverse needs of social welfare recipients.

(7) "Social work practice methods", as used in Subsection 58-60-205(4)(d)(iii)(A)(III), means a course at a program accredited by the Council for Social Work Education as defined in Subsection 58-60-202(5) that includes emphasis on the following:

(a) generalist social work practice at the individual, family, group, organization, and community levels;

(b) planned client change process and social work roles at various levels;

(c) application of key values and principles of the National Association of Social Workers (NASW) Code of Ethics and resolution of ethical dilemmas; and

(d) evaluation of programs and direct practice in the social work field.

(8) "SSW" means a licensed social service worker.

(9) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202(4)(a), means that the CSW is under the general supervision of an LCSW meeting the requirements of Sections R156-60a-302~~e and R156-60a-601~~.

R156-60a-302a. Qualifications for Licensure as an SSW - Education Requirements~~[for Licensure as an SSW].~~

In accordance with Subsection 58-60-205(4)(~~d~~)c(ii), a master's degree qualifying an applicant for licensure as an SSW shall be in a field of social work, psychology, marriage and family therapy, or mental health counseling.

R156-60a-302b. Qualifications for Licensure as an SSW - Supervised Qualifying Experience Requirements~~[for Licensure as an SSW].~~

In accordance with Subsection 58-60-205(4)(~~d~~)c(iii)(B), the 2,000 hours of supervised qualifying experience for licensure as an SSW shall be:

(1) performed as ~~an~~ a W-2 employee of an agency providing social work services and activities;

(2) performed according to a written social work job description approved by the licensed mental health therapist supervisor; and

(3) completed ~~over a duration of~~ in not less than one year.

R156-60a-302c. Qualifications for Licensure as an LCSW - Supervised Training Requirements~~[for Licensure as an LCSW].~~

(1) In accordance with Subsections 58-60-205(1)(e),(f) and (g)~~]~~ and 58-60-202(4)(a), the minimum 4,000 hours of clinical social work training and minimum 1,000 hours of supervised training in mental health therapy ~~training~~ qualifying an applicant for licensure as an LCSW shall:

(a) be obtained after completion of the education requirement ~~set forth~~ in Subsections 58-60-205(1)(d) and (g), and ~~shall~~ may not include any clinical practicum hours obtained as part of the education program;

(b) be completed ~~over a period of~~ in not less than two years;

(c) unless this Subsection (2) applies, be completed while the applicant is licensed as a CSW;

(d) be completed while the applicant is ~~employed by~~ a W-2 employee of a public or private agency engaged in mental health therapy;

(e)(i) be completed in accordance with the supervised training requirements of Section R156-60-302; and

(ii) as required by Subsection 58-60-205(1)(f), at least 100 hours of the mental health therapy training shall be under direct supervision per Subsection R156-60-102(4);~~[under a program of general supervision by an LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601; and]~~

(f) be completed under the supervision of a supervisor who meets the requirements of Subsections 58-60-205(1)(e)(ii) and R156-60-302e; and

(~~f~~)g include the following training requirements:

(i) individual, family, and group therapy;

(ii) crisis intervention;

(iii) intermediate treatment; and

(iv) long term treatment.

(2) An applicant may apply to the Division for an LCSW license without complying with this Subsection (1)(c) if the applicant:

(a) ~~the applicant~~ qualifies for a license exemption under Subsection 58-1-307(1)(a); or

(b) ~~the applicant~~ completed training in another jurisdiction ~~while; which training is completed;~~

(i) ~~while the applicant is~~ licensed as the equivalent of a CSW; or

(ii) ~~while the applicant is not required to be licensed while~~ engaged in the practice of certified social work while not required to be licensed.

(3) The exemption in Subsection 58-1-307(1)(b) does not permit an applicant to engage in the required hours of clinical social work training or mental health therapy training without first becoming licensed as a CSW.

R156-60a-302e. Qualifications to be a CSW Training Supervisor~~[Requirements to Become an LCSW Supervisor].~~

In accordance with Subsections 58-60-202(3)(c) and 58-60-205(1)(e) and (f), ~~in order for an LCSW~~ to supervise a CSW, the ~~LCSW~~ supervisor shall:

(1) be currently licensed in good standing~~[as an LCSW];~~ ~~and]~~

(2) for at least two consecutive years prior to beginning supervised training, have been licensed in good standing and engaged in lawful active practice, including providing mental health therapy;~~[have engaged in active practice as an LCSW, including~~

mental health therapy, for a period of not less than two years prior to supervising a CSW;]

(3) supervise no more than six individuals who are lawfully engaged in training for the practice of mental health therapy, unless granted an exception in writing from the Division in collaboration with the Board; and

(4) comply with all duties and responsibilities uniformly established in Section R156-60-302.

R156-60a-304. Continuing Education.

In accordance with Sections 58-60-105 and 58-60-205.5, the continuing professional education requirements for a social worker licensed under Title 58, Chapter 60, Part 2 are established in Section R156-60-105.

(1) Required Hours. In accordance with Subsection 58-60-105(1) and Section 58-60-205.5, during each two-year renewal cycle commencing on October 1 of each even-numbered year:

(a) An LCSW shall be required to complete not fewer than 40 hours of continuing education. A minimum of three of the 40 hours shall be completed in ethics and/or law.

(b) An SSW shall be required to complete not fewer than 20 hours of continuing education of which a minimum of three contact hours shall be completed in ethics and/or law.

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

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

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

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

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

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

- (A) seminar;
- (B) lecture;
- (C) conference;
- (D) training session;
- (E) webinar;
- (F) internet course;
- (G) distance learning course;
- (H) specialty certification; or
- (I) lecturing or instructing of a continuing education course;

(ii) The following limits apply to the number of hours recognized in the following course types during a two-year license renewal cycle:

- (A) a maximum of ten hours for lecturing or instructing of continuing education courses meeting these requirements; and
- (B) a maximum of 15 hours for online, distance learning, or home study courses that include examination and issuance of a completion certificate;

(c) Course Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

- (i) a recognized accredited college or university;
- (ii) a community mental health agency or a public agency that provides mental health services;
- (iii) a professional association or society involved in the practice of social work; or
- (iv) the Division of Occupational and Professional Licensing;

(d) Objectives. The learning objectives of the course shall be clearly stated in course material;

(e) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience;

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due; and

(i) At a minimum, the documentation shall contain the following:

- (A) date of the course;
- (B) name of the course provider;
- (C) name of the instructor;
- (D) course title;
- (E) number of hours of continuing education credit; and
- (F) course objectives.

(3) Extra Hours of Continuing Education. If a licensee completes more than the required number of hours of continuing education during a two-year renewal cycle specified in Subsection (1), up to ten hours of the excess over the required number may be carried over to the next two-year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted;]

R156-60a-309. Exemption from Licensure Clarified.

The exemption specified in Subsection 58-60-107(5) does not permit an individual to engage in the 4,000 hours of clinical social work and mental health therapy training without first becoming licensed as a CSW;]

R156-60a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) using the abbreviated title of LCSW unless licensed as an LCSW;
- (2) using the abbreviated title of CSW unless licensed as a CSW;
- (3) using the abbreviated title of SSW unless licensed as an SSW;
- (4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60-302, R156-60a-302c, or R156-60a-302e ~~and R156-60a-601~~;
- (5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:
 - (a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy ~~[when]~~while not in compliance with Sections R156-60a-302c and R156-60-302; ~~[Subsection R156-60a-601(7);]~~

(7) engaging in or aiding or abetting conduct or practices ~~[which]~~that are dishonest, deceptive or fraudulent;

(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(9) failing to establish and maintain professional boundaries with a client or former client;

(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;

(11) engaging in sexual activities or sexual contact with a client with or without client consent;

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services even ~~[when]~~if there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relative[s] or other individual[s] with whom the client maintains a personal relationship ~~[when]~~if there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client ~~[when]~~if there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) engaging in or aiding or abetting sexual harassment or any conduct ~~[which]~~that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(16) failing to exercise professional discretion and impartial ~~[judgment]~~judgment required for the performance of professional activities, duties and functions;

(17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

(22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as approved by the 1996 NASW ~~[1996]~~Delegate Assembly and revised by the ~~[2008]~~2017 NASW Delegate Assembly, which is adopted and incorporated by reference.

[

~~R156-60a-601. Duties and Responsibilities of an LCSW Supervisor.~~

~~The duties and responsibilities of an LCSW supervisor are further established as follows:~~

~~(1) be professionally responsible for the acts and practices of the supervisee;~~

~~(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee or is not compromised;~~

~~(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession;~~

~~(4) provide periodic review of the client records assigned to the supervisee;~~

~~(5) comply with the confidentiality requirements of Section 58-60-114;~~

~~(6) monitor the performance of the supervisee for compliance with laws, rules, standards and ethics applicable to the practice of social work;~~

~~(7) supervise only a supervisee who is an employee of a public or private mental health agency;~~

~~(8) supervise not more than three individuals who are lawfully engaged in mental health therapy training, unless otherwise approved by the Division in collaboration with the Board;~~

~~(9) not begin supervision of a CSW until having met the requirements of Section R156-60a-302e; and~~

~~(10) in accordance with Subsections 58-60-205(1)(e) and (f), submit to the Division on forms made available by the Division:~~

~~(a) documentation of the training hours completed by the CSW; and~~

~~(b) an evaluation of the CSW, with respect to the quality of the work performed and the competency of the CSW to practice clinical social work and mental health therapy.]~~

R156-60a-~~602~~601. Supervision - Scope of Practice - SSW.

In accordance with Subsections 58-60-202(2) and (6), supervision and scope of practice of an SSW is further defined as follows:

(1) general supervision of an SSW by a licensed mental health therapist is only required where mental health therapy services are provided; and

(2) the scope of practice of the SSW shall be in accordance with a written social work job description approved by the licensed mental health therapist supervisor, except that the SSW may not engage in the supervised or unsupervised practice of mental health therapy.

KEY: licensing, social workers

Date of Enactment or Last Substantive Amendment: ~~January 22, 2015~~2020

Notice of Continuation: June 13, 2019

Authorizing, and Implemented or Interpreted Law: 58-60-201; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R156-60b

Filing No.
53071

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Jennifer Falkenrath	801-530-7632	jzaelit@utah.gov

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

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

R156-60b. Marriage and Family Therapist Licensing Act Rule

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

In accordance with H.B. 366 passed in the 2019 General Session, and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act, the Division of Occupational and Professional Licensing (Division) recommends these changes to better delineate the relationship between mental health supervisors and supervisees to ensure fairness, accountability, and attaining of supervision objectives, and to streamline and update the continuing education provisions to provide consistency among all of the mental health professions. There is a sister rule filing for each profession regulated under the Mental Health Professional Licensing Act. (EDITOR'S NOTE: The proposed amendment to Rule R156-60a is under Filing No. 53065, the proposed amendment to Rule R156-60c is under Filing No. 53066, and the proposed amendment to Rule R156-60d is under Filing No. 53067 in this issue, October 1, 2020, of the Bulletin.)

4. Summary of the new rule or change:

The amendments to Sections R156-60b-102, R156-60b-302b, and R156-60b-302d, and the deletion of Section R156-60b-302e update the rule per H.B. 366 (2019), and establish criteria for supervision of an associate marriage and family therapist obtaining hours toward licensure as a marriage and family therapist. The supervisor and the supervisee will enter into a supervision contract prior to beginning the supervision, with a sister rule filing in Rule R156-60 defining the contract and supervision procedures for all the mental health professions governed by the Mental Health Practice Act. The amendments to Section R156-60b-304 delete the continuing education provisions for marriage and family therapist licensees from the

Marriage and Family Therapist Licensing Act Rule. Its substantive provisions have been incorporated into the Mental Health Professional Practice Act Rule via a sister rule filing, to assist in streamlining and clarifying the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. The amendments to Sections R156-60b-302a, R156-60b-302c, R156-60b-306, and R156-60b-502 update references and make nonsubstantive formatting changes for clarity. (EDITOR'S NOTE: The proposed amendment to Rule R156-60 is under Filing No. 53064 in this issue, October 1, 2020, of the Bulletin.)

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

None of these proposed changes are expected to impact state government revenues or expenditures because they only clarify interpretation of existing requirements and will not change existing state practices or procedures.

B) Local governments:

None of these proposed changes are expected to impact local governments' revenues or expenditures because they only clarify interpretation of existing requirements and will not change existing local governments' practices or procedures.

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

There are approximately 1,340 small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy and/or substance use disorder counseling who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (North American Industry Classification System (NAICS) 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These proposed amendments may impact these small businesses. These amendments together with the sister rule filings making corresponding amendments to Sections R156-60-102 and R156-60-302 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. All amendments as a whole should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact small businesses' revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices, as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019).

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

There are approximately 72 non-small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). These proposed amendments may impact these non-small businesses. These amendments together with the sister rule filings making corresponding amendments to Sections R156-60-102 and R156-60-302 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. All amendments as a whole should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact non-small businesses' revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices, as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019).

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 amendments establishing and clarifying supervision standards will impact the approximately 212 marriage and family therapist licensees who require supervision in order to attain full licensure. However, the impact is expected to be fiscally neutral because the financial arrangements for supervision for the supervisors and supervisees will not be changed by the proposed amendments. The amendments will only codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting, and require that the supervision is documented in a written contract to ensure the supervision is done in a manner that will fulfill the statutory requirements. The amendments are expected to simply allow for greater efficiency in supervision and allow the supervisees to more easily obtain proper documentation of supervision hours.

F) Compliance costs for affected persons:

There are not expected to be any 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 Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division proposes amendments to update the Marriage and Family Therapist Licensing Act Rule in accordance with H.B. 366 (2019) and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act. The revisions establish criteria for supervision for a substance use disorder counselor and an advanced substance use disorder counselor obtaining hours toward licensure. There are also substantive provisions that have been incorporated into the Mental Health Professional Practice Act Rule through other rule filings connected with H.B. 366 (2019) to harmonize the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. Amendments are also made to update references and make nonsubstantive formatting changes for clarity.

Small Businesses (less than 50 employees):

In Utah, there are approximately 1,340 small businesses comprised of licensees practicing mental health therapy and substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These amendments together with similar rule filings connected with H.B. 366 (2019) will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. Thus, all amendments as a whole should allow for greater efficiency in supervision and documentation of hours. Accordingly, no fiscal impact is expected for small businesses over and above any fiscal impact described in the Legislative fiscal note for H.B. 366 (2019) as these costs are either inestimable or there is no fiscal impact.

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

In Utah, there are approximately 72 non-small businesses comprised of establishments engaged in the practice of mental health therapy and substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). These amendments together with the other rule filings connected with H.B. 366 (2019) will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. These changes will allow greater efficiency in supervision. Thus, these changes are not expected to impact non-small businesses' revenues or expenditures because they establish and clarify definitions, standards, and procedures to incorporate current requirements and update the rule to conform to statutory changes. Any fiscal impact beyond those described in the Legislative fiscal note for H.B. 366 (2019) are either inestimable or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Chris Parker, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Section 58-60-301
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Updates Revised AAMFT Code of Ethics
Publisher	American Association for Marriage and Family Therapy (AAMFT)
Date Issued	January 1, 2015

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:		11/02/2020
B) A public hearing (optional) will be held:		
On:	At:	At:
10/05/2020	9:00 AM	Rule hearing will be held before the Division electronically only. Meeting ID: meet.google.com/cwk-sgez-hny Phone Numbers: (US) +1 302-846-7685 PIN: 165 425 131#

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	Date:	09/15/2020
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R156. Commerce, Occupational and Professional Licensing. R156-60b. Marriage and Family Therapist Licensing Act Rule. R156-60b-102. Definitions.

In addition to the definitions regarding marriage and family therapy in Title 58, Chapters 1 and 60, as used in Title 58, Chapters

1 and 60, ~~[or this rule]~~ the following rule definitions supplement the statutory definitions:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Deficiency,"² as used in Subsection 58-60-117(1)(d), means no more than a combined total of six semester or eight quarter hours in:

(a) theoretical foundations of marital and family therapy;

(b) assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

(c) human development and family studies ~~[which]~~ that include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(d) research methodology and data analysis; and

(e) electives in marriage and family therapy.

(3) "Directly related to marriage and family therapy", as used in R156-60b-304~~(2)(a)~~ and R156-60-105(1)(c), means that the continuing education course meets at least one of the following criteria:

(a) approved by an international, national, or state marriage and family therapy association, national or state marriage and family therapy regulatory board, or a COAMFTE accredited program; or

(b) title, objective, or official description of the course indicates instruction on relationships, couples, or families.

(4) "Face to face supervision" as ~~used in this rule~~ ~~[described in Subsection R156-60b-302a(1)(b)(ii)(G)]~~ includes both individual and group supervision.

(5) "Group supervision" means, in accordance with Section 58-60-307, supervision between the supervisor and no more than ~~[three supervisees, unless preapproved by the Board]~~ six individuals who are lawfully engaged in training for the practice of mental health therapy, unless the supervisor is granted an exception in writing from the Division in collaboration with the Board.

(6) "Individual supervision" means supervision between the supervisor and one or two supervisees.

(7) "Practicum,"³ as used in R156-60b-302a~~(1)(b)(ii)(G)]~~~~(2)(g)~~ means a clinical program of training at an accredited school under general supervision in a setting other than a student's private practice.

(8) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60b-502.

R156-60b-302a. Qualifications for Licensure - Education Requirements.

(1) Pursuant to Subsection 58-60-305(1)(d), an applicant applying for licensure as a marriage and family therapist shall produce certified transcripts evidencing completion of:

(a) ~~[produce certified transcripts evidencing completion of]~~ a clinical master's or doctorate degree in marriage and family therapy, from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education at the time the applicant obtained the education; or

(b) ~~(i) produce certified transcripts evidencing completion of]~~ a clinical master's degree in marriage and family therapy or equivalent, from a program accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education.

~~(ii)~~ (2) A program under Subsection (1)(b)~~(i)~~ shall include the following:

~~(A)~~ (a) six semester hours~~]~~ or nine quarter hours of course work in theoretical foundations of marital and family therapy;

~~(B)~~ (b) nine semester hours~~]~~ or 12 quarter hours of course work in assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

~~(C)~~ (c) six semester hours~~]~~ or nine quarter hours of course work in human development and family studies ~~[which]~~ that include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

~~(D)~~ (d) three semester hours~~]~~ or four quarter hours in professional ethics;

~~(E)~~ (e) three semester hours~~]~~ or four quarter hours in research methodology and data analysis;

~~(F)~~ (f) three semester hours~~]~~ or four quarter hours in electives in marriage and family therapy; and

~~(G)~~ (g) a clinical practicum under supervision meeting the criteria of Sections R156-60b-302d and R156-60-302, which includes at least~~[of not fewer than]~~ 600 hours as follows:~~[which includes not fewer than]~~

(i) at least 100 hours of face to face supervision; and

(ii) at least ~~[not fewer than]~~ 500 direct contact hours of face to face supervised clinical practice, ~~[of which not less than]~~ that at least 250 hours shall be with couples or families who are physically present in the therapy room.

R156-60b-302b. Qualifications for Licensure - ~~[Experience]~~ Supervised Training Requirements.

(1) Pursuant to Subsections 58-60-305(1)(e) and ~~58-60-305(1)(f)~~ and Section R156-60-302, an applicant shall have completed~~[complete marriage and family therapy and mental health therapy training consisting of]~~ a minimum of 4,000 hours of supervised marriage and family therapy training ~~[which shall]~~ as follows:

(a) ~~[be completed]~~ in not less than two years;

(b) ~~[be completed]~~ while the applicant is ~~[an employee]~~ a W-2 employee of a public or private agency engaged in mental health therapy;

(c) ~~[be completed]~~ under the supervision of a ~~[marriage and family therapist]~~ supervisor meeting the requirements ~~[under]~~ of Section 58-60-307 and Section R156-60-302 and R156-60b-302d;

(d) [include at least 100 hours of direct supervision spread uniformly throughout the training period;

(e) in accordance with Subsections 58-60-305(1)(e) and 58-60-305(1)(f), include a minimum of 1,000 hours of supervised training in mental health therapy, with:~~[of which]~~

(i) at least 100 hours under direct supervision spread uniformly throughout the training period; and

(ii) at least 500 hours ~~[are]~~ in couple or family therapy with two or more clients participating and at least one physically present; and

~~(f)~~ (e) count training hours completed in a group therapy session ~~[may count]~~ only if the supervisee functions as the primary therapist.

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, and who has completed all or part of the marriage and family therapy training requirements outside the state, may receive credit for that training completed outside of the state if ~~[it is demonstrated by]~~ the applicant demonstrates, by evidence satisfactory to the Division and Board, that the training ~~[completed outside the state]~~ is equivalent to and [in all respects] meets the requirements for training under this Section and

Subsections 58-60-305(1)(e) and 58-60-305(1)(f) ~~and Subsection R156-60b-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the Division and Board that the training completed outside the state is equivalent to and in all respects meets the requirements under this subsection].~~

R156-60b-302c. Qualifications for Licensure - Examination Requirements.

Pursuant to ~~[the provisions of]~~ Subsection 58-60-305(1)(~~g~~)~~f~~, an applicant for licensure as a marriage and family therapist ~~must~~shall pass the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor.

Pursuant to ~~[the provisions of]~~ Subsection 58-60-307(1), to be qualified as a marriage and family therapist training supervisor ~~[for training required]~~ under Subsections 58-60-305(1)(e) and (f) and Section R156-60-302, an individual shall:

(1) ~~[be]~~have been licensed in good standing as a marriage and family therapist, clinical mental health counselor, psychiatrist, psychologist, registered psychiatric mental health nurse practitioner, or clinical social worker ~~[in good standing]~~ for at least two consecutive years prior to beginning supervised training~~[not less than two years];~~

(2) be currently licensed ~~[as a marriage and family therapist]~~ in good standing in the state ~~[in which]~~that the training is being performed;~~[-and]~~

(3) ~~[-meet one of the following three options:~~

~~-----]~~(a) be currently approved by AAMFT as a marriage and family therapist supervisor;

(b) have successfully completed a supervision course in a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited marriage and family therapy (MFT) program at an accredited university; or

(c)(~~+~~) have successfully completed 20 clock hours of instruction sponsored by AAMFT or the Utah Association for Marriage and Family Therapy (UAMFT) as follows:

~~-----~~(ii) The instruction under Subsection (3)(c)(i) shall include the following:

~~[(A)]~~i four hours of review of models of MFT and supervision;

~~[(B)]~~ii eight hours of MFT supervision processes and practice;

~~[(C)]~~iii four hours of research on effective outcomes and processes of supervision; and

~~[(D)]~~iv four hours of AAMFT Code of Ethics, state rules, and case studies related to MFT supervision~~[-];~~

(4)(a) enter into a written supervision contract with the supervisee in accordance with Subsection R156-60-302;

(b) provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee;

(c) comply with each of the duties and responsibilities uniformly established in Section R156-60-302; and

(5) in each two-year renewal cycle, complete four hours of the required 40 hours of continuing professional education in topics directly related to marriage and family therapy supervisor training.

~~[R156-60b-302c. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.~~

~~-----~~ The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established to provide the supervisor shall:

~~-----~~(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;

~~-----~~(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

~~-----~~(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;

~~-----~~(4) provide periodic review of the client records assigned to the supervisee;

~~-----~~(5) comply with the confidentiality requirements of Section 58-60-114;

~~-----~~(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the Division;

~~-----~~(7) supervise only a supervisee who is an employee of a public or private mental health agency;

~~-----~~(8) submit appropriate documentation to the Division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;

~~-----~~(9) complete four hours of the required 40 hours of continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established;

~~-----~~(10) supervise not more than three supervisees at any given time unless approved by the Board and Division;

~~-----~~(11) provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee.]

R156-60b-304. Continuing Education.

In accordance with Section 58-60-105, the continuing professional education requirements for a marriage and family therapist licensed under Title 58, Chapter 60, Part 3 are established in Section R156-60-105.

~~[(1)]~~ In accordance with Section 58-60-105, there is hereby established a continuing education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist.

~~-----~~(2) During each two year period commencing October 1st of each even numbered year, a marriage and family therapist shall be required to complete not fewer than 40 hours of continuing education directly related to the licensee's professional practice of which:

~~-----~~(a) at least 15 hours must be directly related to marriage and family therapy; and

~~-----~~(b) at least six hours must be in ethics/law, of which at least three hours must be directly related to marriage and family therapy.

~~(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceeding the date on which that individual first became licensed.~~

~~(4) Continuing education under this section shall:~~

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

~~(b) be prepared and presented by individuals who are qualified by education, training, and experience to provide continuing education relevant to the practice of a mental health therapist; and~~

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

~~(5) Credit for continuing education shall be recognized in accordance with the following:~~

~~(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of universities, colleges or professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of mental health therapy;~~

~~(b) a maximum of 14 hours per two year period may be recognized for:~~

~~(i) teaching courses under Subsection (5)(a); or~~

~~(ii) supervision of an individual completing the experience requirement for licensure as a mental health therapist;~~

~~(c) a maximum of 15 hours per two year period may be recognized for clinical readings, internet or distance learning courses directly related to practice as a mental health therapist; and~~

~~(d) a maximum of two hours per two year period may be for continuing education from the Division of Occupational and Professional Licensing.~~

~~(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.~~

~~(7) A licensee requesting a waiver of the continuing education requirement must comply with requirements as established by rule in R156-1-308d.~~

~~(8) If a licensee completes more than the required number of hours of continuing education during a two year renewal cycle specified in Subsection (2), up to ten hours of the excess over the required number may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.]~~

R156-60b-306. License Reinstatement [–]Requirements.

In accordance with Subsection 58-1-308(5) and subject to Section R156-1-308g(4), an [Aa] applicant for reinstatement of a [his] license [after]more than two years [following expiration of that license]after the date the license expired shall[–be required to meet the following reinstatement requirements]:

(1) upon request, meet with the Board [for the purpose of evaluating]to evaluate the applicant's [current–]ability to [engage]safely and competently [in–]practice as a marriage and family therapist, and [to make a determination of]determine any additional education, experience, or examination requirements [which will be required–]before reinstatement;

(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor that[which] may include

up to 4,000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if [it is determined by–]the Board determines it[that current taking and passing of the examination is] necessary to demonstrate the applicant's ability to [engage–]safely and competently [in–]practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the [b]Board as necessary to ensure the applicant's ability to [engage–]safely and competently [in–]practice as a marriage and family therapist.

R156-60b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision duties of a supervisor without complying with or ensuring [the–]compliance with the requirements of Sections R156-60-302 and R156-60b-302d[and R156-60b-302e];

(2) engaging in the supervised practice of mental health therapy [when]if not in compliance with [Subsections]Sections R156-60-302 or R156-60b-302b;

(3) engaging in [and]or aiding or abetting conduct or practices [which]that are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to maintain professional boundaries with a client within two years after the formal termination of therapy or last professional contact, with or without client consent, including engaging in any of the following:

(a) dual or multiple relationships; or

(b) romantic, intimate or sexual relationship;

(6) if engaging in any activity or relationship referenced in Subsection (5) with a client after two years following the formal termination of therapy or last professional contact, failing to demonstrate that there has been no exploitation or injury to the client or to the client's immediate family;

(7) engaging in sexual activities or sexual contact with a client's relative[s] or other individual[s] with whom the client maintains a relationship, [when]if that individual is especially vulnerable or susceptible to being disadvantaged because of the personal history, current mental status, or any condition [which]that could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance [which]that exists or may exist between the marriage and family therapist and that individual;

(8) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(9) engaging in or aiding or abetting sexual harassment or any conduct [which]that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(10) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(11) exploiting a client for personal gain;

(12) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

NOTICES OF PROPOSED RULES

(13) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(14) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(15) failure to cooperate with the Division during an investigation; and

(16) ~~[failure to abide by provisions 1 to 8.8]~~ violating a provision of the Revised AAMFT Code of Ethics [of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective July 1, 2012, effective January 1, 2015, which is adopted and incorporated by reference.

KEY: licensing, therapists, marriage and family therapist

Date of Enactment or Last Substantive Amendment: ~~January 7, 2016~~ **2020**

Notice of Continuation: June 13, 2019

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-60-301

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R156-60c	Filing No. 53066
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Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Jennifer Falkenrath	801-530-7632	jzaelit@utah.gov

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

General Information

2. Rule or section catchline:

R156-60c. Clinical Mental Health Counselor Licensing Act Rule

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

In accordance with H.B. 366 passed in the 2019 General Session, and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act, the Division of Occupational and Professional Licensing (Division) recommends these

amendments to better delineate the relationship between mental health supervisors and supervisees to ensure fairness, accountability, and attaining of supervision objectives, and to streamline and update the continuing education provisions to provide consistency among all of the mental health professions. There is a sister rule filing for each profession regulated under the Mental Health Professional Licensing Act. The Division, in collaboration with the Clinical Mental Health Counselor Licensing Board, also recommends these amendments in accordance with S.B. 68 passed in the 2020 General Session to clarify qualifications for licensure and establish requirements for education and practicum and internship, and establish a post-degree program for applicants who don't meet the core coursework requirements and would like to pursue licensure by completing additional coursework. (EDITOR'S NOTE: The proposed amendment to Rule R156-60a is under Filing No. 53065, the proposed amendment to Rule R156-60b is under Filing No. 53071, and the proposed amendment to Rule R156-60d is under Filing No. 53067 in this issue, October 1, 2020, of the Bulletin.)

4. Summary of the new rule or change:

In accordance with statutory changes made by S.B. 68 (2020), Section R156-60c-302a containing obsolete education requirements is deleted, and Section R156-60c-102 is amended to update the definition of "Deficiency" and to define "Equivalent Field" as used in Section 58-60-405. These amendments clarify that the qualifying education requirement for licensure as a clinical mental health counselor includes only 700 documented hours of supervised clinical training from at least one practicum/internship.

Section R156-60c-302b is renumbered to R156-60c-302a, and Sections R156-60c-401 and R156-60c-402 are deleted. These changes update the rule per H.B. 366 (2019), and establish criteria for supervision for a certified social worker obtaining hours toward licensure as a licensed clinical social worker. The supervisor and the supervisee will enter into a supervision contract prior to beginning the supervision, with a sister rule filing in Rule R156-60 defining the contract and supervision procedures for all the mental health professions governed by the Mental Health Practice Act. (EDITOR'S NOTE: The proposed amendment to Rule R156-60 is under Filing No. 53064 in this issue, October 1, 2020, of the Bulletin.)

Section R156-60c-302c is renumbered to R156-60c-302b, and is amended to add the National Board for Certified Counselors (NBCC) National Counselor Examination (NCE) as a qualification for licensure.

New Section R156-60c-302c provides an additional licensure pathway. If an applicant's qualifying degree upon which licensure is to be based fails to include required coursework, the applicant may complete certain requirements post-degree in order to obtain licensure.

The amendments to Section R156-60c-304 delete the continuing education provisions for CMHC licensees from this rule. These substantive provisions have been incorporated into the Mental Health Professional Practice Act Rule via a sister rule filing, to assist in streamlining and clarifying the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act.

The amendments to Section R156-60c-306 clarify licensure reinstatement requirements.

The amendments to Section R156-60c-502 update references and make nonsubstantive formatting changes for clarity.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

As described in the analyses for small businesses and non-small businesses, Section R156-60c-302c may indirectly benefit state agencies acting as businesses that employ mental health professionals, but the full fiscal and non-fiscal benefits are inestimable. The Division may also experience an indirect fiscal impact resulting from additional staff workload caused by increased applications for mental health licenses, but any such cost is expected to be largely balanced by additional revenue and will be absorbed within the Division's existing budget. None of the remaining proposed changes together with the sister rule filings are expected to impact state government revenues or expenditures because they only clarify requirements and update the rule to conform to statutory changes enacted by H.B. 366 (2019) and S.B. 68 (2020), and will not change existing state practices or procedures.

B) Local governments:

None of these proposed changes are expected to impact local governments' revenues or expenditures because they will not change existing local governments' practices or procedures.

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

There are approximately 1,340 small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy and/or substance use disorder counseling who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (North American Industry Classification System (NAICS) 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). New Section R156-60c-302c may benefit these small businesses who employ mental health professionals. The full fiscal and non-fiscal benefits cannot be determined because the data necessary to determine how many mental health agencies will hire mental health professionals resulting from more post-

degree programs is unavailable. The resulting employment will vary widely depending on the characteristics and scope of practice of each small business, as well as the individual characteristics of each licensee. The remaining amendments together with the sister rule filings making corresponding amendments to Sections R156-60-102 and R156-60-305 are not expected to impact small business revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices, as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019) and S.B. 68 (2020).

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

There are approximately 72 non-small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy who may employ those engaged in the practice of mental health therapy, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). New Section R156-60c-302c may benefit these non-small businesses who employ mental health professionals. The full fiscal and non-fiscal benefits cannot be determined because the data necessary to determine how many mental health agencies will hire mental health professionals resulting from more post-degree programs is unavailable. The resulting employment will vary widely depending on the characteristics and scope of practice of each non-small businesses, as well as the individual characteristics of each licensee. The remaining amendments together with the sister rule filings making corresponding amendments to Sections R156-60-102 and R156-60-305 are not expected to impact non-small businesses' revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices, as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019) and S.B. 68 (2020).

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 amendments establishing and clarifying supervision standards will impact all licensees who require supervision in order to attain full licensure. However, the impact is expected to be fiscally neutral because the financial arrangements for supervision for the supervisors and supervisees will not be changed by the proposed amendments. The amendments will only codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting, and require that the supervision is documented in a written contract to ensure the supervision is done in a manner that will fulfill the statutory

requirements. The amendments are expected to simply allow for greater efficiency in supervision and allow the supervisees to more easily obtain proper documentation of supervision hours.

The Division estimates that the amendment to (renumbered) Section R156-60c-302b requiring applicants for CMHC licensure to pass the NCE exam will result in a direct ongoing fiscal cost to CMHC applicants. Each exam costs approximately \$275. Based on the average number of CMHC applications for the last 3 years, and an average 10% retest rate, the Division estimates that these amendments will result in a total cost to all applicants of approximately \$57,475 in FY 2021 (\$275/exam x 190 applicants, with 19 estimated retakes at a cost of \$275 per retake), \$60,500 in FY 2022 (estimated 200 CMHC applicants), and \$61,150 in FY 2023 (estimated 220 CMHC applicants).

New Section R156-60c-302c will provide a pathway for licensure for applicants who are deficient in coursework will help such persons obtain licensure in Utah. However, the net impact to these applicants from the potential savings or cost from these amendments is inestimable, as it will vary substantially depending on the characteristics and choices of each applicant, and the relevant data is unavailable. Mental health customers are also expected to receive an indirect benefit from more licensees becoming employed, but this indirect benefit is inestimable as it will vary widely depending on the characteristics of the customers and this data is unavailable.

F) Compliance costs for affected persons:

There are not expected to be any compliance costs for affected persons.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$57,475	\$60,500	\$61,150
Total Fiscal Cost	\$57,475	\$60,500	\$61,150
Fiscal Benefits			

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	\$-57,475	\$-60,500	\$-61,150

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division proposes amendments to update the Clinical Mental Health Counselor Licensing Act Rule in accordance with H.B. 366 (2019) and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act. The revisions establish criteria for supervision for a substance use disorder counselor and an advanced substance use disorder counselor obtaining hours toward licensure. There are also substantive provisions that have been incorporated into the Mental Health Professional Practice Act Rule through other rule filings connected with H.B. 366 (2019) to harmonize the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. Amendments are also made to update references and make nonsubstantive formatting changes for clarity.

Small Businesses (less than 50 employees):

In Utah, there are approximately 1,340 small businesses comprised of licensees practicing mental health therapy and substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These amendments together with similar rule filings connected with 2019 HB 366 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. Thus, all amendments as a whole should allow for greater efficiency in supervision and documentation of hours. Accordingly, no fiscal impact is expected for small business over and above any fiscal impact described in the Legislative fiscal note for H.B. 366 (2019) as these costs are either inestimable or there is no fiscal impact.

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

In Utah, there are approximately 72 non-small businesses comprised of establishments engaged in the practice of mental health therapy and substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). These amendments together with the other rule filings connected with 2019 HB 366 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. These changes will allow greater efficiency in supervision. Thus, these changes are not expected to impact non-small business revenues or expenditures because they establish and clarify definitions, standards, and procedures to incorporate current requirements and update the rule to conform to statutory changes. Any fiscal impact beyond those described in the Legislative fiscal note for H.B. 366 (2019) are either inestimable or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Chris Parker, Executive Director

Citation Information**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 58-60-401	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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Incorporations by Reference Information**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	First Incorporation
Official Title of Materials Incorporated (from title page)	American Mental Health Counselors Counseling Association Code of Ethics
Publisher	American Mental Health Counselor Association
Date Issued	2020

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

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

On:	At:	At:
10/05/2020	9:00 AM	Rule hearing will be held before the Division electronically only. Meeting ID: meet.google.com/cwk-sgez-hny Phone Numbers: (US) +1 302-846-7685 PIN: 131#

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10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Director	Date:	09/14/2020
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**R156. Commerce, Occupational and Professional Licensing.
R156-60c. Clinical Mental Health Counselor Licensing Act Rule.
R156-60c-102. Definitions.**

In addition to the definitions regarding clinical mental health counseling in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, ~~or this rule~~ the following rule definitions supplement the statutory definitions:

(1) "Deficiency,"[s] as used in Subsection 58-60-117(1)(d), means that the educational degree upon licensure is to be based fails to include coursework listed in any one or more of Subsections R156-60c-102a(4)(b)(i) through (ix) and R156-60c-102a(4)(c).[s]

~~_____ (a) no more than a combined total of six semester or nine quarter hours in:~~

- ~~_____ (i) group counseling and group work;~~
- ~~_____ (ii) human growth and development;~~
- ~~_____ (iii) career development;~~
- ~~_____ (iv) substance-related and addictive disorders; and~~
- ~~_____ (v) research and program evaluation.]~~

~~_____ (2) "Internship" means:~~

~~_____ (a) one or more courses completed as part of a program at an accredited school:~~

~~_____ (i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and~~

~~_____ (ii) under supervision provided by a qualified mental health training supervisor as defined in Section R156-60c-[404]302a.~~

~~_____ (3) "Practicum" means:~~

~~_____ (a) one or more courses completed as part of a program at an accredited school:~~

~~_____ (i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and~~

~~_____ (ii) under supervision provided by a qualified mental health training supervisor as defined in Section R156-60c-[404]302a(3)(a) through R156-60c-302a(3)(c).~~

~~_____ (4) "Equivalent field," as used in Section 58-60-405, means that the educational program:~~

~~_____ (a) prepares students to practice mental health counseling through the study of generally recognized clinical mental health counseling principles, methods, and procedures;~~

~~_____ (b) contains graduate level courses in the following subjects:~~

- ~~_____ (i) social and cultural diversity;~~
- ~~_____ (ii) group counseling and group work;~~
- ~~_____ (iii) human growth and development;~~
- ~~_____ (iv) career development;~~
- ~~_____ (v) counseling and helping relationships;~~
- ~~_____ (vi) substance-related and addictive disorders;~~
- ~~_____ (vii) assessment and testing;~~
- ~~_____ (viii) mental status examination and the appraisal of DSM~~

~~_____ maladaptive and psychopathological behavior; and~~

~~_____ (ix) research and program evaluation; and~~

~~_____ (c) includes 700 documented hours of supervised clinical training from at least one practicum or internship, of which 240 hours consists of providing therapy directly to clients.~~

~~_____ ([4]5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60c-502.~~

[R156-60c-302a. Qualifications for Licensure - Education Requirements.

~~_____ (1) Pursuant to Subsection 58-60-405(1)(d)(i), an applicant for licensure as a clinical mental health counselor shall:~~

~~_____ (a) produce certified transcripts evidencing completion of at least 60 semester or 90 quarter credit hours completed as part of a master's or doctorate degree conferred to the applicant in clinical mental health counseling or counselor education and supervision from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP); or~~

~~_____ (b)(i) produce certified transcripts evidencing completion of at least 60 semester or 90 quarter credit hours as part of a master's or doctorate degree conferred to the applicant in clinical mental health counseling or an equivalent field from a program affiliated~~

~~_____ with an institution that has accreditation that is recognized by the Council for Higher Education Accreditation (CHEA).~~

~~_____ (ii) A program under Subsection (1)(b)(i) shall include the following graduate level course work:~~

~~_____ (A) a minimum of two semester or three quarter hours in professional counseling orientation and ethical practice based on the standards of the American Counseling Association (ACA), American Mental Health Counselors Association (AMHCA), or National Board of Certified Counselors (NBCC);~~

~~_____ (B) a minimum of two semester or three quarter hours in social and cultural diversity;~~

~~_____ (C) a minimum of two semester or three quarter hours in group counseling and group work;~~

~~_____ (D) a minimum of two semester or three quarter hours in human growth and development;~~

~~_____ (E) a minimum of two semester or three quarter hours in career development;~~

~~_____ (F) a minimum of six semester or eight quarter hours in counseling and helping relationships;~~

~~_____ (G) a minimum of two semester or three quarter hours in substance-related and addictive disorders;~~

~~_____ (H) a minimum of two semester or three quarter hours in assessment and testing;~~

~~_____ (I) a minimum of four semester or six quarter hours in mental status examination and the appraisal of DSM maladaptive and psychopathological behavior;~~

~~_____ (J) a minimum of two semester or three quarter hours in research and program evaluation;~~

~~_____ (K) a minimum of four semester or six quarter hours of internship or practicum as defined in Subsection R156-60c-102(1) or (2) that includes combined completion of at least 1,000 hours of supervised clinical training of which at least 400 hours shall be in providing clinical mental health counseling directly to clients as defined in Subsection 58-60-102(7); and~~

~~_____ (L) a minimum of 34 semester or 52 quarter hours of course work related to the practice of counseling of which no more than six semester or eight quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required hours in this subsection.]~~

R156-60c-302[b]a. Qualifications for Licensure - [Experience] Supervised Training Requirements.

~~_____ (1) The clinical mental health counselor and mental health therapy training qualifying an applicant for licensure as a clinical mental health counselor under Subsections 58-60-405(1)(d) and (e) [and (f)] and Section R156-60-302 shall be completed:~~

~~_____ (a) [be completed] in not less than two years;~~

~~_____ (b) [be completed] while the applicant is licensed as a licensed associate clinical mental health counselor [or licensed associate clinical mental health counselor extern];~~

~~_____ (c) [be completed] while the applicant is a [n] W-2 employee, as defined in Subsection R156-60-102([3]5), of a public or private agency engaged in mental health therapy [under the supervision of a qualified clinical mental health counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, physician, or marriage and family therapist]; and~~

~~_____ ([e]d) [be completed] under a program of supervision by a [mental health therapist meeting] supervisor who meets the requirements [under Sections R156-60c-401 and R156-60c-402] of Subsection (3) and Section R156-60-302.~~

(2) An applicant for licensure as a clinical mental health counselor[~~]~~ who is not seeking licensure by endorsement based upon licensure in another jurisdiction, and who has completed [all]the whole or part of the clinical mental health counselor and mental health therapy training requirements under Subsection (1) outside the state, may receive credit for that training completed outside of the state if [it is demonstrated by]the applicant demonstrates, by evidence satisfactory to the Division and Board, that the training [completed outside the state]is equivalent to and must meet the requirements[in all respects meets the requirements] for training under this Section and Subsections 58-60-405(1)(d) and 58-60-405(1)(e)[~~and (f), and Subsections R156-60c-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the Division and Board that the training completed outside the state is equivalent to and in all respects meets the requirements under this Subsection].~~

(3) To qualify as a clinical mental health counselor training supervisor under Subsections 58-60-405(1)(d) and 58-60-405(1)(e), the supervisor shall:

(a) in accordance with Subsection 58-60-405(1)(d), be currently licensed in good standing as a clinical mental health counselor, psychiatrist, psychologist, clinical social workers, registered psychiatric mental health nurse specialist, marriage and family therapist, or physician, in the state where the supervised training is performed;

(b) for at least 4,000 hours in the two consecutive years prior to beginning supervised training, have been licensed in good standing and engaged in the lawful practice of mental health therapy;

(c)(i) be employed by or have a contract with the mental health agency that employs the supervisee; and

(ii) comply with R156-60-302(4)(d) by not being employed by the supervisee, or by an agency owned in total or in part by the supervisee, or in which the supervisee has any controlling interest;

(d) enter into a written supervising contract with the supervisee in accordance with Section R156-60-302;

(e) supervise no more than six individuals who are lawfully engaged in training for the practice of mental health therapy, unless granted an exception in writing from the Division in collaboration with the Board, unless otherwise approved by the Division in collaboration with the Board; and

(f) comply with each of the duties and responsibilities uniformly established in Section R156-60-302.

R156-60c-302[e]b. Qualifications for Licensure - Examination Requirements.

[Under]In accordance with Subsection 58-60-405(1)([g]f), an applicant for licensure as a clinical mental health counselor shall pass the following National Board for Certified Counselors (NBCC) examinations:

(1) the National Clinical Mental Health Counseling Examination (NCMHCE); and

(2) the National Counselor Examination (NCE)[of the National Board for Certified Counselors].

R156-60c-302c. Qualifications for Licensure - Post Degree Programs.

(1) If an applicant's qualifying degree upon licensure is to be based contains a deficiency as defined in Subsection R156-60c-102(1), the applicant may complete these requirements post-degree to obtain licensure, if:

(a) such coursework is completed through:

(i) a master's or doctorate degree conferred to the applicant in clinical mental health counseling, clinical rehabilitation counseling, or counselor education and supervision from a program accredited by CACREP; or

(ii) a master's or doctorate program in clinical mental health counseling or an equivalent field from a program affiliated with an institution that has accreditation recognized by CHEA;

(b) coursework is taken and passed for full credit; and

(c) no more than 12 semester or 18 quarter credits are passed for the licensure.

(2) An individual who qualifies to complete requirements post-degree under this section, and who qualifies for temporary licensure as an associate clinical mental health counselor extern under Section 58-60-117, may engage in clinical mental health counseling.

R156-60c-304. Continuing Education.

(1) [There is hereby established a]In accordance with Section 58-60-105, the continuing professional education requirements for [all individuals]a clinical mental health counselor licensed under Title 58, Chapter 60, Part 4[~~as a clinical mental health counselor and associate clinical mental health counselor~~] are established in Section R156-60-105.

(2) During each two year period commencing October 1st of each even numbered year, a clinical mental health counselor or licensed associate clinical mental health counselor shall complete at least 40 hours of continuing education directly related to the licensee's professional practice of which at least six hours shall be in ethics/law.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased proportionally, according to the date of licensure.

(4) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education regarding clinical mental health counseling; and

(c) document and verify attendance and completion.

(5) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of at least one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 10 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing education courses in the field of clinical mental health counseling, or supervising of an individual completing the experience requirement for licensure in a mental health therapist license classification; and

(c) a maximum of 10 hours per two year period may be recognized for distance learning, clinical readings, or internet based courses directly related to practice as a clinical mental health counselor or as otherwise approved by the Division.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for at least four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to continuing education to demonstrate it meets the requirements under this section.

(7) A licensee who documents having engaged in full time activities or is subjected to circumstances that prevent the licensee

from meeting the continuing education requirements established under this Section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

~~(8) If a licensee completes more than the required number of continuing education hours during a two-year renewal cycle specified in Subsection (2), up to ten hours of the excess may be carried over to the next two-year renewal cycle.~~

~~(9) No education received prior to licensure in Utah may be used towards the continuing education requirements of Subsection (2).]~~

R156-60c-306. License Reinstatement - Requirements.

In ~~[addition to the requirements established in]~~ accordance with Subsection 58-1-308(5) and Section R156-1-308[e]g, an applicant for reinstatement of ~~[his license after two years following expiration of that license]~~ licensure more than two years after the date the license expired shall ~~[be required to meet the following reinstatement requirements]:~~

~~(1) [if deemed necessary] upon request, meet with the Board [for the purpose of evaluating] to evaluate the applicant's [current] ability to [engage] safely and competently [in] practice as a clinical mental health counselor, and [to make a determination of] determine any additional education, experience, or examination requirements [which will be required] before reinstatement;~~

~~(2) upon the recommendation of the Board, establish a plan of supervision under an approved supervisor, which may include up to 4,000 hours of clinical training as an associate clinical mental health counselor extern;~~

~~(3) pass the NBCC's National Counseling Examination, [of the National Board for Certified Counselors] if [it is determined by] the Board determines it [that current taking and passing of the examination] is necessary to demonstrate the applicant's ability to [engage] safely and competently [in] practice as a clinical mental health counselor;~~

~~(4) pass the NBCC's National Clinical Mental Health Counseling Examination, if [it is determined by] the Board determines it [that current taking and passing of the examination] is necessary to demonstrate the applicant's ability to [engage] safely and competently [in] practice as a clinical mental health counselor; and~~

~~(5) complete a minimum of 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to [engage] safely and competently [in] practice as a clinical mental health counselor.~~

~~[R156-60c-401. Requirements to be Qualified as a Clinical Mental Health Counselor Training Supervisor.~~

~~In accordance with Subsections 58-60-405(1)(e) and (f), in order for an individual to be qualified as a clinical mental health counselor training supervisor, the individual shall have the following qualifications:~~

~~(1) be currently licensed in good standing in a profession set forth for a supervisor under Subsection 58-60-405(1)(e) in the state in which the supervised training is being performed;~~

~~(2) have engaged in lawful practice of mental health therapy as a physician, clinical mental health counselor, psychiatrist, psychologist, clinical social worker, registered psychiatric mental health nurse specialist, or marriage and family therapist for not fewer than 4,000 hours in a period of not less than two years prior to beginning supervision activities; and~~

~~(3) be employed by or have a contract with the mental health agency that employs the supervisee, but not be employed by the supervisee, nor be employed by an agency owned in total or in part by the supervisee, or in which the supervisee has any controlling interest.~~

~~R156-60c-402. Duties and Responsibilities of a Supervisor of Clinical Mental Health Counselor.~~

~~The duties and responsibilities of a licensee providing supervision to an individual completing supervised clinical mental health counselor training requirements for licensure as a clinical mental health counselor are to:~~

~~(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;~~

~~(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;~~

~~(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;~~

~~(4) provide periodic review of the client records assigned to the supervisee;~~

~~(5) comply with the confidentiality requirements of Section 58-60-114;~~

~~(6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of clinical mental health counseling and report violations to the Division;~~

~~(7) supervise only a supervisee who is an employee of a public or private mental health agency;~~

~~(8) submit appropriate documentation to the Division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised clinical mental health counselor training, including the supervisor's evaluation of the supervisee's competence in the practice of clinical mental health counseling;~~

~~(9) supervise not more than three supervisees at any given time unless approved by the Board and Division; and~~

~~(10) assure each supervisee is licensed as a licensed associate clinical mental health counselor or licensed associate clinical mental health counselor extern prior to beginning the supervised training of the supervisee as required under Subsection 58-60-405(1)(e) and (f).]~~

R156-60c-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision duties of a supervisor without complying with or ensuring [the] compliance with the requirements of Sections ~~[R156-60c-401 and R156-60c-402]~~ R156-60-302 and R156-60c-302a;

(2) engaging in the supervised practice of mental health therapy ~~[when] while~~ not in compliance with ~~[Subsections R156-60c-401(3) and R156-60c-402(7)]~~ Sections R156-60-302 or R156-60c-302a;

(3) engaging in ~~[and] or~~ aiding or abetting conduct or practices ~~[which] that~~ are dishonest, deceptive, or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition ~~[which]~~that could reasonably be expected to place the client at a disadvantage recognizing the power imbalance ~~[which]~~that exists or may exist between the counselor and the client;

(10) engaging in sexual activities or sexual contact with a client's relative[s] or other individual[s] with whom the client maintains a relationship, ~~[when]~~if that individual is especially vulnerable or susceptible to being disadvantaged because of ~~[his]~~his personal history, current mental status, or any condition ~~[which]~~that could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance ~~[which]~~that exists or may exist between the counselor and that individual;

(11) engaging in physical contact with a client ~~[when]~~if there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct ~~[which]~~that is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health, or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) using a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording, or permitting third party observations of client care or records;

(18) failing to cooperate with the Division during an investigation; and

(19) failing to abide by the provisions of the American Mental Health Counselors Association Code of Ethics, ~~[last amended March 2010]~~2020, which is adopted and incorporated by reference.

KEY: licensing, counselors, mental health, clinical mental health counselor

Date of Enactment or Last Substantive Amendment: ~~[January 7, 2016]~~2020

Notice of Continuation: September 5, 2019

Authorizing, and Implemented or Interpreted Law: 58-60-401; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R156-60d	Filing No. 53067
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Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Jennifer Falkenrath	801-530-7632	jzaelit@utah.gov

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

General Information

2. Rule or section catchline:

R156-60d. Substance Use Disorder Counselor Act Rule

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

In accordance with H.B. 366 passed in the 2019 General Session, and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act, the Division of Occupational and Professional Licensing (Division) recommends these changes to better delineate the relationship between mental health supervisors and supervisees to ensure fairness, accountability, and attaining of supervision objectives, and to streamline and update the continuing education provisions to provide consistency among all of the mental health professions. There is a sister rule filing for each profession regulated under the Mental Health Professional Licensing Act. (EDITOR'S NOTE: The proposed amendment to Rule R156-60a is under Filing No. 53065, the proposed amendment to Rule R156-60b is under Filing No. 53071, and the proposed amendment to Rule R156-60c is under Filing No. 53066 in this issue, October 1, 2020, of the Bulletin.)

4. Summary of the new rule or change:

The amendment to Section R156-60d-302b updates the rule per H.B. 366 (2019) and establishes criteria for supervision for a substance use disorder counselor and an advanced substance use disorder counselor obtaining hours toward licensure. The supervisor and the supervisee will enter into a supervision contract prior to beginning the supervision, with a sister rule filing in Rule

R156-60 defining the contract and supervision procedures for all the mental health professions governed by the Mental Health Practice Act. The amendments to Section R156-60d-304 delete the continuing education provisions for substance use disorder counselor licensees from the Substance Use Disorder Counselor Act Rule. Its substantive provisions have been incorporated into the Mental Health Professional Practice Act Rule via a sister rule filing, to assist in streamlining and clarifying the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. The amendments to Sections R156-60d-102, R156-60d-302a, R156-60d-307, and R156-60d-502 update references and make nonsubstantive formatting changes for clarity. (EDITOR'S NOTE: The proposed amendment to Rule R156-60 is under Filing No. 53064 in this issue, October 1, 2020, of the Bulletin.)

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

None of these proposed changes are expected to impact state government revenues or expenditures because they only clarify interpretation of existing requirements and will not change existing state practices or procedures.

B) Local governments:

None of these proposed changes are expected to impact local governments' revenues or expenditures because they only clarify interpretation of existing requirements and will not change existing local governments' practices or procedures.

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

There are approximately 1,340 small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy and/or substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (North American Industry Classification System (NAICS) 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These proposed amendments may impact these small businesses. These amendments together with the sister rule filings making corresponding amendments to Sections R156-60-102 and R156-60-302 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. All amendments as a whole should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact small businesses' revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current

requirements and best practices, as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019).

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

There are approximately 72 non-small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy and/or substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). These proposed amendments may impact these non-small businesses. These amendments together with the sister rule filings making corresponding amendments to Sections R156-60-102 and R156-60-302 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. All amendments as a whole should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact non-small businesses' revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices as well as update the rule to conform to statutory changes enacted by H.B. 366 (2019).

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 amendments establishing and clarifying supervision standards will impact the approximately 457 substance use disorder counselor licensees who require supervision. However, the impact is expected to be fiscally neutral because the financial arrangements for supervision for the supervisors and supervisees will not be changed by the proposed amendments. The amendments will only codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting, and require that the supervision is documented in a written contract to ensure the supervision is done in a manner that will fulfill the statutory requirements. The amendments are expected to simply allow for greater efficiency in supervision and allow the supervisees to more easily obtain proper documentation of supervision hours.

F) Compliance costs for affected persons:

There are not expected to be any 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 Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division proposes amendments to update the Substance Use Disorder Counselor Act Rule in accordance with H.B. 366 (2019) and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act. The revisions establish criteria for supervision for a substance use disorder counselor and an advanced substance use disorder counselor obtaining hours toward licensure. There are also substantive provisions that have been incorporated into the Mental Health Professional Practice Act Rule through other rule filings connected with

H.B. 366 (2019) to harmonize the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. Amendments are also made to update references and make nonsubstantive formatting changes for clarity.

Small Businesses (less than 50 employees):

In Utah, there are approximately 1,340 small businesses comprised of licensees practicing mental health therapy and substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These amendments together with similar rule filings connected with 2019 HB 366 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. Thus, all amendments as a whole should allow for greater efficiency in supervision and documentation of hours. Accordingly, no fiscal impact is expected for small businesses over and above any fiscal impact described in the Legislative fiscal note for H.B. 366 (2019) as these costs are either inestimable or there is no fiscal impact.

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

In Utah, there are approximately 72 non-small businesses comprised of establishments engaged in the practice of mental health therapy and substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). These amendments together with the other rule filings connected with H.B. 366 (2019) will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. These changes will allow greater efficiency in supervision. Thus, these changes are not expected to impact non-small businesses' revenues or expenditures because they establish and clarify definitions, standards, and procedures to incorporate current requirements and update the rule to conform to statutory changes. Any fiscal impact beyond those described in the Legislative fiscal note for H.B. 366 (2019) are either inestimable or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Chris Parker, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 58-60-501	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Updates NAADAC, the Association for Addiction Professionals/NAADAC NCC AP Code of Ethics
Publisher	NAADAC: The Association for Addiction Professionals
Date Issued	October 9, 2016

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:		11/02/2020
B) A public hearing (optional) will be held:		
On:	At:	At:
10/05/2020	9:00 AM	Rule hearing will be held before the Division electronically only. Meeting ID: meet.google.com/cwk-sgez-hny Phone Numbers: (US) +1 302-846-7685 PIN: 165 425 131#

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mark S. Steinagel, Division Director	Date:	09/14/2020
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R156. Commerce, Occupational and Professional Licensing.
R156-60d. Substance Use Disorder Counselor Act Rule.
R156-60d-102. Definitions.

In addition to the definitions regarding substance use disorder counseling practice in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60~~[or this rule]~~, the following rule definitions supplement the statutory definitions:

(1) "Accredited institution of higher education that meet division standards,"^[7] as used in Subsections 58-60-506(2)(a)(i) and (5)(a)(i), means an educational institution that has accreditation that is recognized by the Council for Higher Education Accreditation ~~of the American Council on Education~~ (CHEA).

(2) "ASAM" means the American Society of Addiction Medicine~~[Patient Placement Criteria]~~.

(3) "DSM-IV or 5" means the Diagnostic Statistical Manual of Mental Health Disorders published by the American Psychiatric Association.[[]

~~(4) "General supervision" means that the supervisor provides consultation with the supervisee by personal face to face contact, or direct voice contact by telephone or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.]~~

(~~5~~)^[4] "IC&RC" means the International Certification and Reciprocity Consortium.

(~~6~~)^[5] "Initial assessment" means the procedure of gathering psycho-social information, ~~[which may include]~~ including the application of the Addiction Severity Index, ~~[in order]~~ to recommend a level of treatment and to assist the mental health therapist supervisor in the information collection process, and may include a referral to an appropriate treatment program.

(~~7~~)^[6] "NAADAC" means the ~~[National]~~ Association for Addiction Professionals~~[of Alcohol and Drug Abuse Counselors]~~.

(~~8~~)^[7] "Prerequisite courses,"^[7] as used in Subsections 58-60-506(2)(a)(iii) and (5)(a)(iii), means courses completed before qualifying for licensure.

(~~9~~)^[8] "SASSI" means Substance Abuse Subtle Screening Inventory.

(~~10~~)^[9] "Screening,"^[7] as used in Subsection 58-60-502(9)(b) and (10)(b)(i), means a brief interview conducted in person or by telephone to determine if there is a potential substance abuse problem. If a potential problem is identified, the screening may include a referral for an initial assessment or a substance use disorder evaluation. The screening may also include a preliminary ASAM ~~[level]~~ Criteria recommendation in order to expedite the subsequent assessment and evaluation process. Screening instruments such as the SASSI may be included in the screening process.

(~~11~~)^[10] "Substance use disorder evaluation" means the process used to interpret information gathered from an initial assessment, other instruments as needed, and a face to face interview by a licensed mental health therapist in order to determine if an individual meets the DSM-IV or 5 criteria for substance abuse or dependence and is in need of treatment. If the need for treatment is determined, the substance use disorder evaluation process includes the determination of a DSM-IV or 5 diagnosis and the determination of an individualized treatment plan.

(~~12~~)^[11] "Substance use disorder education program,"^[7] as used in Subsection 58-60-506(2)(b) and (5)(b), means college or university coursework at an accredited institution.

(~~13~~)^[12] "Unprofessional conduct,"^[7] as defined in Title 58 Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(c), in Section R156-60d-502.

R156-60d-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-60-506(2)(a)(iii) and (5)(a)(iii), two prerequisite courses shall be completed at an accredited institution and shall cover the following subjects:

- (a) human development across the lifespan; and
- (b) general psychology.

(2) In accordance with Subsection 58-60-506(5)(a)(ii), completion of the equivalent of an associate's degree includes not less than 90 quarter or 60 semester credit hours of course work from accredited institutions of higher education that have accreditation recognized by the Council for Higher Education Accreditation [~~of the American Council on Education~~](CHEA).

R156-60d-302b. Qualifications for Licensure - Supervised Experience Requirements.

(1) In accordance with Subsection 58-60-506(2)(c), the 4,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the advanced substance use disorder counselor license shall ~~be~~:

~~_____ (a) supervised experience]consist of~~ providing substance use disorder counseling services as defined in Subsection 58-60-502(9).];

~~_____ (b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and~~

~~_____ (c) completed only under the direct supervision of an advanced substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.]~~

(2) In accordance with Subsection 58-60-506(5)(c), the 2,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the substance use disorder counselor license shall ~~be~~:

~~_____ (a) supervised experience]consist of~~ providing substance use disorder counseling services as defined in Subsection 58-60-502(10).];

~~_____ (b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and~~

~~_____ (c) completed only when under the direct supervision of a substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.]~~

(3) In accordance with Subsections 58-60-506(2)(c)(i) and 58-60-506(5)(c)(i), supervised experience shall be completed:

~~_____ (a) under direct supervision as defined in Section 58-60-502(3) and R156-60-102(4), by a supervisor who meets the requirements of Section 58-60-508 and Section R156-60-302; and~~

~~_____ (b) in accordance with Section R156-60-302, which requires a written supervision contract and establishes certain duties and responsibilities for the supervisor and supervisee.~~

R156-60d-304. Continuing Education.

In accordance with Section 58-60-105, the continuing professional education requirements for a substance use disorder counselor licensed under Title 58, Chapter 60, Part 5 are established in Section R156-60-105.

~~_____ (1) In accordance with Section 58-60-105, there is created a continuing education requirement as a condition for renewal or reinstatement of a licensed advanced substance use disorder~~

~~counselor, certified advanced substance use disorder counselor, licensed substance use disorder counselor, or a certified substance use disorder counselor issued under Title 58, Chapter 60, Part 5.~~

~~_____ (2) Continuing education shall consist of 40 hours of education directly related to the licensee's professional practice. A licensed advanced substance use disorder counselor and licensed substance use disorder counselor shall complete the requirement during each two year license renewal cycle. A certified advanced substance use disorder counselor and a certified substance use disorder counselor shall complete the requirement during each two year period following the date of initial licensure. At least six of the 40 required hours must be in the area of professional ethics and responsibilities.~~

~~_____ (3) The required number of hours of continuing education for a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor who first becomes licensed during the two year renewal cycle shall be decreased in a pro rata amount equal to any part of that two year renewal cycle preceding the date on which that individual first became licensed.~~

~~_____ (4) The standards for continuing education shall include:~~

~~_____ (a) a clear statement of purpose and defined objective for the educational program directly related to the practice of a substance use disorder counselor;~~

~~_____ (b) documented relevance to the licensee's professional practice;~~

~~_____ (c) a competent, well organized, and sequential presentation consistent with the stated purpose and objective of the program;~~

~~_____ (d) preparation and presentation by individuals who are qualified by education, training, and experience; and~~

~~_____ (e) a competent method of registration of individuals who actually completed the continuing education program and records of that registration completion available for review.~~

~~_____ (5) Credit for continuing education shall be recognized in accordance with the following:~~

~~_____ (a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, conferences, workshops, institutes, or in services;~~

~~_____ (b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, or teaching continuing education courses in the field of substance use disorder counseling; and~~

~~_____ (c) a maximum of 15 hours per two year period may be recognized for distance learning, clinical readings or internet based courses directly related to practice as a substance use disorder counselor.~~

~~_____ (6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to continuing education to demonstrate it meets the requirements under this section.~~

~~_____ (7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this section may be excused from the requirement for a period of up to five years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.]~~

R156-60d-307. License Reinstatement - Requirements.

In accordance with Subsection 58-1-308(5) and subject to Section R156-1-308g, an applicant for reinstatement of a license ~~[after]more than two years [following expiration of that license]after the date the license expired shall[~~demonstrate competency by~~]~~:

(1) meet~~[ing]~~ with the Board upon request for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a substance use disorder counselor and to make a determination of any additional education, experience or examination requirements ~~[which]that~~ will be required before reinstatement;

(2) pass~~[ing]~~ the examination required in Section R156-60d-302c if it is determined necessary by the Board to demonstrate the applicant's ability to engage safely and competently in practice as a substance use disorder counselor; and

(3) ~~[completing]~~complete at least 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to engage safely and competently in practice as a substance use disorder counselor.

R156-60d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) ~~[violation]~~violating of any provision of the NAADAC, the Association for Addiction Professionals (October 9, 2016) NAADAC and NCC AP Code of Ethics~~[- Teaching Tool, January 2011 edition]~~, which is hereby incorporated by reference;

(2) violating any provision applicable to a supervisor under Section 58-60-508 or Section R156-60-302;~~[acting as a supervisor without ensuring that the supervisee holds the requisite license;~~

~~(3) exercising undue influence over the clinical judgment of a supervisor over whom the licensee has administrative control;~~

~~(4) if licensed as a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor, accepting the duties as a supervisor of a certified advanced substance use disorder counselor, certified advanced substance use disorder counselor intern, certified substance use disorder counselor, or a certified substance use disorder counselor intern who has any supervisory control over the licensed advanced substance use disorder counselor or licensed substance use disorder counselor; and]~~

(3) violating any provision applicable to a supervisee under Section R156-60-302; or

~~([5]4)~~ directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession.

KEY: licensing, substance use disorder counselors

Date of Enactment or Last Substantive Amendment: ~~[January 22, 2015]~~2020

Notice of Continuation: July 14, 2020

Authorizing, and Implemented or Interpreted Law: 58-60-501; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Utah Admin. Code Ref (R no.):	R174-1	Filing No. 53060
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Agency Information

1. Department:	Communications Authority Board (Utah)		
Agency:	Administration		
Street address:	5215 Wiley Post Way, Suite 550		
City, state:	Salt Lake City, UT 84116		
Contact person(s):			
Name:	Phone:	Email:	
Quinton Stephens	801-641-0547	qstephens@uca911.org	
David Edmunds	435-640-8117	dedmunds@uca911.org	
Nathan Marigoni	801-840-4200	marigonin@ballardspahr.com	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule or section catchline:
R174-1. Utah 911 Advisory Committee
3. Purpose of the new rule or reason for the change:
Significant legislation has been passed including S.B. 130 in the 2020 General Session, S.B. 154 in the 2019 General Session, and S.B. 198 in the 2017 General Session. This legislation renders the existing rule moot and requires updates and revisions which are proposed throughout this submission.
4. Summary of the new rule or change:
The proposed reenacted rule addresses the methods and means for providing access and/or equipment to both the statewide public safety radio network and the statewide NG911 system. This rule also includes procedures for the distribution of statutorily provided funds in accordance with the Utah Communications Authority Act, Title 63H, Chapter 7a.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule is not expected to have any fiscal impact on state government revenues or expenditures because the rule addresses participation by state and local government entities in statewide emergency communications services that have already been procured and budgeted by the Utah Communications Authority (UCA). All of UCA's funding comes from restricted accounts and service fees dedicated for these emergency communications services. Those portions of the rule addressing distributions from UCA's restricted accounts to

participating entities only set forth the procedure for distributions already required by statute, i.e., Section 63H-7a-304.5. The proposed rule itself will have no effect on any state budget.

B) Local governments:

This proposed rule is not expected to have any fiscal impact on local governments' revenues or expenditures because the rule addresses participation by state and local government entities in statewide emergency communications services that have already been procured and budgeted by UCA. All of UCA's funding comes from restricted accounts and service fees dedicated for these emergency communications services. Those portions of the rule addressing distributions from UCA's restricted accounts to participating entities only set forth the procedure for distributions already required by statute, i.e., Section 63H-7a-304.5. The proposed rule itself will have no effect on any local budget.

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

This proposed rule is not expected to have any fiscal impact on small businesses' revenues or expenditures because the rule addresses participation by state and local government entities in statewide emergency communications services maintained by UCA. UCA provides no services to businesses and businesses are not permitted to participate in these emergency communications services.

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

This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because the rule addresses participation by state and local government entities in statewide emergency communications services maintained by UCA. UCA provides no services to businesses and businesses are not permitted to participate in these emergency communications services.

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

This proposed rule is not expected to have any fiscal impact on other person's revenues or expenditures because the rule addresses participation by state and local government entities in statewide emergency communications services maintained by UCA. UCA provides no services to entities other than state and local government entities and no entities other than state and local government entities are permitted to participate in these emergency communications services.

F) Compliance costs for affected persons:

This proposed rule is not expected to have any compliance costs because the rule addresses participation by state and local government entities in statewide emergency communications services maintained by UCA. The rule establishes only a procedure for UCA to manage participation in the system and participating entities and it is not anticipated that such entities will incur any compliance costs as a result of the 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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Utah Communications Authority, David Edmunds, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

As an independent state entity, I, David Edmunds, UCA's Executive Director, am the department head. I concur with the above statements and indicate that these rules, in and of themselves, will have no direct fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

David A. Edmunds, Executive Director

Citation Information**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Title 63H, Chapter 7a	Section 63H-7a-304.5	Section 63H-7a-304
Section 63H-7a-303		

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	David Edmunds, Executive Director	Date:	09/14/2020
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R174. Communications Authority Board (Utah), Administration.

~~[R174-1. Utah 911 Advisory Committee.~~

~~R174-1-1. Purpose.~~

~~The purpose of this rule is to outline the operation of the~~

~~committee and procedures whereby the committee shall award funds to Public Safety Answering Points (PSAPs) and Dispatch Centers throughout the State of Utah for the establishment and maintenance of a statewide unified E-911 emergency system, and to establish the framework to provide grants from the Computer Aided Dispatch (CAD) Restricted Account.~~

~~**R174-1-2. Authority.**~~

~~This rule is authorized by Section 63H-7a-302(5), and Section 63H-7a-204(11).~~

~~**R174-1-3. Definitions.**~~

~~(1) Definitions used in the rule are defined in Section 69-2-2.~~

~~(2) In addition:~~

~~(a) "applicant" means a Public Safety Answering Point (PSAP) submitting a grant application;~~

~~(b) "Authority" means the Utah Communications Authority established in Section 67H-7a-201;~~

~~(c) "Board" means the Utah Communications Authority Board established in Section 67H-7a-203;~~

~~(d) "CAD2CAD Interface" means a component to share CAD data between disparate CAD systems on a statewide or regional basis;~~

~~(e) "committee" means the 911 Advisory Committee established in Section 63H-7a-307.~~

~~(f) "grant" means an appropriation of funds from the restricted Unified Statewide Emergency Service Account created in Section 63H-7a-304 or the Computer Aided Dispatch Restricted Account created in Section 63H-7a-303;~~

~~(g) "PSAP" means a public safety answering point as defined in Section 69-2-2(7).~~

~~(h) "Program" means the defined activities funded by the Unified Statewide 911 Emergency Service Account in Section 63H-7a-304(2) or the defined activities funded by the Computer Aided Dispatch Restricted Account in Section 63H-7a-303(2); and~~

~~(i) "State" means the state of Utah.~~

~~**R174-1-4. Operation of the Committee.**~~

~~(1)(a) A chairperson shall be elected as provided in Section 63H-7a-307(3)(a) at the first meeting of each calendar year.~~

~~(b) The committee shall also elect a vice chairperson at that time to assist the chairperson with administrative duties.~~

~~(2)(a) The committee shall meet monthly unless circumstances otherwise dictate.~~

~~(b) Members of the committee may participate in the meeting by electronic means such as internet connection or a phone bridge.~~

~~**R174-1-5. Grant Process.**~~

~~(1)(a) A PSAP seeking a grant from the Unified Statewide 911 Emergency Service Account or the Computer Aided Dispatch Restricted Account shall make application to the committee using the Utah 911 Committee Grant Application forms.~~

~~(b) The application must include:~~

~~(i) a description of all equipment or services that may be purchased with the grant;~~

~~(ii) a list of vendors and contractors who may be used to provide equipment or services;~~

~~(iii) evidence that the PSAP has used a competitive process when procuring equipment or services;~~

~~(iv) a complete narrative justifying the need for the grant;~~

~~(v) if applying for a grant from the Computer Aided Dispatch Restricted Account, a description of how the project fulfills the purposes outlined in 63H-7a-303;~~

~~(vi) a description of any other funding sources that may be used to pay for the acquisition of equipment, construction of facilities or services;~~

~~(vii) additional information as requested by the committee; and~~

~~(viii) the signature of the authorized agency official.~~

~~(2)(a) Any PSAP intending to apply for a grant shall submit a notice of intent to Agency staff prior to the beginning of the calendar year for consideration in the next budget cycle.~~

~~(b) PSAPs that submit a notice of intent may receive priority over PSAPs that do not submit a notice of intent prior to making a grant application.~~

~~(3)(a) The committee requires a 30-day review period to consider grant application submissions.~~

~~(i) In cases of extenuating circumstances, a PSAP may request that the committee shorten the 30-day review period and consider the application at its next regularly scheduled meeting.~~

~~(ii) The request for a shorter review period shall be made in writing, and explain the extenuating circumstances that justify the expedited consideration of the grant application.~~

~~(b) Following the 30-day review period, a representative from the PSAP making the application shall be present, in person or by electronic means, at the next regularly scheduled committee meeting to present the grant application.~~

~~(4) PSAPs in the third through sixth class counties may apply for grants that enhance 911 emergency services. The committee shall consider these applications on a case-by-case basis.~~

~~R174-1-6. Criteria for Determining Grant Eligibility.~~

~~(1) In order to be eligible for a grant, a PSAP shall comply with all of the requirements found in Title 63H Chapter 7a-Part 3; Title 53, Chapter 10, Part 6; and Title 69, Chapter 2.~~

~~(2)(a) When determining which PSAPs may receive grants, the committee shall give priority to 911 projects that:~~

~~(b) enhance public safety by providing a statewide, unified 911 emergency system;~~

~~(c) include a maintenance package that extends the life of the 911 system;~~

~~(d) increase the value of the 911 system by ensuring compatibility with emerging technology;~~

~~(e) replace equipment which is no longer reliable or functioning; and~~

~~(f) include a local share of funding according to the following formula:~~

~~(i) PSAPs in a county of the first class that pay at least 30% of the total cost of the project;~~

~~(ii) PSAPs in a county of the second class that pay at least 20% of the total cost of the project; and~~

~~(iii) PSAPs in a county of the third through sixth class that pay up to 10% of the total cost of the project.~~

~~(3) Eligible CAD functional elements—Refer to Section R174-1-8, Attachment A—Eligible CAD Functional Elements.~~

~~(a) In the case of an award from the Computer Aided Dispatch Restricted Account, PSAPs shall pay a grant match of 20% regardless of class.~~

~~(4) If a grant application includes equipment that utilizes geographical information systems or geo-positioning systems, the PSAP shall consult with the State Automated Geographic Reference~~

~~Center (AGRC) in the Division of Integrated Technology of the Department of Technology Services.~~

~~(5) When economically feasible and advantageous to the individual PSAPs, the committee may negotiate with vendors on behalf of the PSAPs as a group.~~

~~(6) Where applicable, PSAPs shall provide evidence from the Bureau of Emergency Medical Services (BEMS) that they are a Designated Emergency Medical Dispatch Center.~~

~~R174-1-7. Awarding a Grant.~~

~~(1) The recommendation to award a grant shall be made by a majority vote of the committee.~~

~~(2) The committee may only recommend grants for the purchase of equipment or the delivery of services in an amount which is equal to, or less than, the amount that would be paid to a State vendor or contractor.~~

~~(3)(a) All grant awards shall be memorialized in a contract between the Authority and the grant recipient.~~

~~(b) Each contract shall include the following conditions:~~

~~(i) the state or local entity shall agree to participate in the statewide 911 data management system sponsored by the committee;~~

~~(ii) the grant may be used only for the purposes specified in the application; and~~

~~(iii) the grant shall be de-obligated if the state or local entity breaches the terms of the contract.~~

~~(4)(a) Unspent grant funds shall be automatically de-obligated within one year from the approval of the original grant.~~

~~(b) A PSAP may request a time extension to spend grant funds in extenuating circumstances.~~

~~(i) The request shall be made in writing and explain the extenuating circumstances that justify additional time to spend the grant funds.~~

~~(ii) The committee shall recommend the approval or denial of the request by a majority vote.~~

~~R174-1-8. Attachment A—Eligible CAD Functional Elements.~~

~~(i) Hardware: Servers and other hardware are eligible for full reimbursement when the equipment is required to support the core CAD functionality. New CAD required hardware that also supports associated functions such as Records Management Systems is eligible for reimbursement at the apportioned rate of documented use.~~

~~(ii) Software: CAD software fulfilling the core missions of call entry, address verification, unit recommendation, dispatching and tracking of units, and mapping. Eligible items include:~~

~~(a) Core System to support CAD (apportioned to actual cost of modules to support CAD)~~

~~(b) CAD application~~

~~(c) Geo-base address verification~~

~~(d) Mapping~~

~~(e) Automatic Vehicle Location~~

~~(f) Unit Recommendations or Response Plans~~

~~(g) E911 copy over~~

~~(h) Interfaces to closely related 3rd party applications (medical/fire/police card system, fire department paging system, or UCJIS)~~

~~(i) Premise (apportioned at 50%)~~

~~(iii) Professional Services: (installation, configuration, etc.) apportioned for eligible items.~~

~~(iv) Maintenance: Ineligible other than CAD2CAD interface.~~

~~(v) Database Merging/Conversion: Eligible for CAD data merging/conversion, apportioned at 50% if RMS data is also included in the merge/conversion.~~

~~(vi) Ineligible software items include, but are not limited to:~~

- ~~(a) RMS related modules~~
- ~~(b) System dashboards or monitoring~~
- ~~(c) Aerial photography~~
- ~~(d) Equipment tracking~~
- ~~(e) Personnel tracking~~
- ~~(f) Imaging~~
- ~~(g) Pin mapping or statistics packages]~~

R174-1. Utah Communications Authority Board.

R174-1-101. Purpose.

The purpose of this rule is to provide for the management and administration of the public safety communications network, defined by Subsection 63H-7a-103(15) to include regional and statewide public safety governmental communications networks and 911 emergency services, including radio communications, connectivity, and 911 call processing equipment; to provide standards and procedures for participation in the public safety communications network consistent with the Authority's statutory duties; and to provide standards and procedures for administering restricted accounts to provide administrative and financial support for statewide 911 emergency services.

R174-1-102. Definitions.

Terms used in this rule shall have the meaning set forth in Section 63H-7a-103. In addition:

(1) "NG911 Contract" means the contract between the Authority and Vesta Solutions, Inc. dated June 19, 2020, procured by the Authority pursuant to RFP Solicitation #CO20022;

(2) "CAD-to-CAD Interface" means software and/or hardware utilized to share CAD data between separate instances of one vendor's CAD systems on a statewide or regional basis;

(3) "CAD Aggregator" means software/hardware utilized to share CAD data between separate instances of different vendors' CAD systems on a statewide or regional basis ; and

(4) "CAD-to-CAD Transfer" means the seamless transfer of a 911 call from one PSAP CAD system to another PSAP CAD system through a CAD-to-CAD Interface or CAD Aggregator.

(5) "Call-taking Position" means the services and equipment furnished under the NG911 Contract, including customer premises equipment, ESINet connection, and access to NG911 services but excluding optional equipment and services.

(6) "ESINet" means the emergency services IP network maintained by the Authority;

(7) "Legacy Call-taking Position" means the services and equipment necessary for a single 911 operator in a PSAP or dispatch center to receive and respond to a 911 call and currently in use by the PSAP or dispatch center and connected to the Authority's Legacy RFAI ESINet prior to the implementation of the NG911 system;

(8) "Legacy Radio Console" means the services and equipment necessary for a single dispatcher or telecommunicator in a PSAP or dispatch center to connect to and send and receive communications on the public safety radio network and in use by the PSAP or dispatch center and registered with the public safety radio network prior to the implementation of the P25 upgrade to the public safety radio network;

(9) "NG911" means the next-generation 911 core services and call handling solution procured by the Authority pursuant to RFP Solicitation #CO20022 and all associated equipment, network connections, and services;

(10) "P25" means the Project 25 suite of standards for digital mobile radio communications adopted and published by the Association of Public-Safety Communications Officials (APCO) and any revisions or modification of those standards adopted by APCO;

(11) "P25 Contract" means the contract between the Authority and L3Harris Technologies, dated June 7, 2019, procured by the Authority pursuant to RFP Solicitation #CO19008;

(12) "Public safety radio network" shall mean the statewide radio network operated and maintained by the Authority pursuant to Section 63H-7a-402;

(13) "Radio Console" means the Symphony Dispatch Consoles and associated software and licenses furnished under the P25 Contract;

(14) "RFAI ESINet" refers to the transitional ESINet that is being provided and maintained by the Authority as of July 1, 2020.

(15) "State" means the State of Utah; and

(16) "State agency" means any department, division, agency, commission, board, council, committee, authority, or any other institution of the State.

R174-1-103. Authority.

This rule is authorized by Subsection 63H-7a-204(12).

R174-1-201. Board Compensation Prohibited; Permissible Reimbursement.

(1) Pursuant to Subsection 63H-7a-203(11), a member of the Board shall not receive compensation for the member's service on the Board. Notwithstanding the foregoing, in discharging any duties as a Board member or official business of the Authority that require travel, a Board member may receive from the Authority:

(a) a per diem at the rate established under Section 63A-3-106; and

(b) travel expenses at the rate established under Section 63A-3-107.

(2) A Board member seeking such per diem and travel expenses shall submit to the Authority documentation showing the dates and purpose of any travel for any per diem sought and dates, purpose of travel, and actual travel expenses incurred for reimbursement of travel expenses. The Executive Director may approve such requests or present such requests for consideration and approval by the Board at its next public meeting.

R174-1-301. Participation in NG911 System.

A PSAP or Dispatch Center established pursuant to Section 69-2-201 may, upon approval of the Executive Director, participate in the NG911 system implemented and maintained by the Authority.

R174-1-302. Participation by PSAP.

(1) All PSAPs connected to and participating in the Authority's legacy RFAI ESINet as of July 1, 2020, shall be deemed a participating PSAP under this Section.

(2) Any non-participating PSAP that seeks to participate and connect to the Authority's NG911 system shall submit a written request to the Executive Director. Upon the Executive Director's approval, the PSAP shall become a participating PSAP under this Section.

R174-1-303. Application for Participation by Dispatch Centers.

(1) A Dispatch Center that seeks to participate in and connect to the Authority's NG911 system shall submit the application described herein to the Executive Director.

(2) UCA shall maintain and publish an application form, approved by the Executive Director, that requires the following information from each applicant:

(a) The name of the entity that operates the Dispatch Center;

(b) Contact information for the Dispatch Center, including a single point of contact during emergencies;

(c) The geographic area served by the Dispatch Center;

(d) A copy of any agreements between the Dispatch Center and any other party relating to the provision of 911 services;

(e) The estimated number of 911 calls transferred to the Dispatch Center on an annual basis;

(f) The number of Legacy Call-taking Positions currently operated by the Dispatch Center and the number of Call-taking Positions the Dispatch Center anticipates purchasing;

(g) The source of funding for the anticipated Call-taking Positions;

(h) Any other information required by the Executive Director.

(3) The Executive Director shall approve an application under this Section if the Executive Director determines:

(a) participation by the applicant will serve a public safety purpose; and

(b) participation by the applicant is not inconsistent with the Authority's duties under Title 63H, Chapter 7a.

(4) If the Executive Director rejects an application under this Section, the Executive Director shall make a written determination of the reasons for the rejection and provide that determination to the applicant.

R174-1-304. NG911 Service Model and Cooperative Purchase.

The Authority has procured NG911 Core Services, ESINet, and customer premises equipment and call handling positions through a managed service model under the NG911 Contract. Services and equipment shall be furnished to a PSAP or dispatch center under the NG911 Contract only at the direction of or with the approval of the Authority.

R174-1-305. Initial Allocation of Call-taking Positions.

The Authority will allocate Call-taking Positions to each participating PSAP identified in Subsection R174-1-302(1) on a one-to-one basis with Legacy Call-taking Positions deployed and in active use at the PSAP, based upon the documentation on file with the Authority as of June 5, 2020. That allocation shall constitute the "Baseline" Call-taking Position count for the PSAP for purposes of this rule.

R174-1-306. Allocation of Additional Call-taking Positions to PSAPs.

(1) The Authority will allocate additional Call-taking positions to a participating PSAP based on increases in three-year average call volume for the PSAP as determined by the Authority.

(2) To determine whether to allocate additional Call-taking Positions to a PSAP, the Authority shall:

(a) Prepare and maintain a "Baseline" call count for each PSAP based on the three-year average annual call volume reported for the PSAP as of December 31, 2019. This Baseline call count shall

correspond to the Baseline Call-taking Position count allocated to the PSAP under Section R174-1-305; and

(b) On an annual basis, compare the three-year average annual call volume for the PSAP to the Baseline call count and allocate additional Call-taking Positions to the PSAP based on the growth in call volume as follows:

(i) The authority shall allocate to a PSAP one additional Call-taking Position per each Call Volume Increment, as defined below, above the Baseline call count;

(ii) For the period ending in 2025, the Call Volume Increment shall be an increase of 3,000 calls per year in the three-year annual average;

(iii) For each three-year period ending after 2025, the Authority's Executive Director shall calculate a Call Volume Increment that, in the Executive Director's judgment, justifies allocating an additional Call-taking Position to a PSAP.

(iv) In making this determination, the Executive Director may consider, among other things, the ratio of call volume to Call-taking Positions in similarly situated PSAPs; performance metrics such as call answer time, transfers, and holds; one-time and recurring costs of additional Call-taking Positions; legislative appropriations and budget forecasts; and any other information that bears on the feasibility or advisability of allocating an additional Call-taking Position to a PSAP.

(v) In the event a PSAP's call volume for a given three-year period decreases such that the PSAP would be allocated fewer Call-taking Positions than a previous year, the PSAP will be permitted to retain already allocated CPE positions unless the Executive Director determines it is in the Authority's best interest to reduce the allocation of Call-taking Positions to that PSAP.

(vi) If the Executive Director determines it is in the Authority's best interest, the Executive Director may defer or cancel the allocation of additional Call-taking Positions that would otherwise be allocated under this Section. The Executive Director shall make a written determination of the reasons for any such deferral or cancellation and provide that determination to the affected PSAP.

(3) In the event a PSAP removes a Call-taking Position allocated under this Section from service, the PSAP shall notify the Authority to allow the Call-taking Position to be reallocated at the discretion of the Authority and pursuant to the above guidelines.

R174-1-307. Payment for Allocated Call-taking Positions.

The Authority shall be responsible for payment of non-recurring and recurring costs for all Call-taking Positions allocated under Sections R174-1-305 and -306.

R174-1-308. Purchase of Call-taking Positions or Optional Equipment.

Upon the Authority's written approval, a participating PSAP or Dispatch Center may purchase Call-taking Positions or optional equipment authorized by the NG911 Contract at its own expense. Any such purchase shall be pursuant to the cooperative purchase provision of the NG911 Contract. The Authority shall not be responsible for payment of non-recurring or recurring costs for any such Call-taking Positions or optional equipment authorized by the NG911 Contract.

R174-1-401. Restricted Account Funding Procedures.

Sections R174-1-401 through R174-1-404 apply to all requests for payment or reimbursement from restricted accounts maintained by the Authority pursuant to Sections 63H-7a-303, -304,

R174-1-402. Authority.

This rule is authorized by Subsection 63H-7a-302(5).

R174-1-403. Disbursements from Computer Aided Dispatch Restricted Account.

(1) The Authority shall make available to participating PSAPs funds from the Computer Aided Dispatch Restricted Account created in Section 63H-7a-303 as reimbursement for costs incurred for the purchase and implementation of an eligible CAD-to-CAD Interface or CAD Aggregator.

(2) Upon the approval by the Executive Director of a PSAP's application for reimbursement under this section, the Authority shall reimburse the applicant from the Computer Aided Dispatch Restricted Account for 80% of the costs actually incurred by the applicant in purchasing and implementing an eligible CAD-to-CAD Interface or CAD Aggregator.

(3) To be eligible for reimbursement under this Section, a CAD-to-CAD Interface or CAD Aggregator must:

(a) connect the CAD systems of two or more geographically contiguous areas;

(b) allow for CAD-to-CAD Transfer in conformity with the Statewide Standard Operating Procedures adopted by the Authority's Board;

(c) be purchased and implemented for the purpose of attaining performance benchmarks for reduction of 911 call transfers set forth in statute, administrative rule, or the Authority's strategic plan, as applicable.

(4) The following shall be ineligible for reimbursement under this Section:

(a) Any expenses that are inconsistent with the Authority's strategic plan;

(b) New CAD platforms or software solutions;

(c) A CAD-to-CAD or CAD Aggregator that was implemented or became operational prior to January 1, 2020;

(d) Ongoing maintenance of any CAD-to-CAD Interface, CAD Aggregator, or CAD Software;

(e) Hardware, software, services, or equipment other than that necessary for implementation of an eligible CAD-to-CAD Interface or CAD Aggregator;

(f) Security system and key costs; or

(g) Costs of non-emergency or administrative phone lines.

(5) The Authority shall maintain and publish an application form, approved by the Executive Director, that requires the following information from any applicant for reimbursement under this section:

(a) The name of the entity or entities applying for reimbursement;

(b) The CAD systems and geographic areas that are connected by the eligible CAD-to-CAD Interface or CAD Aggregator;

(c) The date upon which the eligible CAD-to-CAD Interface or CAD Aggregator became operations, such as a substantial completion, commissioning, or cutover date;

(d) A proposal, scope of work, or itemized invoice sufficient to show all hardware, equipment, services, or other costs incurred in the purchase of the eligible CAD-to-CAD Interface or CAD Aggregator;

(e) Bills of sale, receipts, cancelled checks, wire transfer records, or other documents sufficient to demonstrate the amounts actually paid by the applicant(s) for the eligible CAD-to-CAD Interface or CAD Aggregator;

(f) A description of the anticipated effect of the eligible CAD-to-CAD Interface and CAD Aggregator on the 911 call transfer

rate for the applicant(s), including whether the anticipated 911 call transfer rate will meet any applicable benchmarks, and a narrative setting forth the basis of any anticipated effect on 911 call transfer rates; and

(g) Any other information required by the Executive Director.

(6) The Executive Director shall approve an application under this Section unless the Executive Director determines:

(a) the application is incomplete or inaccurate;

(b) the applications seeks reimbursement for ineligible costs;

(c) reimbursement would not be consistent with the Authority's duties under Title 63H, Chapter 7a;

(d) there are insufficient funds in the Computer Aided Dispatch Restricted Account to reimburse the amounts sought; or

(e) the application or proposal violates this rule or any other applicable rule or statute.

(7) If the Executive Director determines that insufficient funds in the Computer Aided Dispatch Restricted Account to reimburse the amounts requested in an application under this Section, the Executive Director may:

(a) approve the application for payment at a later date, conditional upon sufficient funds being available in the Computer Aided Dispatch Restricted Account at that later date; or

(b) deny the application without prejudice to a future application for reimbursement of the eligible CAD-to-CAD Interface or CAD Aggregator.

(8) If the Executive Director rejects an application under this Section, the Executive Director shall make a written determination of the reasons for the rejection and provide that determination to the applicant.

(9) If the Executive Director determines that funds were disbursed to an applicant for a CAD-to-CAD Interface or CAD Aggregator that does not meet the criteria set forth in subsection (3), or that an applicant was reimbursed for ineligible costs under subsection (4), upon written demand by the Executive Director, the applicant shall return the funds to the Authority for deposit in the Computer Aided Dispatch Restricted Account.

R174-1-404. Disbursements from Unified Statewide 911 Emergency Service Account.

(1) Beginning in its Fiscal Year 2022, the Authority shall make available annually to participating PSAPs funds from the Unified Statewide 911 Emergency Service Account created in Section 63H-7a-304 in accordance with the requirements of Section 63H-7a-304.5.

(2) The funds available for distribution shall be those funds described in Subsection 63H-7a-304(1), less:

(a) funds expended or disbursed pursuant to Subsection 63H-7a-304(2)(a), (3), or (4);

(b) funds otherwise expended or disbursed by the Authority consistent with its strategic plan, including:

(i) implementing, maintaining, or upgrading the public safety communications network or statewide 911 phone system, including implementation of NG911; or

(ii) overhead of the Authority for management of the 911 portion of the public safety communications network; and

(c) funds the Board determines should remain in the Unified Statewide 911 Emergency Service Account for future use.

(3) To be eligible for a distribution under Section 63H-7a-304.5, a PSAP must be a Qualifying PSAP as defined in Subsection 63H-7a-304.5(d) for the fiscal year in which a distribution is sought.

(4) A Qualifying PSAP that seeks a proportionate share of available funds shall submit the certified statement defined in Subsection 63H-7a-304.5(1)(a) to the Executive Director no later than July 31 following the end of the fiscal year for which the distribution is sought.

(5) If the Authority determines that a certified statement submitted by a PSAP is untimely, does not comply with the requirements of Subsection 63H-7a-304.5(1)(a), or does not demonstrate that the PSAP is a Qualifying PSAP, the Executive Director shall make a written determination of the reasons for the deficiency in the certified statement and provide that determination to the PSAP.

(6) For each fiscal year, the Authority shall distribute a proportionate share of available funds to each Qualifying PSAPs that timely submitted a certified statement. The proportionate share for a PSAP shall be calculated in accordance with Subsection 63H-7a-305.5(1)(c) and (3)(b).

(a) In the event that Subsection 63H-7a-305.5(3)(b) does not permit distribution of all available funds to Qualifying PSAPs, any remaining funds shall remain in the Unified Statewide 911 Emergency Service Account for use by the Authority or distribution in a subsequent fiscal year.

(7) If the Executive Director determines that funds were disbursed to a PSAP that was not a Qualifying PSAP, upon written demand by the Executive Director, the PSAP shall return the funds to the Authority for use by the Authority or distribution in a subsequent fiscal year.

R174-1-501. Participation in Public Safety Radio Network; Eligibility.

The following persons or entities are eligible for participation in the public safety radio network pursuant to an application approved by the executive director:

- (a) a state agency;
- (b) a public safety agency;
- (c) a public safety answering point;
- (d) a political subdivision of the state or agency thereof that is:
 - (i) not a public safety agency or public safety answering point;
 - (ii) sponsored by an entity defined in subsections (a), (b), or (c) that is an approved participant in the public safety communications network; and
 - (iii) approved to participate for a specified public safety purpose; or
- (e) any other person or entity with the express approval of the Authority's Executive Director.

R174-1-502. Service Tiers.

(1) To ensure reliability and high availability of the public safety radio network for first responders, the Authority shall implement network-management policies and procedures that prioritize network traffic and access to the public safety radio network by establishing service tiers.

(2) Approved participants in the public safety radio network shall be assigned to the following service tiers for purposes of the Authority's network-management policies and procedures:

- (a) each participant under Section R174-1-501(a), (b), or (c) shall be assigned to Tier One;
- (b) each participant under Section R174-1-501(d) shall be assigned to Tier Two;

(c) each participant under Section R174-1-501(e) shall be assigned to Tier One or Tier Two at the Executive Director's discretion.

(3) The Executive Director may limit access to the public safety radio network for Tier Two participants as may be necessary to ensure network availability for Tier One participants in the Executive Director's judgment.

R174-1-503. Application.

(1) Each entity described in Section R174-1-501 that seeks to participate in the public safety radio network shall submit the application described herein to the Executive Director.

(2) UCA shall maintain and publish an application form, approved by the Executive Director, that requires the following information from each applicant:

- (a) The name of the entity applying;
- (b) The basis for eligibility to participate in the public safety communications network under Section R174-1-501;
- (c) For an entity seeking participation under Subsection R174-1-501(d):
 - (i) the name of the sponsoring entity;
 - (ii) approval signed by an authorized representative of the sponsoring entity; and
 - (iii) the public safety purpose for which admission is requested;
- (d) For an entity seeking participation under Subsection R174-1-501(e):
 - (i) a copy of the written agreement allowing participation;
- (e) The estimated number of users for the period running for five years from July 1 following the date of the application.
- (f) Any other information required by the Executive Director.

(3) For an application pursuant to Subsection R174-1-501(a), (b), (c), or (e), the Executive Director shall approve the application unless permitting access would not be consistent with the Authority's duties under Title 63H, Chapter 7a.

(4) For an application pursuant to Subsection R174-1-501(d), the Executive Director shall approve the application if the Executive Director determines:

- (a) participation by the applicant will serve a public safety purpose; and
- (b) participation by the applicant is not inconsistent with the Authority's duties under Title 63H, Chapter 7a.

(5) If the Executive Director rejects an application under this Section, the Executive Director shall make a written determination of the reasons for the rejection and provide that determination to the applicant and its sponsoring entity, if any.

R174-1-504. Recertification.

(1) Each participant in the public safety communications network shall submit to the Authority an application to participate in the form prescribed by Section R174-1-503 no later than July 1 in the year that is five years from the date of its original application or its last recertification application, whichever is later.

(2) Each eligible entity that is a participant in the public safety communications network on January 1, 2020 shall submit to the Authority a recertification application in the form prescribed by Section R174-1-503 no later than:

- (a) for a state agency, June 30 2022;
- (b) for a county of the first or second class, December 31, 2021;

(c) for all other entities, June 30, 2021.

(3) A PSAP recertifying under this Section shall provide to the Authority, together with its recertification application, a copy of any PSAP interlocal agreement.

(4) The Authority shall notify any participating entity of its failure to submit a timely recertification application under this section.

(5) The Executive Director shall review each recertification application under this section in the manner set forth in Section R174-1-503.

(6) If an application is rejected, or if an entity fails to timely submit an application and such failure is not cured by the entity or excused by the Executive Director, the entity shall be removed as a participant in the public safety radio network on the later of either December 31 of the year in which the recertification application was required or six months from the due date.

R174-1-505. Initial Allocation of Radio Consoles to Participating PSAPs.

The Authority will allocate Radio Consoles to each participating PSAP identified in Subsection R174-1-302(1) on a one-to-one basis with Legacy Radio Consoles deployed and connected to the Authority's legacy public safety radio system based upon the documentation on file with the Authority as of June 5, 2020. That allocation shall constitute the "Baseline" Dispatch Position count for the PSAP for purposes of this rule.

R174-1-506. Allocation of Additional Radio Consoles to PSAPs.

(1) The Authority will allocate additional Radio Consoles to a participating PSAP based on increases in three-year average call volume for the PSAP as determined by the Authority.

(2) To determine whether to allocate additional Radio Consoles to a PSAP, the Authority shall:

(a) On an annual basis, compare the three-year average annual call volume for the PSAP to the Baseline call count established in Subsection R174-1-306(2)(a) and allocate additional Radio Consoles to the PSAP based on the growth in call volume as follows:

(i) The authority shall allocate to a PSAP one additional Radio Consoles per each Call Volume Increment, as defined in R174-1-306(2)(a)(ii)-(iii), above the Baseline call count;

(ii) In the event a PSAP's call volume for a given three-year period decreases such that the PSAP would be allocated fewer Radio Consoles than a previous year, the PSAP will be permitted to retain already allocated Radio Consoles unless the Executive Director determines it is in the Authority's best interest to reduce the allocation of Radio Consoles to that PSAP.

(iii) If the Executive Director determines it is in the Authority's best interest, the Executive Director may defer or cancel the allocation of additional Radio Consoles that would otherwise be allocated under this Section. The Executive Director shall make a written determination of the reasons for any such deferral or cancellation and provide that determination to the affected PSAP.

(3) In the event a PSAP removes a Radio Console allocated under this Section from service, the PSAP shall notify the Authority to allow the Radio Console to be reallocated.

R174-1-507. Payment for Allocated Radio Consoles.

The Authority shall be responsible for purchase and maintenance costs for all Radio Consoles allocated under Sections R174-1-505 and -506. All such Radio Consoles shall remain the sole property of the Authority.

R174-1-508. Purchase of Radio Consoles.

Upon the Executive Director's written approval, a participating PSAP or Dispatch Center may purchase Radio Consoles at its own expense. Any such purchase shall be pursuant to the cooperative purchase provision of the Authority's P25 Contract. The Authority shall not be responsible for purchase or maintenance costs for any such Radio Consoles and may charge the PSAP or Dispatch Center a programming or maintenance fee for any service the Authority performs on such Radio Consoles at the request of the PSAP or Dispatch Center.

R174-1-509. Radio Console Connection Fee.

The Authority may charge a person or entity other than a PSAP a fee for connecting a Radio Console to the public safety communications network as permitted by Subsection 63H-7a-404(3)(c).

R174-1-601. Approved Devices.

To ensure network reliability and availability and to maintain an appropriate level of expertise and efficiency of UCA personnel in supporting end-user radio devices, users of the public safety radio network may not connect a radio device to the public safety radio network unless the radio device is one approved under this Rule.

R174-1-602. Approved Radio List.

The Authority shall develop and maintain a list, approved by the Executive Director, of radio devices authorized and approved to operate on the public safety radio network. The approved radio list shall initially include all P25-compliant radios that are connected to and operational on the Authority's legacy radio system. Additional radio devices shall be added to the approved radio list from time to time at the Executive Director's discretion or upon the request of an authorized user and a showing that the radio complies with the requirements of Section R174-1-603.

R174-1-603. Radio Compatibility Requirements.

(1) To be authorized for operation on the public safety radio network or for inclusion on the approved radio list, a radio device must meet the following requirements:

(a) The radio device must be P25 Compliance Assessment Program (CAP) certified with the Harris MSTR V 900 Trunked Radio for both Phase 1 and Phase 2 and the summary test report must be posted on the Department of Homeland Security website;

(b) The CAP testing facility(ies) must have a Scope of Recognition that meets all of the P25 CAP test requirements; and

(c) The radio must be tested by Authority personnel for compatibility with the public safety radio network after radio personalities and fleet maps are developed by Authority personnel.

(2) An authorized user requesting a radio device be authorized for use or added to the approved radio list shall provide to the Executive Director satisfactory evidence that the radio device meets each of the foregoing criteria. If the Executive Director concludes the radio device meets the required criteria, the Executive Director may direct the radio device be added to the approved radio list or provide a written authorization for the requesting user to operate the radio device on the public safety radio network. A device that does not appear on the approved radio list shall not be operated on the public safety radio network without written authorization from the Executive Director.

KEY: Utah Communications Authority, [~~Utah 911 Advisory Committee~~] Administration
Date of Enactment or Last Substantive Amendment: [~~September 29, 2015~~] 2020
Notice of Continuation: May 2, 2016
Authorizing, and Implemented or Interpreted Law: 63H-7a-303; 63H-7a-304; 63H-7a-304.5

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R277-113	Filing No. 53080
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Agency Information

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

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

General Information

2. Rule or section catchline:
R277-113. LEA Fiscal and Auditing Policies
3. Purpose of the new rule or reason for the change:
Board Rule R277-113 has been amended to update local education agency (LEA) standard accounting requirements for reporting school fees waiver information.
4. Summary of the new rule or change:
The amendments were made in Subsection R277-113-8(1)(f). The new changes update language referencing the LEA's accounting system and add a requirement that an LEA use contra-revenue accounts to record fee waivers in the LEA's accounting system.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or

expenditures. The requirements in the rule primarily affect LEA accounting systems and processes.

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. LEAs may need to change accounting systems and processes to comply with the requirements in this rule.

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The requirements in the rule primarily affect LEA accounting systems and processes.

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The requirements in this rule primarily affect LEA accounting systems and processes.

F) Compliance costs for affected persons:

There are no expected independent compliance costs for affected persons. LEAs may need to change accounting systems and processes to comply with the requirements in 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	FY2021	FY2022	FY2023

NOTICES OF PROPOSED RULES

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			
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 approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on LEAs and will not have a fiscal impact on small businesses either.			
B) Name and title of department head commenting on the fiscal impacts:			
Sydnee Dickson, State Superintendent			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53E-3-501(1)(e)(iv)	Section 53E-5-202
Subsection 53E-3-401(4)	Section 53E-3-602	Subsection 53G-5-404(4)
Subsection 53E-3-501(1)(e)(i)	Section 53E-3-603	

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	09/14/2020
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R277. Education, Administration.

R277-113. LEA Fiscal and Auditing Policies.

R277-113-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-3-501(1)(e)(i), which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures;

(d) Subsection 53E-3-501(1)(e)(iv), which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements;

(e) Section 53E-3-602, which allows the Board to approve auditing standards for LEA governing boards;

(f) Section 53E-3-603, which requires the Board to verify accounting procedures of LEA governing boards for the purpose of determining the allocation of Uniform School Funds;

(g) Section 53E-5-202, which directs the Board to adopt rules to implement a statewide accountability system;

(h) Subsection 53G-5-404(4), which requires charter schools to make the same annual reports required of other public schools, including an annual financial audit report; and

(i) ESSA, which requires states to revise and redesign school accountability systems.

(2) The purpose of this rule is to:

(a) require LEAs to formally adopt and implement policies regarding the management and use of public funds;

(b) provide minimum standards, procedures and definitions for LEA policies;

(c) direct that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available;

(d) require LEAs to train employees in:

(i) appropriate financial practices;

(ii) necessary accounting procedures; and

(iii) ethical financial practices;

(e) specify uniform budgeting, accounting, and auditing procedures for LEAs consistent with GAAP, GAAS, and GAGAS; and

(f) establish reporting and accounting requirements for LEAs to enable the Board to comply with ESSA.

R277-113-2. Definitions.

(1) "Accrual basis of accounting" means a basis of accounting that records:

(a) revenue when earned and expenses when incurred; and

(b) transactions irrespective of the dates on which any associated cash flows occur.

(2) "Administration" means:

(a) an LEA superintendent or director;

(b) a deputy or associate superintendent or director;

(c) a business administrator or manager; or

(d) another LEA educational administrator, designated staff, or a designated educational service provider.

(3) "Arm's length transaction" means a transaction between two unrelated, independent, and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.

(4) "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.

(5) "FASB" means the Financial Accounting Standards Board whose purpose is to establish GAAP for nongovernmental entities within the United States.

(6) "GAAP" means Generally Accepted Accounting Principles or a common framework of accounting rules and standards for financial reporting promulgated by either FASB or GASB, as applicable to the reporting entity.

(7) "GAAS" means Generally Accepted Auditing Standards or a set of auditing standards and guidelines promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.

(8) "GAGAS" means Generally Accepted Government Auditing Standards or a set of auditing standards and guidelines promulgated by the Government Accountability Office.

(9) "GASB" means the Governmental Accounting Standards Board whose purpose is to establish GAAP for state and local governments within the United States.

(10) "Internal controls" means a process, implemented by an entity's governing body, administration, or other personnel, designed to:

(a) provide reasonable assurance regarding the achievement of objectives in the following categories:

(i) effectiveness and efficiency of operations;

(ii) reliability of reporting for internal and external use; and

(iii) compliance with applicable laws and regulations;

(b) provide reasonable assurance regarding the achievement of the following objectives over state and federal awards:

(i) proper recording and accounting for transactions, in order to:

(A) permit the preparation of reliable financial statements and state and federal reports;

(B) maintain accountability over assets; and

(C) demonstrate compliance with state and federal statutes, regulations, and the terms and conditions of state and federal awards; and

(ii) execution of transactions in compliance with:

(A) all state and federal statutes and regulations; and

(B) the terms and conditions of state or federal awards; and

(c) safeguard funds, property, and other against loss from unauthorized use or disposition.

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

(12) "Modified accrual basis of accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measurable and recognizes expenditures when liabilities are incurred.

(13) "Non-operating LEA" means an LEA that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as an LEA in a start-up period.

(14) "N-size" means the minimum size necessary to disclose or display data to ensure maximum student group visibility while protecting student privacy.

(15) "Operating LEA" means an LEA that has received state minimum school program funds or federal funds and is providing educational services during a fiscal year.

(16)(a) "Provided, sponsored, or supported by a school" has the same meaning as defined in Section R277-407-2.

(b) "Provided, sponsored, or supported by a school" does not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53G-7-704 through 53G-7-707.

(17) "Public funds" has the same meaning as that term is defined in Subsection 51-7-3(26).

(18) "Title IX" refers to that portion of the United States Education Amendments of 1972 codified as 20 U.S.C. 1681 through 20 U.S.C. 1688.

(19) "Utah Public Officers' and Employees' Ethics Act," means Title 67, Chapter 16, which provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between public duties and private interests.

R277-113-3. Superintendent Responsibilities.

(1) The Superintendent shall provide training, informational materials, and model policies for use by LEAs in developing LEA and public school-specific financial policies.

(2) The Superintendent shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds.

(3) The Superintendent shall provide training and informational materials for use by LEA governing boards in establishing their audit committees and internal audit programs in compliance with Section 53G-7-402.

(4) The Superintendent shall provide and establish a cycle for state review of LEA fiscal policies and standards.

(5) The Superintendent shall work with and provide information upon request to the Utah State Auditor's Office, the Legislative Fiscal Auditors, and other state agencies with the right to information from the Board.

R277-113-4. LEA Audit Responsibilities.

(1) The presiding officer of an LEA governing board shall ensure that the members of the governing board and audit committee are provided with training on the requirements of Title 53G, Chapter 7, Part 4, Internal Audits, and this Section R277-113-4 as part of the member on-boarding process.

(2) The training described in Subsection (1) shall:

(a) comply with Title 63G, Chapter 22, State Training and Certification Requirements; and

(b) use the online training and informational materials provided by the Superintendent in accordance with Subsection R277-113-3(3).

(3) An LEA governing board shall:

(a) designate board members to serve on an audit committee, consistent with Subsection 53G-7-401(1); and

(b) maintain the following information on the LEA's website:

(i) names of the governing board members who serve on the audit committee; and

(ii) if required by Subsection 53G-7-402(2);

(A) the name and contact information of the internal audit director; and

(B) a copy of the LEA's annual audit plan.

(4) An LEA audit committee shall:

(a) ensure the LEA obtains all audits, agreed-upon procedures, engagements, and financial reports required by Section 51-2a-201 and Subsection 53G-5-404(4);

(b) provide an independent forum for internal auditors, internal audit contractors, and other regulatory bodies to report findings of fraud, waste, abuse, non-compliance, or control weaknesses, particularly if LEA administration is involved;

(c) ensure that corrective action on findings, concerns, issues and exceptions reported by independent external auditors, internal auditors, or other regulatory bodies are resolved in a timely manner by LEA administration;

(d) present, as appropriate, information and reports from the audit committee's meetings to the LEA board; and

(e) receive, as appropriate, reports of reviews, monitoring, or investigations conducted by LEA administration and ensure appropriate corrective action is taken in a timely manner.

(5) With regards to engagements completed by an independent external auditor, an LEA audit committee shall:

(a) manage the audit procurement and quality process in compliance with Title 63G, Chapter 6a, State Procurement Code and Rule R123-5;

(b) ensure that the independent external auditor has access to directly communicate with the audit committee;

(c) review disagreements between independent external auditors and LEA administration;

(d) consider LEA responses to audits or agreed-upon procedures; and

(e) determine the scope and objectives of other non-audit services, as necessary.

(6) An LEA audit committee shall if required by Section 53G-7-402:

(a) establish an internal audit program that provides internal audit services for the programs administered by the LEA;

(b) advise the LEA board in the appointment of an audit director or in contracting for internal audit services in accordance with Subsection 53G-7-402(3);

(c) conduct or advise the LEA board in an annual evaluation of the internal audit director or contractors providing internal audit services;

(d) prioritize the internal audit plan based on risk;

(e) receive regular updates on the internal audit plan and internal audit project progress; and

(f) receive final internal audit reports from internal auditors or contractors providing internal audit services.

R277-113-5. LEA Fiscal Responsibilities and Required Fiscal Policies.

(1) An LEA shall review the LEA's fiscal policies and procedures regularly.

(2) An LEA shall develop a plan for annual training of LEA and public school employees on policies and procedures enacted by the LEA specific to job function.

(3) LEA fiscal policies and procedures shall be available at each LEA main office, at individual public schools, and be publicly available on the LEA's website.

(4) LEA fiscal policies, procedures, and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(5) An LEA may have one or more policies to satisfy the minimum requirements of this R277-113.

(6) An LEA fiscal policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

(7) A public education foundation established by an LEA shall follow the requirements set forth in Section 53E-3-403.

(8)(a) An LEA shall ensure that the LEA's written fiscal policies and procedures address all applicable state and federal statutes and regulations.

(b) The requirements set forth in this Section R277-113-5 are minimum requirements.

(c) An LEA may include other related items, provide LEA specific policy and guidance, and set policies that are more restrictive and inclusive than the minimum provisions established by Board rule.

(9) LEA fiscal policies shall include the following:

(a) a program accounting policy that establishes internal controls and procedures to record program revenues and expenditures in accordance with:

(i) GAAP; and
 (ii) the school fee provisions in Section R277-407-13;
 (b) a program accounting policy that:
 (i) accurately reflects the use of funds for allowable costs and activities;
 (ii) requires that transactions be recorded when they occur;
 (iii) allows adjusting journal entries during the year and at the end of the year, in accordance with GAAP; and
 (iv) requires that initial transactions, and adjusting entries if applicable, be recorded in the proper program, utilizing the following codes as established by the Board approved chart of accounts:
 (A) fund;
 (B) function;
 (C) program;
 (D) location; and
 (E) object or revenue code, as applicable;
 (c) a cash handling policy, which shall address cash receipts (cash, checks, credit cards, and other items) collected at the LEA and individual public schools and shall include:
 (i) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received; and
 (ii) compliance with Utah Code 51-4-2(2) regarding deposits.
 (d) an expenditure policy, which shall address all expenditures made by the LEA and individual public schools and shall include:
 (i) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, including:
 (A) credit, debit, or purchase card transactions;
 (B) employee reimbursements;
 (C) travel; and
 (D) payroll;
 (ii) directives regarding the appropriate use of the LEA's tax exempt status number;
 (iii) compliance with Section 63G-6a-1204 regarding length of multi-year contracts;
 (iv) compliance with:
 (A) Title 63G, Chapter 6a;
 (B) Board rule regarding construction and improvements; and
 (C) Title IX;
 (v) requirements for LEA contracts, including:
 (A) inclusion of specific scope of work language;
 (B) inclusion of federal requirements;
 (C) inclusion of language regarding data privacy and use, where appropriate; and
 (D) legal review prior to LEA approval; and
 (vi) procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy; and
 (vii) procedures for determining allowability of costs in accordance with relevant regulations and terms and conditions of awards;
 (e) a fundraising policy that:
 (i) establishes procedures for LEA and public school fundraising in general;
 (ii) establishes an approval process for fundraising activities for school sponsored activities;

(iii) provides for compliance with school fee and fee waiver provisions outlined in Rule R277-407; and
 (iv) includes:
 (A) specific designation of employees by title or job description who are authorized to approve fundraising, school sponsored activities, and grant fee waivers with appropriate attention to student and family confidentiality;
 (B) establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;
 (C) directives regarding the appropriate use of the LEA's tax exempt status number and issuance of charitable donation written disclosure in accordance with IRS regulations;
 (D) procedures governing LEA or public school employee interaction with parents, donors, and organizations doing fundraisers not provided, supported or sponsored, by a school or LEA;
 (E) disclosure requirements for LEA and public school employees approving, managing, or overseeing fundraising activities, who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company;
 (F) Provisions establishing compliance with:
 (I) Utah Constitution, Article X, Section 2, establishing a free public education system;
 (II) R277-407; and
 (III) Title IX;
 (v) may include procedures governing:
 (A) student participation and incentives offered to students;
 (B) allowable types of individual or group fundraising activities; and
 (C) participation in school sponsored activities by volunteer or outside organizations;
 (f) an LEA donation and gift policy that includes:
 (i) an acceptance and approval process for:
 (A) monetary donations;
 (B) donations and gifts with donor restrictions;
 (C) donations of gifts, goods, materials, or equipment; and
 (D) donation of funds or items designated for construction or improvements of facilities;
 (ii) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;
 (iii) directives regarding the appropriate use of the LEA's tax exempt status number, and issuance of charitable donation written disclosure in accordance with IRS regulations;
 (iv) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;
 (v) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;
 (vi) procedures establishing provisions for direct donations or gifts to the LEA or LEA programs, individual public school or public school programs;
 (vii) provisions restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;
 (viii) compliance with:
 (A) Title 63G, Chapter 6a;
 (B) state law and Board rule regarding construction and improvements;

NOTICES OF PROPOSED RULES

- (C) IRS regulations and tax deductible directives; and
- (D) Title IX;
- (ix) procedures for:
- (A) accepting donations and gifts through an LEA's legally organized foundation, if applicable;

- (B) recognition of donors; or
- (C) granting naming rights; and

(e) an LEA Financial Reporting policy, which shall include the following:

(i) a requirement that the LEA shall ensure external audits of LEA financial reporting, compliance, and performance, in accordance with GAAS and GAGAS;

(ii)(A) a requirement that the LEA shall provide financial reporting in a manner consistent with the basis of accounting as required by GAAP, as applicable to the entity;

(B) for state fiscal year 2020, if an LEA follows FASB standards, a requirement that the LEA shall provide reconciliation between the accrual basis of accounting and modified accrual basis of accounting; and

(C) beginning with state fiscal year 2021, a requirement that the basis of accounting will be GASB; and

(iii) a requirement that the LEA shall provide data and information consistent with budgeting, accounting, including the uniform chart of accounts for LEAs, and auditing standards for Utah LEAs provided online annually by the Superintendent.

(10) The Superintendent shall maintain a School Finance website with applicable Utah statutes, Board rules, and uniform rules for:

- (a) budgeting;
- (b) financial accounting, including a chart of accounts required for an LEA;
- (c) student membership and attendance accounting;
- (d) indirect costs and proration;
- (e) financial audits;
- (f) statistical audits; and
- (g) compliance and performance audits.

R277-113-6. LEA Governing Board Fiscal Responsibilities.

(1) An LEA governing board shall have the following responsibilities:

(a) approve written fiscal policies and procedures required by Section R277-113-5;

(b) ensure, considering guidance in "Standards for Internal Control in the Federal Government," issued by the Comptroller General of the United States or the "Internal Control Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission, that LEA administration establish, document, and maintain an effective internal control system for the LEA;

- (c) develop a process to regularly discuss and review LEA:
- (i) budget and financial reporting practices;
- (ii) financial statements and annual financial and program

reports;

(iii) financial position;

(iv) expenditure of restricted funds to ensure administration is complying with applicable laws, regulations, and award terms and conditions; and

(v) systems and software applications for compliance with financial and student privacy laws;

(d) receive the results of required annual audits from the external auditor in accordance with Section R123-5-5;

(e) oversee procurement processes in compliance with Title 63G, Chapter 6a, Utah Procurement Code, and Rule R277-115, including:

(i) reviewing the scope and objectives of LEA contracts or subawards with entities that provide business or educational services; and

(ii) receiving reports regarding the compliance and performance of entities with contracts or subawards;

(f) ensure the procurement process for an external auditor is in compliance with Section R123-5-4;

(g) ensure LEA administration implements sufficient internal controls over the functions of entities with contracts or subawards to perform services on behalf of the LEA;

(2) An LEA governing board shall:

(a)(i) provide a hotline independent from administration for stakeholders to report concerns of fraud, waste, abuse, or non-compliance; and

(ii) post on the school's website in a readily accessible location:

(A) a hotline phone number;

(B) a hotline email; or

(C) an online complaint form; or

(b) post a link on the school's website in a readily accessible location with contact information for the Board's hotline.

R277-113-7. Reporting of School Level Expenditures.

(1) In accordance with ESSA, the Superintendent shall make public the per pupil expenditures of federal, state, and local funds, for each LEA and each school in the state.

(a) The Superintendent shall exclude expenditures that:

(i) are non-current;

(ii) do not reflect the day-to-day operations of an LEA or school;

(iii) do not contribute to k-12 education; or

(iv) are significant, unique expenditures that may skew data in certain years and thwart year-to-year comparison.

(b) The Superintendent shall publish and make available a comprehensive list of expenditures that are excluded from per pupil expenditure information.

(2) The Superintendent's school level report for each school shall include:

(a) average daily membership for the fiscal year covered by the report;

(b) an indicator if the school is:

(i) a Title I School; or

(ii) a Necessarily Existent Small School;

(c) grade levels served by each school;

(d) student demographics;

(e) expenditures recorded at the school level and central expenditures allocated to each school by:

(i) federal program expenditures; and

(ii) state and local combined expenditures;

(f) calculated per pupil expenditures; and

(g) average teacher salary.

(3) The Superintendent may not report expenditure data for a school with an n-size of less than 10.

R277-113-8. LEA Accounting Requirements.

(1) Each LEA shall:

(a) record revenues and expenditures in compliance with the Board approved chart of accounts;

(b) record expenditures using school location codes that can be mapped to official school location codes used in the Board system of record;

(c) record expenditures using approved district and school codes in the Board system of record;

(d) submit expenditures using location codes in the UPEFS system; ~~and~~

(e) perform program accounting in accordance with GAAP and this rule ~~[-]; and~~

(f) beginning with the fiscal year that begins on July 1, 2021, accrue school fees, and fee waivers and use contra-revenue accounts to record fee waivers in the LEA's accounting system.

(2) Each LEA shall record and report the following expenditures for each school annually:

(a) salaries;

(b) benefits;

(c) supplies;

(d) contracted services; and

(e) equipment.

(3) If an LEA pays for contracted services that occur at the school level, the LEA shall record the payments to the contractors in the appropriate function and object codes established under Subsection (2) at the school level.

(4)(a) An LEA shall record centralized administrative costs to the administrative location code.

(b) The Superintendent shall allocate such costs to each school based on school enrollment.

(5) The Superintendent shall present one expenditure report for a school receiving more than one report card under Subsection R277-497-4(8).

(6) If an LEA reports expenditures in programs, the LEA shall report the expenditures to one or more schools.

R277-113-9. Activities Provided, Sponsored, or Supported by a School.

(1) An LEA or school shall comply with this Section R277-113-9 for all activities provided, sponsored, or supported by a school.

(2) An LEA shall ensure that revenues raised from or during activities provided, sponsored, or supported by a school are classified, recorded, and deposited as public funds in compliance with LEA cash handling, program accounting, and expenditure of funds policies as required by Section R277-113-5.

(3) An LEA shall:

(a) maintain records in sufficient detail to:

(i) track individual contributions and expenditures;

(ii) track overall financial outcomes; and

(iii) verify compliance with relevant regulations; and

(b) make records of activities available to parents, students, and donors, except as restricted by state or federal law;

(4) An LEA may establish LEA-specific rules or policies:

(a) designating categories of activities or groups as provided, sponsored, or supported by the school; and

(b) regarding use of facilities or LEA resources.

(5) An LEA shall document their annual review of fundraising activities that support or subsidize LEA or public school-authorized clubs, activities, sports, classes, or programs to determine if the activities are provided, sponsored, or supported by a school.

(6)(a) An LEA may enter into contractual agreements to allow for fundraising and use of LEA facilities.

(b) An agreement under Subsection (6)(a) shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds, resources, and assets.

(c) An LEA shall review an agreement under Subsection (6)(a) with the LEA's insurer or legal counsel to consider risk to the LEA.

(7) An LEA shall comply with this Subsection (7) for any activity not provided, sponsored, or supported by a school:

(a) An LEA shall conduct all transactions at arm's length;

(b) An LEA may not co-mingle revenue and expenditures with public funds; and

(c) A public school employee may only manage or hold funds consistent with Rule R277-107.

R277-113-10. LEA Policies and Compliance with State and Federal Law.

(1) An LEA is responsible to ensure that its policies comply with the following:

(a) Utah Constitution Article X, Section 3;

(b) Title 63G, Chapter 6a, Utah Procurement Code;

(c) Title 51, Chapter 4, Deposit of Funds Due State;

(d) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(e) Family Educational Rights and Privacy Act, 20 U.S.C. 1232g;

(f) Title 63G, Chapter 2, Government Records Access and Management Act;

(g) Title 53G, Chapter 7, Student Fees;

(h) Title 53G, Chapter 6, Textbook Fees;

(i) Section 53E-3-403, Establishment of Public Education Foundations;

(j) Title 53G, Chapter 7, Part 7, Student Clubs Act;

(k) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(l) Additional state legal compliance guides for operating LEAs and non-operating LEAs as published by the office of the state Auditor;

(m) Subsection 51-7-3(26), Definition of Public Funds;

(n) Title 53G, Chapter 7, Part 4, Internal Audits;

(o) Rule R277-407, School Fees;

(p) Rule R277-107, Educational Services Outside of Educator's Regular Employment;

(q) Rule R277-217, Utah Educator Standards;

(r) Rule R277-605, Coaching Standards and Athletic Clinics;

(s) Rule R123-5, Audit Requirements for Audits of Political Subdivisions and Governmental Nonprofit Corporations; and

(t) 2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(2) An LEA shall include the following requirements of Title IX in LEA policies:

(a) Fundraising shall equitably benefit males and females;

(b) Males and females shall have reasonably equal access to facilities, fields, and equipment;

(c) School sponsored activities shall be reasonably equal for males and females.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee

Date of Enactment or Last Substantive Amendment: [August 12,] 2020

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53E-3-401(4); 53E-3-501(1)(e)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-302	Filing No. 53082

Agency Information

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

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

General Information

2. Rule or section catchline:
R277-302. Educator Licensing Renewal
3. Purpose of the new rule or reason for the change:
The Utah State Board of Education (Board) is amending this rule to strike the Return to Licensure program in light of the simplified renewal procedures adopted by the Board.
4. Summary of the new rule or change:
Subsection R277-302-3(5)(a) was amended to require less than three years instead of two years' experience in an educator position related to the area of licensure in a public or accredited private school in Utah, consistent with other licensing rules; and Section R277-302-8 was stricken from the rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The Board has simplified the educator renewal processes. This rule change eliminates the Return to Licensure Program because the simplification of educator renewal processes makes this program largely unnecessary.

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The Board has simplified the educator renewal processes. This rule change eliminates the Return to Licensure Program because the simplification of educator renewal processes makes this program largely unnecessary.

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The Board has simplified the educator renewal processes. This rule change eliminates the Return to Licensure Program because the simplification of educator renewal processes makes this program largely unnecessary.

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule change eliminates the Return to Licensure Program because the simplification of educator renewal processes makes this program largely unnecessary.

F) Compliance costs for affected persons:

There are no expected independent compliance costs for affected persons. This rule change eliminates the Return to Licensure Program because the simplification of educator renewal processes makes this program largely unnecessary.

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

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

rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53E-6-201	Subsection 53E-3-401(4)
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Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	09/15/2020
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R277. Education, Administration.

R277-302. Educator Licensing Renewal.

R277-302-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53E-6-201, which gives the Board power to issue licenses.

NOTICES OF PROPOSED RULES

(2) The purpose of this rule is to ensure that licensed educators maintain and enhance their education-related skills and knowledge throughout the duration of the license.

R277-302-2. Definitions.

(1) "Alternate professional learning activities" means activities that enhance or improve the education-related skills and knowledge of an educator serving in school, but not in a role as a primary educator, including:

- (a) work as a paraprofessional;
- (b) substitute teaching in a public school;
- (c) volunteering in a public school;
- (d) travel with an educational purpose or component;
- (e) presenting at professional conferences, including the time to design or prepare the presentation;
- (f) educational research;
- (g) work as a department chair in a public school.

(2) "Conflict of interest" means a business, family, monetary, or relationship concern that may cause a reasonable educator to be unduly influenced or that creates the appearance of undue influence.

(3) "Educator" has the same meaning as defined in Section 53E-6-102.

(4) "Educator collaboration opportunities" mean opportunities in which educators engage in data analysis in collaboration with colleagues to inform instructional adjustments and student need, including through professional learning communities.

(5) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(6) "Licensed administrator" means:

- (a) an individual holding a current Utah educator license with a school leadership license area of concentration;
- (b) an individual, familiar with the requirements of this rule, holding an equivalent license in another jurisdiction; or
- (c) an individual currently employed in an administrative position in a Utah charter school or accredited private school.

(7)(a) "Professional education entity" means a public or private organization engaged in services related, in whole or in part, to promoting education.

(b) "Professional education entity" includes:

- (i) an LEA;
- (ii) the Board, including its staff;
- (iii) another elected or appointed government body responsible for education policy;
- (iv) a regional service center;
- (v) a union or association of professional educators;
- (vi) an association whose members are comprised of Utah LEAs or schools;
- (vii) an accredited p-12 private institution; and
- (viii) a regionally accredited college or university.

(8) "Professional learning experiences" means learning experiences in:

- (a) curriculum development;
 - (b) school improvement;
 - (c) mentoring and training new teachers; and
 - (d) instructional coaching.
- (9) "Professional service" means service in a local, state, or national government or professional education association leadership role.

R277-302-3. Educator License Renewal Requirements.

(1) An individual that holds a current Utah educator license may apply to the Superintendent for renewal of the license after meeting

all requirements detailed in this rule between January 1 and June 30 of the year in which the educator's license expires.

(2) An individual that holds an expired associate or professional Utah educator license may apply to the Superintendent for renewal of the license after meeting all requirements detailed in this rule.

(3) A Utah educator license holder shall accrue 100 license renewal points prior to license renewal, beginning with the date of each new renewal.

(4) Prior to applying for renewal, an individual that holds a professional Utah educator license shall:

- (a) complete license renewal points as detailed in Section R277-302-7 during the five years prior to the date of renewal;
- (b) complete the USBE educator ethics review during the year prior to the date of renewal; and
- (c) maintain ongoing background monitoring in accordance with Section 53G-11-403.

(5) Prior to applying for renewal, an individual that holds an associate Utah educator license shall:

- (a) have less than ~~two~~ three years of experience in an educator position related to the area of licensure in a public or accredited private school in Utah;
- (b) meet the current content knowledge requirements for an associate educator license related to the educator's area of licensure detailed in Section R277-301-4;
- (c) redo the professional learning modules required for an associate educator license detailed in Section R277-301-4 during the six months prior to the date of renewal;
- (d) complete the USBE educator ethics review during the year prior to the date of renewal; and
- (e) maintain ongoing background monitoring in accordance with Section 53E-6-401.

~~[(6) An individual that holds an expired professional Utah educator license and that has not been employed by a Utah LEA for at least one school year may apply for renewal under the Returning Educator Relicensure program described in Section R277-302-8.]~~

R277-302-4. Superintendent Responsibilities.

(1) The Superintendent shall establish application procedures for Utah educator license renewal that:

- (a) include simplified procedures for an educator that:
 - (i) is currently employed in an educator position by a professional education entity;
 - (ii) has been employed in an educator position by a professional education entity in each of the years covered by the individual's Utah educator license; and
 - (iii) has participated in professional learning activities as required by Subsection R277-302-6(1);
- (b) require verification of the educator's completed license renewal points by the signature of a current licensed administrator without a conflict of interest with the educator; and

(c) is completed through an automated, online platform, to the extent reasonably possible given existing technology and resources.

(2) The Superintendent shall monitor a random sample of approximately ten percent of annual renewals that utilize automated or online procedures.

(3) The Superintendent shall provide guidance to educators to the extent that funding allows that:

- (a) promotes participation in activities that are not cost intensive;
- (b) encourages licensed administrators to consider a broad variety of activities under Subsection R277-302-7(4)(d); and

(c) supports educators in learning how and where to earn points without directly referring educators to paid services.

(4)(a) The Superintendent may monitor review any renewal transaction for accuracy and compliance with this rule.

(b) The Superintendent may void a license transaction that was completed on the basis of inaccurate information at any time with notice to the license holder.

(5) If the Superintendent identifies evidence of intentional misconduct under Rule R277-217 during monitoring in accordance with this Section R277-302-4, the Superintendent shall report the allegations to UPPAC.

(6) The Superintendent shall provide a model policy to facilitate the resolution of a conflict between a licensed educator and a licensed administrator that arises based on the requirement detailed in Subsection R277-302-4(1)(b), which may include a provision for review of the issues by the Superintendent.

R277-302-5. Educator Responsibilities.

(1) An educator is responsible for acquiring and retaining documentation and signatures related to the completion of professional learning activities used to meet the requirements of this rule.

(2) An educator shall finalize all renewal documentation during the six months prior to the date of renewal.

(3) An educator shall retain all documentation related to a renewal application under this rule for no less than two years from the date of renewal.

(4) If an educator's renewal application is identified for monitoring in accordance with Subsections R277-302-4(2) and (3), the educator shall submit any requested documentation to the Superintendent in a timely manner.

R277-302-6. LEA Responsibilities.

(1) An LEA that employs an individual holding a professional Utah educator license shall provide opportunities for the individual to complete a minimum of the equivalent of twenty license renewal points as defined in Section R277-302-7 of professional learning activities to all such license holders annually, which shall include trainings required by state law or Board rule.

(2) An LEA shall maintain or provide to the educator documentation of professional learning activities under Subsection (1).

(3) If an individual that holds a professional Utah educator license does not participate in the activities provided under Subsection (1), the educator's LEA shall notify the educator and the Superintendent that the educator is not eligible to utilize the simplified procedures described in Subsection R277-302-4(1)(a).

R277-302-7. Professional Renewal Activities.

(1) An educator with a current assignment in a Utah LEA shall earn points in at least two of the areas identified in this Section R277-302-7, subject to the maximum renewal points in Subsections (4).

(2) An educator without a current assignment in a Utah LEA shall earn points in any area identified in this Section R277-302-7 with no maximum renewal points in any given area.

(3) Notwithstanding Subsections (1) and (2):

(a) an educator may receive 100 points towards renewal for earning national board certification, with no further renewal points required;

(b) an educator may receive 20 points per national board certification component completed during any given renewal cycle; or

(c) an educator who held a Level 3 license prior to July 1, 2020, may receive 25 renewal points in recognition of the Level 3 requirements in the educator's first renewal after July 1, 2020.

(4) An educator may earn points in the following areas:

(a) Professional learning experiences, up to a maximum of 90 points, as follows:

(i) one renewal point for each clock hour of scheduled professional learning activities sponsored or approved by a professional education entity in the following areas:

(A) university coursework;

(B) USBE professional learning;

(C) curriculum development;

(D) school improvement;

(E) mentoring and training of new teachers;

(F) training and support designed specifically for new teachers or teachers identified as ineffective on the teacher's annual evaluation;

(G) instructional coaching; or

(H) conferences, workshops, institutes, trainings, symposia, or staff-development programs; or

(ii) ten renewal points per year for a teacher evaluation deemed highly effective;

(b) Educator collaboration opportunities, with one renewal point for each clock hour up to a maximum of 30 points;

(c) Professional service, with one renewal point for each clock hour up to a maximum of 50 points; and

(d) Alternate learning opportunities, with one renewal point for each clock hour up to a maximum of 30 points.

~~R277-302-8. Returning Educator Relicensure Program.~~

~~(1) An individual utilizing the Returning Educator Relicensure program shall:~~

~~(a) hold a position in a Utah LEA requiring an educator license;~~

~~(b) obtain a new background check and enroll in on-going monitoring as required by Section 53E-6-401;~~

~~(c) resolve any background check issues that may arise in accordance with Rule R277-214;~~

~~(d) complete a one school year professional learning plan developed jointly by the educator's direct administrative supervisor and the returning educator consistent with Section R277-302-7 taking into account the following:~~

~~(i) previous successfully education experience;~~

~~(ii) formal educational preparation;~~

~~(iii) period of time between last education experience and the present;~~

~~(iv) school goals for student achievement and with the employing school and the educator's role in accomplishing those goals;~~

~~(v) the returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and~~

~~(vi) completion of additional necessary professional development for the educator;~~

~~(e) submit a copy of the professional learning plan described in Subsection (d) to the Superintendent; and~~

~~(f) submit documentation upon completion of the educator's professional learning plan to the Superintendent.~~

~~(2) The Superintendent shall establish procedures for the Returning Educator Relicensure program, including:~~

~~(a) renewal of the educator's professional educator license for one school year;~~

~~(b) submission of the professional learning plan as required by Subsection (1)(e) within 60 days of the educator's starting employment date; and~~

~~(c) submission of documentation required by Subsection (1)(f) prior to the completion of the school year;~~
~~(3) A professional learning plan under this Section;~~
~~(a) may include activities provided by the LEA under Section R277-302-6; and~~
~~(b) shall include additional activities focusing on the unique needs of the educator.]~~

R277-302-[9]8. Licensing Renewal Point Options for Grandfathered Licenses.

(1) Notwithstanding Subsection R277-302-3(4)(a), an educator whose professional Utah educator license has an expiration date prior June 30, 2025 may earn license renewal points in accordance with this Section R277-302-[9]8 on the educator's first subsequent renewal, in addition to the options described in Section R277-302-7 if the educator does not meet the renewal requirements detailed in this rule.

(2) If an educator chooses to earn license renewal points under this Section R277-302-[9]8:

(a) an educator who held a level two or three license prior to June 30, 2020, shall accrue 200 points in the five years prior to applying for renewal; and

(b) an educator who held a level one license prior to June 30, 2020 shall accrue 100 points in the three years prior to applying for renewal.

(3) An educator may earn license renewal points for employment in a position requiring a Utah educator license, as follows:

(a) An educator may earn 35 license renewal points per year of employment, up to a maximum of 105 points per license cycle; and

(b) An educator may only count years of employment with satisfactory performance evaluations for license renewal points.

(4) An educator may earn license renewal points for content and pedagogy testing, as follows:

(a) A qualifying test must be approved by the Superintendent;

(b) For each qualifying test submitted with a passing score, the educator qualifies for 25 license renewal points; and

(c) An educator may submit no more than two qualifying test scores per license cycle.

(5) An educator may receive license renewal points for service in a leadership role in a national, state-wide, or LEA-recognized professional education organization, as follows:

(a) The educator's direct administrative supervisor shall approve qualifying service under Subsection (5); and

(b) Each clock hour of participation qualifies for one license renewal point, not to exceed ten points per year.

(6) An educator may receive license renewal points for substituting in a public school or accredited private school in Utah, as follows:

(a) The educator must have an inactive license during the school year the points are earned;

(b) Two hours of documented substitute time equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle; and

(c) A licensed administrator at the LEA where the substitute teaching occurred shall verify hours on LEA or school letterhead;

(7) An educator may receive license renewal points for paraprofessional or volunteer service in a public school or accredited private school in Utah, as follows:

(a) The educator must have an inactive license during the school year the points are earned;

(b) Three hours of documented paraprofessional or volunteer service equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle; and

(c) A licensed administrator at the LEA where the paraprofessional or volunteer service occurred shall verify hours on LEA or school letterhead.

KEY: license renewal, educators

Date of Enactment or Last Substantive Amendment: ~~July 9,~~ 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4)

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.): R277-403

Filing No.
53075

Agency Information

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

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

General Information

2. Rule or section catchline:

R277-403. School Safety Pilot Program

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

This rule is being created to establish the school safety grant program related to an appropriation listed in H.B. 120 passed in the 2019 General Session. This funding was appropriated in the legislation with no language in the bill or statute connected to the funding outside of being appropriated for the creation of a pilot program. This rule creation provides the necessary parameters.

4. Summary of the new rule or change:

This new rule establishes the parameters for the school safety pilot program. These parameters include: application requirements, program eligibility, scoring criteria, funding distribution, award amounts, and prohibited uses of funding.

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. This rule is a result of H.B. 120 (2019).

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This rule is a result of H.B. 120 (2019).

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This rule is a result of H.B. 120 (2019).

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The rule is a result of H.B. 120 (2019).

F) Compliance costs for affected persons:

There are no expected independent compliance costs for affected persons. The rule is a result of H.B. 120 (2019).

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	FY2021	FY2022	FY2023
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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			
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 approval of regulatory impact analysis:			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.			
B) Name and title of department head commenting on the fiscal impacts:			
Sydnee Dickson, State Superintendent			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53E-6-201	Subsection 53E-3-401(4)
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Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	11/02/2020
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10. This rule change MAY become effective on:	11/09/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	09/15/2020
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R277. Education, Administration.**R277-403. School Safety Pilot Program.****R277-403-1. Authority and Purpose.**

(1) This rule is authorized by:

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

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

(2) The purpose of this rule is to:

(a) create the school safety pilot program;

(b) establish grant eligibility requirements for the schools safety pilot program;

(c) create an application process; and

(d) establish reporting requirements.

R277-403-2. Definitions.

(1) "CSTAG" means the Comprehensive School Threat Assessment Guidelines adopted by the board as the evidence-based school threat assessment tool.

(2) "SafeUT" means the same as the term is used in Subsection 53B-17-1202.

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

(1) Subject to legislative appropriation, an LEA may apply for a three-year school safety pilot program grant.

(2) An LEA's application shall contain the following:

(a) a budget proposal for the use of funds including how the LEA will increase school safety measures;

(b) a narrative as to why the LEA should be selected for the school safety pilot program including:

(i) number of disciplinary actions;

(ii) number of threatening behaviors; and

(iii) other evidence demonstrating need.

(c) which school within the LEA will participate in the school safety pilot program;

(d) how many staff members within the LEA are trained in CSTAG;

(e) if the participating school within the LEA has a multi-disciplinary team; and

(f) evidence of the LEA's participating school's:

(i) relationship with local law enforcement;

(ii) relationship with the local mental health authority; and

(iii) implementation of SafeUT;

(3) An LEA's application shall be scored and ranked based upon the following:

(a) the quality of the LEA's overall budget proposal and application as described in Subsection (2); and

(b) an LEA's participating school's geographic and student diversity including:

(i) urban student settings;

(ii) suburban student settings; and

(iii) rural student settings.

(4) The Superintendent may choose which school shall be the participating school if more than one school is prioritized by the LEA to participate.

R277-403-4. Performance Measures and Reporting.

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

(a) complete a conditions and resources assessment to create a school safety measurement baseline;

(b) hold a semi-annual meeting with the Superintendent to discuss implementation and progress of the school safety pilot program within the LEA;

(c) attend professional development opportunities provided by the Superintendent; and

(d) share relevant aggregated school safety measure as requested by the Superintendent.

(2) An LEA shall submit to the Superintendent an annual progress report by the date and in a manner prescribed by the Superintendent.

(3) The annual progress report shall report on all performance measures and data requested by the Superintendent.

(4) If an LEA that receives a school safety pilot program is found to be non-compliant with state law, the LEA shall be removed from the remainder of the three-year pilot program.

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

(1) An LEA may receive up to the LEA's requested amount not to exceed \$37,500 annually for up to three years on a reimbursement basis for one participating school.

(2) An LEA shall use funds only for the purposes specified in the LEA's budget provided in the LEA's application.

(3) An LEA may submit a request to amend the LEA's budget proposal to the Superintendent.

(4) An LEA may not use funds for:

(a) purchase of property;

(b) new equipment;

(c) supplanting existing funding from any source;

(d) salaries and benefits of any employee;

(e) maintenance of current equipment; or

(f) travel expenses unless for approved out of state professional development.

KEY: school safety, grant program, pilot

Date of Enactment or Last Substantive Amendment: 2020

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R277-407	Filing No. 53076
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Agency Information

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

General Information

2. Rule or section catchline:
R277 407. School Fees
3. Purpose of the new rule or reason for the change:
The amendments to Board Rule R277-407 are being made related to H.B. 80 passed in the 2020 General Session.
4. Summary of the new rule or change:
The updates to Board Rule R277-407 include amendments to the definitions of "co-curricular activity" and "extracurricular activity," and adds the definition for "curricular activity." Also, the changes made in Section

R277-407-6 include updates to the fee schedule and in Section R277-407-14 updates were made to the fee waiver reporting requirements.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The changes in this amendment are to align rule with the statutory changes found in H.B. 80 and H.B. 391 (2020), as well as to improve clarity in this rule.

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The changes in this amendment are to align rule with the statutory changes found in H.B. 80 and H.B. 391 (2020), as well as to improve clarity in this rule.

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The changes in this amendment are to align rule with the statutory changes found in H.B. 80 and H.B. 391 (2020), as well as to improve clarity in this rule.

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The changes in this amendment are to align this rule with the statutory changes found in H.B. 80 and H.B. 391 (2020), as well as to improve clarity in this rule.

F) Compliance costs for affected persons:

There are no expected independent compliance costs for affected persons. The changes in this amendment are to align this rule with the statutory changes found in H.B. 80 and H.B. 391 (2020), as well as to improve clarity in 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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses,

they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53G-7-504	Subsection 53G-7-503(2)
Subsection 53E-3-401(4)		

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	09/15/2020
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R277. Education, Administration.**R277-407. School Fees.****R277-407-1. Authority and Purpose.**

- (1) This rule is authorized under:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Article X, Section 2 of the Utah Constitution, which provides that:
 - (i) public elementary schools shall be free; and
 - (ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;
 - (c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
 - (d) Subsection 53G-7-503(2), which requires the Board to adopt rules regarding student fees; and
 - (e) Subsection 53G-7-504 which authorizes waiver of fees for eligible students with appropriate documentation.
- (2) This rule also serves to comply with the order arising from the Permanent Injunction issued in Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).
- (3) The purpose of this rule is to:
- (a) permit the orderly establishment of a system of reasonable fees;
 - (b) provide adequate notice to students and families of fees and fee waiver requirements; and
 - (c) prohibit practices that would:
 - (i) exclude those unable to pay from participation in school-sponsored activities; or
 - (ii) create a burden on a student or family as to have a detrimental impact on participation.

R277-407-2. Definitions.

- (1) "Co-curricular activity" means ~~[an activity, course, or program, outside of school hours, that also includes a required regular school day program or curriculum]~~ the same as that term is defined in Section 53G-7-501.
- (2) "Curricular activity" means the same as that term is defined in Section 53G-7-501.
- ~~[(2)](3) "Extracurricular activity" means the same as that term is defined in Section 53G-7-501[an activity or program for students, outside of the regular school day, that:~~
- ~~(a) is sponsored, recognized, or sanctioned by an LEA; and~~
 - ~~(b) supplements or complements, but is not part of, the LEA's required program or regular curriculum].~~
- ~~[(3)](4)(a) "Fee" means something of monetary value requested or required by an LEA as a condition to a student's participation in an activity, class, or program provided, sponsored, or supported by a school.~~
- (b) "Fee" includes money or something of monetary value raised by a student or the student's family through fundraising.
- ~~[(4)](5)(a) "Fundraiser," "fundraising," or "fundraising activity" means an activity or event provided, sponsored, or supported by a school that uses students to generate funds to raise money to:~~
- ~~(i) provide financial support to a school or any of the school's classes, groups, teams, or programs; or~~
 - ~~(ii) benefit a particular charity or for other charitable purposes.~~
- (b) "Fundraiser," "fundraising," or "fundraising activity" may include:
- (i) the sale of goods or services;

- (ii) the solicitation of monetary contributions from individuals or businesses; or
 - (iii) other lawful means or methods that use students to generate funds.
- (c) "Fundraiser," "fundraising," or "fundraising activity" does not include an alternative method of raising revenue without students.
- ~~[(5)](6) "Group fundraiser" or "group fundraising" means a fundraising activity where the money raised is used for the benefit of the group, team, or organization.~~
- ~~[(6)](7) "Individual fundraiser" or "individual fundraising" means a fundraising activity where money is raised by each individual student to pay the individual student's fees.~~
- ~~[(7)](8)(a) "Instructional equipment" means an activity, course, or program-related tool or instrument that:~~
- ~~(i) is required for a student to use as part of an [secondary] activity, course, or program in a secondary school;~~
 - ~~(ii) typically becomes the property of the student upon exiting the activity, course, or program; and~~
 - ~~(iii) is subject to fee waiver.~~
- (b) "Instructional equipment" includes:
- (i) shears or styling tools;
 - (ii) a band instrument;
 - (iii) a camera;
 - (iv) a stethoscope; and
 - (v) sports equipment, including a bat, mitt, or tennis racquet.
- (c) "Instructional equipment" does not include school equipment.
- ~~[(8)](9)(a) "Instructional supply" means a consumable or non-reusable supply that is necessary for a student to use as part of an [secondary] activity, course, or program in a secondary school.~~
- (b) "Instructional supply" includes:
- (i) prescriptive footwear;
 - (ii) brushes or other art supplies, including clay, paint, or art canvas;
 - (iii) wood for wood shop;
 - (iv) Legos for Lego robotics;
 - (v) film; and
 - (vi) filament used for 3D printing.
- ~~[(9)](10) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~
- ~~[(10)](11) "Noncurricular club" has the same meaning as that term is defined in Section 53G-7-701.~~
- ~~[(11)](12) "Non-waivable charge" means a cost, payment, or expenditure that:~~
- ~~(a) is a personal discretionary charge or purchase, including:~~
 - ~~(i) a charge for insurance, unless the insurance is required for a student to participate in an activity, class, or program;~~
 - ~~(ii) a charge for college credit related to the successful completion of:~~
 - ~~(A) a concurrent enrollment class; or~~
 - ~~(B) an advanced placement examination; or~~
 - ~~(iii) except when requested or required by an LEA, a charge for a personal consumable item such as a yearbook, class ring, letterman jacket or sweater, or other similar item;~~
 - ~~(b) is subject to sales tax as described in Utah State Tax Commission Publication 35, Sales Tax Information for Public and Private Elementary and Secondary Schools; or~~
 - ~~(c) by Utah Code, federal law, or Board rule is designated not to be a fee, including:~~
 - ~~(i) a school uniform as provided in Section 53G-7-801;~~
 - ~~(ii) a school lunch; or~~

NOTICES OF PROPOSED RULES

(iii) a charge for a replacement for damaged or lost school equipment or supplies.

~~[(42)](13)~~(a) "Provided, sponsored, or supported by a school" means an activity, class, program, fundraiser, club, camp, clinic, or other event that:

(i) is authorized by an LEA or school, according to local education board policy; or

(ii) satisfies at least one of the following conditions:

(A) the activity, class, program, fundraiser, club, camp, clinic, or other event is managed or supervised by an LEA or school, or an LEA or school employee in the employee's school employment capacity;

(B) the activity, class, program, fundraiser, club, camp, clinic, or other event uses, more than inconsequentialy, the LEA or school's facilities, equipment, or other school resources; or

(C) the activity, class, program, fundraising event, club, camp, clinic, or other event is supported or subsidized, more than inconsequentialy, by public funds, including the school's activity funds or minimum school program dollars.

(b) "Provided, sponsored, or supported by a school" does not include an activity, class, or program that meets the criteria of a noncurricular club as described in Title 53G, Chapter 7, Part 7, Student Clubs.

~~[(43)](14)~~(a) "Provision in lieu of fee waiver" means an alternative to fee payment or waiver of fee payment.

(b) "Provision in lieu of fee waiver" does not include a plan under which fees are paid in installments or under some other delayed payment arrangement.

~~[(44)](15)~~ "Regular school day" has the same meaning as the term "school day" described in Section R277-419-2.

~~[(45)](16)~~ "Requested or required by an LEA as a condition to a student's participation" means something of monetary value that is impliedly or explicitly mandated or necessary for a student, parent, or family to provide so that a student may:

(a) fully participate in school or in a school activity, class, or program;

(b) successfully complete a school class for the highest grade; or

(c) avoid a direct or indirect limitation on full participation in a school activity, class, or program, including limitations created by:

(i) peer pressure, shaming, stigmatizing, bullying, or the like; or

(ii) withholding or curtailing any privilege that is otherwise provided to any other student.

~~[(46)](17)~~ "School day" has the same meaning as defined in R277-419-2.

~~[(47)](18)~~(a) "School equipment" means a durable school-owned machine, equipment, or tool used by a student as part of an ~~[secondary]~~ activity, course, or program in a secondary school.

(b) "School equipment" includes a saw~~[-machine, and]~~ or 3D printer.

~~[(48)](19)~~(a) "Something of monetary value" means a charge, expense, deposit, rental, fine, or payment, regardless of how the payment is termed, described, requested or required directly or indirectly, in the form of money, goods or services.

(b) "Something of monetary value" includes:

(i) charges or expenditures for a school field trip or activity trip, including related transportation, food, lodging, and admission charges;

(ii) payments made to a third party that provide a part of a school activity, class, or program;

(iii) classroom supplies or materials; and

(iv) a fine, except for a student fine specifically approved by an LEA for:

(A) failing to return school property;

(B) losing, wasting, or damaging private or school property through intentional, careless, or irresponsible behavior; or

(C) improper use of school property, including a parking violation.

~~[(49)](20)~~(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.

(b) "Student supplies" include:

(i) pencils;

(ii) paper;

(iii) notebooks;

(iv) crayons;

(v) scissors;

(vi) basic clothing for healthy lifestyle classes; and

(vii) similar personal or consumable items over which a student retains ownership.

(c) "Student supplies" does not include items listed in Subsection ~~[(48)](20)~~(b) if the requirement from the school for the student supply includes specific requirements such as brand, color, or a special imprint in order to create a uniform appearance not related to basic function.

~~[(20)](21)~~ "Supplemental kindergarten" means an LEA program for students in kindergarten who voluntarily elect to receive additional hours of instruction beyond the LEA's regular school day for kindergarten students for an additional fee.

~~[(21)](22)~~ "Supplemental Security Income for children with disabilities" or "SSI" means a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

~~[(22)](23)~~ "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

~~[(23)](24)~~(a) "Textbook" means instructional material necessary for participation in an activity, course or program, regardless of the format of the material.

(b) "Textbook" includes:

(i) hardcopy book or printed pages of instructional material, including a consumable workbook;

(ii) computer hardware, software, or digital content; and

(iii) the maintenance costs of school equipment.

(c) "Textbook" does not include:

(i) instructional equipment; or

(ii) instructional supplies.

~~[(24)](25)~~ "Waiver" means a full release from the requirement of payment of a fee and from any provision in lieu of fee payment.

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

(1) No fee may be charged in kindergarten through grade six for:

(a) materials;

(b) textbooks;

(c) supplies, except for student supplies described in Subsection (6); or

(d) any class or regular school day activity, including assemblies and field trips.

(2)(a) An LEA may charge a fee in connection with an activity, class, or program provided, sponsored, or supported by a school for a student in a secondary school that takes place during the regular school day if the fee is approved as provided in this R277-407.

(b) All fees are subject to the fee waiver provisions of Section R277-407-8.

(3)(a) Notwithstanding, Subsection (1) and except as provided in Subsection (3)(b), a school may charge a fee to a student in grade six if the student attends a school that includes any of grades seven through twelve.

(b) A school that provides instruction to students in grades other than grades six through twelve may not charge fees for grade six unless the school follows a secondary model of delivering instruction to the school's grade six students.

(c) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from grade six students and that the fees are subject to waiver.

(4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver provisions of Rule R277-407-8.

(5)(a) In project related courses, projects required for course completion shall be included in the course fee.

(b) A school may require a student at any grade level to provide materials or pay for an additional discretionary project if the student chooses a project in lieu of, or in addition to a required classroom project.

(c) A school shall avoid allowing high cost additional projects, particularly if authorization of an additional discretionary project results in pressure on a student by teachers or peers to also complete a similar high cost project.

(d) A school may not require a student to select an additional project as a condition to enrolling, completing, or receiving the highest possible grade for a course.

(6) An elementary school or elementary school teacher may provide to a student's parent or guardian, a suggested list of student supplies for use during the regular school day so that a parent or guardian may furnish, on a voluntary basis, student supplies for student use, provided that, in accordance with Section 53G-7-503, the following notice is provided with the list:

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

(7) A school may require a secondary student to provide student supplies, subject to the provisions of Section R277-407-8.

(8) Except as provided in Subsection (9), if a school requires special shoes or items of clothing that meet specific requirements, including requesting a specific ~~color, style, brand,~~ fabric, or imprints, the cost of the special shoes or items of clothing are:

- (a) considered a fee; and
- (b) subject to fee waiver.

(9) As provided in Subsection 53G-7-802(4), an LEA's school uniform policy, including a requirement for a student to wear a school uniform, is not considered a fee for either an elementary or a secondary school if the LEA's school uniform policy is consistent with the requirements of Title 53G, Chapter 7, Part 8, School Uniforms.

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

(1) A school may charge a fee, subject to the provisions of Section R277-407-8, in connection with any school-sponsored activity, that does not take place during the regular school day, regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

(2) A fee related to a co-curricular or extracurricular activity may not exceed the maximum fee amounts for the co-curricular or extracurricular activity adopted by the LEA governing board as described in Subsection R277-407-6(3).

(3) A school may only collect a fee for an activity, class, or program provided, sponsored, or supported by a school consistent with LEA policies and state law.

(4) An LEA that provides, sponsors, or supports an activity, class, or program outside of the regular school day or school calendar is subject to the provisions of this rule regardless of the time or season of the activity, class, or program.

(5)(a) An LEA may charge a fee related to a student's enrollment in supplemental kindergarten.

(b) An LEA's fee for supplemental kindergarten described in Subsection (5)(a) is subject to fee waiver.

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

Fees for the following are waivable:

- (1) an activity, class, or program that is:
 - (a) primarily intended to serve school-age children; and
 - (b) taught or administered, more than inconsequentially, by a school employee as part of the employee's assignment;
- (2) an activity, class, or program that is explicitly or implicitly required:

(a) as a condition to receive a higher grade, or for successful completion of a school class or to receive credit, including a requirement for a student to attend a concert or museum as part of a music or art class for extra credit; or

(b) as a condition to participate in a school activity, class, program, or team, including, a requirement for a student to participate in a summer camp or clinic for students who seek to participate on a school team, such as cheerleading, football, soccer, dance, or another team;

(3) an activity or program that is promoted by a school employee, such as a coach, advisor, teacher, school-recognized volunteer, or similar person, during school hours where it could be reasonably understood that the school employee is acting in the employee's official capacity;

(4) an activity or program where full participation in the activity or program includes:

- (a) travel for state or national educational experiences or competitions;
- (b) debate camps or competitions; or
- (c) music camps or competitions;
- (5) a concurrent enrollment, CTE, or AP course; and
- (6) the cost to access software, digital content, or other instructional materials required as part of an activity, course or program.

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

(1) An LEA, school, school official, or employee may not charge or assess a fee or request or require something of monetary value in connection with an activity, class, or program provided, sponsored, or

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supported by, and including for a co-curricular or extracurricular activity, unless the fee:

(a) has been set and approved by the LEA's governing board;
(b) is equal to or less than the maximum fee amount established by the LEA governing board as described in Subsection (4); and

(c) is included in an approved fee schedule or notice in accordance with this rule.

(2)(a) If an LEA charges a fee, on or before April 1 and in consultation with stakeholders, the LEA governing board shall annually adopt a fee schedule and fee policies for the LEA in a regularly scheduled public meeting.

(b) Before approving the LEA's fee schedule described in this Section, an LEA shall provide an opportunity for the public to comment on the proposed fee schedule during a minimum of two public LEA governing board meetings.

(c) An LEA shall:

(i) provide public notice of the meetings described in Subsections (2)(a) and (b) in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and

(ii) encourage public participation in the development of fee schedules and waiver policies.

(d) In addition to the notice requirements of Subsection(2)(c), an LEA shall provide notice to parents and students of the meetings described in Subsections (2)(a) and (b) using the same form of communication regularly used by the LEA to communicate with parents, including notice by e-mail, text, flyer, or phone call.

(e) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, in accordance with Section 52-4-203.

(3) After the fee schedule described in Subsection (2)(a) is adopted, an LEA may amend the LEA's fee schedule if the LEA follows the process described in Subsection (2) before approving the amended fee schedule.

(4)(a) As part of an LEA's fee setting process, the LEA shall establish a per student annual maximum fee amount that the LEA's schools may charge a student for the student's participation in all courses, programs, and activities provided, sponsored, or supported by a school for the year.

(b) An LEA shall establish:

(i) a maximum fee amount per student for each activity; and
(ii) a maximum total aggregate fee amount per student per school year.

(c) The amount of revenue raised by a student through an individual fundraiser shall be included as part of the maximum fee amount per student for the activity and maximum total aggregate fee amount per student.

(d) An LEA shall include the total per student amount expected to be received through required group fundraising as part of the maximum fee amount for an activity described in Subsection (4)(b)(i).

(e) An LEA may establish a reasonable number of activities, courses, or programs that will be covered by the annual maximum fee amount described in Subsection (4)(a).

(5) As part of an LEA's fee setting process described in this Section, the LEA may review and consider the following per school:

- (a) the school's cost to provide the activity, class, or program;
- (b) the school's student enrollment;
- (c) the median income of families:
- (i) within the school's boundary; and
- (ii) enrolled in the school;

(d) the number and monetary amount of fee waivers, designated by individual fee, annually granted within the prior three years;

(e) the historical participation and school interest in certain activities;

(f) the prior year fee schedule;

(g) the amount of revenue collected from each fee in the prior year;

(h) fund-raising capacity;

(i) prior year community donors; and

(j) other resources available, including through donations and fundraising.

(6)(a) An LEA shall annually provide written notice to a parent or guardian of each student who attends a school within the LEA of all current and applicable fee schedules and fee waiver policies.

(7)(a) If an LEA charges a fee, the LEA shall:

(i) annually publish the LEA's fee waiver policies and fee schedule, including the fee maximums described in Subsection(4), on each of the LEA's schools' publicly available websites;

(ii) annually include a copy of the LEA's fee schedule and fee waiver policies with the LEA's registration materials; and

(iii) provide a copy of the LEA's fee schedule and fee waiver policies to a student's parent who enrolls a student after the initial enrollment period.

(b) If an LEA's student or parent population in a single written language other than English exceeds 20%, the LEA shall also publish the LEA's fee schedule and fee waiver policies in the language of those families.

(c) An LEA representative shall meet personally with each student's parent or family and make available an interpreter for the parent to understand the LEA's fee waiver schedules and policies if:

(i) the student or parent's first language is a language other than English; and

(ii) the LEA hasn't published the LEA's fee schedule and fee waiver policies in the parent's first language.

(8) A notice described in Subsection (6)(a) shall:

(a) be in a form approved by the Board; and

(b) include the following:

(i) for a school serving elementary students:

(A) School Fees Notice for Families of ~~[Children]~~Students in an Elementary School;

(B) Fee Waiver application[s] (Elementary School);

(C) Fee Waiver Decision and Appeals Form; and

(D) the Board's elementary school poster; and

(ii) for a school serving secondary students:

(A) School Fees Notice For Families of Students in a Secondary School;

(B) Fee Waiver Application (Secondary School);

~~(C) Fee Waiver Decision and Appeals Form; [(C) Application for Fee Waivers and Community Service (Secondary School);~~

~~(D) Community Service Assignments and Notice of Appeal Rights;~~

~~(E) Appeal of Community Service Assignment;~~ and

~~[(F)]~~(D) the Board's secondary school poster.

(9)(a) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing an LEA's denial of a fee waiver, as soon as possible before the fee becomes due.

(b) If an LEA denies a student or parent request for a fee waiver, the LEA shall provide the student or parent:

(i) the LEA's decision to deny a waiver; and

(ii) the procedure for the appeal in the form approved by the Board.

(10)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees.

(b) A school may impose a reasonable charge to cover the cost of duplicating, mailing, or transmitting transcripts and other school records.

(c) A school may not charge for duplicating, mailing, or transmitting copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll.

(11) To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

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

(1)(a) A school may not request or accept a donation in lieu of a fee from a student or parent unless the activity, class, or program for which the donation is solicited will otherwise be fully funded by the LEA and receipt of the donation will not affect participation by an individual student.

(b) A donation is a fee if a student or parent is required to make the donation as a condition to the student's participation in an activity, class, or program.

(c) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but all such requests must clearly state that donations and contributions by a student or parent are voluntary.

(2) If an LEA solicits donations, the LEA:

(a) shall solicit and handle donations in accordance with policies established by the LEA; and

(b) may not place any undue burden on a student or family in relation to a donation.

(3) An LEA may raise money to offset the cost to the LEA attributed to fee waivers granted to students through the LEA's foundation.

(4) An LEA shall direct donations provided to the LEA through the LEA's foundation in accordance with the LEA's policies governing the foundation.

(5) If an LEA accepts a donation, the LEA shall prevent potential inequities in schools within the LEA when distributing the donation.

R277-407-8. Fee Waivers.

(1)(a) All fees are subject to waiver.

(b) Fees charged for an activity, class, or program held outside of the regular school day, during the summer, or outside of an LEA's regular school year are subject to waiver.

(c) Non-waivable charges are not subject to waiver.

(2)(a) Except as provided in Subsection (2)(b), beginning with the 2020-21 school year, an LEA may not use revenue collected through fees to offset the cost of fee waivers by requiring students and families who do not qualify for fee waivers to pay an increased fee amount to cover the costs of students and families who qualify for fee waivers.

(b) An LEA may notify students and families that the students and families may voluntarily pay an increased fee amount or provide a donation to cover the costs of other students and families.

(c) For an LEA with multiple schools, the LEA shall distribute the impact of fee waivers across the LEA so that no school carries a disproportionate share of the LEA's total fee waiver burden.

(3) An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

(4) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.

(5) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.

(6) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.

(7) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.

(8)(a) An LEA shall ensure that a fee waiver or other provision in lieu of fee waiver is available to any student whose parent is unable to pay a fee.

(b) A school or LEA administrator shall verify fee waivers consistent with this rule.

(9) An LEA shall submit school fee compliance forms to the Superintendent for each school that affirm compliance with the permanent injunction, consistent with *Doe v. Utah State Board of Education*, Civil No. 920903376 (3rd District 1994).

(10) An LEA shall adopt a fee waiver policy for review and appeal of fee waiver requests which:

(a) provides parents the opportunity to review proposed alternatives to fee waivers;

(b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and

(c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.

(11) An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:

(a) exclude a student from a school, an activity, class, or program that is provided, sponsored, or supported by a school during the regular school day;

(b) refuse to issue a course grade; or

(c) withhold official student records, including written or electronic grade reports, diplomas or transcripts.

(12)(a) A school may withhold student records in accordance with Subsection 53G-8-212(2)(a).

(b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.

(13) A school is not required to waive a non-waivable charge.

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

(1) Subject to the provisions of Subsection (2), an LEA may allow a student to perform service in lieu of a fee, but service in lieu of a fee may not be required.

(2) An LEA may allow a student to perform service in lieu of a fee if:

(a) the LEA establishes a service policy that ensures that a service assignment is appropriate to the:

(i) age of the student;

(ii) physical condition of the student; and

(iii) maturity of the student;

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(b) the LEA's service policy is consistent with state and federal laws, including:

- (i) Section 53G-7-504; and
- (ii) the Federal Fair Labor Standards Act, 29 U.S.C. 201;
- (c) the service can be performed within a reasonable period of time; and

(d) the service is at least equal to the minimum wage for each hour of service.

(3)(a) A student who performs service may not be treated differently than other students who pay a fee.

(b) The service may not create an unreasonable burden for a student or parent and may not be of such a nature as to demean or stigmatize the student.

(4) An LEA shall transfer a student's service credit to:

- (a) another school within the LEA; or
- (b) another LEA upon request of the student.

(5)(a) An LEA may make an installment payment plan available to a parent or student to pay for a fee.

(b) An installment payment plan described in Subsection (5)(a) may not be required in lieu of a fee waiver.

(6) An LEA that charges fees shall adopt policies that include at least the following:

(a) a process for obtaining waivers or pursuing alternatives that is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and families;

(b) a process with no visible indicators that could lead to identification of fee waiver applicants;

(c) a process that complies with the privacy requirements of The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 123g (FERPA);

(d) a student may not collect fees or assist in the fee waiver approval process;

(e) a standard written decision and appeal form is provided to every applicant; and

(f) during an appeal the requirement that the fee be paid is suspended.

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

(1) An LEA governing board shall establish a fundraising policy that includes a fundraising activity approval process.

(2) An LEA's fundraising policy described in Subsection (1):

(a) may not authorize, establish, or allow for required individual fundraising;

(b) may provide optional individual fundraising opportunities for students to raise money to offset the cost of the student's fees;

(c) may allow for required group fundraisers;

(d) may not deny a student membership on a team or group, based on the student's non-participation in a fundraiser;

(e) shall require compliance with the requirements of Rule R277-113 when using alternative methods of raising revenue that do not include students; and

(f) shall include a requirement that a school notify parents of required group fundraising, letting parents and students know how and when specific details, as described in Subsection (3), will be provided.

(3) The specific details described in Subsection (2)(f) shall include a description of the nature of the required group fundraiser and the estimated participation time required of the student or parent for the required group fundraiser.

R277-407-11. Fee Waiver Eligibility.

(1) A student is eligible for fee waiver if an LEA receives verification that:

(a) in accordance with Subsection 53G-7-504(4), based on the family income levels established by the Superintendent as described in Subsection (2);

(b) the student to whom the fee applies receives SSI;

(c) the family receives TANF funding;

(d) the student is in foster care through the Division of Child and Family Services; or

(e) the student is in state custody.

(2) The Superintendent shall annually establish income levels for fee waiver eligibility and publish the income levels on the Board's website.

(3) In lieu of income verification, an LEA may require alternative verification under the following circumstances:

(a) If a student's family receives TANF, an LEA may require [a letter of decision] the student's family to provide to the LEA an electronic copy or screen-shot of the student's family's eligibility determination or eligibility status covering the period for which a fee waiver is sought from the Utah Department of Workforce Services;

(b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;

(c) If a student is in state custody or foster care, an LEA may rely on the youth in care required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

(d) An LEA may not subject a family to unreasonable demands for re-qualification.

(4) A school may grant a fee waiver to a student, on a case by case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.

(5) An LEA may charge a proportional share of a fee or reduced fee if circumstances change for a student or family so that fee waiver eligibility no longer exists.

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

(1) Beginning with the 2022-23 school year, an LEA may not charge a fee for a textbook as provided in Section 53G-7-603, except for a textbook used for a concurrent enrollment or advanced placement course as described in Subsection (2).

(2)(a) An LEA may charge a fee for a textbook used for a concurrent enrollment or advanced placement.

(b) A fee for a textbook used for a concurrent enrollment or advanced placement course is fee waivable as described in Section R277-407-8.

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

(1) An LEA shall follow the general accounting standards described in Rule R277-113 for treatment of fee revenue.

(2) An LEA shall:

(a) establish a spend plan for the revenue collected from each fee charged; and

(b) if the LEA has two or more schools within the LEA, share revenue lost due to fee waivers across the LEA.

(3)(a) A spend plan described in Subsection (2)(a) provides students, parents, and employees transparency by identifying a fee's funding uses.

(b) An LEA or school's spend plan shall identify the needs of the activity, course, or program for the fee being charged and shall include a list or description of anticipated types of expenditures, for the current fiscal year or as carryover for use in a future fiscal year, funded by the fee charged.

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

(b) An LEA that has multiple schools shall establish a procedure to identify and address potential inequities due to the impact of the number of students who receive fee waivers within each of the LEA's schools.

R277-407-14. Fee Waiver Reporting Requirements.

~~[(4)]~~ An LEA shall attach the following to the LEA's annual year end report for inclusion in the Superintendent's annual report:

~~[(a)]~~(1) a summary of:

~~[(i)]~~(a) the number of students in the LEA given fee waivers;

~~[(ii)]~~(b) the number of students who worked in lieu of a waiver;~~and~~

~~[(c)]~~ (c) the number of students denied fee waivers; and

~~[(iii)]~~(d) the total dollar value of student fees waived by the LEA;

~~[(b)]~~(2) a copy of the LEA's fee and fee waiver policies;

~~[(e)]~~(3) a copy of the LEA's fee schedule for students;~~and~~

~~[(d)]~~(4) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian~~[-];~~

~~[(e)]~~(5) a fee waiver compliance form approved by the Superintendent for each school and LEA~~[-];~~

~~[(6)]~~ (6) the total count of fees approved on the LEA schedule; and

~~[(7)]~~ (7) the total dollar amount of all fees charged to students within all schools within the LEA.

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

(1) The Superintendent shall provide ongoing training, informational materials, and model policies, as available, for use by LEAs.

(2) The Superintendent shall provide online training and resources for LEAs regarding:

(a) an LEA's fee approval process;

(b) LEA notification requirements;

(c) LEA requirements to establish maximum fees;

(d) fundraising practices;

(e) fee waiver eligibility requirements, including requirements to maintain student and family confidentiality; and

(f) community service or fundraising alternatives for students and families who qualify for fee waivers.

(3) An LEA governing board shall annually review the LEA's policies on school fees, fee waivers, fundraising, and donations.

(4) An LEA shall develop a plan for, at a minimum, annual training of LEA and school employees on fee related policies enacted by the LEA specific to each employee's job function.

R277-407-16. Enforcement.

(1) The Superintendent shall monitor LEA compliance with this rule:

(a) through the compliance reports provided in Section R277-407-14; and

(b) by such other means as the Superintendent may reasonably request at any time.

(2) If an LEA fails to comply with the terms of this rule or request of the Superintendent, the Superintendent shall send the LEA a first written notice of non-compliance, which shall include a proposed corrective action plan.

(3) Within 45 days of the LEA's receipt of a notice of non-compliance, the LEA shall:

(a) respond to the allegations of noncompliance described in Subsection (2); and

(b) work with the Superintendent on the Superintendent's proposed corrective action plan to remedy the LEA's noncompliance.

(4)(a) Within fifteen days after receipt of a proposed corrective action plan described in Subsection (3)(b), an LEA may request an informal hearing with the Superintendent to respond to allegations of noncompliance or to address the appropriateness of the proposed corrective action plan.

(b) The form of an informal hearing described in Subsection (4)(a) shall be as directed by the Superintendent.

(5) The Superintendent shall send an LEA a second written notice of non-compliance and request for the LEA to appear before a Board standing committee if:

(a) the LEA fails to respond to the first notice of non-compliance within 60 days; or

(b) the LEA fails to comply with a corrective action plan described in Subsection (3)(b) within the time period established in the LEA's corrective action plan.

(6) If an LEA that failed to respond to a first notice of non-compliance receives a second written notice of non-compliance, the LEA may:

(a)(i) respond to the notice of non-compliance described in Subsection (5); and

(ii) work with the Superintendent on a corrective action plan within 30 days of receiving the second written notice of non-compliance; or

(b) seek an appeal as described in Subsection (8)(b).

(7) If an LEA that failed to respond to a first notice of non-compliance fails to comply with either of the options described in Subsection (6), the Superintendent shall impose one of the financial consequences described in Subsection (10).

(8)(a) Prior to imposing a financial consequence described in Subsection (10), the Superintendent shall provide an LEA thirty days' notice of any proposed action.

(b) The LEA may, within fifteen days after receipt of a notice described in Subsection (8)(a), request an appeal before the Board.

(9) If the LEA does not request an appeal described in Subsection (8)(b), or if after the appeal the Board finds that the allegations of noncompliance are substantially true, the Superintendent may continue with the suggested corrective action, formulate a new form of corrective action or additional terms and conditions which must be met and may proceed with the appropriate remedy which may include an order to return funds improperly collected.

(10) A financial consequence may include:

(a) requiring an LEA to repay an improperly charged fee, commensurate with the level of non-compliance;

(b) withholding all or part of an LEA's monthly Minimum School Program funds until the LEA comes into full compliance with the corrective action plan; and

(c) suspending the LEA's authority to charge fees for an amount of time specified by the Superintendent or Board in the determination.

(11) The Board's decision described in Subsection (9) is final and no further appeals are provided.

R277-407-17. Enforceable Date.

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

KEY: education, school fees

Date of Enactment or Last Substantive Amendment: ~~December 10, 2019~~ 2020

NOTICES OF PROPOSED RULES

Notice of Continuation: July 19, 2017

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.):	R277-528	Filing No. 53077
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Agency Information

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

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

General Information

2. Rule or section catchline:
R277-528. Use of Public Education Job Enhancement Program (PEJEP) Funds
3. Purpose of the new rule or reason for the change:
The sunset date was 07/01/2020 in the Utah Code for the Public Education Job Enhancement Program (PEJEP).
4. Summary of the new rule or change:
This program has been dissolved, therefore, this rule is not necessary and being repealed in its entirety.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The program sunset in the Utah Code and, therefore, this rule is no longer necessary.

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The program sunset in the Utah Code and, therefore, this rule is no longer necessary.

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The program sunset in the Utah Code and, therefore, this rule is no longer necessary.

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The program sunset in the Utah Code and, therefore, this rule is no longer necessary.

F) Compliance costs for affected persons:

There are no expected independent compliance costs for affected persons. The program sunset in the Utah Code and, therefore, this rule is no longer necessary.

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

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

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Subsection 53F-2-514(5)(b)	Subsection 53F-2-514(3)(c)(ii)
Subsection 53E-3-401(4)		

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	09/15/2020
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R277. Education, Administration.

~~[R277-528. Use of Public Education Job Enhancement Program (PEJEP) Funds.~~

~~**R277-528-1. Authority and Purpose.**~~

~~_____ (1) This rule is authorized by:~~

~~_____ (a) Article X, Section 3 of the Utah Constitution, which places general control and supervision of public education in the Board;~~

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

~~_____ (c) Subsection 53F-2-514(3)(c)(ii) which requires the Board to make a rule that provides for repayment of a portion of the initial payment by the teacher if the teacher fails to complete the university program with exceptions; and~~

~~_____ (d) Subsection 53F-2-514(5)(b) which directs the Board to develop criteria for PEJEP awards.~~

NOTICES OF PROPOSED RULES

~~(2) The purpose of this rule is to provide standards and procedures for ongoing participation in PEJEP.~~

R277-528 2. Definitions.

~~(1) "Council for Accreditation of Educator Preparation" or "(CAEP)" is a nationally recognized organization that accredits professional teacher education programs in institutions offering baccalaureate and graduate degrees for K-12 teachers.~~

~~(2) "PEJEP award" means an award granted to an eligible PEJEP participant pursuant to Section 53F-2-514 and R277-528.~~

~~(3) "PEJEP Participant" means a qualified teacher with an approved application pursuant to Section 53F-2-514 and R277-528;~~

~~(4) "Public Education Job Enhancement Program (PEJEP)" means the program authorized under Subsection 53F-2-514(2).~~

R277-528 3. PEJEP Participants.

~~(1) If an application is filed on behalf of a qualified teacher pursuant to Subsection 53F-2-514(3)(a) and approved by the Superintendent, the PEJEP participant shall:~~

~~(a) commit to required courses for advanced degrees and endorsements consistent with Subsection 53F-2-514(2);~~

~~(b) provide documentation annually, by October 1, to the Superintendent, demonstrating full time employment as an educator during the previous school year;~~

~~(c) notify the Superintendent of the participant's satisfaction of the participant's four year teaching commitment as described by Subsection 53F-2-514(3); and~~

~~(d) provide required documentation to receive textbook reimbursements which will be reimbursed directly to the PEJEP participant by the Superintendent.~~

~~(2) If a PEJEP participant changes employers, leaves public education, or moves from the state, the Superintendent may require repayment or partial repayment, consistent with Subsection 53F-2-514(3).~~

R277-528 4. University Program Eligibility.

~~(1) A university program that provides licensure and endorsements in the areas outlined in Subsection 53F-2-514(2) and meets the criteria of this section shall be eligible to receive tuition reimbursement for a PEJEP participant.~~

~~(2) To be an eligible university program, the university shall:~~

~~(a) be a Utah institution of higher education;~~

~~(b) provide documentation to the Superintendent of the university's program accreditation by CAEP; and~~

~~(c) provide to the Superintendent an overview of the university's endorsement program including:~~

~~(i) program requirements and eligibility standards for participants;~~

~~(ii) a screening process for prospective participants;~~

~~(iii) course syllabi; and~~

~~(iv) a yearly evaluation of the program.~~

~~(3) The Superintendent may determine the eligibility of a university's program on an annual basis.~~

~~(4) The Superintendent shall reimburse tuition directly to an eligible university's program for a PEJEP participant.~~

R277-528 5. Evaluation.

~~(1) The Superintendent shall maintain records of PEJEP award participants.~~

~~(2) The Superintendent shall prepare an annual report for the Board that demonstrates use of PEJEP funding consistent with Section 53F-2-514 and:~~

~~**KEY: educators, awards**~~

~~**Date of Enactment or Last Substantive Amendment: August 19, 2019**~~

~~**Notice of Continuation: February 8, 2019**~~

~~**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53F-2-514; 53E-3-401(4)**~~

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.): R277-721

Filing No. 53078

Agency Information

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

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

General Information

2. Rule or section catchline:

R277-721. PRIME Pilot Program

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

This rule is being created as a result of H.B. 336, Concurrent Enrollment Certificate Pilot, which passed in the 2020 General Session. The bill creates a pilot program to create different levels of certification for a student who completes the required concurrent enrollment courses outlined in the bill. The certifications are transferable to all public institutions governed by Board of Regents.

4. Summary of the new rule or change:

This rule establishes the pilot program grant requirements and application process.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. This new rule is a result of H.B. 336 (2020).

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This new rule is a result of H.B. 336 (2020).

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This new rule is a result of H.B. 336 (2020).

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

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

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This new rule is a result of H.B. 336 (2020).

F) Compliance costs for affected persons:

There are no expected independent compliance costs for affected persons. The new rule is a result of H.B. 336 (2020).

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

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

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53E-10-309	Subsection 53E-3-401(4)
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Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	11/02/2020
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10. This rule change MAY become effective on:	11/09/2020
--	------------

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	09/15/2020
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R277. Education, Administration.**R277-721. PRIME Pilot Program.****R277-721-1. Authority and Purpose.**

(1) This rule is authorized by:

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

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

(c) Section 53E-10-309, which requires the Board to make rules to establish the requirements for the Utah Prime Pilot Program.

(2) The purpose of this rule is to:

(a) establish eligibility requirements for a participating LEA; and

(b) create an application process for LEAs to apply for the pilot program.

R277-721-2. Definitions.

(1) "Career and technical education" or "CTE" means the same as the term is defined in Subsection 53B-1-101.5(3).

(2) "Concurrent enrollment" or "CE" means the same as the term is defined in Subsection R277-701-2(2).

(3) "Program" means the PRIME pilot program as described in Subsection 53E-10-309(7).

(4) "Underrepresented students" means the same as the term is defined in Subsection R277-707-2(6).

(5) "Technical college" means the same as the term is defined in Subsection 53B-1-101.5(7).

(6) "Utah System of Higher Education" or "USHE" means the same as the term is defined in Section 53B-1-102.

R277-721-3. PRIME Program--Eligibility, Application, and Review Committee.

(1) Subject to legislative appropriation, all LEAs may apply for a PRIME pilot program grant.

(2) An LEA's application shall contain the following:

(a) a budget proposal for the use of funds;

(b) how the LEA will increase access to courses for underrepresented students;

(c) a list of the current CE and CTE courses the LEA offers including courses as described in Subsections 53E-10-309(2), (3), and (4);

(d) a detailed plan of implementation including current gaps the PRIME pilot program will address; and

(e) requisite baseline data established by the Superintendent.

(3) An LEA's application shall be scored and ranked based upon the quality of the LEA's overall budget proposal and application as described in Subsection (2).

(4) The Superintendent shall create a PRIME program advisory committee.

(5) The advisory committee shall include the following members as non-voting chairs:

(a) The Superintendent or designee; and

(b) The Commissioner of Higher Education or designee.

(6) In addition to the chairs described in Subsection (5), the Board shall appoint seven additional members to the committee including:

(a) an early college specialist;

(b) a CTE coordinator;

(c) a technical college representative;

(d) a representative of USHE;

(e) a member of the State Charter School Board;

(f) an early college alliance designee; and

(g) a secondary LEA designee.

(7) The advisory committee shall:

(a) review, score, and rank the LEA applications as described in Subsection (3); and

(b) award PRIME pilot program grants:

(i) based upon the score and rank; and

(ii) as described in Subsection 53E-10-309(7)(b).

R277-721-4. Performance Measures and Reporting.

(1) An LEA that receives a PRIME pilot program grant shall submit to the Superintendent an annual progress report by June 30 that includes:

(a) demographic data of participating students compared to overall LEA demographics;

(b) growth of the program compared to the program baseline data submitted in the LEA's application;

(c) how the LEA has closed access gaps with underrepresented students;

(d) itemized budgetary expenditures; and

(e) overall effectiveness of the program.

(2) The Superintendent shall incorporate data regarding certificates awarded within each participating LEA into the legislative report described in Subsection 53E-10-309(7)(d).

(3) An LEA may request a complete list of awarded certificates from the Superintendent.

R277-721-5. Distribution and Use of Funds.

(1) An LEA may receive up to the LEA's requested amount not to exceed \$100,000 annually for two years.

(2) An LEA may not use funds for:

(a) non CTE or CE courses;

(b) to supplant local funds;

(c) indirect costs charged by the LEA;

(d) expenditures not listed in the LEA's proposed budget.

KEY: PRIME, concurrent enrollment, CTE, early college
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-4

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R277-921	Filing No. 53079
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Agency Information

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

General Information

2. Rule or section catchline:
R277-921. Strengthening College and Career Readiness Program
3. Purpose of the new rule or reason for the change:
This rule is being amended to update the existing language for counselor certification to better correspond with updates to the licensing Rule R277-306. This will allow for consistency between both rules regarding expectations for counseling licensing and certification. This rule also updates the standards for school counselor competencies to be demonstrated by someone in a counselor preparatory program.

4. Summary of the new rule or change:

This rule amendment adds relevant reference to Section R277-306-6 throughout this rule for school counselor licensing. This rule also incorporates by reference the College and Career Readiness Certificate Program Standards Document that outlines the standards and competencies a school counselor needs to meet to be certified. Technical edits are also made throughout.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The amendments improve consistency among rules governing school counseling licensing and certification and update the standards for school counselor competencies.

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments improve consistency among rules governing school counseling licensing and certification and update the standards for school counselor competencies.

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The amendments improve consistency among rules governing school counseling licensing and certification and update the standards for school counselor competencies.

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

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

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

This rule change is not expected to have material fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments are primarily technical and clarifying in nature. The amendments improve consistency among rules governing school counseling licensing and certification and update the standards for school counselor competencies.

F) Compliance costs for affected persons:

There are no expected independent compliance costs for affected persons. The amendments improve consistency among rules governing school counseling licensing and certification and update the standards for school counselor competencies.

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

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

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

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

B) Name and title of department head commenting on the fiscal impacts:

Sydnee Dickson, State Superintendent

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Article X, Section 3	Section 53F-5-204	Subsection 53E-3-401(4)
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Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	College and Career Readiness Certificate Program Standards Document
Publisher	Utah State Board of Education – Career and Technical Education
Date Issued	September 3, 2020
Issue, or version	Version 1

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in

the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	09/15/2020
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R277. Education, Administration.

R277-921. Strengthening College and Career Readiness Program.

R277-921-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests the general control and supervision of the public education system in the Board;
 - (b) Subsection 53E-3-401(4), which authorizes the Board to adopt rules in accordance with its responsibilities; and
 - (c) Section 53F-5-204, which requires the Board to make rules regarding the program.
- (2) The purpose of this rule is to establish:
 - (a) procedures and criteria for applying for and awarding a grant; and
 - (b) reporting requirements for a grantee.

R277-921-2. Definitions.

- (1) "Certificate" means the certificate described in Subsection 53F-5-204(3)(a) that a school counselor may receive through participation in the program.
- (2) "Grant" means payment of a course fee for a course required to earn the certificate.
- (3) "Program" means the Strengthening College and Career Readiness Program created in Section 53F-5-204.
- (4) "School counselor" means a person who:
 - (a) holds or is applying for a Utah School Counselor License as described in Subsection R277-306-6;
 - ~~(b) has a master's degree or higher from an accredited institution;~~
 - (e)b is an employee of an LEA who provides counseling and information to a student about an educational or career choice;
 - (d)c has received an evaluation as effective or higher through the LEA's evaluation system; and
 - (e)d is recommended to participate in the program by a supervisor.

R277-921-3. Incorporation of College and Career Readiness Certificate Program Standards Document.

- (1)(a) This rule incorporates by reference the College and Career Readiness Certificate Program Standards Document, September 3, 2020, which lists approved standards of each component of the College and Career Readiness Certificate.
- (b) A school counselor preparation program shall provide opportunities for program applicants, accepted into their programs after January 1, 2020, to successfully demonstrate competencies based on the College and Career Certificate Program Standards.
- (2) A copy of the College and Career Readiness Certificate Program Standards Document is located at:
 - (a) <https://www.school.utah.gov/>; and
 - (b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-921-[3]4. Grant Application.

- (1) Subject to legislative appropriations, ~~[A]~~an LEA may apply for a grant on behalf of a school counselor by submitting an application:
 - (a) provided on ~~[USOE's]~~USBE's website;
 - (b) to the Superintendent; and
 - (c) except as provided in Subsection (2), on or before June 30.
- (2) If the annual appropriation for the program exceeds the grant requests, the Superintendent may extend the deadline specified in Subsection (1)(c) by posting a new deadline on ~~[USOE's]~~USBE's website.

R277-921-[4]5. Procedure and Criteria for Awarding Grant.

- (1) If the grant applications exceed the annual appropriation for the program, the Superintendent shall give preference in awarding a grant to an applicant if:
 - (a) the school where the school counselor works has a state approved ~~[Comprehensive Counseling and Guidance]~~School Counseling Program;
 - (b) the school where the school counselor works meets the school counselor-to-student ratio of 1:350, according to Rule R277-462; and
 - (c) the school counselor is licensed as a school counselor according to ~~[Rule]~~Subsection R277-~~[506]~~306-6.
- (2) A school counselor who fails to complete a course that is paid for by a grant shall repay the course fee to the Superintendent.

R277-921-[5]6. Reporting Requirements for Grantee.

- After completing the course work necessary to receive the certificate, the school counselor shall submit to the Superintendent:
- (1) an action plan to implement the skills developed through earning the certificate to improve students' college and career readiness; and
 - (2) an application that is provided on ~~[USOE's]~~USBE's website to add the certificate to the school counselor's license.

KEY: counseling, grant programs, college and career readiness
Date of Enactment or Last Substantive Amendment: ~~[December 8, 2015]~~2020
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53E-3-401(4); 53F-5-204

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R305-7-104	Filing No. 53072

Agency Information

1. Department:	Environmental Quality	
Agency:	Administration	
Room no.:	Fourth Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R305-7-104. Filing and Service of Notices, Orders, Motions, and Other Papers
3. Purpose of the new rule or reason for the change:
The Utah Department of Environmental Quality (UDEQ) has rulemaking authority under Subsection 19-1-201(1)(d)(ii) to make procedural rules that govern adjudicative proceedings under Section 19-1-301, and special adjudicative proceedings under Section 19-1-301.5. UDEQ has promulgated those rules, codified at Rule R305-7. Subsection R305-7-104(5) governs, in part, the form and timeliness of filings to initiate adjudicative proceedings regarding agency actions. Filing to initiate an adjudication on an agency decision must occur within 30 days of that decision, see Subsections R305-7-203(5) (for petitions for review); and R305-7-303(5) (for requests for agency action). The current rule expressly states that email submission is insufficient to initiate an adjudicative proceeding, see Subsection R305-7-104(5)(a). Therefore, paper submissions that must be filed in person or by mail are currently the only filing option to initiate new adjudicative proceedings.
The UDEQ offices are located in the Multi-Agency State Office Building (MASOB). The MASOB recently opened to the public after six months of closure due to the COVID-19 Pandemic. However, due to ongoing concern with COVID-19, few agency employees currently staff the agency offices and in the future the building may close again to the public if conditions dictate. Consequently, although the current rule requires that those wishing to initiate an adjudicative proceeding must file a paper copy in person, or via an overnight courier service, at MASOB,

they cannot do so at this time because the building has limited staffing and may be, at times, closed to the public. Although filing by U.S. Mail is still an option under the rule, processing of mail may be delayed due to reduced on-site staffing. Nothing in the rule requires a filer to use mail if personal filing is not available and hand-delivery, either in person or via an overnight courier service, are still allowed under the rule.

The closing of the MASOB to the public and both Salt Lake City and Salt Lake County shelter in place orders suggest that allowing people to enter the MASOB and have contact with the limited staff onsite is a threat to public health, safety, or welfare as it might contribute to further spreading of COVID-19. The reason for this closing is to prevent the spread of the virus. Even if the MASOB were open to the public for the limited purposes of complying with the filing requirements of Section R305-7-104 raises the risk that, for example, an asymptomatic carrier of COVID-19 could unwittingly spread the virus to others in MASOB.

UDEQ divisions continue to function and make final agency actions through limited on-site staff and telework. Those final agency decisions trigger the right to seek a legal remedy by initiating adjudicative proceedings.

4. Summary of the new rule or change:

The proposed changes would allow temporary electronic filing of requests for agency action and petitions for review to initiate adjudicative proceedings contesting UDEQ actions.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget, as the state will simply be receiving electronically-filed requests for agency action or petitions for review.
B) Local governments:
None anticipated, as the state is the governmental entity that receives petitions for review or requests for agency action. Should a local government seek to initiate an adjudication, it will result in the marginal savings of not having to send an employee to file in person.
C) Small businesses ("small business" means a business employing 1-49 persons):
Any savings to small businesses will be to those who do not have to incur expenses to travel to the MASOB to file to initiate an adjudicative proceeding.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Any savings to non-small businesses will be to those who do not have to incur expenses to travel to the MASOB to

file to initiate an adjudicative proceeding.

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

Any savings will be to those who do not have to incur expenses to travel to the MASOB to file to initiate an adjudicative proceeding.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons as compliance with the rule requires minimal work.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved of this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This rule amendment is expected to help to make the filing to initiate an adjudicative proceeding easier on businesses and therefore will have no negative fiscal impact. Conversely, savings may be seen since they will no longer have to travel to the MASOB building to file.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 19-1-201(1)(d)(ii)	Section 63G-3-304	
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Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	L. Scott Baird, Executive Director	Date:	09/14/2020
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R305. Environmental Quality, Administration.**R305-7. Administrative Procedures.****R305-7-104. Filing and Service of Notices, Orders, Motions, and Other Papers.**

(1) (a) The rules governing service of Initial Orders and Notices of Violation are provided in Section R305-7-302.

(b) Filing and service of ~~[all]~~ papers in adjudicative proceedings shall be made by email except as otherwise provided in this Section R305-7-104 and in Subsections R305-7-309(2)(b), R305-7-309(7)(b)(ii), and Section R305-7-313. Adjudicative proceedings ~~may~~shall not be initiated by U.S. Mail or by email, in accordance with~~Initiation of adjudicative proceedings through traditional (paper) filing is governed by~~ subsection (5)~~[, below]~~.

(c) In the event the ALJ determines that it is inappropriate in a specific case to file and serve ~~[all]~~ papers by email, the requirements of Subsection R305-7-104(4) will govern. Those requirements may be modified by the ALJ.

(d) The provisions of Subsection R305-7-104(2) will also apply regardless of whether filing and service are done by email pursuant to ~~[c]~~Subsection R305-7-104(3)(j) or by traditional service methods pursuant to Subsection [c]R305-7-104(4)(j).

(e) A party seeking to have filing and service requirements governed by Subsection R305-7-104(4), such as a person who does not have access to email, shall file and serve that request as provided in Subsection R305-7-104(4). Once a request to proceed under Subsection R305-7-104(4) is filed and served, the provisions of that section shall apply to ~~[all]~~ future filing and service unless otherwise ordered by the ALJ.

(2) General Provisions Governing Filing and Service.

(a) Every submission shall be filed with:

(i) the ALJ or, if no ALJ has been appointed, the Director;
and

(ii) the Administrative Proceedings Records Officer.

(b) In addition, every submission shall be served upon:

(i) the Director, if a submission is not filed with the Director under Subsection [paragraph] (2)(a)(i);

(ii) the assistant attorney general representing the Director;

(iii) the permittee or the person who was the recipient of the Permit Order, or other order or notice of violation being challenged; and

(iv) any other party.

(c) A person, other than the Director, who is represented by an attorney or other representative, as provided in Section R305-7-106, shall be served through the attorney or other representative.

(d) Every submission shall include a certificate of service that shows the date and manner of filing with and service on the persons identified in Subsections R305-7-104(2)(a) and (b).

(e) Service on a regulated person at the person's Designated Address shall be deemed to be service on that person.

(3) Provisions governing electronic filing and service.

(a) A submission following the initiation of an adjudicative proceeding shall be filed with the Administrative Proceedings Records Officer by emailing it to DEQAPRO@utah.gov. Initiation of adjudicative proceedings is governed by ~~[s]~~Subsection (5).

(b) Filing or service on ~~[all]~~ other parties shall be by email at addresses provided by those persons. If the person filing or serving the submission is unable, after due diligence, to determine an email address for a party, the person shall file or provide service by traditional means, as provided in Subsection R305-7-104(4).

(c) (i) A text document served by email shall be submitted as a searchable PDF document.

(ii) A person filing a submission may electronically file and serve a document without a signature if the person indicates that the document was signed, such as ~~[e.g.,]~~ "signed by (name)" or "/s/ (name)"~~[j]~~.

(d) The ALJ may order any other submission to be provided in a searchable format.

(e) ~~[Large e]~~Emails ~~[of 5 Mb or more]~~ may not be accepted by some email systems. It shall be the responsibility of a person sending an ~~[large]~~ email of 5 Mb or more to ensure that it has been received by all parties, ~~[e.g.,]~~such as by telephoning or by sending a separate notification email and requesting a response.

(f) Photographic or other illustration documents filed and served by email shall be submitted as:

(i) a PDF document; or

(ii) a JPEG document.

(g) Documents that are difficult to file and serve by email because of their size or form may be filed and served on a CD, DVD, USB flash drive or other commonly used digital storage medium. A document may also be provided in paper form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in Subsection R305-7-104(4).

(h) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ.

(4) Provisions governing traditional filing and service of paper documents to the extent that filing and service of paper documents is allowed or required by this Rule.

(a) Filing and service of paper documents shall be made:

(i) by United States mail, postage pre-paid;

(ii) by hand~~[]~~ delivery; or

(iii) by overnight courier delivery,~~[]~~ ~~or~~

~~by the Utah State Building Mail system, if the sender and receiver are both state employees.]~~

(b) Documents to be filed with or served on the Director shall be filed and served at the address specified in Section R305-7-602[Part 6].

(c) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses:

(i) By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or

(ii) By hand or commercial delivery: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, 195 North 1950 West, Second Floor, Salt Lake City Utah 84116.

(d) ~~[(i) Except as provided in R305-7-104(5)(b), a]~~ A document that is filed or served by U.S. Mail or overnight delivery service shall be considered filed or served on the date it is mailed or picked up by the overnight delivery service. A document that is filed or served by email shall be considered filed or served on the date that it is sent, subject to the service requirements set forth in Subsection (5)(a). ~~[or provided to the overnight delivery service. A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mail bin.]~~

(5)(a) After November 9, 2020, adjudicative proceedings before the Department may be initiated by service upon the Administrative Proceedings Hearing Officer via email at DEQAPRO@utah.gov, or by service of paper documents upon the applicable Director and the Administrative Proceedings Hearing Officer, in accordance with Subsection (4)(c)(i) or (ii). If an adjudicative proceeding ~~Email does not constitute filing and is not~~

adequate to initiate an adjudicative proceeding] under this Rule, Section 19-1-301, or a special adjudicative proceeding under Section 19-1-301.5 is initiated via email at DEQAPRO@utah.gov, a [—A] paper copy [paper, signed original] of any Request for Agency Action, Petition for Review, Notice of Agency Action, or Petition to Intervene that is filed by email shall be [filed traditionally and—] served as provided in Subsections R305-7-104(2) and (4).

(b) The filing of [To be timely,] a Request for Agency Action, Petition for Review, or a Petition to Intervene in accordance with Subsection (5)(a) shall be deemed to be timely [must be received by the Director and the Administrative Proceedings Records Officer] as provided in:

(i) For a Petition for Review, filed and served in a special adjudicative proceeding, pursuant to Subsection R305-7-203(5) and R305-7-205 [—(for a Petition for Review, filed and served in a special adjudicative proceeding)];

(ii) For a Request for Agency Action filed and served in a proceeding other than a special adjudicative proceeding pursuant to Subsection R305-7-303(5) [—(for a Request for Agency Action filed and served in a proceeding other than a special adjudicative proceeding)];

(iii) For a Petition to Intervene filed and served in a special adjudicative proceeding pursuant to Subsection R305-7-204(2) and Section R305-7-205 [—(for a Petition to Intervene filed and served in a special adjudicative proceeding)]; and

(iv) For a Petition to Intervene filed and served in a proceeding other than a special adjudicative proceeding pursuant to Section R305-7-304 [—(which incorporates the requirements of R305-7-204(2)) for a Petition to Intervene filed and served in a proceeding other than a special adjudicative proceeding)].

KEY: administrative procedures, adjudicative procedures, hearings

Date of Enactment or Last Substantive Amendment: [November 1, 2018] 2020

Notice of Continuation: October 26, 2017

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-1-301.5; 63G-4-102; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-205; 63G-4-503

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R307-110-17	Filing No. 53056
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Agency Information

1. Department:	Environmental Quality
Agency:	Air Quality
Room no.:	Fourth Floor
Building:	Multi Agency State Office Building
Street address:	195 N 1950 W
City, state:	Salt Lake City, UT 84116
Mailing address:	PO Box 144820
City, state, zip:	Salt Lake City, UT 84114-4820
Contact person(s):	
Name:	Phone: Email:

Liam Thrailkill	801-536-4419	lthrailkill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits

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

The rule amendment is to incorporate changes being made to Part H of the Utah State Implementation Plan (SIP). Since Kennecott's Power Plant has been shut down and the units subject to related provisions are no longer in operation, UDAQ is proposing to remove these provisions from Part H to ensure that these limits do not delay EPA approval of the PM_{2.5} Serious Area SIP and redesignation to attainment.

A public hearing is set for Tuesday, November 3, 2020. Further details may be found below. The hearing will be cancelled should no request for one be made by Monday, November 2, 2020, at 10AM MT. The final status of the public hearing will be posted on Monday, November 2, after 10:00AM MT. The status of the public hearing may be checked at the following website location under the corresponding rule.

<https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment>

Interested Persons can participate electronically, via the internet:

<https://meetingsamer15.webex.com/meetingsamer15/j.php?MTID=m357b639a97d449b240dc3856771885>
 Meeting Number: 126 260 8137
 Meeting password: g5cWszbBg36 (45297922 from phones and video systems)
 Join by Phone: 1-408-418-9288

4. Summary of the new rule or change:

The rule amendment will update the date of incorporation of Part H to include the most recent changes.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There are no anticipated costs or savings to the state budget as this amendment places no new requirements on the state or staff.

B) Local governments:

There are no anticipated costs or savings to local governments because this rule amendment is not applicable to them.

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

There are no anticipated costs or savings to small businesses as this rule amendment simply updates the incorporation by reference date for the Part H amendments which are not applicable to small businesses.

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

There is no anticipated costs or savings to non-small businesses as this rule amendment simply updates the incorporation by reference date for the Part H amendments which are not applicable to non-small businesses.

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

There are no anticipated costs to persons other than small businesses, non-small businesses, state, or local government entities as this amendment is not applicable to them.

F) Compliance costs for affected persons:

There are no new compliance costs as a result of this rule amendment.

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This rule amendment will have no fiscal impact on businesses as the rule amendment itself is simply an update to the date of incorporation by reference and the amendments to the SIP are not applicable to businesses as a whole.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 19-2-104

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Utah State Implementation Plan Emission Limits and Operating Practices. Section IX, Part H.
Publisher	Utah Division of Air Quality
Issue, or version	December 2, 2020

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/03/2020

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

On:	At:	At:
11/03/2020	10:00AM	Held online -- see Box 3 above for details

10. This rule change MAY become effective on: 11/10/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Bryce Bird, Director	Date:	08/18/2020
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R307. Environmental Quality, Air Quality.**R307-110. General Requirements: State Implementation Plan.****R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on December 2[4], 2020[19], pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone

Date of Enactment or Last Substantive Amendment: ~~December 5, 2019~~ 2020

Notice of Continuation: January 27, 2017

Authorizing, and Implemented or Interpreted Law: 19-2-104

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R384-324	Filing No. 53049
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Agency Information

1. Department:	Health	
Agency:	Disease Control and Prevention, Health Promotion	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 142106	
City, state, zip:	Salt Lake City, UT 84114-2106	
Contact person(s):		
Name:	Phone:	Email:
Braden Ainsworth	801-538-6187	tobaccorulescomments@utah.gov
Christy Cushing	801-538-6260	tobaccorulescomments@utah.gov

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

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

R384-324. Tobacco Retailer Permit Process

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

These changes revise this rule to align with changes in Title 26, Chapter 62, that are effective as of 07/01/2020. The changes are because of the passage of H.B. 23 and S.B. 37 from the 2020 General Session and the passage of S.B. 6008 during the 2020 Sixth Special Session.

4. Summary of the new rule or change:

The changes add and update existing definitions, including tobacco products, electronic cigarette products, and nicotine products, throughout this rule to align with the state law changes in Title 26, Chapter 62.

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

The amendments to this rule are not expected to have any fiscal impact on the state budget because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.

B) Local governments:

The amendments to this rule are not expected to have any fiscal impact on the local governments because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.

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

The amendments to this rule are not expected to have any fiscal impact on small businesses because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.

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

The amendments to this rule are not expected to have any fiscal impact on non-small businesses because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.

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 amendments to this rule are not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities, because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.

F) Compliance costs for affected persons:

The amendments to this rule are not expected to have any compliance costs for affected person, because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Interim Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Businesses will see neither revenue nor cost as this amendment simply updates the rule to comply with recent legislation.

B) Name and title of department head commenting on the fiscal impacts:

Richard G. Saunders, Interim Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Subsection 26-62-202(6)		
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Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the

date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Joseph Miner, MD, Deputy Director	Date:	09/02/2020
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R384. Health, Disease Control and Prevention, Health Promotion. R384-324. Tobacco Product, Electronic Cigarette Product, and Nicotine Product Retailer Permit Process.

R384-324-1. Authority and Purpose.

(1) This rule is authorized by Section 26-1-5 and Subsections 26-1-30(4) and 26-62-202(6).

(2) This rule establishes the process by which local health departments issue, suspend and revoke a tobacco retail permit.

R384-324-2. Definitions.

As used in this rule:

(1) "Community location" means the same as the term is defined in Section 17-50-333 and in Section 10-8-41.6.

(2) "Department" means the Utah Department of Health, created in Section 26-1-4.

(3) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

(4) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.

(5) "Local health department" means the same as the term is defined in Section 26A-1-102.

(6) "Nicotine product" means the same as that term is defined in Section 76-10-101.

(7) "Owner" means a person holding a 20% ownership interest in the business that is required to obtain a permit under Title 26, Chapter 62.

(8) "Plan review" means the process by which the local health department will verify the accuracy of the information provided by retail tobacco specialty businesses through the permit application process.

(9) "Proprietor" means the owner of a retail establishment, or any other place of business [which] that sells, markets, or distributes tobacco products, electronic cigarette products, or nicotine products.

(10) "Public retail floor space" means the total floor square feet of the business where a customer can see, retrieve, or purchase any item that is offered for sale by the general tobacco retailer, including [all] the areas behind the purchase counter, and including appurtenant areas used for storage.

(11) "Retail tobacco specialty business" means a commercial establishment in which:

(a) ~~The~~ sales of tobacco products, electronic cigarette products, and nicotine products accounts for more than 35% of the total quarterly gross receipts for the establishment;

(b) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;

(c) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products; ~~or~~

(d) the commercial establishment;

(i) holds itself out as a retail tobacco specialty business; and

(ii) causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business;

(e) any flavored electronic cigarette product is sold; or

~~(f) the retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products.~~

(12) "Self-service display" means the same as that term defined in Section 76-10-105.1.

(13) "Shelf space" means the total cubic feet (length x depth x height) of shelf space contained within the retail space that is used for the offer, display, or storage of items that are offered for sale by the tobacco retailer. The shelf height is measured from the top of the tallest item on the top of the shelf. The shelf length is measured from the end of the longest item at the end of the shelf. Empty shelf space is not included in the total shelf space calculation.

(14) "Tax commission license" means a license issued by the State Tax Commission under:

(a) Section 59-14-201 to sell a cigarette at retail;

(b) Section 59-14-301 to sell a tobacco product at retail; or

(c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product at retail.

(15) "Tobacco product" means: ~~the same as that term defined in Section 59-14-102.~~

(a) a tobacco product as defined in Section 76-10-101; or

(b) tobacco paraphernalia as defined in Section 76-10-101.

~~(a) Tobacco paraphernalia, as that term is defined in Section 76-10-104.1.~~

(16) "Tobacco retailer" means a proprietor that is required to obtain a tax commission license and a local health department permit for the sale of tobacco.

(17) "Tobacco retail permit" means the permit issued by the local health department to general tobacco retailers and retail tobacco specialty businesses for the sale, marketing or distribution of tobacco products, electronic cigarette products, or nicotine products.

R384-324-3. Permit Process.

~~This permitting process is separate from and in addition to the requirement to have and maintain a valid tobacco license with the Utah State Tax Commission.~~

(1) ~~Beginning July 1, 2018, a~~ A tobacco retailer shall hold a valid tobacco retail permit issued by the local health department with jurisdiction over the physical location where the tobacco retailer operates.

~~(a) A tobacco retailer that holds a tax commission license that was valid on July 1, 2018:~~

~~(i) May operate without a permit under this chapter until December 31, 2018; and~~

~~(ii) Shall obtain a permit from a local health department under this chapter before January 1, 2019.~~

~~(iii) Shall maintain a valid tax commission license.~~

(2) To receive a tobacco retail permit, an applicant shall:

(a) ~~§~~ submit an application provided by the local health department with jurisdiction over the physical location where the tobacco retailer operates or will operate; and

(b) [P]pay [all]any applicable fees.

(3) To submit an application for a tobacco retail permit, an applicant shall ~~[]~~complete each required sections of the application and submit the application either online or by a hard copy to the local health department. The applicant shall provide the following:

~~[]~~(a) Complete all required sections of the application and submit either online or a hard copy to the local health department.]

~~[]~~(i)(a) [Provide]information for each individual listed as a proprietor~~[]~~ and owner, including percentage of ownership, or if the proprietor is a corporation, corporate ownership information;

~~[]~~(1) If the proprietor is a corporation, corporate information suffices.]

~~[]~~(b) [A]a local individual to contact concerning the application and business must be included under business information on the application;.]

~~[]~~(c) [Provide]information concerning the business, including business name, street address, mailing address, and telephone number[];

~~[]~~(d) [Provide]a copy of a valid Utah State T[]ax C[]ommission license[]; and

~~[]~~(e) [The individual completing the application must certify]certification that the proposed retail tobacco location meets the requirements as defined in the application for a:

~~[]~~(i) [G]general tobacco retailer; or

~~[]~~(ii) [R]etail tobacco specialty business.

~~[]~~(4) Applications for a retail tobacco specialty business shall~~[]~~must include a map that demonstrates that the business is not located within]:

~~[]~~(a) include a \$250.00 plan review fee; and

~~[]~~(b) include a map that demonstrates the business location meets the proximity requirements for a retail tobacco specialty business, by measuring in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of the location identified as the business address, without regard for intervening structures or zoning districts, to prove that the business is not located within:

~~[]~~(i) 1,000 feet of a community location;~~[]~~and;

~~[]~~(ii) 600 feet of another retail tobacco specialty business; and,

~~[]~~(iii) 600 feet of property used or zoned for agricultural or residential use.

~~[]~~(a) For purposes of subsection a.v., the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of the location identified as the business address, without regard for intervening structures or zoning districts.

~~[]~~(vi) Application for a retail tobacco specialty business must include a \$250.00 plan review fee.

~~[]~~(1) Proprietor is responsible to notify the local health department if there is a change in their business operation requiring a change in their business license between tobacco retail specialty business and general tobacco retailer.

~~[]~~(2) If the information described in Subsection 26-62-202(3) changes, a tobacco retailer:

~~[]~~(a) may not renew the permit; and

~~[]~~(b) shall apply for a new permit no later than 15 days after the information in Subsection 26-62-202(3) changes.]

~~[]~~(5)(a) Notwithstanding S[s]ubsection (4)(b)[a.v.], a retail tobacco specialty business that meets the requirements described in Subsection 10-8-41.6(7) or 17-50-333(7)[received a business license from a municipality under Section 10-8-41.6, or

from a county under Section 17-50-333, before December 31, 2015,] is exempt from the proximity requirements.

~~[]~~(viii) A tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015, may continue to operate until December 31, 2018 so long as the business maintains a current and valid business license and tobacco tax license.]

~~[]~~(b) A retail tobacco specialty business that does not meets the requirements described in Subsection 10-8-41.6(7) or 17-50-333(7)[received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015,] that desires ~~[to continue]~~to sell tobacco products, electronic cigarette products, and nicotine products ~~[on December 31, 2018, and beyond;]~~must complete the application described in this section and demonstrate that the location:

~~[]~~(1) Must complete the application described in this section and demonstrate that the location:]

~~[]~~(i) [M]meets the proximity requirements for a retail tobacco specialty business in S[s]ubsection (4)(b)[a.v.]; or[]

~~[]~~(ii) [H]has a business model and business layout that meets the requirements for a general tobacco retailer.

~~[]~~(6) The [L]local health department[s] will have 30 days to issue the permit beginning on the date the local health department receives the application and payment.

(a) The [L]local health department will provide online or hard copy receipt of payment and application submission to the proprietor at the time the local health department receives the application and payment.

~~[]~~(b) The receipt provided by the local health department to the proprietor will serve as a temporary operating permit, which will be valid for 30 days.

~~[]~~(5) General tobacco retailers and retailer tobacco specialty businesses that hold a valid tax commission license may begin applying for a local health department tobacco permit on November 1, 2018.]

~~[]~~(7) The permits are non-transferrable.

~~[]~~(8) Permit length~~[]~~and terms:]

~~[]~~(a) A general tobacco retailer permit is valid for two years.

~~[]~~(b) A retail tobacco specialty business permit is valid for one year.

(9) The proprietor of a tobacco retailer is responsible to notify the local health department if there is a change in their business operation requiring a change in their business license between tobacco retail specialty business and general tobacco retailer. If the information described in Subsection 26-62-202(3) changes, a tobacco retailer:

~~[]~~(a) may not renew the permit; and

~~[]~~(b) shall apply for a new permit no later than 15 days after the information in Subsection 26-62-202(3) changes.

~~[]~~(10) A tobacco retailer may apply for a renewal of a permit no earlier than 30 days before the day on which the permit expires.

~~[]~~(a) A tobacco retailer that fails to renew a permit before the permit expires may apply to reinstate the permit by submitting to the local health department:

~~[]~~(i) [A]an application, as outlined in Subsection R384-324-3(3), for either a general tobacco retailer or a retail tobacco specialty business ~~[as outlined above]~~and the additional requirements outlined in Subsection R384-324-3(4) for retail tobacco specialty businesses;

~~[(2)](ii)~~ ~~[(7)]~~ the fee for the reinstatement of a permit; and
~~[(3)](iii)~~ ~~[(A)]~~ a signed affidavit affirming that the tobacco retailer has not violated the prohibitions in Subsection 26-62-201(1)(b).

~~[(a)](b)~~ Until an expired permit is reinstated, a tobacco retailer with an expired permit may not:

(i) ~~[(P)]~~ place a tobacco product, electronic cigarette product, or a nicotine product in public view;

(ii) ~~[(D)]~~ display any advertisement related to tobacco products, electronic cigarette products, or nicotine products that promotes the sale, distribution, or use of those products; or

(iii) ~~[(S)]~~ sell, offer for sale, or offer to exchange for any form of consideration, tobacco, ~~[(or)]~~ tobacco products, electronic cigarette products, or nicotine products.

~~[(iv)]~~ The permit is non-transferrable.

R384-324-4. Permit Violations.

(1) A proprietor is in violation of the permit issued under this rule if the proprietor violates:

(a) any provision of Title 26, Chapter 62;

(b) any provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;

(c) any provision of Title 76, Chapter 10, Part 1;

(d) any provision of Title 76, Chapter 10, Part 16;

(e) any regulation restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or

(f) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of a tobacco product[s], an electronic cigarette product, or a nicotine product.

R384-324-5. Enforcement.

In enforcing or seeking penalties of any violation as set forth in this rule or Section 26-62-302~~[(+)]~~ and Section 26-62-402, the Department and local health departments shall comply with the enforcement provisions found in Title 26, Chapter 62, Part 3 and Part 4.

KEY: tobacco, permits, tobacco retailers

Date of Enactment or Last Substantive Amendment: ~~July 9, 2018~~ 2020

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-1-30(4); 26-62-202(6)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R414-60	Filing No. 53053
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Agency Information

1. Department:	Health
Agency:	Health Care Financing, Coverage and Reimbursement Policy
Building:	Cannon Health Building
Street address:	288 N 1460 W
Mailing address:	PO Box 143102
City, state, zip:	Salt Lake City, UT 84114-3102

Contact person(s):

Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

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

General Information

2. Rule or section catchline:

R414-60. Medicaid Policy for Pharmacy Program

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

The purpose of this change is to update and clarify provisions in this rule to be consistent with current Medicaid policy.

4. Summary of the new rule or change:

This amendment includes a new definition and clarifies provisions for limitations, reimbursement, and over-the-counter drugs. It also makes other technical changes.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no impact to the state budget as this amendment simply updates and clarifies current policy for the Pharmacy Program.

B) Local governments:

There is no impact on local governments because they neither fund nor provide services under the Pharmacy Program.

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

There is no impact on small businesses as this amendment simply updates and clarifies current policy for the Pharmacy Program.

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

There is no impact on non-small businesses as this amendment simply updates and clarifies current policy for the Pharmacy Program.

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

There is no impact on Medicaid providers and Medicaid members as this amendment simply updates and clarifies current policy for the Pharmacy Program.

F) Compliance costs for affected persons:

There are no compliance costs to a single Medicaid provider or Medicaid member as this amendment simply updates and clarifies current policy for the Pharmacy 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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Interim Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Businesses will see neither revenue nor cost as this amendment simply updates current Medicaid policy.

B) Name and title of department head commenting on the fiscal impacts:

Richard G. Saunders, Interim Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 26-1-5 Section 26-18-3

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Richard G. Saunders, Interim Executive Director	Date:	09/02/2020
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-60. Medicaid Policy for Pharmacy Program.

R414-60-2. Definitions.

(1) "Covered outpatient drug" means a drug that meets ~~all of~~ the following criteria:

(a) ~~[R]~~requires a prescription for dispensing;

(b) ~~[H]~~has a ~~[N]~~national ~~[D]~~drug ~~[C]~~code number;

(c) ~~[F]~~is eligible for ~~[F]~~federal ~~[M]~~medical ~~[A]~~assistance ~~[P]~~percentages funds;

(d) ~~[H]~~has been approved by the Food and Drug Administration; and

(e) [F]is listed in the nationally recognized drug pricing index under contract with the Department.

(2) "Full-benefit dual eligible beneficiary" means an individual who has Medicare and Medicaid benefits.

(3) "Rural pharmacy" means a pharmacy located in the state of Utah, which is outside of Weber County, Davis County, Utah County, and Salt Lake County.

(4) "Urban pharmacy" means a pharmacy located in Weber County, Davis County, Utah County, Salt Lake County, or in another state.

(5) "Usual and customary charge" ~~[is]~~means the lowest amount a pharmacy charges the general public for a covered outpatient drug, which reflects ~~[all]~~ advertised savings, discounts, special promotions, or any other program available to the general public.

(6) "Wholesale acquisition cost" means the list price paid by the wholesaler, distributor, and other direct accounts for drugs purchased from the wholesaler's supply.

R414-60-5. Limitations.

(1) Medicaid may place limitations on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Medicaid includes these limitations in the Pharmacy Services Provider Manual and its attachments. These limitations are incorporated by reference in Section R414-1-5 and may include the following:

(a) quantity limits or cumulative limits for a drug or drug class for a specified period of time;

(b) therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) prior authorization.

(2) A pharmacy may dispense a covered outpatient drug that requires prior authorization for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List (PDL) may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

(7) Medicaid does not cover drugs provided to a member during an inpatient hospital stay, neither as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers prescription cough and cold preparations meeting the definition of a covered outpatient drug.

(9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for the following:

(a) Medicaid may cover medications on the Utah Medicaid Three-Month Supply Medication List, attachment to the Pharmacy Services Provider Manual, for up to a three-month supply per dispensing;

(b) Medicaid may cover prenatal vitamins for a pregnant woman, multiple vitamins with or without fluoride for a child who is zero through five years of age, and fluoride supplements for up to a three-month supply per dispensing;

(c) Medicaid may cover contraceptives for up to a three-month supply per dispensing; and

(d) Medicaid may cover long-acting injectable antipsychotic drugs in accordance with Section R414-60-12 for up to a three-month supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of controlled substances. Medicaid will pay for a prescription refill for controlled substances after 85% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) drugs for weight loss;

(b) drugs to promote fertility;

(c) drugs for the treatment of sexual dysfunction;

(d) drugs for cosmetic purposes;

(e) vitamins; except for prenatal vitamins for a pregnant woman, vitamin drops for a child who is zero through five years of age, and fluoride supplements;

(f) over-the-counter drugs (OTC) not included on the Utah Medicaid ~~[Over the Counter Drug List]~~ PDL and Resources~~[s]~~ attachment to the Pharmacy Services Provider Manual;

(g) drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(h) drugs given by a hospital to a patient at discharge;

(i) breast milk, breast milk substitutes, baby food, or medical foods. Prescription metabolic products for congenital errors of metabolism are covered through the Durable Medical Equipment benefit; and

(j) drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

(12) Opioid claims used for the treatment of non-cancer pain are subject to the following limitations or restrictions set forth by the Division of Medicaid and Health Financing (DMHF):

(a) initial fill limits;

(b) monthly limits;

(c) quantity limits;

(d) additional limits for a child or pregnant woman;

(e) morphine milligram equivalents (MME) and cumulative morphine equivalents daily (MED) limits; or

(f) concurrent use of opioids with high-risk drugs as defined by DMHF.

(13) Antipsychotic medications prescribed to a Medicaid member who is 19 years of age or younger are limited as follows:

(a) no use of multiple antipsychotic drugs;

(b) no off-label use;

(c) no use outside established age guidelines; and

(d) no doses higher than FDA recommendations.

(14) Exceptions may be granted as appropriate through the prior authorization process.

R414-60-7. Reimbursement.

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered-outpatient drugs are reimbursed as outlined in Attachment 4.19-B of the Utah Medicaid State Plan. ~~[at the lesser of the following:~~

~~(a) The Wholesale Acquisition Cost;~~

~~(b) The Federal Upper Limit assigned by the Centers for Medicare and Medicaid Services;~~

NOTICES OF PROPOSED RULES

~~(c) The Utah Maximum Allowable Cost, and~~
~~(d) The submitted ingredient cost.~~
~~(e) If a prescriber obtains prior authorization for a brand-name version of a multi-source drug in accordance with 42 CFR 447.512 or if a brand name drug is covered because a financial benefit will accrue to the State in accordance with Section 58-17b-606, then Medicaid will not apply the Utah Maximum Allowable Cost or Federal Upper Limit to the claim.]~~

~~(f)3~~ [Pharmacies—]A pharmacy [participating—]that participates in the 340B program and us[ing]es medications obtained through the 340B program to bill Medicaid, must submit the actual acquisition cost of the medication on the claim.

~~(g)4~~ [Pharmacies—]A pharmacy that participates in the [F]federal [S]supply [S]schedule and uses medications obtained through the schedule to bill [Utah—]Medicaid, must submit the actual acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or [A]all [F]inclusive [R]rate.

~~(h)5~~ [Pharmacies—]A pharmacy that obtains and uses medications at a nominal price must submit the actual acquisition cost of the medication on the claim.

~~(i) The Utah Maximum Allowable Cost (UMAC) for drugs for which the Centers for Medicare and Medicaid Services (CMS) publishes a National Average Drug Acquisition Cost (NADAC), is the NADAC itself. The UMAC for which CMS does not publish a NADAC is calculated by the Department.]~~

~~(j)6~~ Dispensing fees are [as—]outlined in Attachment 4.19-B of the Utah Medicaid State Plan, [Attachment 4.19-B as approved by CMS and as follows:

~~(a)] Medicaid will pay the lesser of the assigned dispensing fee or the submitted dispensing fee[;]~~

~~(b) Medicaid will only pay one dispensing fee per 24 days per covered outpatient drug per pharmacy.]~~

~~(4)7~~ [Medicaid will pay the lesser of the sum of the allowed amount for the covered outpatient drug and dispensing fee or the billed charges.]Medicaid pays only one dispensing fee every 24 days for each covered outpatient drug per pharmacy.

~~(5)8~~ [Immunizations provided to Medicaid clients—]A provider that immunizes a Medicaid member who [are]is [at least—]19 years of age or older, will be paid for the cost of the immunization plus a dispensing fee. Medicaid [will—]pays the lesser of the allowed or submitted charges.

~~(6)9~~ [Immunizations provided to Medicaid clients who are]A provider that immunizes a Medicaid member who is 18 years old or younger, will only be eligible for a dispensing fee with no reimbursement for the immunization. Immunizations for Medicaid [clients]members who are 18 years old or younger must be obtained through the Vaccines for Children program.

~~(7)10~~ [Blood glucose test strips]Diabetic supplies listed [as preferred—]on the Utah Medicaid [Preferred Drug List will be]PDL are reimbursed at the lesser of the [W]wholesale [A]acquisition [C]cost with no dispensing fee or the billed charges.

(11) Pursuant to Section 58-17b-805, a dispensing medical practitioner may prescribe and dispense medication directly to a patient when providing outpatient cancer therapy. Details of reimbursement are found on the Medicaid website at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>

R414-60-10. Over-the-Counter Drugs.

(1) Medicaid covers [over the counter]OTC drugs when the drug is listed on the Utah Medicaid [Over the Counter Drug List]PDL

and Resources attachment to the Pharmacy Services Provider Manual, incorporated by reference in Section R414-1-5.

(2) For a Medicaid member who resides in a nursing home, OTC drugs on the approved list are not a benefit through the outpatient pharmacy program. The nursing-home rate of reimbursement includes payment for OTC drugs.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~[June 19, 2020]~~

Notice of Continuation: April 28, 2017

Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R414-307

Filing No. 53073

Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
Mailing address:	PO Box 143102	
City, state, zip:	Salt Lake City, UT 84114-3102	
Contact person(s):		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

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

General Information

2. Rule or section catchline:

R414-307. Eligibility for Home and Community-Based Services Waivers

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

The purpose of this change is to update and clarify Medicaid policy for home and community-based services waivers.

4. Summary of the new rule or change:

This amendment removes provisions for the Autism Waiver that no longer exist.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no impact to the state budget as this amendment simply updates and clarifies ongoing policy for home and community-based services (HCBS) waivers. Funding for the Autism Waiver was previously appropriated.

B) Local governments:

There is no impact on local governments because they neither fund nor provide services under HCBS waivers.

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

There is no impact on small businesses as this amendment simply updates and clarifies ongoing policy for HCBS waivers. Funding for the Autism Waiver was previously appropriated.

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

There is no impact on non-small businesses as this amendment simply updates and clarifies ongoing policy for HCBS waivers. Funding for the Autism Waiver was previously appropriated.

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

There is no impact on Medicaid providers and Medicaid members as this amendment simply updates and clarifies ongoing policy for HCBS waivers. Funding for the Autism Waiver was previously appropriated.

F) Compliance costs for affected persons:

There are no compliance costs to a single Medicaid provider or Medicaid member as this amendment simply updates and clarifies ongoing policy for HCBS waivers. Funding for the Autism Waiver was previously appropriated.

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Interim Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

Businesses will see neither revenue nor cost as this amendment simply updates current Medicaid policy.

B) Name and title of department head commenting on the fiscal impacts:

Richard G. Saunders, Interim Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 26-1-5	Section 26-18-3	
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Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in

NOTICES OF PROPOSED RULES

the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Executive Director	Date:	09/14/2020
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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-307. Eligibility for Home and Community-Based Services Waivers.

~~**[R414-307-12. Home and Community-Based Services Waiver for Individuals with Autism.**~~

~~(1) An individual must be at least two years of age and under seven years of age to be eligible for the Medicaid Autism Waiver.~~

~~(a) The eligibility agency shall treat an individual as being under seven years of age through the month in which the individual turns seven years old.~~

~~(b) The agency shall end waiver eligibility after the month in which the individual turns seven years old.~~

~~(2) This waiver complies with the provisions of the Community Supports Home and Community-Based Services Waiver and all other eligibility requirements found in Section R414-307-7, except for the requirement of Subsection R414-307-7(1).]~~

R414-307-[13]12. Home and Community-Based Services Waiver for Medically Complex Children.

(1) An individual must be under 19 years of age to be eligible for the HCBS Waiver for Medically Complex Children.

(a) The eligibility agency shall treat an individual as being under 19 years of age through the month in which the individual turns 19 years old.

(b) The agency shall end waiver eligibility after the month in which the individual turns 19 years old.

(2) The agency shall determine whether an individual meets the disability criteria described in Section R414-303-3.

(3) This waiver is in accordance with the provisions of the Community Supports Home and Community-Based Services waiver and all other eligibility requirements found in Section R414-307-7, except for the requirement of Subsection R414-307-7(1).

KEY: eligibility, waivers, special income group

Date of Enactment or Last Substantive Amendment: ~~May 20, 2016~~ **2020**

Notice of Continuation: March 29, 2017

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R510-302	Filing No.	53036
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Agency Information

1. Department:	Human Services	
Agency:	Aging and Adult Services	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Nels Holmgren	801-538-3921	nholmgren@utah.gov
Nan Mendenhall	801-538-4591	nmendenh@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R510-302. Adult Protective Services
3. Purpose of the new rule or reason for the change:
Many of the changes are being made to clean up outdated or unclear language in the current rule. Additionally, Adult Protective Services (APS) needs to be able to share information with the Department of Human Services (DHS) Office of Licensing in order to provide background screenings for DHS clients. Lastly, the COVID-19 pandemic has prompted a need to clarify APS process for in person versus remote client visits.
4. Summary of the new rule or change:
A number of minor updates are being made to clarify current practices, reflect changes to APS' staffing structure, and removing outdated materials. In addition, the changes allow APS to share information with the DHS Office of Licensing and clarifies when face to face client visits are required and when visits can be done remotely by electronic means.

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

The language updates throughout this filing do not impact the cost of current services and the financial impact on APS, its clients, and other agencies.

B) Local governments:

The language updates throughout this filing do not fiscally impact costs at the local government level. This amendment is clarifying in nature.

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

The language updates throughout this filing do not fiscally impact small businesses. This amendment is clarifying in nature.

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

The language updates throughout this filing do not fiscally impact non-small businesses. This amendment is clarifying in nature.

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 language updates throughout this filing do not fiscally impact persons other than small businesses, non-small businesses, state, or local government entities. This amendment is clarifying in nature.

F) Compliance costs for affected persons:

There are no anticipated compliance costs associated with the language changes throughout this amendment.

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The DHS does not anticipate any fiscal impacts on businesses as a result of language changes throughout this rule.

B) Name and title of department head commenting on the fiscal impacts:

Ann Williamson, Executive Director

Citation Information**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 62A-3-301

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	11/02/2020
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10. This rule change MAY become effective on:	11/09/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	09/15/2020
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R510. Human Services, Aging and Adult Services.**R510-302. Adult Protective Services.****R510-302-1. Purpose.**

This rule clarifies the responsibilities of Adult Protective Services.

R510-302-2. Authority.

This rule is authorized by Section 62A-3-302.

R510-302-3. Principles.

(1) Adult Protective Services (APS) shall respect the lifestyle that is knowingly and voluntarily chosen by the vulnerable adult.

(2) A vulnerable adult with capacity to consent has the right to self-determination.

(3) ~~[All-s]~~ Services provided are voluntary unless court ordered.

(4) ~~[All-s]~~ Services provided should be the least restrictive possible.

(5) ~~[All-s]~~ Services provided shall be community-based unless community-based services are unavailable.

(6) Adult Protective Services shall encourage a vulnerable adult's family and community to take responsibility for providing necessary services.

(7) Adult Protective Services shall coordinate and cooperate with other agencies to protect vulnerable adults.

(8) Adult Protective Services shall treat vulnerable adults and others in a courteous, dignified and professional manner.

R510-302-4. Definitions.

(1) ~~[All-d]~~ Definitions found in Title 62A Chapter 3 ~~are incorporated by reference~~.

(2) "Activities of ~~[D]~~daily ~~[L]~~living" (ADL's) means the ability to:

~~(a)~~ take a full body bath or shower, including transfer in and out of the bath or shower;

~~(b)~~ tend to personal hygiene needs, including care of teeth, dentures, shaving, and hair care;

~~(c)~~ put on, fasten and take off ~~[aH-]~~clothing, and select appropriate attire;

~~(d)~~ walk without supervision or cues, including using a walker or cane;

~~(e)~~ use steps or ramps;

~~(f)~~ use toilet or commode, including transferring on and off toilet, cleansing self, changing pads, and caring for colostomy or catheter in appropriate manner;

~~(g)~~ transfer without supervision or devices in and out of a bed or chair; and

~~(h)~~ the ability to feed oneself, prepare food, drink or use necessary adaptive devices.

~~(2a)3)~~ "Instrumental ~~[A]~~activities of ~~[D]~~daily ~~[L]~~living" (IADL's) means the core life activities of independent living, including using the telephone, managing money, preparing meals, doing housework, remembering to take medications, providing for one's necessities, and obtaining services.

~~(3)4)~~ "Durable" with respect to a power of attorney, means not terminated by the principals incapacity.

~~(4)5)~~ "Conservator" means an individual or agency appointed by a court in accordance with Section 75-5-401~~[-et seq]~~.

~~(5)6)~~ "Guardian" means an individual or agency appointed by a court in accordance with Section 75-5-303~~[-et seq]~~.

~~(6)7)~~ "Incapacitated ~~[P]~~person" is as defined in Subsection 75-1-201~~[(48)](22)~~.

~~(7)8)~~ "Intentionally" is as defined in Subsection 76-2-103(1).

~~(8)9)~~ "Knowingly" is as defined in Subsection 76-2-103(2).

~~(9)10)~~ "Lifestyle ~~[C]~~choice" means a knowing and voluntary choice to live a certain way, including a non-conventional way, by a person who has capacity to make that choice.

~~(10)11)~~ "Limited ~~[C]~~capacity" means that an adult person's ability to understand, communicate, make decisions regarding the nature and consequences the person's life or property is limited in one or more, but not all, functional areas, or during identified times of day, due to a mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause.

~~(14)12)~~ "Long-term care facility" is as defined in Section 62A-3-202.

~~(12)13)~~ "Power of ~~[A]~~attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

~~(13)14)~~ "Protective intervention funding" means payments made to the vulnerable adult, family, or caregiver or other provider that will alleviate or resolve a protective need.

~~(14)15)~~ "Protective ~~[N]~~needs" means factors identified by the APS ~~[P]~~protective ~~[N]~~needs ~~[A]~~assessment that pose significant risk for, or are the result of ~~[A]~~abuse, ~~[N]~~neglect or ~~[E]~~exploitation of a vulnerable adult.

~~(15)16)~~ "Protective ~~[N]~~needs ~~[A]~~assessment" means an assessment of a vulnerable adult's impairments and alleged risk factors for ~~[A]~~abuse, ~~[N]~~neglect or ~~[E]~~exploitation that are found to be present in that APS case investigation.

~~(17)~~ "Protective services" means services to protect a vulnerable adult from abuse, neglect, or exploitation.

~~(16)18)~~ "Protective ~~[S]~~supervision" means an APS service offered to reduce or resolve a vulnerable adult's protective need.

~~(17)19)~~ "Recklessly" is as defined in Subsection 76-2-103(3).

~~(18)20)~~ "Respite ~~[C]~~care" means a time-limited period of relief from care giving responsibilities paid to a respite care provider or individual from Protective Intervention Funds.

~~(19)21)~~ "Service ~~[P]~~plan" means a document created by the APS caseworker for an approved ~~[S]~~short~~[-]~~term ~~[S]~~service ~~[C]~~case that includes a goal, objectives, methods, and progress reviews to

resolve the protective needs identified in an ~~[Adult Protective Services]~~APS investigation, and ~~[which]~~that implements recommendations of the case review committee.

~~((20)22)~~ "Short[-] term ~~[protective-]services~~" include: ~~[but are not limited to-]~~crisis intervention, emergency shelter, protective supervision, respite care, supported living services, or short[-] term intervention funding.

~~((24)23)~~ "Short[-] ~~[T]~~term intervention funding" means short[-] term payments made to the vulnerable adult, family, or caregiver or other provider, during a short[-] term service case for goods or services other than for ~~[R]~~respite ~~[E]~~care or ~~[S]~~supported ~~[L]~~living, that will alleviate or resolve a protective need.

~~((22)24)~~ "Supported ~~[L]~~living" means short[-] term payments made to individuals or providers that enable the vulnerable adult to remain in his or her own home or in the home of a relative.

R510-302-6. Adult Protective Services Intake Criteria.

(1) Referrals may be submitted to the APS Intake Office in any format from any person who has reason to believe that a vulnerable adult has been abused, neglected, or exploited ~~[in the State of Utah]~~.

(2) ~~[All-]~~Referrals shall be evaluated by APS Intake to determine whether APS shall investigate the allegation.

(3) APS shall ~~[accept]~~investigate ~~[all-]~~referrals ~~off~~with allegations of abuse, neglect, or exploitation of a vulnerable adult ~~[in the State of Utah]~~ except as follows:

(a) when the referral does not involve an allegation that a vulnerable adult may have been or is being abused, neglected or exploited~~[-]~~;

(b) when the referral does not identify a current abuse, neglect or exploitation but anticipates that abuse, neglect or exploitation may occur~~[-]~~;

(c) when the referral involves a vulnerable adult on an Indian reservation, unless a written agreement between APS and tribal authorities granting APS authority to investigate ~~is~~ must be in effect or the referral shall be forwarded by Intake to federal or tribal authorities~~[-]~~;

(d) when the referral involves an alleged incident in a long-term care facility involving an alleged theft or alleged loss of a resident's money ~~[and]~~ or personal property, the alleged perpetrator~~(s)~~ is unknown, and the money ~~[and]~~ or personal property has been replaced, returned, or reimbursed by the facility~~[-]~~;

(e) when the referral involves an alleged financial scam ~~[and]~~ or alleged consumer fraud~~[-]~~; and

(f) when the referral contains insufficient information to either locate the alleged victim or reasonable attempts by APS Intake to gather that information are unsuccessful.

(4) APS shall notify:

(a) the Department of Health and the ~~[L]~~local Long-term Care Ombudsman when a referral involves a long-term care facility~~[-]~~; ~~and~~

(b) the Division of Services for People with Disabilities (DSPD), when the referral involves a person who receives services from DSPD~~[-]~~; and

(c) the Department of Human Services, Office of Licensing, if the referral involves a Division of Services for People with Disabilities (DSPD) who reside in a DHS licensed provider facility or if the incident occurred at a DHS licensed provider facility.

(5) APS may submit a referral that involves a ~~[Division]~~Department employee or other potential conflict of interest to the DHS Office of Services Review for review.

R510-302-7. Investigation.

(1) The assigned investigator shall initiate the investigation and determine whether:

- (a) there is an allegation of abuse, neglect or exploitation;
- (b) the alleged victim is a vulnerable adult;
- (c) the alleged victim has the capacity to consent;
- (d) the alleged victim has a legal guardian or conservator;
- (e) an emergency exists; and
- (f) the extent of the alleged victim's mental or physical impairment.

(2) The investigator shall make a face-to-face visit with the alleged victim except as outlined in Subsection R510-7 (2).

(a) The investigator shall seek the consent of the vulnerable adult to provide services if the vulnerable adult has the capacity to consent.

(b) The investigator shall seek the consent of the vulnerable adult's legal guardian to provide services if the vulnerable adult does not have the capacity to consent.

(3) The investigator may not enter the home of a vulnerable adult unless the vulnerable adult, their legal guardian~~[-]~~ or their caretaker consents, except when: ~~[the investigator has reason to believe exigent circumstances exist to protect the vulnerable adult from imminent harm.]~~

(a) the investigator has reason to believe exigent circumstances exist to protect the vulnerable adult from imminent harm; and

(b) the alleged perpetrator is the vulnerable adult's legal guardian or caretaker.

(4) Adult Protective Services may not require a face-to-face visit with the alleged victim in instances where a Public Health Emergency Declaration or Natural Disaster Emergency Declaration is issued by the federal, state, or local government. In such instances, Adult Protective Services will make visit determinations to safeguard the alleged victim based on circumstances that are deemed to be emergent, or where there is an imminent risk to the alleged victim's health and safety.

~~[(4)](5)~~ The investigator shall interview the alleged perpetrator~~(s)~~ unless:

(a) specifically requested not to do so by law enforcement ~~[officers in order]~~ to avoid impeding an ongoing criminal investigation or proceeding;

(b) interviewing the alleged perpetrator~~(s)~~ would likely endanger or cause harm to any person;

(c) prior to interviewing the alleged perpetrator~~(s)~~, the allegation is found to be without merit;

(d) the alleged victim with capacity to understand the allegation and protective need, denies the allegation and they do not want the alleged perpetrator to be contacted;

~~[(d)](e)~~ APS is unable to locate the victim;

~~[(e)](f)~~ the alleged victim died before the investigation started;

~~[(f)](g)~~ the alleged perpetrator~~(s)~~ cannot be located or is unknown after APS has made reasonable efforts to locate and~~[-]~~ identify the alleged perpetrator~~(s)~~; and

~~[(g)](h)~~ the alleged perpetrator~~(s)~~ has refused the interview, or has not responded to efforts to contact the investigator.

~~[(h)](6)~~ When the investigator has reason to believe any hazardous waste or illegal drugs may be located at an investigative ~~[site]~~home, the investigator will contact law enforcement agencies and not enter the ~~[site]~~home until the local health department determines it is safe to do so. The law enforcement agencies may be asked:

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(a) to assess and secure a vulnerable adult's immediate safety[;];
(b) facilitate the vulnerable adult's exit from the [site]home[;];
and

(c) [and]arrange for emergency transportation to the hospital for decontamination.

~~[(6)]~~(7) The investigator may obtain an administrative subpoena when one of the following circumstances applies:

(a) the vulnerable adult ~~[lacks the capacity to consent]~~does not have capacity to consent to allow access to records to further the investigation;~~[-or]~~

(b) the vulnerable adult's legal guardian refuses to consent;~~[-or]~~

(c) the custodian of the records or items pertinent to an investigation refuses to allow access to those records or items without a subpoena; or

(d) the information sought is necessary to investigate allegations of abuse, neglect or exploitation or to protect the alleged victim.

~~[(7)]~~(8) An administrative subpoena form:

(a) shall include a list that specifically identifies the documents or objects being subpoenaed; and

(b) is not valid until signed by the ~~[D]director or [Regional Director]program administrator.~~

~~[(8)]~~(9) The investigator shall document ~~[all]~~items received as a result of the subpoena.

~~[(9)]~~(10) the investigator shall evaluate ~~[all]~~information obtained during the investigation and determine:

(a) whether each allegation of abuse, neglect and exploitation identified during the investigation is supported, inconclusive, or without merit; and

~~[(e)]~~(b) law enforcement shall be contacted to coordinate or assist on an investigation, if the investigation indicates that criminal abuse, neglect or exploitation may have occurred or the safety of the any person is endangered.

~~[(e)]~~(11) ~~[(i)]~~If an unmet ~~[(c)]~~protective~~[(y)]~~ need exists:

~~[(i)]~~a) the investigator may refer the vulnerable adult and the vulnerable adult's legal guardian to available community resources and services to resolve the protective need;

~~[(ii)]~~b) the investigator or ~~[S]~~supervisor may request a review by the ~~short term services c[]ase r[R]eview c[]ommittee~~ to determine if ~~[S]~~short~~[-]~~~~[-F]~~term ~~[S]~~services may help to resolve the protective need;

~~[(iii)]~~c) the investigator may make a referral to the Office of Public Guardian;

~~[(iv)]~~d) the investigator may provide crisis intervention to assist the vulnerable adult in obtaining services or benefits as it relates to the abuse, neglect or exploitation;

~~[(v)]~~e) the investigator may contact the family of a vulnerable adult who ~~[lacks capacity]~~does not have capacity to consent and inform the family that the vulnerable adult requires alternate living arrangements in an environment that is safe and meets the vulnerable adult's protective needs;

~~[(vi)]~~f) the investigator may provide ~~[P]~~protective ~~[H]~~intervention ~~[F]~~funds at the sole discretion of APS~~[-]~~. ~~[-F]~~these funds may be made available to the vulnerable adult, family caregiver or other provider to alleviate or resolve a protective need, and must directly benefit the vulnerable adult;

~~[(vii)]~~g) the investigator may provide one-time payments for medications, medical treatment, or medical equipment or supplies not covered by insurance or other medical coverage~~[-]~~, transportation~~[-]~~, minor repairs or modifications~~[-]~~, rent~~[-]~~, food~~[-]~~, or clothing, or other

needs that directly benefit the vulnerable adult to alleviate or resolve a protective need; or

~~[(viii)]~~h) the investigator may provide payments for a service provider or individual for approved ~~[S]~~short~~[-]~~term services for ~~[R]~~respite care, ~~[S]~~supported living, or for short~~[-]~~term intervention funds.

R510-302-8 Settlement Agreements.

(1) The Division may enter into a settlement agreement with ~~[the]~~a person who has received a notification of agency action letter pursuant to Section 62A-3-311.5.

(2) ~~[No]~~A settlement agreement shall not be entered into once the ~~[S]~~supported finding has been upheld by a court of competent jurisdiction.

R510-302-9. Eligibility.

(1) There are no income eligibility requirements for an APS investigation of allegations of abuse, neglect, or exploitation.

(2) There are no eligibility requirements ~~[-in order]~~ to receive short~~[-]~~term protective supervision services.

(3) There are no eligibility requirements~~[-in order]~~ to receive ~~[P]~~protective ~~[H]~~intervention ~~[F]~~funds to resolve a situational crisis or an immediate protective need.

(4) A vulnerable adult shall meet income eligibility requirements~~[-in order]~~ to receive short~~[-]~~term ~~[protective-]services[other than protective supervision services]~~, including respite care, supported living, short~~[-]~~term intervention funding, and other services approved by the APS ~~[D]~~director or designee[regional director].

(a) ~~[For purposes of e]~~Eligibility for short~~[-]~~term ~~[protective]~~services, "family" includes an adult, the adult's spouse, and their natural children under age 18, who are residing in the same household.

(b) A person living under the care of someone other than their spouse is considered a one-person family.

(c) In determining whether a vulnerable adult meets income eligibility requirements for short~~[-]~~term ~~[protective-]services~~, family assets shall be disclosed and evaluated.

(i) Family assets include the fair market value of stocks, bonds, certificates of deposit, notes, savings and checking accounts, inheritance, capital gains, or gifts, ~~[which]~~that can be readily converted to cash.

(ii) A client's income and deductions will be used to determine the client's adjusted gross income to determine the client's eligibility status.

(iii) Monthly gross income includes:

(A) the total monthly income received by an individual from earnings, military pay, commissions, tips, piece-rate payments, and cash bonuses;

(B) net income from self-employment;

(C) Social Security ~~[P]~~pensions, SSI, ~~[S]~~survivor's ~~[B]~~benefits, and ~~[P]~~permanent ~~[D]~~disability ~~[H]~~insurance payments; dividends, interest, income from estates or trusts, net rental income or royalties, net income from rental of property, receipts from boarders or lodgers;

(D) pensions~~[-]~~ or annuities;

(E) unemployment compensation;

(F) strike benefits;

(G) worker's compensation;

(H) alimony, child support, money received as specified in a divorce or support decree;

(I) Veterans' pensions or subsistence allowances; and

(J) other regular, ~~[(c)]~~three out of the last six months~~[-]~~ financial assistance.

- (iv) Monthly gross income does not include:
 - (A) per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;
 - (B) net proceeds received from the sale of a primary residence or an automobile;
 - (C) money borrowed; insurance payments in excess of incurred costs that must be paid from the settlement;
 - (D) the value of the coupon allotment under the Food Stamp Act;
 - (E) the value of USDA donated foods; the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act;
 - (F) any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
 - (G) earnings of a child [f]under 18 years of age[j] residing in the home;
 - (H) payments for energy assistance and weatherization HEAT program;
 - (I) housing subsidies paid by the [F]federal government;
 - (J) payments or grants received due to natural disaster;
 - (K) educational loans, grants, or scholarships to any undergraduate student for educational purposes that is made or insured by the U.S. Commissioner of Education, [f]BEOG[j], SEOG[j], NDSL[j], Guaranteed Student Loans[j], SSIG[j], and PELL Grants[j];
 - (L) payments to participate in a service learning program, such as College Work-Study or University Year for Action; and
 - (M) that portion of any other loan, grant, or scholarship [which]that is conditioned upon school attendance, actually used for tuition, books, fees, equipment, special clothing needs, transportation to and from the school, and the child care services necessary for school attendance.
- (v) The expenses that shall be deducted in determining adjusted gross income are limited to:
 - (A) medical expenses, [f]including Medicaid spend-down and insurance[j];
 - (B) storage expenses;
 - (C) child support paid, including money paid for house payments, rent, etc. as specified in a divorce or support decree;
 - (D) the dollar amount of first mortgage[j] or rental payment over 25% of monthly countable income, [f]not counted for Foster Care[j]; and
 - (E) fees paid for other programs and protective services.
- (vi) The sum of [all]family assets shall be divided by the number of family members, and if that amount exceeds \$4,000 per family member, then the value over \$4,000 shall be prorated over twelve months, and the resulting amount shall be added to the monthly countable income.
- (vii) Eligibility status must be verified annually and within 30 days of any family member's increase in assets.
- (viii) A client's adjusted gross income for income tax purposes is not the same as the adjusted gross income for short term service eligibility purposes.
- (ix) [All]family assets and expenses shall be supported with current bank records, check stubs, and other verifiable records. Documentation must clearly indicate the name of the applicable family member.

R510-302-10. Short Term Protective Need Intervention.

~~[(1) APS may petition the court for an emergency protective services order as outlined in 62A-3-320~~

~~_____](2)1) An [F]investigator may request [P]protective [F]intervention [F]funding for an emergency shelter placement to alleviate the vulnerable adult's protective need. Emergency shelter placements may be made for up to 30 days within a twelve-month period for a vulnerable adult who has been abused, neglected, or exploited only if:~~

- ~~(a) the vulnerable adult's circumstances require immediate alternate living arrangements in a safe environment;~~
- ~~(b) the vulnerable adult or legal guardian consents to the emergency shelter placement or a court order authorizes the placement;~~
- ~~(c) the vulnerable adult does not meet the eligibility requirements for shelter under the Family Violence program; and~~
- ~~(d) the emergency shelter has the[all] required current licenses and certifications.~~

R510-302-11. Short[-]Term [Intervention]Services.

(1) Short[-]term ~~[protective]~~services may only be provided to a vulnerable adult who is the victim of abuse, neglect or exploitation, and in accordance with the terms of a service plan consented to and signed by the vulnerable adult or the vulnerable adult's legal guardian, or pursuant to a court order. An updated service plan shall be signed at each case review.

(2) A short[-]term services Case Review Committee shall monitor and review short[-]term services. The Case Review Committee:

- (a) shall consist of the primary caseworker, supervisor or designee, and ~~[two other region]workers a program administrator;[-]~~ ~~The Committee may include other APS and community or agency individuals when determined necessary by the Case Review Committee.]~~

(b) shall oversee the progress made towards resolution of the protective need[-];

(c) may recommend that short[-]term services are initiated, extended, or terminated[-]; and

(d) may recommend community referrals or alternative actions.

(3) The [C]case [S]supervisor may approve or deny [S]short[-].[T]term [S]services recommended by the Case Review Committee.

(4) Short[-].[T]term [S]services may only be provided under the following conditions:

(a) Short[-]term services are voluntary and shall not be implemented without the written consent of the vulnerable adult or the vulnerable adult's legal representative.

(b) Every short[-]term service case shall include a protective supervision service.

(c) Protective [F]intervention funds for [S]short[-]term services shall not be disbursed without the approval of the APS supervisor or ~~[regional director]designee.~~

(d) Respite [C]care funds may not be used for caring for other members of the family, performing extensive household tasks, or transportation.

(e) Respite [C]care may be provided in the vulnerable adult's home, a caregiver's home, or in a licensed facility.

~~[(f) Supported Living Payments may be made to providers to enable the vulnerable adult to remain in his own home or in the home of a relative, and may include short term supervision, transportation, assistance with shopping, training or assistance with activities of daily living.]~~

~~[(g)f] Payments for [S]short[-].[T]term [S]services may not be made until a case has been approved by the Case Review Committee~~

NOTICES OF PROPOSED RULES

and [S]services voluntarily agreed to in writing by the vulnerable adult, his or her guardian, or approved by court order.

R510-302-12. Protective Payee Services.

(1) Adult Protective Services shall not provide payee services.

R510-302-13. Termination of Short[-]Term [Protective-S]Services.

(1) A vulnerable adult has no entitlement or right to short[-]term [protective-S]services from APS.

(2) Short term [Protective-S]services may be terminated at any time by the vulnerable adult, ~~or~~ APS, ~~at any time, except if there is a Court order in place,~~ or through a court of competent jurisdiction.

(3) Short term [Protective-S]services shall be terminated when:

(a) the vulnerable adult is no longer in immediate danger of abuse, neglect or exploitation;

(b) a vulnerable adult who voluntarily accepted services requests that those services be terminated;

(c) recommended by the Case Review Committee;

(d) the court terminates an order requiring APS to provide services;

(e) the vulnerable adult is receiving short term [protective-S]services from other persons or agencies;

(f) the vulnerable adult's behavior is abusive or violent and constitutes a threat;

(g) the vulnerable adult no longer meets the eligibility requirements for services;

(h) the vulnerable adult refuses to comply with the service plan;

(i) there is insufficient funding to pay for the service;

(j) the vulnerable adult moves out of [S]state; or

(k) the vulnerable adult dies. APS shall complete a [D]deceased [C]client [R]report form in accordance with DHS policy 05-02.

(4) When APS terminates [S]short[-]term [F]term [protective-S]services, a letter shall be sent to the vulnerable adult stating the case is going to be terminated and the reason for termination.

~~(a)~~ The letter shall state that termination becomes effective 10 days from the date the letter was sent unless the vulnerable adult requests an administrative review of the reason for the termination and to decide if the services should be reinstated or alternative services may be available.

KEY: vulnerable adults, adult protective services investigation, shelter care facilities, short[-]term services

Date of Enactment or Last Substantive Amendment: ~~August 7, 2017~~ **2020**

Notice of Continuation: June 30, 2017

Authorizing, and Implemented or Interpreted Law: 62A-3-301 et seq.

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Utah Admin. Code Ref (R no.):	R539-1	Filing No. 53069
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Agency Information

1. Department:	Human Services
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Agency:	Services for People with Disabilities	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT	
Mailing address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Kelly Thomson	435-669-4855	kthomson@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R539-1. Eligibility

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

The purpose of the repeal and reenactment of Rule R539-1 is to set forth the procedures for limited support services, update the eligibility procedure, and remedy preexisting non-conforming language that exists throughout the current version of the rule.

4. Summary of the new rule or change:

The proposed reenacted changes add limited support services and procedure for waiver entry. Electronic surveillance definitions are removed and will be updated and added to another section of rule. Organization of this rule changed to differentiate entry into the comprehensive waivers and limited waiver; and add a section outlining the state match rate. All other revisions update language and fix language that did not conform to rulewriting requirements.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The addition of limited support services creates an ongoing state general fund cost. The Legislature appropriated ongoing funding through S.B. 44 passed in the 2020 General Session. This rule is not anticipated to create further costs or savings to the state budget.

B) Local governments:

No anticipated costs or savings to local governments. Local governments do not fund the Division of Services for People with Disabilities (DSPD) services.

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

No anticipated costs or savings to small businesses. Small business may financially benefit from the market expansion.

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

No anticipated costs or savings to non-small businesses. Non-small business may financially benefit from the market expansion.

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

No anticipated costs or savings to persons. Persons may benefit from access to limited support services.

F) Compliance costs for affected persons:

No anticipated compliance costs for affected person. DSPD does not charge fees to apply for or use services.

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	FY2021	FY2022	FY2023
State Government	\$400,000	\$400,000	\$400,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Department does not anticipate any fiscal impact on businesses as a result of the repeal and reenactment of this rule.

B) Name and title of department head commenting on the fiscal impacts:

Ann Williamson, Executive Director

Citation Information**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 62A-5-103	Section 62A-5-105	
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Incorporations by Reference Information**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	First Incorporation
Official Title of Materials Incorporated (from title page)	Directive 1.40 Qualifying Brain Injury Diagnoses
Publisher	Division of Services for People with Disabilities
Date Issued	2019

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

	Second Incorporation
Official Title of Materials Incorporated (from title page)	Diagnostic and Statistical Manual of Mental Disorders. Intellectual Disability.
Publisher	American Psychiatric Association
Date Issued	2013

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

	Third Incorporation
Official Title of Materials Incorporated (from title page)	Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2019 Through September 30, 2020
Publisher	Office of the Federal Register, National Archives and Records Administration
Date Issued	11/28/2018
Issue, or version	83 FR 61157

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

	Fourth Incorporation
Official Title of Materials Incorporated (from title page)	Annual Update of the HHS Poverty Guidelines
Publisher	Office of the Federal Register, National Archives and Records Administration
Date Issued	01/17/2020
Issue, or version	85 FR 3060

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

	Fifth Incorporation
Official Title of Materials Incorporated (from title page)	42 CFR 435.910 - Use of social security number.
Publisher	Code of Federal Regulations (annual edition)
Date Issued	2019

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members.

Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	09/10/2020
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R539. Human Services, Services for People with Disabilities. Error! Bookmark not defined.

R539-1. Eligibility.

[R539-1-1. Purpose.

(1) The purpose of this rule is to provide:
 (a) a procedure and standard for the determination of eligibility for division services as required by Section 62A-5-1; and
 (b) notice to an applicant of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes a procedure and standard for the determination of eligibility for any division service as required by Section 62A-5-1.
 (2) This rule constitutes the minimum requirement for eligibility for division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.
 (2) "Agency Action" means an action taken by the division that denies, defers, or changes a service to an applicant applying for, or a person receiving, division funding.
 (3) "Applicant" means a person or a representative of a person applying for determination of eligibility.
 (4) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as multiple sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident.
 (5) "Department" means the Department of Human Services.
 (6) "Division" means the Division of Services for People with Disabilities.
 (7) "Electronic Surveillance" is the real time observation or listening to a person, place, or activity with the aid of an electronic device such as a camera, web cam, global positioning system, motion

detector, weight detector or microphone.

(8) "Electronic Surveillance Certification" means documentation signed by members of the Provider Human Rights Committee that contains the following information as required by Subsections R539-3-7(3) and R539-3-7(4):

- (a) the location of the site under surveillance;
 - (b) a description of the type of surveillance to be used;
 - (c) the name of each person under surveillance; and
 - (d) a signed consent from each person affected.
- (9) "Form" means a standard document required by division rule or other applicable law.

(10) "Guardian" means an individual appointed by a court to be a substitute decision maker for a person deemed to be incompetent to make an informed decision.

(11) "Hearing Request" means a written request made by a person for a hearing concerning a denial, deferral or change in service.

(12) "ICF/ID" means Intermediate Care Facility for People with Intellectual Disability.

(13) "Person" means an individual who has been found eligible for division funding for a support service due to a disability and who is waiting for or receiving a service at the present time.

(14) "Qualifying Acquired Neurological Brain Injury" means an eligible diagnosis from the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10 CM), as outlined in division Directive 140 Qualifying Acquired Brain Injury Diagnoses, incorporated by reference.

(15) "Related Conditions" means a severe, chronic disability that meets the following conditions:

- (16) It is attributable to:
 - (a) cerebral palsy or epilepsy; or
 - (b) Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with intellectual disability, and requires treatment or services similar to those required for these persons.
- (ii) It is manifest before the person reaches age 22.
- (iii) It is likely to continue indefinitely.
- (iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

- (A) Self-care.
- (B) Understanding and use of language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction
- (F) Capacity for independent living.

(17) "Representative" means the person's legal representative including the person's parent if the person is a minor child, a court appointed guardian or a lawyer retained by the person.

(18) "Resident" is an applicant or guardian who is physically present in Utah and provides a statement of intent to reside in Utah.

(19) "Support" is assistance for the portion of a task that allows a person to independently complete any other portion of the task or to assume increasingly greater responsibility for performing the task independently.

(20) "Support Coordinator" is an employee of the division or an individual contracted with the division to provide assistance in assessing the needs of, and developing services and supports for, a person receiving division funding. A support coordinator completes written documentation of supports and assist with monitoring the appropriate spending of a person's annual budget, as well as monitors the quality of each service provided.

(21) "Team Member" means any member of the person's circle of support who participates in the planning and delivery of services and supports with the person. A team member may include the person applying for or receiving services, their parent, guardian, the support coordinator, friend of the person, and any other professional and provider staff working with the person.

(22) "Waiver" means the Medicaid approved plan for a state to provide home and community based services to a person with a disability instead of institutionalization in a Title XIX facility, the division administers three waivers; the intellectual disabilities or related conditions waiver, the brain injury waiver, and the physical disabilities waiver.

~~R539-1-4. Non-Waiver Services for People with Intellectual Disabilities or Related Conditions.~~

(1) The division will serve an applicant who meets the definition of a person with a disability in Subsection 62A-5-101(9).

(2) When determining functional limitations in the areas listed below for an applicant aged seven years or older, age appropriate abilities shall be considered.

(a) "Self-care" means an applicant who requires assistance, training or supervision with eating, dressing, grooming, bathing or toileting.

(b) "Expressive and receptive language" means an applicant who:

- (i) lacks functional communication skills;
- (ii) requires the use of assistive devices to communicate;
- (iii) does not demonstrate an understanding of requests; or
- (iv) is unable to follow two-step instructions.

(c) "Learning" means an applicant who has a valid diagnosis of intellectual disability based on the criteria found in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), incorporated by reference.

(d) "Mobility" means an applicant who requires the use of assistive devices for mobility and who cannot self-evacuate from a building during an emergency without the assistive device.

(e) "Capacity for Independent Living" means:

- (i) a minor applicant, at least seven years of age, who is unable to locate and use a telephone; cross streets safely; or understand that it is not safe to accept rides, food, or money from strangers; or
- (ii) an adult applicant who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) "Self-direction" means:

- (i) a minor applicant, at least seven years of age, who is significantly at risk in making age appropriate decisions;
- (ii) an adult applicant who is unable to provide informed consent for medical care, personal safety, legal, financial, habitative, or residential issues; or who has been declared legally incompetent; or
- (iii) an applicant who is a significant danger to self or others without supervision.

(g) "Economic self-sufficiency" means an adult applicant who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with an intellectual disability or related condition as set forth in Subsection 62A-5-101(9).

(a) An applicant with a primary diagnosis of mental illness, hearing impairment or visual impairment, learning disability, behavior disorder, substance use disorder or personality disorder do not qualify for services under this rule.

~~(4) The applicant, parent of a minor child, or the applicant's guardian must be a resident of the State of Utah prior to the division's final determination of eligibility.~~

~~(5) The applicant shall be provided with information about each service option available through the division as well as a copy of the Division's Guide to Services.~~

~~(6) It is the applicant's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.~~

~~(7) The following documents are required to determine eligibility for non-waivered intellectual disability or related conditions services:~~

~~(a) A Division Eligibility for Services Form 19 completed by the designated staff. For children younger than seven years of age, Eligibility for Services Form 19C, completed by the designated staff within the division office, will be accepted instead of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to intellectual disability or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.~~

~~(b) An assessment of functional limitation and need shall be completed by the division.~~

~~(c) Social History completed by or for the applicant within one year of the date of application.~~

~~(d) Psychological evaluation provided by the applicant or, for a child younger than seven years of age, a developmental assessment may be used as an alternative.~~

~~(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the eligibility documentation. Examples of supporting documentation include mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.~~

~~(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the applicant indicating that the intake case will be placed in inactive status.~~

~~(a) The applicant may activate the application at anytime by providing the remaining required information.~~

~~(b) The applicant shall be required to update information.~~

~~(9) When all necessary eligibility documentation is received from the applicant, division staff shall determine the applicant eligible or ineligible for funding for non-waiver intellectual disability or related conditions services within 90 days of receiving the required documentation.~~

~~(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the applicant of eligibility determination and placement on the waiting list. The applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.~~

~~(11) Each person receiving a service shall have their eligibility re-determined on an annual basis. If a person is determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are met.~~

~~(12) This section does not apply to an applicant who meets the separate eligibility criteria for physical disability and brain injury as described in Sections R539-1-6 and R539-1-8, respectively.~~

~~(13) Any person not participating in a waiver or any person participating in a waiver but receiving a non-waiver service may have reductions in non-waiver service packages or be discharged from non-waiver services completely, due to a budget shortfall, reduced legislative allocation or a reevaluation of eligibility.~~

~~R539-1-5. Medicaid Waiver Eligibility for People with Intellectual Disability or Related Conditions.~~

~~(1) Matching federal funds may be available through the Community Supports Waiver for a person with an intellectual disability or related condition to provide an array of home and community-based services that an eligible person may need.~~

~~(2) Within appropriations from the Legislature, as described in Subsections 62A-5-102(3) and (4), a person may be found eligible for waiver funding according to the following methods:~~

~~(a) A person's needs score, as determined by the division's need assessment tool, identifies the person as ranking among each other person with the most critical need.~~

~~(b) A person is identified by the division as a person whose only need is respite services.~~

~~(i) The division determines that a person only needs respite services by:~~

~~(A) identifying each person who, according to the division's records, have indicated that the person only needs respite services; and~~

~~(B) conducting an additional needs assessment to update the person's need score and determine if the person needs additional services beyond respite.~~

~~(ii) Each person identified by the division as needing only respite services will be grouped together. The division shall randomly select each person using a simple random sampling method.~~

~~(3) Pursuant to Section R414-510, when the Department of Health determines that sufficient funds are available, an eligible individual may receive waiver services by transitioning out of an ICF/IID into the Community Supports Waiver for a person with an intellectual disability or related condition.~~

~~(4) Pursuant to Section R414-502, when the Department of Health determines that a person meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid home and community-based waiver program, a person may be found eligible for funding through the Community Supports Waiver for a person with an intellectual disability or related condition when all other eligibility requirements of Section R414-502 are met.~~

~~(5) Any person found eligible for funds through the waiver may choose not to participate in the waiver. A person who chooses not to participate in the waiver will receive only the state funded portion of the budget the person would have received had the person participated in the waiver.~~

~~R539-1-6. Non-Waivered Services for People with Physical Disabilities.~~

~~(1) The division will serve an applicant who meets the eligibility requirements for physical disabilities services. To be determined eligible for a non-waivered physical disabilities service, the applicant must:~~

~~(a) have the functional loss of two or more limbs;~~

~~(b) be 18 years of age or older;~~

~~(c) have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that~~

is safe and can accommodate the personnel and equipment needed to adequately and safely care for the person;

- _____ (d) be medically stable and have a physical disability;
- _____ (e) Have their physician document that the person's qualifying disability and need for a personal assistance service are attested to by a medically determinable physical impairment that the physician expects will last for a continuous period of not less than 12 months and that has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living and instrumental activities of daily living;
- _____ (f) be capable, as certified by a physician, of selecting, training and supervising a personal attendant;
- _____ (g) be capable of managing personal financial and legal affairs; and
- _____ (h) be a resident of the state.

_____ (2) An applicant seeking non-waiver funding for a physical disability service from the division shall apply directly to the division, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

_____ (3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the applicant indicating that the intake case will be placed in inactive status.

_____ (a) The applicant may activate the application at any time by providing the remaining required information.

_____ (b) The applicant shall be required to update information.

_____ (4) When all necessary eligibility documentation is received from the applicant and the applicant is determined eligible, the applicant will be assessed by a nurse coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing the person into services. The physical disabilities nurse coordinator shall:

_____ (a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each person's level of need;

_____ (b) determine and prioritize a need score;

_____ (c) rank order the need score for each person eligible for service; and

_____ (d) if funding is unavailable, enter the person's name and score on the physical disability wait list.

_____ (5) The physical disabilities nurse coordinator shall assure that the need assessment score and ranking remain current by updating the need assessment score as necessary. A person's ranking may change as needs assessments are completed for each new applicant found to be eligible for services.

_____ (6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the applicant of eligibility determination and placement on the pending list. The applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

_____ (7) This does not apply to an applicant who meets the separate eligibility criteria for intellectual disability or related condition and brain injury as described in Sections R539-1-4 and R539-1-8 respectively.

_____ (8) Any person not participating in a waiver or any person participating in a waiver but receiving non-waiver services may have reductions in non-waiver service packages or be discharged from non-waiver services completely, due to a budget shortfall, reduced legislative allocation or a reevaluation of eligibility.

R539-1-7. Medicaid Waiver Eligibility for People with Physical Disabilities.

_____ (1) Matching federal funding may be available through the Medicaid home and community-based waiver for a person with a physical disability to provide an array of home and community-based services that an eligible person may need.

_____ (2) Within appropriations from the Legislature, as described in Subsections 62A-5-102(3) and (4), a person with physical disability may be found eligible for waiver funding according to the following methods:

_____ (a) A person's need score, as determined by the division's need assessment tool, identifies the person as ranking among each other person with the most critical need.

_____ (b) A person who is eligible for waiver service through the Medicaid home and community-based waiver for a person with a physical disability is not eligible for a respite service.

_____ (3) Pursuant to Section R414-502, when the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid home and community-based waiver program, an applicant may be found eligible for funding through the Medicaid home and community-based waiver for a person with a physical disability when all other eligibility requirements of Section R414-502 are met.

_____ (4) A person who is found eligible for funds through the Medicaid home and community-based waiver for a person with a physical disabilities may choose not to participate in the waiver. A person who chooses not to participate in the waiver will receive only the state-funded portion of the budget the person would have received had the person participated in the waiver.

R539-1-8. Non-Waiver Services for People with Brain Injury.

_____ (1) The division will serve an applicant who meets the eligibility requirements for brain injury services. To be determined eligible for a non-waiver brain injury service the applicant must:

_____ (a) have a documented qualifying acquired neurological brain injury from a licensed physician;

_____ (b) be 18 years of age or older;

_____ (c) score between 36 and 136 on the Comprehensive Brain Injury Assessment Form 4-1; and

_____ (d) meet at least three of the functional limitations listed under Subsection R539-1-8(4).

_____ (2) An applicant with functional limitations due solely to mental illness, substance use disorder or deteriorating diseases like multiple sclerosis, muscular dystrophy, Huntington's chorea, ataxia or cancer are ineligible for non-waiver services.

_____ (3) An applicant with intellectual disability or related conditions are ineligible for a non-waiver brain injury service.

_____ (4) In addition to the definitions in Section 62A-5-101, eligibility for brain injury services will be evaluated according to the applicant's functional limitations as described in the following definitions:

_____ (a) "Memory" or "Cognition" means the applicant's brain injury resulted in a substantial problem with recall of information; concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

_____ (b) "Activities of Daily Life" means the applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

_____ (c) "Judgment" and "Self-protection" means the applicant's brain injury resulted in substantial limitation of the ability to:

_____ (i) provide personal protection;

- ~~_____ (ii) provide necessities such as food, shelter, clothing, or mental or other health care;~~
- ~~_____ (iii) obtain services necessary for health, safety, or welfare;~~
- ~~or~~
- ~~_____ (iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.~~
- ~~_____ (d) "Control of Emotion" means the applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.~~
- ~~_____ (e) "Communication" means the applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.~~
- ~~_____ (f) "Physical Health" means the applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.~~
- ~~_____ (g) "Employment" means the applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.~~
- ~~_____ (5) The applicant shall be provided with information concerning service options available through the division and a copy of the Division's Guide to Services.~~
- ~~_____ (6) The applicant must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.~~
- ~~_____ (7) It is the applicant's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician.~~
- ~~_____ (8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:~~
 - ~~_____ (a) Comprehensive Brain Injury Assessment Form 4-1, Sections A through L; and~~
 - ~~_____ (b) Brain Injury Social History Summary Form 824L, completed or updated within one year of eligibility determination.~~
- ~~_____ (9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the applicant indicating that the intake case will be placed in inactive status.~~
- ~~_____ (a) The applicant may activate the application at any time by providing the remaining required information.~~
- ~~_____ (b) The applicant shall be required to update information.~~
- ~~_____ (10) When all necessary eligibility documentation is received from the applicant, division staff shall determine the applicant eligible or ineligible for funding for brain injury supports.~~
- ~~_____ (11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the applicant of eligibility determination and placement on the waiting list. The applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.~~
- ~~_____ (12) Each person receiving a brain injury service will have their eligibility re-determined on an annual basis. A person determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.~~

~~R539-1-9. Medicaid Waiver Eligibility for People with Acquired Brain Injury.~~

- ~~_____ (1) Matching federal funds may be available through the Medicaid home and community-based waiver for a person with an acquired brain injury to provide an array of home and community-based services that an eligible person may need.~~

- ~~_____ (2) Within appropriations from the Legislature, as described in Subsections 62A-5-102(3) and (4), a person may be found eligible for waiver funding according to the following methods:~~
 - ~~_____ (a) A person's needs score, as determined by the division's need assessment tool, identifies the person as ranking among each other person with the most critical need.~~
 - ~~_____ (b) A person is identified by the division as a person whose only need is respite services.~~
 - ~~_____ (i) The division determines that a person only needs respite services by:~~
 - ~~_____ (A) identifying each person who, according to the division's records, have indicated that the person is in need of respite services only; and~~
 - ~~_____ (B) conducting an additional needs assessment to update the person's need score and determine if the person needs any additional service beyond respite.~~
 - ~~_____ (ii) Any person identified by the division as needing only respite services will be grouped together. The division shall randomly select each person using a simple random sampling method.~~
 - ~~_____ (3) Pursuant to Section R414-502, when the Department of Health determines that an applicant meets nursing facility level of care and is medically approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid home and community-based waiver program, an applicant may be found eligible for funding through the Medicaid home and community-based waiver for a person with an acquired brain injury when all other eligibility requirements of Section R414-502 are met.~~
 - ~~_____ (4) Any person who is found eligible for funds through the Medicaid home and community-based waiver for a person with an acquired brain injury may choose not to participate in the waiver. Any person who chooses not to participate in the waiver will receive only the state-funded portion of the budget the person would have received had the person participated in the waiver.~~

~~R539-1-10. Graduated Fee Schedule.~~

- ~~_____ (1) Pursuant to Subsections 62A-5-105(2)(b) and (c) the division establishes a graduated fee schedule for use in assessing fees to a person. The graduated fee schedule shall be applied to a person who does not meet the Medicaid eligibility requirements for waiver services. Family size and gross income shall be used to determine the fee. This rule does not apply to a person who qualifies for Medicaid waiver funding but who choose to have funding reduced to the state match as described in Subsections R539-1-5(5), R539-1-7(4), and R539-1-9(4) rather than participate in the Medicaid waiver.~~
 - ~~_____ (a) A person who does not participate in a Medicaid waiver who does not meet waiver level of care must apply for a Medicaid card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid waiver who meet waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. A person who does not participate in a Medicaid waiver shall provide the support coordinator or nurse coordinator with the financial determination letter within 10 days of the receipt of such documentation. A person who does not participate in a Medicaid waiver and who fails to comply with these requirements shall have funding reduced to the state match rate.~~
 - ~~_____ (b) A person who does not participate in a Medicaid waiver due to financial eligibility, must be reduced to the state match rate.~~
 - ~~_____ (c) A person who only meets the general eligibility requirements, as described in Sections R539-1-4, R539-1-6, and R539-1-8, must report all cash assets, annual income and number of family members living together using division Form 2-1G. A person with a~~

discretionary trust is exempt from the Graduated Fee Schedule as described in Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The person shall return Form 2-1G to the support coordinator prior to delivery of new services. A person currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the division. A person who completes the division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income using the formula: $(\text{assets} + \text{income}) / \text{by the total number of family members} = \text{available income}$. Available income will be used to determine the fee percent ranging from 0% to 3%. The annual fee amount will be calculated by multiplying available income by the fee percent. A person who does not participate in a Medicaid waiver, who only meets general eligibility requirements, and has an available income below 300% of the poverty level will not be assessed a fee. A person with an available income between 300% and 399% of poverty will be assessed a 1% fee, a person with an available income between 400% and 499% of poverty will be assessed a 2% fee and those with available income over 500% of poverty will be assessed a 3% fee.

(e) No fee shall be assessed for a person who does not participate in a Medicaid waiver and who receives funding for less than 31% of their assessed need. A multiplier shall be applied to the fee of a person who does not participate in a Medicaid waiver and who receive 31% to 100% of their assessed need.

(f) If a person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. A person who does not participate in a Medicaid waiver younger than 18 years of age shall be assessed a fee based upon parent income. A person who does not participate in a Medicaid waiver 18 years of age or older shall be assessed a fee based upon individual income and assets.

(h) If the person is assessed a fee, the person shall pay the division or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the person.

(i) If the person fails to pay the fee for six months, the division may reduce the person's next year annual allocation to recover the amount due. If a person can show good cause why the fee cannot be paid, the division director may grant an exception on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The division requires a person applying for services to provide a valid Social Security Number. The division adopts the same standard as Sections R414-302 and 42 CFR 435.910, 2014 ed., which is incorporated by reference.]

R539-1-1. Purpose.

(1) The purpose of this rule is to provide a procedure and standard for:

(a) the determination of eligibility for division services as required by Section 62A-5-1; and

(b) notice to an applicant of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes a procedure and standard for the determination of eligibility for division services as required by Section 62A-5-1.

(2) Procedure described by this rule constitutes the minimum requirement to determine eligibility for division funding. Additional procedure may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) "Agency Action" means an action taken by the division that results in:

(a) a determination of eligibility or change of intake status for an applicant; and

(b) a denial, termination, suspension, or reduction of a service applied for or included in the budget of a person receiving division funding.

(3) "Applicant" means an individual or a representative of an individual applying for a determination of eligibility.

(4) "Cash Assets" means any stock, bond, certified deposit, saving, checking, and trust account. An exempt discretionary trust account as described in Subsection 62A-5-110(6) is not included.

(5) "Department" means the Department of Human Services.

(6) "Division" means the Division of Services for People with Disabilities.

(7) "Form" means a standard document required by division rule or other applicable law.

(8) "Guardian" means someone appointed by a court to be a substitute decision-maker for an individual deemed incompetent to make an informed decision.

(9) "Hearing Request" means a written request made by an applicant or a person for a hearing concerning a denial, deferral or change in service.

(10) "ICF" means Intermediate Care Facility for People with Intellectual Disability.

(11) "Person" means an individual or their representative found eligible for division funding for a support service, who is waiting for or receiving a service.

(12) "Qualifying Acquired Neurological Brain Injury" means an eligible diagnosis from the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM), as described in division Directive 1.40 Qualifying Acquired Brain Injury Diagnoses (2019), incorporated by reference.

(13) "Related Conditions" means the same as defined in 42 CFR 435.1010.

(14) "Representative" means any legal representative including the parent of a minor child, a court appointed guardian, or a retained lawyer.

(15) "Resident" means an applicant, person, or guardian who voluntarily lives in the state with the intention of making the state their place of residence.

(16) "Support" means assistance for any portion of a task that allows a person to:

(a) independently complete any other portion of the task; or

(b) assume increasingly greater responsibility for performing the task independently.

(17) "Support Coordinator" means an employee of the division or an individual contracted with the division who provides assistance with:

(a) assessing the need of a person receiving division funding;
 (b) developing a service and support plan for a person receiving division funding;
 (c) completing written documentation of support;
 (d) monitoring the appropriate spending of a person's annual budget; and
 (e) monitoring the quality of each service used by a person receiving division funding.

(18) "Team Member" means any member of the person's circle of support who participates in the planning and delivery of any service and support with the person. Team members may include the person applying for or receiving a service, the parent, the guardian, the support coordinator, a friend of the person, and any other professional and provider staff working with the person.

(19) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to a person with disability instead of institutionalization in a Title XIX facility.

R539-1-4. Services for People with Intellectual Disabilities or Related Conditions.

(1) The division shall only offer services for an intellectual disability or a related condition to an eligible applicant with a disability as defined in Subsection 62A-5-101(9).

(2) An eligible applicant must meet the following requirements:

(a) have a diagnosed intellectual disability or related condition as defined in Subsection 62A-5-101(9) and Section R414-502-8;

(b) have three or more functional limitations; and

(c) be a resident of the state.

(3) Functional limitations are defined as:

(a) "Self-care" means an applicant who requires assistance, training, or supervision with:

(i) eating;

(ii) dressing;

(iii) grooming;

(iv) bathing; or

(v) toileting.

(b) "Expressive and receptive language" means an applicant who:

(i) lacks functional communication skills;

(ii) requires the use of an assistive device to communicate;

(iii) does not demonstrate an understanding of requests; or

(iv) is unable to follow a two-step instruction.

(c) "Learning" means an applicant who has a valid diagnosis of intellectual disability based on the criteria found in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders DSM-5 (2013), incorporated by reference.

(d) "Mobility" means an applicant who:

(i) requires the use of assistive devices for mobility; and

(ii) cannot self-evacuate from a building during an emergency without the assistive device.

(e) "Capacity for Independent Living" means:

(i) a minor applicant, at least seven years of age, who is unable to:

(A) locate and use a telephone;

(B) cross a street safely; or

(C) understand that it is not safe to accept a ride, food, or money from a stranger; or

(ii) an adult applicant who lacks basic survival skills in the areas of:

(A) shopping;

(B) preparing food;

(C) housekeeping; or

(D) paying a bill.

(f) "Self-direction" means an applicant who:

(i) is unable to provide informed consent for:

(A) medical care;

(B) personal safety;

(C) legal matters;

(D) financial matters;

(E) habilitative care; or

(F) residential matters;

(ii) has been declared legally incompetent;

(iii) is a significant danger to self or any other individual without supervision; or

(iv) is a minor applicant, at least seven years of age, significantly at risk in making an age appropriate decision.

(g) "Economic self-sufficiency" means an adult applicant who:

(i) receives disability benefits; and

(ii) is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(4) The division determines eligibility.

(a) The division shall determine if an applicant is eligible for non-waiver services within 90 days of receiving needed documentation.

(b) To determine functional limitations for an applicant aged seven years or older, the division shall consider age appropriate ability.

(c) The division shall retain eligibility documentation in the applicant's electronic record.

(5) The division shall use the following documents to determine eligibility:

(a) Eligibility for Services Form 19 or Eligibility for Services Form 19C for a child younger than seven years of age;

(b) an assessment of functional limitations and need;

(c) a social history of the applicant completed within one year of the date of application;

(d) a psychological evaluation or a developmental assessment for a child younger than seven years of age; and

(e) supporting documentation for each eligibility requirement. Supporting documentation includes mental health assessment, educational record, neuropsychological evaluation, and medical healthcare visit summary.

(6) An applicant shall submit to the division the supporting documentation needed to determine eligibility.

(a) If needed supporting documentation is not submitted within 90 calendar days of initial contact, the division shall change the intake case status to inactive. The division shall send the applicant written notification of an intake status change to inactive.

(b) An applicant may reactivate the intake case by submitting any needed supporting documentation.

(c) An applicant must update eligibility documentation as needed.

(7) The division shall notify an applicant of the eligibility determination by mailing a Notice of Agency Action Form 522-I and a Hearing Request Form 490S.

(a) The Notice of Agency Action Form 522-I indicates:

(i) the eligibility determination; and

(ii) placement on the waiting list, when applicable.

(b) An applicant may challenge the eligibility determination by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(8) The division shall annually re-determine eligibility for each person receiving a service. If a person receiving a service is

determined to be ineligible, the division shall develop a transition plan to discontinue each service that ensures any health and safety need is met.

(9) A person who receives a non-waiver service may have their non-waiver service package reduced or terminated because of:

(a) a division budget shortfall;

(b) a reduced legislative allocation; or

(c) a reevaluation of eligibility.

(10) Section R539-1-4 does not apply to an applicant who meets the eligibility criteria for physical disability or brain injury as described in Sections R539-1-5 and R539-1-6, respectively.

R539-1-5. Services for People with Physical Disabilities.

(1) The division shall only offer services for a physical disability to an eligible applicant with a disability as defined in Subsection 62A-5-101(9).

(2) An eligible applicant must meet the following requirements:

(a) have a qualifying physical disability expected to last for a continuous period of 12 months or longer;

(b) the functional loss of two or more limbs;

(c) need for a personal assistance service in order to accomplish an activity of daily living or an instrumental activity of daily living;

(d) be 18 years of age or older;

(e) medically stable;

(f) capable of selecting, training, and supervising a personal attendant;

(g) have at least one available personal attendant trained or willing to be trained;

(h) live in a safe residence that can accommodate the personnel and equipment needed to adequately and safely care for the person;

(i) capable of managing personal financial and legal matters;

(j) have three or more functional limitations as described in Subsection R539-1-4(3)(a) through R539-1-4(3)(g); and

(k) be a resident of the state.

(3) The division determines eligibility.

(a) The division shall determine if an applicant is eligible for non-waiver services within 90 days of receiving needed documentation.

(b) The division shall retain eligibility documentation in the applicant's electronic record.

(4) The division shall use the following documents to determine eligibility:

(a) Physical Disabilities Services Application Form 3-1 Part B signed by the licensed physician attesting to each eligibility requirement; and

(b) the Minimum Data Set-Home and Community-based (MDS-HC).

(5) An applicant shall submit to the division the documentation needed to determine eligibility.

(a) If needed documentation is not submitted within 90 calendar days of initial contact, the division shall change the intake case status to inactive. The division shall send the applicant written notification of an intake status change to inactive.

(b) An applicant may reactivate the intake case by submitting any needed documentation.

(c) An applicant must update eligibility documentation as needed.

(6) The division shall notify an applicant of the eligibility determination by mailing a Notice of Agency Action Form 522-I and a Hearing Request Form 490S.

(a) The Notice of Agency Action Form 522-I indicates:

(i) the eligibility determination; and

(ii) placement on the waiting list, when applicable.

(b) An applicant may challenge the eligibility determination by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) The division shall annually re-determine eligibility for each person receiving a service. If a person receiving a service is determined to be ineligible, the division shall develop a transition plan to discontinue each service that ensures any health and safety need is met.

(8) A person who receives a non-waiver service may have their non-waiver service package reduced or terminated because of:

(a) a division budget shortfall;

(b) a reduced legislative allocation; or

(c) a reevaluation of eligibility.

(9) Section R539-1-5 does not apply to an applicant who meets the eligibility criteria for intellectual disability and related conditions or brain injury as described in Sections R539-1-4 and R539-1-6, respectively.

R539-1-6. Services for People with Brain Injury.

(1) The division shall only offer services for a brain injury to an eligible applicant with a disability as defined in Subsections 62A-5-101(3) and 62A-5-101(9). Applicants with an intellectual disability or related condition are ineligible for brain injury services.

(2) An eligible applicant must meet the following requirements:

(a) have a documented qualifying acquired neurological brain injury from a licensed physician;

(b) be 18 years of age or older;

(c) have three or more functional limitations;

(d) score between 36 and 136 on the Comprehensive Brain Injury Assessment Form 4-1; and

(e) be a resident of the state.

(3) Functional limitations are defined as:

(a) "Memory" or "Cognition" means an applicant's brain injury resulted in a substantial problem with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) "Activities of daily life" means an applicant's brain injury resulted in substantial dependence on another individual to move, eat, bathe, toilet, shop, prepare a meal, or pay a bill.

(c) "Judgment" and "Self-protection" means the applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide a necessity including food, shelter, clothing, mental health care, or any other health care;

(iii) obtain a service necessary for health, safety, or welfare; or

(iv) comprehend the nature and consequence of remaining in a situation of abuse, neglect, or exploitation.

(d) "Control of emotion" means the applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) "Communication" means the applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) "Physical health" means the applicant's brain injury resulted in substantial limitation of the normal process and working of the human body.

(g) "Employment" means the applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing support.

(4) The division determines eligibility.

(a) The division shall determine if an applicant is eligible for non-waiver services within 90 days of receiving eligibility documentation.

(b) The division shall retain eligibility documentation in the applicant's electronic record.

(5) The division shall use the following documents to determine eligibility:

(a) documentation of a qualifying acquired brain injury diagnosis signed by a licensed physician;

(b) Comprehensive Brain Injury Assessment Form 4-1, Sections A through L; and

(c) Brain Injury Social History Summary Form 824L completed within one year of the date of application;

(6) An applicant shall submit to the division the documentation needed to determine eligibility.

(a) If eligibility documentation is not submitted within 90 calendar days of initial contact, the division shall change the intake case status to inactive. The division shall send the applicant written notification of an intake status change to inactive.

(b) An applicant may reactivate the intake case by submitting any eligibility documentation.

(c) An applicant must update eligibility documentation as needed.

(7) The division shall notify an applicant of the eligibility determination by mailing a Notice of Agency Action Form 522-I and a Hearing Request Form 490S.

(a) The Notice of Agency Action Form 522-I indicates:

(i) the eligibility determination; and

(ii) placement on the waiting list, when applicable.

(b) An applicant may challenge the eligibility determination by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(8) The division shall annually re-determine eligibility for each person receiving a service. If a person receiving a service is determined to be ineligible, the division shall develop a transition plan to discontinue each service that ensures any health and safety need is met.

(9) A person who receives a non-waiver service may have their non-waiver service package reduced or terminated because of:

(a) a division budget shortfall;

(b) a reduced legislative allocation; or

(c) a reevaluation of eligibility.

(10) Section R539-1-6 does not apply to an applicant who meets the eligibility criteria for intellectual disability and related conditions or physical disability as described in Sections R539-1-4 and R539-1-5, respectively.

R539-1-7. Medicaid Waiver Eligibility and Enrollment for the Comprehensive Support Waivers.

(1) Matching federal funds may be available through a comprehensive support waiver that provides an array of home and community-based services for a person with an intellectual disability or related condition, physical disability, or brain injury.

(a) A person must meet financial eligibility for Medicaid benefits as determined by the Department of Workforce Services.

(b) A person must meet a waiver level of care as determined by the division.

(2) Within an appropriation from the Legislature, as described in Subsections 62A-5-102(3) and 62A-5-102(4), the division determines waiver enrollment by the most critical need ranking.

(a) The division shall use a need assessment tool to determine a person's need score.

(b) Ordering of each person's need score identifies the most critical need ranking.

(3) Pursuant to Section R414-510, if the Department of Health determines that sufficient funding is available, an eligible individual may receive a waiver service by transitioning out of an ICF into a comprehensive support waiver.

(4) Pursuant to Section R414-502, the Department of Health may find a person meeting nursing facility level of care eligible for funding through a comprehensive support waiver.

(5) Any person offered enrollment in a Medicaid waiver may choose not to participate. If an eligible person chooses not to participate in a waiver, the person shall receive only the state funded portion of their assessed need as described in Section R539-1-9.

R539-1-8. Medicaid Waiver Eligibility and Enrollment for the Limited Supports Waiver.

(1) Matching federal funds may be available through a limited support waiver that provides an array of home and community-based services for a person with an intellectual disability or related condition, or brain injury.

(a) A person must meet financial eligibility for Medicaid benefits as determined by the Department of Workforce Services.

(b) A person must meet a waiver level of care as determined by the division.

(2) Within an appropriation from the Legislature, as described in Section 62A-5-102, the division determines waiver enrollment.

(a) The division shall offer enrollment in order of time spent waiting.

(b) The division shall identify a person through:

(i) an adjusted critical needs score at or below the person's age group threshold; and

(ii) no immediate need for out-of-home residential support services.

(c) The adjusted critical need score equals the person's total critical need score minus the time spent waiting component.

(d) A person shall be enrolled in a limited support waiver only if the person's assessed need can be safely met within the individual budget limit.

(4) Pursuant to Section R414-510, if the Department of Health determines that sufficient funding is available, an eligible individual may receive a waiver service by transitioning out of an ICF into a limited support waiver.

(5) Pursuant to Section R414-502, the Department of Health may find a person meeting nursing facility level of care eligible for funding through a limited support waiver.

(6) Any person offered enrollment in a Medicaid waiver may choose not to participate. If an eligible person chooses not to participate in a waiver, the person shall receive only the state funded portion of their assessed need as described in Section R539-1-9.

R539-1-9. State Match Rate.

(1) "State match rate" means the state funded portion of a person's assessed need as determined through the person-centered planning process.

(a) The state match rate shall be calculated based on the Centers for Medicare and Medicaid Federal Medical Assistance Percentage (FMAP).

(b) The division incorporates by reference the federal matching shares for Medicaid beginning October 1, 2020 and ending September 30, 2021, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 1396b.

(2) The division shall reduce a person's funding to the state match rate for the following reasons:

(a) rejection of an offer for waiver enrollment and determined eligible for a Medicaid waiver by the Department of Workforce Services;

(b) offered waiver enrollment and determined ineligible for a Medicaid waiver by the Department of Workforce Services;

(c) failure to apply for a determination of financial eligibility for Medicaid benefits within 30 days of an offer for waiver enrollment; or

(d) failure to submit a Graduated Fee Assessment Form 2-1G to the support coordinator within 60 days of notice of the graduated fee schedule.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Subsections 62A-5-105(2)(b) and (c) the division establishes a graduated fee schedule.

(2) The graduated fee schedule applies to any person determined ineligible for a Medicaid waiver.

(a) A person offered waiver enrollment that does not meet financial eligibility for Medicaid benefits as determined by the Department of Workforce Services.

(b) A person offered waiver enrollment that does not meet waiver level of care as determined by the division.

(c) Except a person determined ineligible for a Medicaid waiver who receives only the state match rate as described in Section R539-1-9.

(3) Each person offered waiver enrollment must apply for a determination of financial eligibility for Medicaid benefits within 30 days of the offer.

(a) If the person meets waiver level of care, the division shall submit a Form 927 requesting a determination of financial eligibility.

(b) If the person does not meet waiver level of care, the person shall:

(i) apply for state plan Medicaid; and

(ii) provide the support coordinator or nurse coordinator with the financial determination letter within 10 days of receipt of the determination.

(c) Noncompliance results in a funding reduction as described in Section R539-1-9.

(4) A person determined ineligible for a Medicaid waiver shall submit to the division a Graduated Fee Assessment Form 2-1G to report the following information:

(a) cash assets;

(b) annual gross income; and

(c) number of family members living together.

(5) The Form 2-1G shall be reviewed at the time of the annual planning meeting.

(a) The person shall return a Form 2-1G to the support coordinator prior to delivery of a new service.

(b) A person receiving a service must return a completed and signed Form 2-1G to their support coordinator within 60 days of receiving notice of this rule.

(c) Noncompliance results in a funding reduction as described in Section R539-1-9.

(6) The person's available income determines the fee percent assessed.

(a) Available income shall be calculated using the formula (cash assets + annual gross income)/the total number of family members living together.

(b) The annual fee amount shall be calculated by multiplying available income by the fee percent.

(i) No fee shall be assessed if available income is less than 300% of the federal poverty guideline.

(ii) A 1% fee shall be assessed if available income is between 300% and 399% of the federal poverty guideline.

(iii) A 2% fee shall be assessed if available income is between 400% and 499% of the federal poverty guideline.

(iv) A 3% fee shall be assessed if available income is more than 500% of the federal poverty guideline.

(c) An assessed fee shall not exceed 3% of a person's available income.

(d) The division incorporates by reference the 2020 annual poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(7) Only one fee shall be assessed per family, regardless of the number of children in the family receiving services.

(a) A person ineligible for a Medicaid waiver who is younger than 18 years of age shall be assessed a fee based upon parent annual gross income and cash assets.

(b) A person ineligible for a Medicaid waiver who is 18 years of age or older shall be assessed a fee based upon individual annual gross income and cash assets.

(8) If a fee is assessed, the person shall pay the Division of Services for People with Disabilities or designee the total amount assessed.

(a) A person may submit a monthly prorated payment of 1/12 of the assessed fee amount.

(b) Payment shall begin the month after the division sends notice of the assessed fee amount to the person.

(c) Payment must be submitted before the last day of each month.

(9) If the person fails to pay the fee for six months, the division may reduce the person's annual funding from the next fiscal year to recover the amount due.

(10) If a person can show good cause as to why the fee cannot be paid, the division director may grant an exception on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The division requires an applicant to provide a valid Social Security Number.

(2) The division adopts and incorporates by reference the same standard as Section R414-302 and 42 C.F.R. 435.910 (2019).

KEY: human services, disabilities, social security numbers

Date of Enactment or Last Substantive Amendment: [April 8, 2020]

Notice of Continuation: October 23, 2017

Authorizing, and Implemented or Interpreted Law: 62A-5-103; 62A-5-105

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R657-10	Filing No. 53058

Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	Natural Resources	
Street address:	1594 W North Temple	
City, state:	Salt Lake City, UT 84116-3154	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R657-10. Taking Cougar
3. Purpose of the new rule or reason for the change:
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to taking cougar.
4. Summary of the new rule or change:
The proposed amendments to this rule include amending the definition of "kitten" to remove age limitations; 2) increasing season take limit from one to two cougars between July 1 and June 30 of the following year; 3) adds clarification as to when it would be illegal to take a collared cougar; and 4) exempts cougar hunters from wearing hunter orange during other center fire rifle hunts.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The proposed rule amendments allows for an increased opportunity to harvest cougar in depredation areas throughout the state, as well as an exemption from wearing hunter orange, these changes can be initiated within the current workload and resources of the Division, therefore, the Division determines that these amendments do not create a cost or savings impact to the state budget

or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

B) Local governments:

Since the proposed amendments impact current regulations only, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the established cougar hunts.

F) Compliance costs for affected persons:

DWR has determined that this amendment will not create additional costs for those individuals wishing to participate in cougar hunting in Utah.

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 23-14-18 Section 23-14-19

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on:	11/09/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, DWR Director	Date:	09/09/2020
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R657. Natural Resources, Wildlife Resources.

R657-10. Taking Cougar.

R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Compensation" means anything of economic value in excess of \$100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing cougar for any purpose.

(c) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(d) "Cougar control permit" means a harvest objective permit that authorizes a person to take a second cougar on harvest objective units that have an unlimited quota.

(e) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(f) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(g) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(h) "Green pelt" means the untanned hide or skin of any cougar.

(i) "Harvest objective hunt" means any hunt that is identified as harvest objective in the hunt table of the guidebook for taking cougar.

(j) "Harvest objective permit" means any permit valid on harvest objective units, including limited-entry permits for split units after the split-unit transition date.

(k) "Immediate family member" means a livestock owner's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-

NOTICES OF PROPOSED RULES

law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild and grandchild.

(l) "Kitten" means a cougar~~[less than one year of age.]~~

~~(m) "Kitten with spots" means a cougar that has obvious spots on its sides or its back or has obvious leg barring coloration.~~

(~~n~~) "Limited entry hunt" means any hunt listed in the hunt tables of the guidebook of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.

(~~o~~) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(~~p~~) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(~~q~~) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(~~r~~) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(~~s~~) "Split unit" means a cougar hunting unit that begins as a limited entry unit then transitions into a harvest objective unit.

(~~t~~) "Unlimited quota unit" means a harvest objective unit that does not have a limit on the number of cougar that may be harvested during the open season.

(~~u~~) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

(~~v~~) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

- (i) the name and signature of the owner or person in charge;
- (ii) the address and phone number of the owner or person in charge;
- (iii) the name of the dog handler given permission to enter the private lands;
- (iv) a brief description of the pursuit activity authorized;
- (v) the appropriate dates; and
- (vi) a general description of the property.

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit, harvest~~[]~~-objective cougar permit, or cougar control permit, for the specified management units as provided in the guidebook of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit, harvest objective cougar permit, or cougar control permit, may pursue cougar on the unit for which the permit is valid.

(2) A person may not apply for or obtain more than one cougar permit for the same season, except:

- (a) as provided in Subsection R657-10-25(3);
- (b) as provided in Subsection R657-10-33;~~[or]~~

(c) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective or cougar control permit; or

(d) a person may acquire and use a permit issued pursuant to Utah Code Section 23-16-10 in addition to another lawfully acquired cougar permit.

(3) Any cougar permit purchased after the season opens is not valid until three days after the date of purchase.

(4) To obtain a cougar limited entry permit, harvest objective permit, cougar control permit, or pursuit permit, a person must possess a Utah hunting or combination license.

R657-10-6. Firearms, Archery Equipment, Crossbows, and Airguns.

(1) For ~~[limited entry and harvest objective hunts]~~cougar hunt identified in the Wildlife Board's guidebook for taking cougar that allow harvest of a cougar, a person may use the following to take cougar:

(a) any firearm not capable of being fired fully automatic, except a firearm using rimfire cartridge;

(b) archery equipment meeting the following requirements:

(i) the minimum bow pull is 30 pounds at the draw or the peak, whichever comes first;

(ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock;

(c) a crossbow meeting the following requirements:

(i) a minimum draw weight of 125 pounds;

(ii) a positive mechanical safety mechanism; and

(iii) an arrow or bolt that is at least 16 inches long with:

(A) a fixed broadhead that is at least 7/8 inch wide at the widest point; or

(B) an expandable, mechanical broadhead that is at least 7/8 inch wide at the widest point when the broadhead is in the open position; and

(d) an airgun used to hunt cougar must:

(i) be pneumatically powered;

(ii) be pressurized solely through a separate charging device; and

(iii) may only fire a bolt or arrow:

(A) no less than 16 inches long;

(B) with a fixed or expandable broadhead at least 7/8 inch wide at its widest position; and

(C) traveling no less than 400 feet per second at the muzzle.

(2) Arrows and bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(3) A cougar hunt authorized pursuant to Utah Code Section 23-16-10 does not constitute a centerfire rifle hunt for the purposes of hunter orange requirements on any overlapping big game hunt in the area.

R657-10-21. Livestock Depredation and Human Health and Safety.

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 96 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3)(a) A depredating cougar may be taken by those persons authorized in Subsection (1)(a) with:

(i) any weapon authorized for taking cougar; or

(ii) with the use of snares only with written authorization from the director of the division and subject to each condition and restriction set out in the written authorization.

(b) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredating cougar and must be verified by Wildlife Services or division personnel.

(4)(a) The division may issue depredation permits to take cougar on specified private lands and public land grazing allotments with a chronic depredation situation where numerous livestock have been killed by cougar.

(b) The division may:

(i) issue one or more depredation permits to the affected livestock owner or a designee, provided the livestock owner does not receive monetary consideration from the designee for the opportunity to use the depredation permit;

(ii) determine the legal weapons and methods of take allowed; and

(iii) specify the area and season that the permit is valid.

(5)(a) Any cougar taken under Subsection (1)(a) or (4)(a) shall remain the property of the state and must be delivered to a division office or employee within 96 hours.

(b) The division may issue a cougar damage permit to a person who has killed a depredating cougar under Subsection (1)(a) that authorizes the person to keep the carcass.

(c) A person that takes a cougar under Subsection (1)(a) or (4)(a) may acquire and use a limited entry permit or harvest objective permit in the same year.

(d) Notwithstanding Subsections (5)(b) and (5)(c), a person may retain no more than one cougar annually taken with a cougar depredation permit.

(6)(a) A h[H]unter[s] interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-23. Taking Cougar.

(1)(a) For each permit issued, a person may only take one cougar during the season and from the area specified on the permit.

(b) A l[L]imited entry permit[s] may be obtained by following the application procedures provided in this rule and the guidebook of the Wildlife Board for taking cougar.

(c) A h[H]arvest[-]-objective permit[s] may be purchased on a first-come, first-served basis as provided in guidebook of the Wildlife Board for taking cougar.

(d) A c[C]ougar control permit[s] may be purchased as provided in the guidebook of the Wildlife Board for taking cougar.

(2) A person may not:

(a) take or pursue a female cougar with ~~kittens or kittens with spots~~ a kitten; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten ~~[-with spots,]~~ or any cougar accompanied by one or more kittens ~~[-or any cougar accompanied by an adult].~~

(4) A person may not take a cougar wearing a radio or gps collar ~~[from] on any [areas that are published] unit identified~~ in the guidebook of the Wildlife Board for taking cougar as being closed to the take of collared animals.

(5) The division may authorize a hunter[s] who has ~~[ve]~~ obtained a valid cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(6) Season dates, closed areas, harvest objective permit areas, unlimited quota units, and limited entry permit areas are published in the guidebook of the Wildlife Board for taking cougar.

(7)(a) A person who obtains a limited entry cougar permit on a split unit may hunt on all harvest objective units after the date split units transition into harvest objective units. The split unit transition date is provided in the guidebook of the Wildlife Board for taking cougar.

(b) A person who obtains a limited entry cougar permit on a split unit and chooses to hunt on any harvest objective unit after the transition date is subject to all harvest objective unit closure requirements provided in Sections R657-10-29.

R657-10-25. Cougar Pursuit.

(1)(a) Except as provided in rule R657-10-3(1)(b) and Subsection (2), cougar may be pursued only by persons who have obtained a cougar pursuit permit.

(b) The cougar pursuit permit does not allow a person to:

(i) kill a cougar; or

(ii) pursue cougar for compensation.

(c) A person may pursue cougar for compensation only as provided in Subsection (2).

(d) To obtain a cougar pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue cougar on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue cougar;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue cougar;

(iii) possesses on his or her person the Utah hunting guide or outfitter license;

(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue cougar for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue cougar on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue cougar;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue cougar on public lands and private lands while acting within the scope of their employment.

NOTICES OF PROPOSED RULES

(3) A pursuit permit is not required to pursue cougar under Subsection (2).

(4)(a) A person pursuing cougar for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the guidebooks of the Wildlife Board regulating the pursuit and take of cougar.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue cougar for compensation under this subsection, as determined by a division hearing officer.

(5) A cougar pursuit permit authorizes the holder to pursue cougar with dogs on any unit open to pursuing cougar during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.

(6) A person may not:

(a) take or pursue a female cougar with ~~kittens or kittens with spots~~ a kitten;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(7) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit, harvest objective cougar permit, or cougar control permit.

(8) Cougar may be pursued only on limited entry units, harvest objective units, or unlimited quota units during the dates provided in the guidebook of the Wildlife Board for taking cougar.

(9) A cougar pursuit permit is valid on a calendar year basis.

(10) A person must possess a valid hunting or combination license to obtain a cougar pursuit permit.

KEY: wildlife, cougar, game laws

Date of Enactment or Last Substantive Amendment: ~~June 22,~~ 2020

Notice of Continuation: August 1, 2016

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R657-55	Filing No. 53059
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Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room no.:	Suite 2110
Building:	Natural Resources
Street address:	1594 West North Temple
City, state:	Salt Lake City, UT 84116-3154

Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R657-55. Wildlife Expo Permits

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

This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to expo permits.

4. Summary of the new rule or change:

The proposed changes include: 1) in-person validation for expo permits not be required; 2) the drawing may be done entirely electronically provided an in-person or virtual expo is held; and 3) the minimum in-person attendance objectives be waived for 2021 only. These changes are in a direct response to the public health threat caused by COVID-19 and the recommendations of the Centers for Disease Control, , and local health department to avoid public gatherings and maintain social distancing. These amendments are for the 2021 expo only.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed amendments allow for a virtual expo and can be initiated within the current workload and resources of the Division, therefore, the Division determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

B) Local governments:

This filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those wishing to participate in the expo.

F) Compliance costs for affected persons:

DWR has determined that this amendment will not create additional costs for those individuals wishing to participate in the 2021 Expo.

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	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Brian Steed, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 23-14-18	Section 23-14-19	
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Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, DWR Director	Date:	09/09/2020
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R657. Natural Resources, Wildlife Resources.**R657-55. Wildlife Expo Permits.****R657-55-1. Purpose and Authority.**

(1) Under the authority of Sections 23-14-18 and 23-14-19[~~of the Utah Code~~], this rule provides the standards and requirements for issuing wildlife expo permits.

(2) Wildlife expo permits are authorized by the Wildlife Board and issued by the division to a qualified conservation organization for purposes of generating revenue to fund wildlife conservation activities in Utah and attracting and supporting a regional or national wildlife exposition in Utah.

(3) The selected conservation organization will conduct a random drawing at an exposition held in Utah to distribute the opportunity to receive wildlife expo permits.

(4) This rule is intended as authorization to issue one series of wildlife expo permits per year to a qualified conservation organization.

R657-55-5. Wildlife Expo Permit Application Procedures.

(1) Any person legally eligible to hunt in Utah may apply for a wildlife expo permit, except that only a nonresident of Utah may apply for a special nonresident expo permit.

(2) The handling fee assessed by the conservation organization to process applications shall be \$5 per application submitted.

(3)(a) Except as provided in ~~[Subsection]~~ Subsections (3)(b) and (9), an applicant[s] must validate their application in person at the wildlife exposition to be eligible to participate in the wildlife expo permit drawing.

(i) No person may submit an application in behalf of another.

(ii) A person may validate their wildlife expo permit application at the exposition without having to enter the exposition and pay the admission charge.

(b) An applicant that is a member of the United States Armed Forces and unable to attend the wildlife exposition as a result of being deployed or mobilized in the interest of national defense or a national emergency is not required to validate their application in person; provided exposition administrators are furnished a copy of the written deployment or mobilization orders and the orders identify:

(i) the branch of the United States Armed forces from which the applicant is deployed or mobilized;

(ii) the location where the applicant is deployed or mobilized;

(iii) the date the applicant is required to report to duty; and

(iv) the nature and length of the applicant's deployment or mobilization.

(c) The conservation organization shall maintain a record, including copies of military orders, of ~~[all each applicant[s] that are]~~ not required to validate their applications in person pursuant to Subsection (3)(b), and submit to a division audit of these records as part of its annual audit under R657-55-4(8)(f)[~~z~~] when requested by the division.

(4) An [A]applicant[s] may apply for each individual hunt for which they are eligible.

(5) An [A]applicant[s] may apply only once for each hunt, regardless of the number of permits for that hunt.

(6) An [A]applicant[s] must submit an application for each desired hunt.

(7) An [A]applicant[s] must possess a current Utah hunting or combination license in order to apply for a wildlife expo permit.

(8) The conservation organization shall advertise, accept, and process applications for wildlife expo permits and conduct the drawing in compliance with this rule and ~~[all]~~ other applicable laws.

(9) Due to the serious public health threat posed by the COVID-19 pandemic and recommendations from the CDC, Utah, and local health departments to avoid public gatherings and to maintain social distancing, the 2021 exposition is modified as follows:

(a) a wildlife expo permit applicant will not be required to validate their application in-person at the expo permit drawing;

(b) the wildlife expo permit drawing may be conducted entirely in an electronic format, provided an in-person or electronic exposition is held;

(c) any exposition requirement in this rule and in contract related to holding an in-person exposition and meeting minimum in-person attendance objectives are waived.

KEY: wildlife, wildlife permits

Date of Enactment or Last Substantive Amendment: ~~[August 9, 2018]~~ 2020

Notice of Continuation: April 6, 2020

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R909-1

Filing No.
53050

Agency Information

1. Department:	Transportation	
Agency:	Motor Carrier	
Room no.:	Administrative Suite, First Floor	
Building:	Calvin Rampton	
Street address:	4501 South 2700 West	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov

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

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

R909-1. Safety Regulations for Motor Carriers

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

This rule incorporates by reference several federal safety regulations for motor carriers that the Federal Motor Carrier Safety Administration (FMCSA) updates and changes from time to time. The FMCSA promulgated two such updates this year. This proposed change incorporates certain parts of the updated versions of the Federal Safety Regulations for Motor Carriers by reference rather than the outdated versions.

4. Summary of the new rule or change:

This proposed change incorporates by reference the January 2, 2020, through June 24, 2020, updates to the Federal Safety Regulations for Motor Carriers.

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

This proposed rule change will not lead to additional costs or savings to the state's budget because it only updates regulations the state is already responsible for enforcing.

B) Local governments:

This proposed rule change will not lead to additional costs or savings to local governments because it does not apply to them.

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

This proposed rule change will not lead to additional costs or savings to small businesses because it does not apply to them, generally.

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

This proposed rule change will not lead to additional costs or savings to non-small businesses because it does not apply to them, generally.

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 will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it does not apply to them.

F) Compliance costs for affected persons:

This proposed rule change will not lead to compliance costs for persons affected by this proposed rule change that they do not already experience. This proposed change only updates existing requirements.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Bracer, approves this regulatory impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed rule change will not have a fiscal impact on businesses, generally.

B) Name and title of department head commenting on the fiscal impacts:

Carlos M, Braceras, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 72-9-103	Section 72-9-104	Section 72-9-101
Section 72-9-301	Section 72-9-303	Section 72-9-701
Section 72-9-703		

Incorporations by Reference Information

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

	First Incorporation
Official Title of Materials Incorporated (from title page)	Federal Motor Carrier Safety Regulations Handbook
Publisher	J.J Keller & Associates, Inc.
Date Issued	February 2020

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

	Second Incorporation
Official Title of Materials Incorporated (from title page)	49 CFR 385 and 395, as amended by 85 FR 33396 through 33452
Publisher	Government Publishing Office
Date Issued	June 1, 2020

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

	Third Incorporation
Official Title of Materials Incorporated (from title page)	49 CFR 350, 355, and 388, as amended by 85 FR 37785 through 37805
Publisher	Government Publishing Office
Date Issued	June 24, 2020

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

	Fourth Incorporation
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Official Title of Materials Incorporated (from title page)	49 CFR 367, as amended by 85 FR 8192 through 8198
Publisher	Government Publishing Office
Date Issued	February 13, 2020

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

	Fifth Incorporation
Official Title of Materials Incorporated (from title page)	49 CFR 380, 383, and 384, as amended by 85 FR 6088 through 6101
Publisher	Government Publishing Office
Date Issued	February 4, 2020

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

	Sixth Incorporation
Official Title of Materials Incorporated (from title page)	49 CFR 385 as amended by 85 FR 10307 through 10310
Publisher	Government Publishing Office
Date Issued	February 24, 2020

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	11/02/2020
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10. This rule change MAY become effective on:	11/09/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Bracer, Executive Director	Date:	09/02/2020
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R909. Transportation, Motor Carrier.**R909-1. Safety Regulations for Motor Carriers.****R909-1-2. Adoption of Federal Regulations.**

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Part 385.4, Parts 387 through 399, and Part 40, (~~October 1, 2014~~ January 2, 2020), as amended by the Federal Register through ~~December 16, 2015~~ June 24, 2020, are incorporated by reference, except for 49 CFR Parts 391.11(b)(1) and 391.49 as they apply to intrastate drivers only. These requirements apply to ~~all~~ motor carrier~~s~~ as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers, ~~including the driver,~~ for compensation and ~~Utah Code~~ Subsection 72-9-102(2) engaged in intrastate commerce.

(2) ~~An~~ intrastate trucking operation[s] in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under ~~Rule [R]~~ 708-34.

(4) ~~A~~ driver[s] involved wholly in intrastate commerce shall be at least 18 years old. ~~However, if~~ unless they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, in which case they must be at least 21 years old.

(5) ~~A~~ licensed child[-]care provider[s] operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, ~~is~~ are exempt from 49 CFR Part 387 Subpart B but ~~is~~ are subject to the minimum coverage requirements in Section 72-9-103.

R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) ~~Each~~ intrastate private motor carriers shall have a minimum amount of \$750,000 liability.

(3) ~~Each~~ interstate and intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have \$1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

KEY: trucks, transportation safety, implements of husbandry

Date of Enactment or Last Substantive Amendment: ~~March 28, 2018~~ 2020

Notice of Continuation: August 30, 2016

Authorizing, and Implemented or Interpreted Law: 72-9-103; 72-9-104; 72-9-101; 72-9-301; 72-9-303; 72-9-701; 72-9-703

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R909-2	Filing No. 53051
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Agency Information

1. Department:	Transportation	
Agency:	Motor Carrier	
Room no.:	Administrative Suite, First Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R909-2. Utah Size and Weight Rule
3. Purpose of the new rule or reason for the change:
Rule R909-2 affects almost every person at every level of the motor carrier industry that operates a motor carrier vehicle in Utah. It is important that this rule be clear, easily understandable, and current. This rule is reviewed regularly to determine if it needs to be changed. When the Motor Carrier Division (Division) reviewed this rule earlier this year, the Division determined several changes are needed, it drafted the changes, and had them reviewed by industry participants including the Motor Carrier Advisory Board. The proposed changes update and improve this rule by bringing it up to date and making it more understandable.
4. Summary of the new rule or change:
These proposed changes are technical, grammatical, and intended to update the existing rule and conform it to existing practices and language used in the motor carrier industry. Several definitions are eliminated because they are outdated or no longer used. Some information is relocated to different subsections because doing so adds to clarity of the rule overall.

Fiscal Information**5. Aggregate anticipated cost or savings to:****A) State budget:**

This proposed rule change will not lead to additional costs or savings to the state's budget because it only updates regulations the state is already responsible for enforcing.

B) Local governments:

This proposed rule change will not lead to additional costs or savings to local governments because it does not apply to them.

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

This proposed rule change will not lead to additional costs or savings to small businesses because it does not apply to them.

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

This proposed rule change will not lead to additional costs or savings to non-small businesses because it does not apply to 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 proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it does not apply to them.

F) Compliance costs for affected persons:

Persons affected by this proposed rule change should not experience any compliance costs.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:			
The Executive Director of the Department of Transportation, Carlos M. Bracerias, approves this regulatory impact analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
This proposed rule change will not have a fiscal impact on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Carlos M. Bracerias, Executive Director			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 41-1a-231	Section 41-1a-1206	Section 72-1-201
Section 72-7-402	Section 72-7-404	Section 72-7-406
Section 72-7-407	Section 72-9-301	Section 72-9-502

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency

not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	Date:	09/02/2020
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R909. Transportation, Motor Carrier.

R909-2. Utah Size and Weight Rule.

R909-2-3. Definitions.

(1) "Appurtenance" as defined in CFR 23-658 and Section 72-7-402.

(2) "Articulated vehicle" consists of two or more vehicles that are connected by a joint that can pivot.

(3) "Automobile transporter" is any vehicle combination designed and used for the transport of assembled highway vehicles, including truck camper units. An automobile transporter shall not be prohibited from the transport of cargo or general freight on a backhaul, so long as it complies with weight limitations for a truck tractor and semitrailer combination.

(4) "Bridge formula" is a bridge protection formula used by federal and state governments to regulate the amount of weight that can be put on each of a vehicle's axles, or the number of axles, and the distance between the axles or group of axles must be to legally carry a given weight.

(5) "Cargo or cargo carrying length" means the total length of a combination of trailers or load measured from the foremost of the first trailer or load to the rearmost of the last trailer or load including all coupling devices.

(6) "CSA" means the Compliance, Safety, Accountability program administered by the Federal Motor Carrier [s]Safety Administration, where they work together with state partners and industry to further reduce commercial motor vehicle crashes, fatalities, and injuries on our nation's highways.

(7) "Commercial vehicle" is as defined in Utah Code Section 72-9-102.

(8) "Daylight" means one-half hour before sunrise and one-half hour after sunset.

(9) "Department" means the Utah Department of Transportation.

(10) "Divisible load" a load that can reasonably be dismantled or disassembled and does not meet the definition of non-divisible as defined in this section.

(11) "Division" means the Motor Carrier Division.

(12) "Drawbar" means the connection between two vehicles, measured from box to box or frame to frame or actual drawbar, one of which is towing or drawing the other on a highway.

(13) "Dromedary unit" is a truck-tractor capable of carrying a load independent of a trailer. Units manufactured prior to December 1, 1982 are exempt as a truck-trailer.

(14) "Emergency vehicle" means a vehicle designed to be used under emergency conditions: to transport personnel and equipment; and to support the suppression of fires and mitigation of other hazardous situations.

(15) "Fixed axle" means an axle that is not steerable, self-steering or retractable.

(16) "Flagger" is a person that is trained to direct traffic using signs or flags to aid the over-dimensional load or vehicles in the safe movement along the highway as designated on the over-dimensional load permit.

(17) "Full trailer" a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(18) "High-risk motor carrier" is a carrier that is:

(a) above the threshold in the Crash or Fatigue or Unsafe BASIC that is greater than or equal to 85%, plus one other BASIC at or above the "all other" motor carrier threshold; or

(b) a motor carrier with any four or more BASIC's at or above the "all other" motor carrier threshold.

(19) "Highway" any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(20) "Implement of husbandry" means every vehicle designed or adapted or used exclusively for an agricultural operation and only incidentally operated or moved upon the highways.

(21) "Incidental" means transportation that occurs occasionally or by chance but does not exceed a distance of 20 miles.

(22) "Interstate system" means any highway designated as an interstate or freeway. For the purpose of this rule: I-15, I-215, I-80, I-84, and I-70 [US 89 between I-84 and I-15 and SR 201 between I-15 and I-80 will be considered interstate.]

(23) "Laden" means carrying a load.

(24) "Longer combination vehicle" or an LCV is a combination of truck, truck tractor, semi-trailer and trailers, which exceed[s] legal dimensions and operate[s] on highways by permit for transporting divisible loads.

(25) "Longer combination vehicle authority" means an authorization given to a specific company to exceed standard permitted length allowances for vehicle configuration on pre-approved routes.

(26) "Manufactured home" a transportable factory-built housing unit constructed on or after June 15, 1976, in one or more sections, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(27) "Manufactured mobile home" means a transportable factory-built housing unit built prior to June 15, 1976, in accordance with a state mobile home code, which existed prior to the Federal Manufactured Housing and Safety Standards Act.

(28) "Motor carrier" as defined in Utah Code Section 72-9-102.

(29) "MVR" means motor vehicle record.

NOTICES OF PROPOSED RULES

(30) "MUTCD" means Manual on Uniform Traffic Control Devices.

(31) "Multi-trip" means two or more daily or a minimum of 10 weekly trips in the proximity of a port-of-entry.

(32) "Natural gas vehicle" means the vehicle's engine is fueled primarily by natural gas.

(33) "Non-divisible" any load or vehicle exceeding applicable length, width, ~~or~~ height, or weight limits which, if separated into smaller loads or vehicles would:

(a) compromise the intended use of the load or vehicle;

(b) destroy the value of the load or vehicle; or

(c) require more than eight work hours to dismantle using appropriate equipment. The applicant for a non-divisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

(34) "Out-of-service" is a condition where a motor vehicle, because of mechanical condition or loading, is considered imminently hazardous and likely to cause an accident or breakdown; or where a driver violation renders a commercial vehicle operator unqualified to drive.

(35) "Pole trailer" every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and is ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members generally capable of sustaining themselves as beams between the supporting connections.

(36) "Port-of-entry by-pass permit" allows a motor carrier a temporary permit that would allow by-pass of a designated port of entry.

(37) "Quad axle group" means a group of four consecutive fixed axles.

(38) "Recreational vehicle" is a vehicle or vehicles that are driven solely as family or personal conveyances for non-commercial purposes.

(39) "Retractable axle" is an axle which can be mechanically raised and lowered by the driver of the vehicle, but which may not have its weight-bearing capacity mechanically regulated.

~~[(40) "Rocky mountain doubles" a tractor and two trailers, consisting of a long and a short trailer.]~~

(40[4]) "Saddle mount" means a truck or tractor towing other vehicles with the front axle of each towed vehicle mounted on top of the frame of the ~~preceding~~ preceding vehicle or vehicles.

(41[2]) "Secondary highway" is all other routes not designated as interstate or freeway. Two-lane, two-way highways are synonymous with secondary highways.

(42[3]) "Semi trailer" means every vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests on or is carried by another vehicle.

(43[4]) "Special event" means the movement of an over-dimensional load or vehicle.

(44[5]) "Special mobile equipment" or an SME means a vehicle or vehicles exempt from registration that is not designed or used primarily for the transportation of persons or property; is not designed to operate in traffic; and is only incidentally operated or moved over the highways.

(45[6]) "Special truck equipment" or STE means a vehicle by nature of design that cannot meet the non-divisible weight allowances such as cement pump trucks, well boring trucks, or cranes with a lift capacity of five or more tons.

(46[7]) "Spread axle" is two single axles that exceed 96 inches apart.

(47[8]) "Tandem axle" means two axles spaced not less than 40 inches nor more than 96 inches apart and having at least one common point of weight suspension.

(48[9]) "Tillerman/Steerman" is an individual who steers any axle of an articulated trailer.

(49[54]) "Towaway trailer transporter combination" means a combination of vehicles consisting of a trailer transporter towing unit and 2 trailers or semitrailers.

(50[4]) "Trailer transporter towing unit" means a power unit that is not used to carry property when operating in a towaway trailer transporter combination.

(51[2]) "Tridem axle" means any three consecutive axles whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(52[3]) "Triple trailer" means a tractor and three trailers of approximately equal length.

(53[4]) "Truck" means any self-propelled motor vehicle, except a truck tractor, designed or used for the transportation of property, laden or un-laden.

(54[5]) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(55[6]) "Trunnion axle" an axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle.

(56[7]) "Trunnion axle group" two or more consecutive trunnion axles that are attached to the vehicle by a weight equalizing suspension system and whose consecutive centers are more than 40 inches, but not more than 96 inches apart.

~~[(58) "Turnpike doubles" means a tractor and two trailers of equal length.]~~

(57[9]) "UCR" means Unified Carrier ~~Registration~~.

(58[64]) "Un-laden" means a vehicle is not carrying a load.

(59[64]) "Variable load suspension axle" or VLS is an axle that can be adjusted mechanically to various weight bearing capacities and can also be mechanically raised and lowered.

(60[2]) "Vehicle" every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

R909-2-4. Legal Size Vehicle Dimensions.

(1) Maximum legal vehicle dimensions, laden and un-laden, that may be operated without special permits on Utah Highways:

(a) height: 14 feet;

(b) width: 8 feet 6 inches; and

(c) length: See Table 1 Legal Size Vehicle Dimensions

TABLE 1

Legal Size Vehicle Dimensions

Vehicle	Maximum Length	Comments
Single motor vehicle	45 feet	Measured from bumper to bumper.
Semi-Trailer	53 feet	A trailer may not exceed 53 feet.

Double trailer combinations	61 feet	Measured from the front of the first trailer to the rear of the second trailer, excluding appurtenances. There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.
Stinger-steered Automobile Transporter	80 feet or less	Stinger-steered Automobile transports are measured from bumper to bumper and may have a front overhang of 4 feet or less and a rear overhang of 6 feet or less, with a maximum vehicle length of 80 feet or less (excluding overhangs).
Saddle Mount	97 feet	This will allow a maximum of three saddle mount vehicles, one power unit and one full mount.
Truck trailer combination	65 feet	Measured from bumper to bumper.
Dromedary unit	65 feet	Truck tractor, unloaded box deck and trailer. A dromedary unit is considered a truck trailer configuration whether laden or un-laden.
	75 feet	Dromedary units transporting Class 1 Explosives or munitions related Security materials, as specified by the Department of Defense, are allowed up to 75 feet of overall length on the interstates[1], US highways and reasonable access routes without requiring a permit. Reasonable access means to the Interstate or US highway system.
All other combinations including recreational vehicles	65 feet	Measured from bumper to bumper.
Overhang	3 feet front 6 feet rear	[Overhang]Vehicle may not carry any load extending more than 3 feet beyond the front of the power unit or more than 6 feet beyond the rear of the bed or body of the vehicle.
Drawbar	15 feet	The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, may not exceed 15 feet in length from one vehicle to the other, measured from box to box or frame to frame, except in the case of a connection between any two vehicles transporting poles, pipe, machinery, or structural material that cannot be dismembered when transported upon a pole trailer.
Commercial delivery of light and medium duty trailers	82 feet or less	Consisting of a trailer transporter towing unit and 2 trailers or semitrailers with a total weight not to exceed 26,000 lbs; and in which the trailers or semitrailers carry no property and constitute inventory property of a manufacturer, distributor, or dealer of such trailers or semitrailers, may have an overall length limitation of 82 feet or less

on a towaway trailer transporter combination.

R909-2-5. Legal Weight Limitations.

(1) The maximum gross and axle weight limitations are noted in Table 2 and may not be operated at more than:

TABLE 2

Maximum Gross and Axle Weight Limitations

Single Wheel	10,500 pounds
Single Axle	20,000 pounds
Tandem Axle	34,000 pounds
Tridem Axle	M ust comply with bridge formula
Gross Vehicle Weight	80,000 pounds

(2) An overweight permit must be obtained to authorize any exception to the maximum weight limitations listed in Table 2.

(3) The weight limitation in Table 2 does not apply to a covered heavy-duty tow and recovery vehicle.

(4) Emergency vehicles may exceed the weight limits (up to a maximum gross vehicle weight of 86,000 pounds) of less than - 24,000 pounds on a single steering axle; 33,500 pounds on a single drive axle; 62,000 pounds on a tandem axle; or 52,000 pounds on a tandem rear drive steer axle.

(5) A natural gas vehicle may exceed any vehicle weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by any amount that is equal to the difference between: the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system.

R909-2-6. Tire Load Provisions.

~~[(1) Except for steering axles, self-steering VLS and retractable axles, or wide-based tires, that are 14 inches wide or greater as indicated by the manufacturer's sidewall rating, all axles weighing more than 11,000 pounds shall have at least four tires per axle.~~

~~[(a) For example: A tridem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width, will be allowed 33,000 pounds. A tandem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width will be allowed 22,000 pounds. All axles in the group must be duals or super singles to be allowed maximum weight.]~~

~~[(2)]~~ In circumstances where weight limitations are based on tire width, the manufacturer's size, as indicated on the sidewall will be used to determine maximum tire width:

(a) for non-permitted or legal vehicles, no tire shall exceed 600 pounds per inch of tire width as indicated on the sidewall;

(b) tire loading on vehicles requiring a Divisible overweight permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide or greater;

(c) tires that are greater than 11 inches but less than 14 inches shall have a weight limit not to exceed 5500 pounds;

(d) tires less than 11 inches wide shall not exceed 450 pounds per inch of tire width; and

(e) except as provided in R909-2-6, single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

R909-2-14. Night[~~]~~Time Restrictions.

(1) Loads exceeding the following dimensions are restricted to daylight hours except as provided in R909-2-15:

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- (a) 14 feet 6 inches high;
- (b) 10 feet wide;
- (c) 105 feet in length; or
- (d) front or rear overhang of more than 10 feet.

R909-2-15. Night[-]Time Travel Provisions.

(1) The movement of oversize loads at night will be allowed under the following conditions:

(a) loads may not exceed 12 feet wide on secondary highways, 14 feet wide on interstates, or 14 feet 6 inches high on all roadways;

(b) loads exceeding 10 feet wide, 105 feet overall length, or 10 feet front or rear overhang are required to have one certified pilot escort on interstate highways and two on all secondary highways;

(i) Exception. A tow truck towing vehicles with a total length of up to 120 feet or 10 feet wide may travel during hours of darkness and does not require a pilot escort.

(c) loads exceeding 92 feet overall length are required to have proper lighting every 25 feet, with amber lights to the front and sides of the load marking extreme width, and red to the rear; and

(d) night[-]time travel authorization does not supersede adverse weather conditions.

(2) The division may authorize exceptions to the night[-]time travel provisions based on mitigating circumstances.

R909-2-17. Oversize Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions;

(b) semi-annual and annual permits may be issued for dimensions up to, but not exceeding:

- (i) 14 feet 6 inches in height,
- (ii) 14 feet 6 inches in width, and
- (iii) 105 feet in length.

(2) Exceptions may be granted by the division for annual permitted loads that exceed the ~~[weights]~~dimensions identified in this section~~[-, R909-2-17]~~.

(3) Bulldozer blades, loader buckets or similar equipment exceeding 16 feet in width shall be removed for transport and may be hauled on the same load with the machinery after removal.

(4) Loads exceeding 17 feet in width on two-lane routes, 20 feet in width on interstates, or 17 feet 6 inches in height on all public highways may be allowed under the following terms and conditions:

(a) the permittee shall notify the division by submitting a permit application online, of the dimensions of the oversize vehicle or load and the proposed route to be used;

(b) the division will notify the department region or district permit official affected by the proposed route, and will obtain authorization for the move;

(c) permittee must request authorization through the online system at least 48 hours in advance of the movement;

(d) permit is not valid until the permittee has assumed the cost and responsibility to obtain utility company authorizations and clearances; and

(e) the permittee will assume all costs when a certified police escort or escorts are required.

(5) Tow trucks may purchase a semi-annual or annual non-divisible oversize permit up to 10 feet wide and 165 feet in length.

(a) Loads exceeding 10 feet wide and 165 feet long shall purchase a single trip permit.

R909-2-19. Oversize Non-Divisible Load Provisions Requiring Police Escorts.

(1) Police escorts are required for vehicles with loads which exceed:

(a) 17 feet wide or 17 feet 6 inches high on secondary highways; or

(b) 20 feet wide or 17 feet 6 inches high on all highways; or

(c) All loads more than 175 feet in length must have a minimum of two police escorts;

(d) All loads more than 200 feet in length will require a minimum of ~~[two]~~three police escorts.

(2) ~~[The division may require police escorts based on extenuating circumstances.]The division may authorize exemptions to this rule in coordination with the Utah Highway Patrol.~~

R909-2-20. Oversize Non-Divisible Load Lighting, Signing and Flag Requirements.

(1) Oversize non-divisible load lighting:

(a) warning lights required when headlights are necessary;

(b) front overhang of more than three feet shall be marked with a steady, amber marker light and red flag;

(c) rear overhang exceeding four feet shall be marked with red clearance lights for night travel;

(d) vehicles with front or rear overhang exceeding 20 feet from the front or rear bumper of a vehicle, or from the center of the closest axle in the absence of a bumper, a rotating or flashing beacon visible from a minimum of 500 feet, and shall be displayed at a minimum height of four feet above ground;

(e) tow vehicle headlights shall be operated on low beam, day or night, as an additional warning to traffic; and

(f) night[-]time travel, when authorized by the division, may be permitted with marker lights indicating extreme width using amber lights front and center, and red lights to the rear.

(2) Oversize non-divisible load sign requirements. Non-divisible oversize loads exceeding 10 feet in width, 14 feet 6 inches in height and 105 feet in length shall display an "OVERSIZE LOAD" sign, to warn the motoring public that extra-large vehicles are in operation. Signs must:

(a) be 7 feet by 18 inches;

(b) have a yellow background with 10-inch-high black letters that are painted with 1 5/8 inches wide stroke to read: "OVERSIZE LOAD";

(c) be impervious to moisture;

(d) have front signs mounted on front bumper or on top of vehicle cab with letters presented toward the front of the vehicle;

(e) have rear signs positioned at the rear most part of the Vehicle or load as feasible, ensuring in all cases that the load does not obstruct the view of the sign;

(f) if possible, have the bottom edge of the sign be positioned not more than 5 feet above the road surface;

(g) be mounted with adequate supporting anchorage, constructed, maintained, and displayed so that they are always clearly legible;

(h) be covered, removed or placed face down when the vehicle is not engaged in an oversize movement; and

(i) oversize loads signs are not required on LCVs.

(3) Oversize non-divisible load flag requirements. Red or orange flags must be affixed on all extremities when:

(a) ~~[vehicle or load exceeds 10 feet in width]any time a vehicle having a load that extends beyond its sides;~~

(b) loads on a vehicle exceeding three feet to the front or four feet to the rear of the bed or body while in operation;

(c) flags shall be completely clean and not torn, faded, or worn out and shall be fastened to wave freely; and

(d) over dimensional flagging is not required on LCVs.

(4) Tow trucks that exceed 120 feet in length are required to:

(a) display one sign on rear most of towed vehicle.

(i) the sign must have a yellow background with ~~[-]10[-]~~ inch high black letters that are painted with 1 5/8 inches wide stroke to read: "IN-TOW LONG LOAD"; and

(ii) be 4 feet by 2 feet minimum.

R909-2-22. Trailers More Than 53 to 57 Feet in Length.

Trailers exceeding 53 feet but not to exceed 57 feet may acquire a single trip, semiannual or annual permit. ~~[-Trailers more than 53 feet must have LCV authority to purchase semi annual and annual permits.]~~

R909-2-23. Longer Combination Vehicles.

(1) Motor Carriers operating longer combination vehicles or LCV's must apply and be approved to operate on designated routes on Utah's interstate system.

(a) In addition to Utah's interstate systems, routes also authorized for LVC's, US 89 between I-84 and I-15 and SR 201 between I-15 and I-80.

(2) Authorized motor carriers may operate interstate LCV's with a cargo or cargo carrying length as follows:

(a) a tractor ~~[trailer or tractor-trailer combination]and two-trailer or tractor and three-trailer combination~~ more than 81 feet not to exceed 95 feet cargo or cargo carrying length; or

(b) a truck and two-trailer combination more than 92 feet not to exceed 95 feet in length, 14 feet 6 inches in height, or 8 feet 6 inches in width.

(3) LCV conditions for operation:

(a) non-divisible dimensions with a width greater than 8 feet 6 inches or height greater than 14 feet 6 inches, may not be transported on LCV's; and

(b) acceptable travel conditions exist in accordance with hazardous conditions for loads more than 81 feet cargo or cargo carrying length.

(4) A truck and single trailer exceeding legal length may be permitted up to 88 feet^[7] but requires LCV authority when exceeding 88 feet up to 92 feet.

(5) A dromedary unit when exceeding legal length may be permitted up to 88 feet.

(6) LCV's and double trailers exceeding 81 feet cargo carrying length may not operate on secondary highways other than those pre-approved by the division.

R909-2-25. Overweight Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions; and

(b) the vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds or the total gross weight of the vehicle.

(2) Actual weight must comply with the bridge table formula $\sim 1.47 \times 500 (LN/N-1 + 12N + 36)$.

(3) A permit for a non-divisible load may not be used to transport a divisible load.

(4) Vehicles with a gross vehicle weight of less than 125,000 may be permitted on a single trip, semiannual trip, or annual trip basis as described in Table 3:

TABLE 3

Single Trip, Semi-Annual, ~~Annual~~, Permits allowed up to:

Single Axle	[29,000 pounds] 29,500 pounds
Tandem Axle	50,000 pounds
Tridem Axle	61,750 pounds
Trunnion Axle	60,000 pounds
Gross Weight	125,000 pounds

(5) Tow trucks must be properly registered to purchase annual, semi-annual or single trip permits if they exceed legal weight limitations.

(a) The properly registered and/or permitted weight of the towed vehicle is not calculated in the tow trucks towed vehicles gross combined weight.

(b) Tow trucks must be properly registered and permitted for weight of tow truck and any additional weight placed upon it.

(c) If the towed weight is not properly registered and/or permitted, the towing vehicle will be responsible for the permitting and registration requirements of the towed vehicle.

(6) Vehicles transporting milk products may exceed the gross weight limit of 80,000 pounds or the maximum weight allowed by the Federal Bridge Formula. This requires an appropriate non-divisible permit issued by the Department.

(a) Milk products being carried using multiple trailers will be required to abide by divisible requirements and do not get the non-divisible exception.

R909-2-27. Mobile and Manufactured Homes.

(1) Mobile and manufactured homes exceeding 14 feet 6 inches to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:

(a) all trailer axles shall be equipped with operational brakes; and

(b) axle and suspensions shall not exceed manufacturer's capacity rating.

(2) Paneling requirements of the open sides of a mobile manufactured home:

(a) a rigid material of 0.5-millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of four feet to prevent billowing must fully enclose the open sides of the units in transit.

(3) Rear mounted stop and turn signal lights shall be a minimum 6 inches in diameter with a type 35 red reflector lens.

(a) The lens shall be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches or more than 8 feet above the road surface.

(b) Houses, buildings, and structures not manufactured or built to be transported, will not require tail, brake, or signal lights mounted on the structures as certified pilot and police escort vehicles provide sufficient warning of the intent to brake, turn or stop.

(4) Two safety chains shall be used, one each on the right and left sides but separate from the coupling mechanism connecting the tow vehicle and the mobile and manufactured home while in transit.

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(5) ~~[Tow Vehicles.]~~ Tow vehicles shall comply with the following minimum requirements:

(a) conventional or cab-forward configuration shall have a minimum wheelbase of 120 inches;

(b) cab-over engine tow vehicles shall have a minimum wheelbase of 89 inches;

(c) have a minimum of four rear tires; and

(d) mirrors on each side of the tow vehicle shall be arranged so that the driver can see the entire length of both sides of the towed unit.

(6) Trailer brake requirements:

(a) mobile manufactured homes more than 8 feet 6 inches wide, up to 12 feet wide and equipped with one axle, must have operational brakes; and

(b) a minimum of two axles equipped with operative brake assemblies is required on each mobile manufactured home unit more than 12 feet wide.

R909-2-28. Pilot Escort Requirements and Certification Program.

(1) Pilot escort driver requirements. Individuals who operate a pilot escort vehicle must meet the following requirements:

(a) must be a minimum of 18 years of age;

(b) must possess a valid driver's license for the state jurisdiction in which the driver resides;

(c) must obtain a certification card by an authorized qualified certification program as outlined in this section, and shall have it in their possession at all times while in pilot escort operations;

(d) within 30 days pilot escort drivers must provide a current Motor Vehicle Record (MVR) certification to the qualified certification program at the time of the course;

(e) no passengers under 16 years of age are allowed in pilot escort vehicles during movement of oversize loads;

(f) a pilot escort driver may not perform as a tillerman/steerman while performing pilot escort operations; and

(g) a pilot escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations that weighs more than 10,000 lbs.

(2) Driver certification process.

(a) Drivers domiciled in Utah must complete a Utah pilot escort certification course authorized by the division. A list of authorized instructors may be obtained by contacting (801) 965-4892.

(b) Pilot escort drivers domiciled outside of Utah may operate as a certified pilot escort driver with another state's certification credential, provided the course meets the minimum requirements outlined in the Pilot Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance.

(c) The department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the department.

(i) A current listing of reciprocity states may be obtained by contacting the division at 801-965-4892.

(d) The pilot escort driver's initial certification expires four years from the date issued, and it is the responsibility of the driver to maintain certification.

(i) One additional four-year certification may be obtained through a mail-in or on-line re-certification process provided by a qualified pilot escort training entity.

(3) Suspensions and revocations.

(a) Pilot escort drivers may have their certification denied, suspended, or revoked by the division if it is determined that a disqualifying offense has occurred within the previous four years.

(b) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the division.

(c) The division may suspend for first offenses up to one year. Subsequent offenses may result in permanent revocation of driver certification.

(d) When a driver is denied pilot escort driving privileges for reasons other than the conditions set forth in this rule, the individual may file an appeal.

(i) The appeals shall be handled by a steering committee created by the division.

(e) The steering committee shall have the powers granted to the deputy director in R907-1-3 for appeals from other division administrative actions. This committee's decision, if adopted by the director of the division, will be considered a final agency order under Administrative Procedures in R907-1.

(4) Pilot escort vehicle standards.

(a) Certification inspections are valid for up to one year.

(b) Pilot escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs. and properly registered and licensed as required under Utah Code Sections 41-1a-201 and 41-1a-401.

(c) Equipment shall not reduce visibility or mobility of pilot escort vehicle while in operation.

(d) Trailers may not be towed at any time while in pilot escort operations.

(e) Pilot escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile.

(i) Radio communications must be compatible with accompanying pilot escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary.

(ii) When operating with police escorts a CB radio is required.

(f) Pilot escort vehicles may not carry a load.

(5) Pilot escort vehicle signing requirements. Sign requirements on pilot escort vehicles are as follows:

(a) pilot escort vehicles must display an "OVERSIZE LOAD" sign, which must be mounted on the top of the pilot escort vehicle;

(b) signs must be a minimum of 5 feet wide by 10 inches high visible surface space, with a solid yellow background and 8-inch-high by 1-inch wide black letters. Solid is defined as when being viewed from the front or rear at a 90-degree angle, no light can transmit through;

(c) the sign for the front pilot escort vehicle shall be displayed so it is always clearly legible and readable by oncoming traffic; and

(d) the rear pilot escort vehicle shall display its sign so it is readable by traffic overtaking from the rear and clearly legible at all times.

(6) Pilot escort vehicle lighting requirements. Two methods of lighting are authorized by the division. Requirements are as follows:

(a) two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of six inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation;

(b) an AAMVA approved amber rotating, oscillating, or flashing beacon or light bar mounted on top of the pilot escort vehicle. This beacon light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation; and

(c) incandescent, strobe or diode lights may be used provided they meet the above criteria.

(7) Pilot escort vehicle equipment requirements. Pilot escort vehicles shall be equipped with the following safety items:

(a) standard 18-inch or 24-inch red and white "STOP" and black and orange "SLOW" paddle signs. For nighttime travel moves, signs must be reflective in accordance with MUTCD standards;

(b) nine reflective triangles or 18-inch reflective orange traffic cones, not to replace or be replaced by items (c) or (d);

(c) eight red-burning flares, glow sticks or equivalent illumination device approved by the division;

(d) three orange 18-inch-high cones;

(e) a flashlight with a minimum 1 1/2-inch lens diameter, with extra batteries or charger. An emergency type shake or crank flashlight will not be allowed;

(f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic;

(g) an orange hardhat and class 2 safety vest for personnel involved in pilot escort operations. Class 3 safety vests are required for nighttime travel moves;

(h) a height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height;

(i) a fire extinguisher - one 5 lb. B:C or two 4 lb. B:C or more, and must be designed, constructed, and maintained so that visual determination of whether the extinguisher is fully charged or not is possible;

(j) a first aid kit that is clearly marked;

(k) one spare "OVERSIZE LOAD" sign, 7 feet by 18 inches;

(l) one serviceable spare tire, tire jack and lug wrench;

(m) a handheld two-way simplex radio or other compatible form of communication for operations outside pilot escort vehicles; and

(n) vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

(8) Police escort vehicle equipment and safety requirements. Police escort vehicles shall be equipped with the following safety items:

(a) all officers must have a CB radio to communicate with the pilot and transport vehicles;

(b) officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form;

(c) officers shall verify that all pilot escorts are in possession of current pilot escort inspections, or they shall complete an inspection prior to load movement;

(d) police vehicles must be clearly marked with emergency lighting visible 360 degrees; and

(e) officers shall be in uniform while conducting police escort moves.

(9) Insurance for pilot escort vehicles.

(a) Driver shall possess a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than \$750,000 combined single limit coverage for bodily injury and property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and property damage arising out of an act or omission by the pilot escort vehicle operator of the escort duties required by the regulations. Such insurance or endorsement, as applicable, must always be maintained during the term of the pilot escort certification.

(b) Pilot escort vehicles shall have a minimum amount of \$750,000 liability. This is not a cumulative amount.

(10) Pre-trip planning and coordination requirements. A co-ordination and planning meeting shall be held prior to load movement. The drivers carrying or pulling the oversize loads, the pilot escort vehicle drivers, law enforcement officers, department personnel, and public utility company representatives shall attend as required. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

(a) the person designated as being in charge such as a department representative or a law enforcement officer;

(b) all documentation for authorized routing and permit conditions is distributed to all appropriate individuals involved in the move;

(c) communication and signals coordination;

(d) permitted dimensions will be verified with measurement of load dimensions; and

(e) copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

(11) Permitted vehicle restrictions on certain highways. Certified pilot escort operators must refer to highway restrictions specified in the secondary highway restrictions prior to all load movements.

(12) Flagging requirements. During the movement of an over-dimensional load or vehicle, the pilot escort driver, in the performance of the flagging duties required by R909-2-28, may control and direct traffic to stop, slow or proceed in any situations where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load or vehicle. The pilot escort driver, acting as a flagger, may aid the over-dimensional load or vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:

(a) assume the proper flagger position outside the pilot escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD;

(b) use "STOP" and "SLOW" paddles or a 24-inch red or florescent orange or red square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and

(c) comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagging Training Handbook.

R909-2-29. Requirements for Pilot Escort Qualified Training and Certification Programs.

(1) Application process. Application to become a third-party pilot escort trainer or instructor shall be made on a form furnished by the division, and shall include the following:

(a) name and address of entity;

(b) list of instructors;

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(c) resumes of each instructor outlining related experience in the pilot escort, heavy haul, academia, or commercial vehicle enforcement fields;

(d) a copy of entity's business license;

(e) sample of digital image certification card that will be issued to students upon completion of the course;

(f) sample of "Flagger" certification card that will be issued to students upon completion of the course;

(g) procedural guidelines that outline security measures implemented to safeguard student's personal information; and

(h) copies of all course curriculum and testing materials. Course materials will be reviewed and approved by the division to ensure that all requirements are met.

(2) Course curriculum requirements. An extensive course curriculum description and information can be obtained by contacting the UDOT Motor Carrier Division Customer Service/Superload team at (801) 965-4892. Course curriculum to certify pilot escort drivers to operate in Utah must cover the following topics:

(a) division rules governing over-size load movements;

(b) pilot escort operations;

(c) flagging maneuvers for over dimensional loads;

(d) oversize or overweight load movement, coordination, planning and communication requirements and best practices;

(e) pilot escort vehicle positioning and situational training;

(f) rail grade crossing safety;

(g) routing techniques, including pre-trip surveys; and

(h) insurance coverage requirements and liability issues.

(3) Testing procedures.

Testing materials shall be submitted to the division for approval. Tests should be structured with a minimum of 40 questions per exam. A minimum of two different examinations shall be submitted and used randomly during the instruction of the course and structured as follows:

(a) 12 Fill in the blank;

(b) 12 Multiple choice;

(c) 12 true and false questions;

(d) one to six questions dealing with safety equipment;

(e) one to four questions dealing with the duties of pilot escort drivers;

(f) one to six questions dealing with maintenance of equipment; and

(g) one to six questions dealing with items that must be collected in a route survey.

(4) Grading of examinations. Entity must provide an explanation of how the test will be administered.

(5) Students must pass with an 80% score to be certified.

(6) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.

(7) When a contract is terminated with the third-party pilot and escort trainer, it will be the responsibility of the entity to provide an electronic database to the division, of all students that have completed the course.

(8) Applicant Recertification Procedures.

(a) Entity shall provide means in which an individual may be re-certified either by mail or the internet.

(b) Entity shall submit written procedures documenting the process for the examination that will allow the applicant re-certification. The examination shall not be a duplicate of the examination used during the initial certification process and should

be constructed as to educate the student on updates pertaining to pilot escort certification and legal requirements.

(c) Re-certification tests shall be structured as outlined in R[-]909-2-29.

(d) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.

(e) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.

(9) Training costs. Costs associated with providing classroom instruction, materials, testing and credentialing will be the responsibility of the authorized training entity.

(a) These costs may be passed on to the students for certification in the form of tuition determined by the training entity based on business model and expenses.

(b) Cost proposal and course fees must be submitted to the division for approval as part of the application process.

(10) Suspensions and revocations of pilot escort training entities.

(a) The division may suspend or revoke the entity's ability to provide services if the entity fails to meet conditions and requirements set forth in R909-2-29.

(b) If an entity has its authority to provide services revoked or suspended, the entity may appeal the decision.

(i) The appeals shall be handled by a steering committee created by the division.

(ii) The steering committee shall have the powers granted to the department's deputy director for appeals from other division administrative actions.

(iii) This committee's decision, if adopted by the director of the division, will be considered a final agency order under the Utah Administrative Procedures Act.

(11) The division has the right to review:

(a) rates;

(b) fees;

(c) procedures; and

(d) the certification process established by the entity whenever the division deems it necessary to ensure compliance with this rule.

(12) Record retention and data management requirements. Authorized pilot escort qualified training and certification entities or institutions shall maintain the following certification and recertification records for a period of eight years:

(a) student's name, address, and contact information;

(b) driver's license number, original MVR and original proof of insurance information from insurance provider;

(c) copy of each student's written exam;

(d) digital copy of certification flagger card, including photo;

(e) training and expiration dates on all students;

(f) re-certification and expiration dates; and

(g) list of instructors, proctors, administrators, and a copy of their resumes and date of classroom instruction and recertification dates providing services.

(13) Records may be scanned and kept electronically provided entity has necessary data backup and retrieval procedures.

(a) The division has the right to review any records retained and may observe the instruction given both in the classroom

and through the re-certification process whenever the division deems it necessary to ensure compliance with this rule.

(b) The loss, mutilation or destruction of any records which an entity is required to maintain, must be immediately reported by the entity by affidavit stating the date such records were lost, mutilated, or destroyed, and the circumstances involving such loss, mutilation, or destruction.

(c) All records must be retained by the entity for eight years, except for the computerized file, which is to be kept permanently, during which time the entity shall be subject to inspection by the division during reasonable business hours. If the entity goes out-of-business, the permanent record shall be submitted by the entity to the division.

(d) It is the responsibility of the entity to provide a list of applicants that have successfully re-certified along with the corresponding grade to the division at the end of each quarter of each calendar year.

(e) All records, including computerized records, must be provided to the division when requested for an audit or review of the entities records. Failure to provide all records as requested by the division is a violation of this rule.

(f) Entities shall maintain accurate, up to date records.

R909-2-36. Port-of-Entry By-Pass Permit Provisions.

(1) A temporary by-pass permit may be issued to accommodate the multi-trip highway transportation needs to motor carriers who meet the following criteria:

(a) Motor carriers shall meet the "Multi-trip" definition to receive and maintain by-pass privileges.

(i) A motor carrier may receive an exception from this requirement on a case-by-case basis, if the motor carrier is able to demonstrate that denial of a by-pass permit will cause a hardship if the vehicle must be diverted to a port-of-entry.

(b) The basis for qualification to participate in the by-pass program is based in part on the carrier's safety history as shown in the Federal Motor Carrier Safety Administration's Safety Measurement System.

(i) A carrier with a CSA basic scores equal to or greater than the intervention thresholds noted in Table 4 for General, HM and Passenger, plus one other BASIC at or above the motor carrier threshold is not eligible to participate in the by-pass program.

(ii) A carrier is not eligible for a by-pass permit when the carrier meets the definition of a High-Risk Motor Carrier in Table 4.

TABLE 4

High Risk Motor Carrier Criteria

[BASIC] Basic	General	HM	Passenger
Unsafe Driving	65%	60%	50%
Fatigue Driving (HOS)	65%	60%	50%
Driver Fitness	80%	75%	65%
Controlled Substances and Alcohol	80%	75%	65%
Vehicle Maintenance	80%	75%	65%
Cargo-Related	80%	75%	65%
Crash Indicator	65%	60%	50%

(c) A carrier may become eligible for a by-pass permit after a focused or comprehensive review indicates that the carrier is in compliance.

(d) As a condition of receiving a by-pass permit, a motor carrier is subject to audits, safety assessments, and inspections as the division considers necessary to carry out state and federal law.

(e) Vehicles that obtain by-pass privileges must have a weight ticket, from a scale certified by the Department of Agriculture,

available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, unit-specific information, and destination.

(2) By-pass applications shall be submitted to the division.

(a) By-pass privilege carriers must re-apply ~~[yearly]~~ annually.

(b) Subcontractors operating under their own authority must apply for by-pass privileges independently.

(c) Carriers who lease vehicles from a subcontractor must ensure that the established by-pass criterion is met to maintain privileges.

(d) By-pass permit privileges are valid from the approval date and expire at the end of the application year on December 31.

(e) Applications must show routing information including point of origin, destination, and routine routes traveled.

(3) Approved vehicles within a motor carrier's fleet will be issued a by-pass decal, specific to each individual vehicle, and will receive a by-pass certificate that shall be carried in the vehicle.

(4) By-pass privileges may be granted to carriers traversing multiple ports of entry within the same route.

(5) Authorized by-pass routes are allowed for the following Port of Entries:

(a) Daniels Port of Entry on SR 40 with empty vehicles, traveling eastbound only;

(b) Kanab Port of Entry on Highway 89 from Kanab's Main Street to the Kanab Port of Entry, while traveling on Hwy 389 between Las Vegas, Nevada and Page, Arizona, and all vehicles must clear the St. George Port of Entry;

(c) Perry Port of Entry may be by-passed and travel on Highway 89 between Brigham City and Ogden; and

(d) Monticello Port of Entry may be by-passed on US-191 with empty vehicles only.

(6) By-pass privileges may be revoked or suspended should a carrier fail to meet the safety standards as set forth in the:

(a) Compliance, Safety, Accountability (CSA) program of the Federal Motor Carrier Safety Administration;

(b) Federal Motor Carrier Safety Regulations;

(c) size and weight limitations;

(d) by-pass zone routes; and

(e) out-of-service criteria.

(7) When an application for a by-pass permit is denied the motor carrier may file an appeal.

(a) The appeal shall be handled by the division hearing officer.

(8) The division will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

KEY: permits, safety regulations, size and weight, trucks

Date of Enactment or Last Substantive Amendment: ~~December 31, 2019~~ 2020

Notice of Continuation: May 22, 2019

Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-7-406; 72-9-303; 41-1a-102; 41-1a-231; 41-1a-1206; 72-7-402; 72-7-404; 72-7-407; 72-9-301; 72-9-502

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code R909-19
Ref (R no.):

Filing No.
53052

Agency Information

1. Department:	Transportation	
Agency:	Motor Carrier	
Room no.:	Administrative Suite, First Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification
3. Purpose of the new rule or reason for the change:
The proposed changes are a general update of the existing rule to make technical and grammatical changes and to update Internet addresses included within this rule
4. Summary of the new rule or change:
The proposed changes are a general update of the existing rule to make technical and grammatical changes. The proposed changes eliminate a list of sources that provide certification services for tow truck motor carriers and drivers and replaces the list with an Internet address that leads to an updated list of certification providers and information about certification requirements. The proposed changes also update other Internet addresses that lead to pages that include tow truck motor carrier relevant information on the Department of Transportation's (Department) newly upgraded web site.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule change will not lead to additional costs or savings to the state's budget because it only updates

regulations the state is already responsible for enforcing.

B) Local governments:

This proposed rule change will not lead to additional costs or savings to local governments because it does not apply to them.

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

This proposed rule change will not lead to additional costs or savings to small businesses because it does not apply to them.

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

This proposed rule change will not lead to additional costs or savings to non-small businesses because it does not apply to 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 proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it does not apply to them.

F) Compliance costs for affected persons:

Persons affected by this proposed rule change should not experience any compliance costs.

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

Fiscal Cost	FY2021	FY2022	FY2023
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			

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 approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Braceras, approves this regulatory impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed rule change will not have a fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Carlos M. Braceras, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 72-9-601	Section 72-9-604	Section 72-9-603
Section 72-9-602	Section 53-1-106	Section 41-6a-1405

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, Executive Director	Date:	09/02/2020
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R909. Transportation, Motor Carrier.

R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification. R909-19-3. Definitions.

(1) "Consent tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge [and] or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Emergency moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

(5) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination, [(articulated)] motor vehicle. In the absence of a value specified by the manufacturer, GVWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(6) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(7) "Life-essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing, [(e.g. shoes, coat)], food and water, child safety seats, and government issued photo-identification.

(8) "Non-consent police generated tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(9) "Non-consent non-police generated tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(10) "Normal office hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

(11) "Recovery operation" means a towing service that may require charges in addition to the normal one-truck[/_one-operator towing service requirements. The additional charges may include charges for manpower, extra equipment, and supplies necessary for the recovery operation.

(12) "State impound yard" means a yard for the storage of a vehicle, vessel, or outboard motor that meets the requirements of rules made by the commission pursuant to Subsection 41-1a-1101(5).

NOTICES OF PROPOSED RULES

(13) "Tow truck" means a commercial vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(14) "Tow truck certification program" means a program to authorize and approve tow truck motor carriers~~[-owners]~~, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(15) "Tow truck motor carrier" means a motor carrier that is engaged in or transacting business for tow truck services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervising, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment ~~[and]~~ for accessories.

(16) "Tow truck operator" means an individual that performs operations related to a tow truck service as an employee or as an independent contractor on behalf of a tow truck motor carrier.

(17) "Tow truck service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow truck service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed vehicle-classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium duty" means any towed vehicle with a GVWR between 10,001 to 26,000 pounds;

(iii) "Heavy duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(18) "Tow truck motor carrier steering committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, shall administer, and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier, operator, or tow truck certification, [~~if~~] suspension or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603~~]~~;

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) All non-consent police generated, and non-consent non-police generated tows conducted by tow truck motor carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "<https://secure.utah.gov/ivs/ivs>" as required by Utah Code Subsection 41-6a-1406(11).

(2) Tow truck motor carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a tow truck motor carrier has met this requirement if they can provide proof that a letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) The tow truck motor carrier or the tow truck operator must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or out board motor that was towed.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(4) The Utah Consumer Bill of Rights Regarding Towing shall contain the language and information as published at, [www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396]<https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/utah-bill-of-rights-regarding-towing/>.

(a) The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(b) A consumer has the right to file a complaint alleging:

(i) Overcharges;

(ii) inadequate certification for the operator, truck or company, and;

(iii) violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated, or Utah Administrative Code.

(c) Complaints may be filed online with the Utah Department of Transportation at [<https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:4610,66405>]<https://app.udot.utah.gov/public/mcs/f?p=345:3:::3> or by contacting the Motor Carrier Division at (801) 965-4892.

R909-19-8. Certification.

There are three (3) certifications required by the Department.

(1) Tow Truck Operator Certification.

(a) Effective July 1, 2004 all tow truck operators will be tested and certified in accordance with Towing and Recovery Association of America Inc (TRAA) standards and carry evidence of certification for the appropriate level of vehicle they are operating.

These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

~~_____ (i) Towing and Recovery Association of America (TRAA) Testing Program;~~

~~_____ (ii) Wreckmaster Certification Program;~~

~~_____ (iii) Utah Safety Council; or~~

~~_____ (iv) Other driver testing certification programs approved by the Department to meet certification requirements, however, the tow truck motor carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.]~~

(b) Information on qualified certification programs may be obtained at the UDOT Motor Carrier Division website at <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/tow-truck-certification/> or by contacting the Motor Carrier Division at (801) 965-4892.

(c) Tow truck motor carriers shall ensure that all tow truck operators:

(i) are properly trained and certified to operate tow truck equipment;

(ii) are licensed, as required under Utah Code Sections 53-3-101, through 53-3-909 Uniform Driver License Act;

(iii) are complying with the requirements under Utah Code Sections 41-6a-1406 and 72-9-603;

(iv) have cleared the criminal background check required in Subsections 72-9-602(2) and (3). In addition, a tow truck motor carrier must notify the department of a tow truck operator whom is not in compliance with 72-9-602(3) within two business days of obtaining knowledge from the Bureau of Criminal Identification.

(v) obtain and maintain a valid medical examiner's certificate under 49 C.F.R. Sec 391.45.

(2) Tow Truck Vehicle Certification.

(a) All tow trucks shall receive and pass a tow truck certification inspection biannually.

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at <https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396> <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/tow-truck-certification/> or by calling 801-965-4892.

(c) Upon vehicle certification, a UDOT certification sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle certification shall be retained and available upon request by Department personnel.

(3) Tow truck motor carrier Certification.

(a) Tow truck motor carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, Utah Administrative Code and local laws where applicable.

R909-19-11. Non-Consent Towing Fee.

(1) A tow truck motor carrier may charge up to but not exceed the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396> <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/>.

(a) An additional 15% of the fee for tow truck service may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of and in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck motor carrier shall be considered in possession of the vehicle.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle is attempting to retrieve said vehicle before the tow truck motor carrier is in possession of the vehicle, no fee(s) shall be charged to the vehicle owner.

(d) If the owner, authorized operator, or authorized agent of the owner of the vehicle is attempting to retrieve the vehicle after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(e) Charges for recovery operations, as defined by R909-19-3, shall be coordinated with the towed vehicle owner, or directed by law enforcement prior to initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the towed vehicle owner and tow truck motor carrier.

(i) If attempts to coordinate the recovery operation charges with the towed vehicle owner fail, law enforcement personnel may authorize the recovery operation.

(ii) At least two attempts must be made to contact the towed vehicle owner.

(iii) Record of owner coordination or law enforcement authorization shall be maintained by a tow truck motor carrier for each recovery operation. The record shall include contact name, entity, contact time and date, and agreement made.

(iv) Uncoordinated or unauthorized recovery operation fees may be subject to penalty and reimbursement of recovery operation fees.

R909-19-15. Non-consent Administrative Fee.

A tow truck motor carrier may charge an administrative fee for reporting the removal of up to but not exceeding the amount indicated in the Towing Fee Schedule as published online at, <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396> <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/> per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles and for sending notifications to the owner and lienholder (if applicable).

R909-19-16. Tow Truck Service and Administrative Fee Adjustment.

(1) The Motor Carrier Division is required to establish the allowable maximum fee for a tow truck service and administrative fee for reporting the removal, as per Utah State Code 72-9-603.

The Towing Fees Schedule is published on the Division's website at <http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396> <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/>.

(2) The allowable maximum fee for tow truck service and the maximum allowable administrative fee for reporting the removal shall be tied to the Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W) in the West Urban Region of the U.S. The CPI-W is calculated by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables every month on its web site at <https://www.bls.gov/cpi/tables/home.htm>.

(3) The Motor Carrier Division shall adjust the allowable maximum fees once annually as follows:

(a) The base fee schedule for each calendar year after a year in which the motor Carrier Division determines the allowable maximum fees pursuant to R909-19-11(1) shall be adjusted effective January 1 of each such calendar year (the "Adjustment Date").

NOTICES OF PROPOSED RULES

(b) The adjustment amount of the allowable maximum fees shall be equal to the change in the CPI-W for the twelve-month period prior to the October CPI-W figure reported by the BLS immediately preceding the Adjustment Date in question.

(c) If the twelve-month change in the CPI-W from October to October is negative, the allowable maximum fees shall remain unchanged until the next Adjustment Date.

(d) The Division of Motor Carriers shall round the allowable maximum fees to the nearest whole number.

R909-19-20. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, including a list of tow truck motor carriers that are currently certified by the Department, the public can access this information online at [<http://www.udot.utah.gov/main/Pp-100.pg:::1:T,V:396>] <https://www.udot.utah.gov/connect/business/motor-carriers/tow-trucks/>, or by calling the Motor Carrier Division at (801) 965-4892.

KEY: safety regulations, tow trucks, towing, certifications

Date of Enactment or Last Substantive Amendment: ~~December 31, 2019~~ **2020**

Notice of Continuation: June 2, 2016

Authorizing, and Implemented or Interpreted Law: 41-6a-1404; 41-6a-1405; 41-6a-1406; 53-1-106; 53-8-105; 72-9-601; 72-9-602; 72-9-603; 72-9-604; 72-9-301; 72-9-303; 72-9-701; 72-9-702; 72-9-703

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R920-8	Filing No. 53061
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Agency Information

1. Department:	Transportation	
Agency:	Operations, Traffic and Safety	
Room no.:	Administrative Suite, First Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov

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

General Information

2. Rule or section catchline:

R920-8. Flashing Light Usage on Highway Construction or Maintenance Vehicles

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

This rule change is an effort to enhance safety of construction and maintenance vehicles by requiring placement of flashing amber safety lighting systems on the vehicles to enhance visibility of the vehicles while engaged in construction or maintenance work on the surface and shoulders of state highways. Even though snow removal equipment that operates on state highways is equipped with flashing amber safety lighting systems as required by this rule, the Department of Transportation (Department) still experiences a number of incidents each year involving members of the public crashing their vehicles into plow blades and snow removal equipment. This proposed change is to regulate the installation of an additional safety lighting system on plow blades and other parts of the snow removal equipment to help drivers better see and avoid crashing into snow removal equipment.

4. Summary of the new rule or change:

This proposed rule change regulates installation of green safety lighting systems to supplement flashing amber lighting systems on snow removal equipment that operates on state highways and recommends where and how the green safety lighting systems should be affixed to the plows and the plow vehicles.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Department does not anticipate this proposed rule change will affect the state's budget. The Department already installs a variety of lights and other safety promoting devices on its snow and ice removal equipment within the budget made available to the Department for those purposes. This proposed rule change simply authorizes using green lights.

B) Local governments:

This proposed rule change will not lead to additional costs or savings to local governments because it does not apply to them.

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

This proposed rule change will not lead to additional costs or savings to small businesses because it does not apply to them.

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

This proposed rule change will not lead to additional costs or savings to non-small businesses because it does not apply to 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 proposed rule change will not lead to additional costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because it does not apply to them.

F) Compliance costs for affected persons:

No persons will be affected by this proposed rule change, only the Department.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
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			
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 approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Bracerias, approves this regulatory impact analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This proposed rule change will not have a fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Carlos M. Bracerias, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section
41-6a-1617

Public Notice Information

9. 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. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 11/02/2020

10. This rule change MAY become effective on: 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Bracerias, Executive Director	Date:	09/09/2020
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R920. Transportation, Operations, Traffic and Safety.

R920-8. Flashing Light Usage on Highway Construction or Maintenance Vehicles.

R920-8-1. Purpose.

This rule provides specifications governing the design and use of special flashing lights on vehicles engaged in highway construction and maintenance operations.

R920-8-2. Authority.

This rule is required and authorized by Section 41-6a-1617.

R920-8-3. Definitions.

In addition to the terms defined in Section 41-6a-102, the following terms are defined:

(1) "Engaged" means performing tasks for roadway surface and shoulder maintenance or construction purposes.

(2) "Flashing Amber Lighting System" means one or more amber flashing light~~(s)~~.

(3) "Flashing lights" means bursts of light which are distinguishable and capture attention.

(4) "Headlight, taillight, or brake light flashers", ~~(f)~~also known as "wigwags"~~(g)~~ means a device used to alter or modify the original vehicle manufacturer's electronically controlled lighting system.

(5) "Highway construction and maintenance vehicles" means both on-road and off-road vehicles or equipment.

(6) "360-degree visibility" means the ability to be seen from all angles.

R920-8-4. Requirements for ~~All~~ Vehicles Engaged in Highway Construction or Maintenance Operations on a State Highway[s].

(1)(a) Except as provided under Subsection (1)(b), beginning July 1, 2015, a vehicle[s] engaged in highway construction or maintenance operations on a state highway[s] that ~~are~~is not protected by traffic control devices compliant to the current Utah Manual on Uniform Traffic Control Devices, must have a flashing amber lighting system with 360-degree visibility.

(b) When the flashing amber lighting system does not provide 360-degree visibility, vehicle hazard lights shall be used in addition to the flashing amber lighting system.

(2) A ~~(F)~~flashing amber lighting system[s] may be supplemented with flashing white lights on the front and flashing red lights on the rear that do not alter or modify the original manufacturer's electronically controlled lighting system.

R920-8-5. Requirements for a Vehicle Engaged in Snow and Ice Removal from a State Highway.

A vehicle engaged in snow and ice removal from a state highway may supplement flashing amber lights with a green lighting system on the rear of the vehicle and the plows.

R920-8-~~5~~6. Requirements for All Vehicles Engaged in Highway Construction or Maintenance Operations on Non-State Highways.

~~(4)~~~~(A)~~~~(F)~~local jurisdiction[s] will determine the appropriate use of flashing lights on construction or maintenance vehicles engaged in construction or maintenance operations on non-state roadways.

R920-8-~~6~~7. Visibility.

(1) A ~~(F)~~flashing amber lighting system[s] shall meet or exceed the Society of Automotive Engineers (SAE) Class I certification.

(2) Flashing lights shall be positioned on the vehicle so as to not interfere with the ability to see standard vehicle lighting.

(a) Operation of flashing lights must be used in conjunction with standard vehicle lighting.

R920-8-~~7~~8. Specific Limitations.

For a vehicle[s] engaged in highway construction or maintenance operations, not including the Utah Department of Transportation's Incident Management Team units:

(1) no red light may be visible from the front of a vehicle;

(2) no flashing white light may be visible from the rear of a vehicle;

(3) blue lights are prohibited; and

(4) headlight, taillight, and brake light flashers, known as ~~(f)~~wigwags~~(g)~~, are prohibited.

R920-8-~~8~~9. Exceptions.

(1) When multiple vehicles are engaged in highway construction and maintenance operations, and are concentrated within a small area in a work zone, it is acceptable for those vehicles within the perimeter of vehicles to reduce the intensity or turn off the flashing amber lighting systems ~~and~~or supplemental flashing lighting systems to minimize the distractions to motorists and other workers in the work zone.

(2) A ~~(D)~~delivery vehicle~~s-are~~ is not required to have a flashing amber lighting system~~(s)~~ but must use vehicle hazard lights when entering or exiting a work zone.

R920-8-~~9~~10. Recommended Placement Practice.

(1) A ~~(F)~~flashing amber lighting system[s] should be placed as high on the vehicle as reasonably capable of being placed.

(2) A green lighting system should be affixed as close to the ends of plow blades on the vehicle as reasonably capable of being placed and extend high enough to provide ample visibility of the green lights.

KEY: flashing lights, highways, construction, maintenance

Date of Enactment or Last Substantive Amendment: ~~August 7, 2015~~2020

Notice of Continuation: July 8, 2020

Authorizing, and Implemented or Interpreted Law: 41-6a-1617

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([~~example~~]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE

Utah Admin. Code Ref (R no.):	R357-33	Filing No. 53074
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Agency Information

1. Department:	Governor
Agency:	Economic Development
Building:	World Trade Center
Street address:	60 E South Temple
City, state, zip:	Salt Lake City, UT 84111
Mailing address:	60 E South Temple
City, state, zip:	Salt Lake City, UT 84111

Contact person(s):

Name:	Phone:	Email:
Dane Ishihara	801-538-8664	dishihara@utah.gov

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

General Information

2. Rule or section catchline:
R357-33. COVID-19 PPE Support Grant Program Rule

3. Effective Date:

09/15/2020

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

During the 2020 Fifth Special Session H.B. 5010 passed and directed the Governor's Office of Economic Development (GOED) to establish and administer the COVID-19 PPE Support Grant Program that grants rental relief to certain businesses that have purchased or will purchase items that will protect the business's employees and customers.

5. Summary of the new rule or change:

This rule will codify the administration of the COVID-19 PPE Support Grant Program by establishing definitions, authority, program and documentation requirements. The program will provide assistance to small businesses in the state that have been impacted by the COVID-19 pandemic. (EDITOR'S NOTE: This rule filing will supersede the emergency rule filing under ID No. 52986 that was made effective on 07/27/2020 and published in the August 15, 2020, Bulletin.)

6. Regular rulemaking would:

X	cause an imminent peril to the public health, safety, or welfare;
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cause an imminent budget reduction because of budget restraints or federal requirements; or
place the agency in violation of federal or state law.
Specific reason and justification:
GOED is responsible for economic development in the state and is tasked with, among other things, administering grant programs to enhance the economic health and vitality of the state and its business community. This rule will govern the new COVID-19 PPE Support Grant Program that will provide assistance to businesses in the state that have or will make equipment purchases to protect employees and customers.

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
There is no aggregate anticipated cost or savings to the state budget. This rule establishes the requirements for participation in the COVID-19 PPE Support Grant Program.
B) Local governments:
There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.
C) Small businesses ("small business" means a business employing 1-49 persons):
\$40,000,000 in funds will be awarded to small businesses in the state. The COVID-19 PPE Support Grant Program is designed to serve Utah's businesses that have been impacted by the COVID-19 pandemic.
D) 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 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.
8. Compliance costs for affected persons:
There are no compliance costs for affected persons because participation in the program is optional.
9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
I have reviewed this fiscal analysis and agree with the described fiscal impacts associated with this rule. The

COVID-19 PPE Support Grant Program will help many of Utah's businesses that made adjustments to protect employees and customers. GOED hopes the grants that are distributed will help Utah businesses operate safely during the pandemic.

B) Name and title of department head commenting on the fiscal impacts:

Val Hale, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section
63N-15-302

Agency Authorization Information

Agency head or designee, and title:	Val Hale, Executive Director	Date:	07/27/2020
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R357. Governor, Economic Development.**R357-33. COVID-19 PPE Support Grant Program Rule.****R357-33-101. Title.**

This rule is known as the "COVID-19 PPE Support Grant Program Rule."

R357-33-102. Definitions.

In addition to the definitions under Section 63N-15-102 the following terms are defined:

(1) "Awardee" means a qualified business entity that has been awarded a grant under the program.

(2) "Full-time equivalent employee" means any person working 40 or more hours per week on behalf of the business entity and may include an employment position filled by more than one employee, if the aggregate hours worked by the employees are equal to or greater than 40 hours per week.

(3) "Safe in Utah" means the COVID-19 PPE Support Grant Program.

R357-33-103. Authority.

This rule is adopted by the office under the authority of Section 63N-15-302.

R357-33-104. Documentation Requirements.

(1) An applicant shall submit to the office:

(a) a signed W-9 form; and

(b) (i) for actual COVID-19 expenses documentation of those expenses; and

(ii) for anticipated COVID-19 expenses an estimate of expenses that will be incurred prior to December 31, 2020.

R357-33-105. Program Requirements.

(1) The office will not issue a grant until the required information and documentation is submitted and approved, as

NOTICES OF 120-DAY (EMERGENCY) RULES

determined by the office. Only complete applications will be considered submitted.

(2) An awardee shall follow best practices to protect the health and safety of employees and customers.

(3) A business is prohibited from requesting or claiming CARES act funds from any other source for the same expenses claimed under this program.

KEY: safe in Utah, small business, COVID-19 assistance
Date of Enactment or Last Substantive Amendment: September 15, 2020
Authorizing, and Implemented or Interpreted Law: 63N-15-302

NOTICE OF EMERGENCY (120-DAY) RULE

Utah Admin. Code Ref (R no.):	R357-34	Filing No. 53063
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Agency Information

1. Department:	Governor	
Agency:	Economic Development	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state, zip:	Salt Lake City, UT 84111	
Mailing address:	60 E South Temple	
City, state, zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Dane Ishihara	801-538-8664	dishihara@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R357-34. COVID-19 Impacted Businesses Grant Program Rule
3. Effective Date:
09/11/2020
4. Purpose of the new rule or reason for the change:
During the 2020 Sixth Special Session, S.B. 6009 passed and amended the COVID-19 Impacted Businesses Grant Program that grants rental relief to certain businesses that will provide financial incentives to customers that was created during the 2020 Fifth Special Session H.B. 5010. The Governor's Office of Economic Development (GOED) is responsible for the administration of this program.
5. Summary of the new rule or change:
This new rule will supersede the emergency rule filing under ID No. 52993 that was made effective on

07/30/2020 and published in the August 15, 2020, Bulletin. This rule governs the COVID-19 Impacted Businesses Grant Program and will codify the requirements so that they align with the statutory amendments.

6. Regular rulemaking would:

X	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
	place the agency in violation of federal or state law.

Specific reason and justification:

GOED is responsible for economic development in the state and is tasked with, among other things, administering grant programs to enhance the economic health and vitality of the state and its business community. This rule will govern the new COVID-19 Impacted Businesses Grant Program that will provide assistance to businesses that in turn will provide financial incentives to customers.

Fiscal Information

7. Aggregate anticipated cost or savings to:

A) State budget:

There is no aggregate anticipated cost or savings to the state budget. This rule establishes the requirements for participation in the COVID-19 Impacted Businesses Grant Program.

B) Local governments:

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

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

\$55,000,000 in funds were allocated towards the program. GOED anticipates a large portion will be awarded to small businesses in the state. The COVID-19 Impacted Businesses Grant Program is designed to serve Utah's businesses that have been impacted by the COVID-19 pandemic.

D) 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 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.

8. Compliance costs for affected persons:

There are no compliance costs for affected persons because participation in the program is optional.

9. A) Comments by the department head on the fiscal impact this rule may have on businesses:

I have reviewed this fiscal analysis and agree with the described fiscal impacts associated with this rule. The COVID-19 Impacted Businesses Grant Program will help businesses and save consumers money. GOED hopes qualifying Utah businesses take advantage of this great opportunity to receive support from the federal CARES Act fund. GOED also encourage consumers to "Shop In Utah" and support Utah businesses.

B) Name and title of department head commenting on the fiscal impacts:

Val Hale, Executive Director

Citation Information**10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section
63N-15-302

Agency Authorization Information

Agency head or designee, and title:	Val Hale, Executive Director	Date:	09/11/2020
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R357. Governor, Economic Development.**R357-34. COVID-19 Impacted Businesses Grant Program Rule.****R357-34-101. Title.**

This rule is known as the "COVID-19 Impacted Businesses Grant Program Rule."

R357-34-102. Definitions.

In addition to the definitions under Section 63N-15-102 the following terms are defined:

(1) "Awardee" means a qualified business entity that has been awarded a grant under the program.

(2) "Full-time equivalent employee" means any person that on average works 40 or more hours per week on behalf of the business entity.

(3) "Shop in Utah" means the COVID-19 Impacted Businesses Grant Program.

(4) "Profit & loss statement" means a document that, at a minimum, establishes:

(a) the business entity's name;

(b) the timeframe the document represents;

(c) gross revenue;

(d) expenses; and

(e) net income.

R357-34-103. Authority.

This rule is adopted by the office under the authority of Section 63N-15-202.

R357-34-104. Documentation Requirements.

(1) An applicant shall submit to the office a:

(a) signed W-9 form;

(b) profit & loss statement for:

(i) March 2019 through June 2019 if the business entity began operating prior to July 1, 2019; or

(ii) February 2020 if the business entity began operating on or after July 1, 2019;

(c) profit & loss statement for March 2020 through June 2020; and

(d) financial incentive plan that includes:

(i) budget of the proposed plan; and

(ii) timeline that establishes the funds will be expended prior to December 30, 2020.

R357-34-105. Program Requirements.

(1) The office will not issue a grant until the required information and documentation is submitted and approved, as determined by the office. Only complete applications will be considered submitted.

(2) An awardee shall follow best practices to protect the health and safety of employees and customers.

(3) An award may be denied or reduced if the financial incentive proposed by the applicant has a limited customer reach or otherwise insufficiently incentivizes the customer, as reasonably determined by office.

(4) An awardee shall use the grant funds to offset the economic impact of COVID-19 and shall expend all funds on or before December 30, 2020.

(5) An awardee shall provide the financial incentive to the customer on or before December 30, 2020 and the customer shall redeem the financial incentive any time up to and including June 30, 2021.

(6) An awardee that previously received program funds will only be eligible for the difference between the total amount previously received and the amount the awardee is eligible for under the current statute and administrative code regime.

R357-34-106. Award Calculation.

(1) For a business entity whose revenue decline was:

(a) 50% or more, the lessor of 75% of revenue decline or \$150,000;

(b) more 25% but less than 50%, the lessor of 50% of revenue decline or \$100,000; or

(c) 25% or less, the lessor of 25% of revenue decline or \$50,000.

KEY: Shop in Utah, small business, COVID-19 assistance

Date of Enactment or Last Substantive Amendment: September 11, 2020

Authorizing, and Implemented or Interpreted Law: 63N-15-202

NOTICE OF EMERGENCY (120-DAY) RULE

Utah Admin. Code Ref (R no.):	R357-36	Filing No. 53068
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Agency Information

1. Department:	Governor	
Agency:	Economic Development	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state, zip:	Salt Lake City, UT 84111	
Mailing address:	60 E South Temple	
City, state, zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Dane Ishihara	801-538-8664	dishihara@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R357-36. COVID-19 Oil, Gas, and Mining Grant Program
3. Effective Date:
09/14/2020
4. Purpose of the new rule or reason for the change:
During the 2020 Sixth Special Session, S.B. 6009 passed and directed the Governor's Office of Economic Development (GOED) to establish and administer the COVID-19 Oil, Gas, and Mining Grant Program that provides assistance to business that are substantially involved in the oil, gas, and mining industries that have experience a revenue decline due to the COVID-19 pandemic.
5. Summary of the new rule or change:
This rule will codify the administration of the COVID-19 Oil, Gas, and Mining Grant Program by establishing definitions, authority, program, and documentation requirements. The program will provide assistance to oil, gas and mining businesses that have been impacted by the COVID-19 pandemic.
6. Regular rulemaking would:
<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or
<input type="checkbox"/> place the agency in violation of federal or state law.
Specific reason and justification:
GOED is responsible for economic development in the state and is tasked with, among other things, administering grant programs to enhance the economic health and vitality of the state and its business community. This rule will govern the new COVID-19 Oil, Gas, and Mining Grant

Program that will provide assistance to oil, gas, and mining businesses.

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
There is no aggregate anticipated cost or savings to the state budget. This rule establishes the requirements for participation in the COVID-19 Impacted Businesses Grant Program.
B) Local governments:
There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.
C) Small businesses ("small business" means a business employing 1-49 persons):
\$55,000,000 in funds were allocated towards the program. The COVID-19 Oil, Gas, and Mining Grant Program is designed to serve Utah's businesses that have been impacted by the COVID-19 pandemic.
D) 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 <i>agency</i>):
There is no 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.
8. Compliance costs for affected persons:
There are no compliance costs for affected persons because participation in the program is optional.
9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
I have reviewed this fiscal analysis and agree with the described fiscal impacts associated with this rule. This is a unique grant that, working with the Governor's Office of Energy Development, GOED is excited to provide to businesses in the important oil, gas and mining industries.
B) Name and title of department head commenting on the fiscal impacts:
Val Hale, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section
63N-15-502

Agency Authorization Information

Agency head or designee, and title:	Val Hale, Executive Director	Date:	09/14/2020
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R357. Governor, Economic Development.**R357-36. COVID-19 Oil, Gas, and Mining Grant Program Rule.****R357-36-101. Title.**

This rule is known as the "COVID-19 Oil, Gas, and Mining Grant Program Rule."

R357-36-102. Definitions.

In addition to the definitions under Section 63N-15-102 the following terms are defined:

(1) "Awardee" means a qualified oil, gas, and mining business entity that has been awarded a grant under the program.

(2) "Full-time equivalent employee" means any person that on average works 40 or more hours per week on behalf of the business entity in Utah.

(3) "OGM grant" means the COVID-19 Oil, Gas, and Mining Grant Program.

(4) "Profit & loss or equivalent financial statement" means documents that, at a minimum, establish for Utah operations:

(a) the business entity's name;

(b) the timeframe the document represents;

(c) gross revenue;

(d) expenses; and

(e) net income.

R357-36-103. Authority.

This rule is adopted by the office under the authority of Section 63N-15-502.

R357-36-104. Documentation Requirements.

(1) An applicant shall submit to the office a:

(a) signed W-9 form;

(b) profit & loss or equivalent financial statement for:

(i) March 2019 through June 2019 if the business entity began operating prior to July 1, 2019; or

(ii) February 2020 if the business entity began operating on or after July 1, 2019; and

(c) profit & loss or equivalent financial statement for March 2020 through June 2020.

R357-36-105. Program Requirements.

(1) The office will not issue a grant until all required information and documentation is submitted and approved, as determined by the office. Only complete applications will be considered submitted.

(2) An awardee shall follow best practices to protect the health and safety of employees and customers.

(3) An awardee shall use the grant funds to offset the economic impact of COVID-19 and will expend all funds on or before December 30, 2020.

(4) An awardee shall submit to audits and information requests as reasonably requested by GOED or its designee.

(5) If an oil, gas, and mining business entity was purchased by the applicant within twelve months of the application date the applicant may use the acquired oil, gas and mining business entity's profit and loss or equivalent financial statements to establish base revenue.

(6) An applicant shall demonstrate the business entity is substantially involved in the extraction of oil, gas, or minerals in Utah or directly provides services to oil, gas, or mining businesses in Utah.

R357-34-106. Award Calculation.

(1) For a business entity whose revenue decline was:

(a) 50% or more, the lessor of 75% of revenue decline or \$250,000;

(b) more than 25% but less than 50%, the lessor of 50% of revenue decline or \$150,000; or

(c) 25% or less, the lessor of 25% of revenue decline or \$75,000.

KEY: Oil, Gas, and Mining, COVID-19 assistance

Date of Enactment or Last Substantive Amendment: September 14, 2020

Authorizing, and Implemented or Interpreted Law: 63N-15-502

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 <https://rules.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

Utah Admin. Code Ref (R no.):	R15-2	Filing No. 50022
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Agency Information

1. Department:	Administrative Services	
Agency:	Administrative Rules (Office of)	
Street address:	4315 S 2700 W	
City, state, zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141007	
City, state, zip:	Salt Lake City, UT 84114-1007	
Contact person(s):		
Name:	Phone:	Email:
Michael Broschinsky	801-957-7100	mbroschi@utah.gov

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

General Information

2. Rule catchline:
R15-2. Public Petitioning for Rulemaking
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 63G-3-601(3) directs the Office of Administrative Rules (Office) to establish how public petitions for agency rulemaking may be made, how those petitions must be considered, and the disposition of those petitions, and to do so by administrative 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 regarding this rule have been received by the Office since its last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Citizens of the state and other members of the public must be able to have a voice in the regulatory process. The legislature has formalized this ability in statute. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Michael Brochinsky, Director	Date:	09/08/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R15-3	Filing No. 50011
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Agency Information

1. Department:	Administrative Services	
Agency:	Administrative Rules (Office of)	
Street address:	4315 S 2700 W, Floor 3	
City, state, zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141007	
City, state, zip:	Salt Lake City, UT 84114-1007	
Contact person(s):		
Name:	Phone:	Email:

Michael Broschinsky	801-957-7100	mbroschi@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R15-3. Administrative Rules: Scope, Content, and When Required
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 63G-3-402(2) directs the Office of Administrative Rules (Office) to establish filing, publication, and hearing procedures. Rule R15-3 clarifies when rulemaking is required, and requirements for incorporation by reference within rules.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments regarding Rule R15-3 have been received since its last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Guidance regarding when rulemaking is necessary and how to address incorporation by reference within rule text is still necessary. In addition, the legislative direction at Subsection 63G-3-402(2) continues in force. Therefore, the rule should continue.

Agency Authorization Information

Agency head or designee, and title:	Michael Broschinsky, Director	Date:	09/10/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R15-4	Filing No.	50002
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Agency Information

1. Department:	Administrative Services
Agency:	Administrative Rules (Office of)
Street address:	4315 S 2700 W, Floor 3
City, state, zip:	Taylorsville, UT 84129-2128
Mailing address:	PO Box 141007
City, state, zip:	Salt Lake City, UT 84114-1007

Contact person(s):		
Name:	Phone:	Email:
Michael Broschinsky	801-957-7100	mbroschi@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R15-4. Administrative Rulemaking Procedures
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 63G-3-402(2) directs the Office of Administrative Rules (Office) to establish filing, publication, and hearing procedures. Rule R15-4 establishes procedures for filing and publication of agency rules under Sections 63G-3-301, 63G-3-303, and 63G-3-304.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received regarding Rule R15-4 since its last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Rule R15-4 provides rulemaking agencies with consistent procedures to follow in filing and publishing rules. These consistent procedures facilitate agency work and public access to rulemaking information. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Michael Broschinsky, Director	Date:	09/10/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R15-5	Filing No.	50012
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Agency Information

1. Department:	Administrative Services
Agency:	Administrative Rules (Office of)
Street address:	4315 S 2700 W, Floor 3
City, state, zip:	Taylorsville, UT 84129-2128

Mailing address:	PO Box 141007	
City, state, zip:	Salt Lake City, UT 84114-1007	
Contact person(s):		
Name:	Phone:	Email:
Michael Broschinsky	801-957-7100	mbroschi@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R15-5. Administrative Rules Adjudicative Proceedings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 63G-4-202 permits an agency to designate adjudicative proceedings as informal. If the agency chooses to do so, it must do so by rule. Section 63G-4-503 requires each agency to issue rules that govern procedures for declaratory orders. Subsection 63G-3-402(1)(n) requires the Office of Administrative Rules (Office) to administer the Utah Administrative Rulemaking Act, Title 63G, Chapter 3.
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 regarding Rule R15-5 since its last five-year review.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Upon review of this rule, the Office has determined that it may no longer be necessary because the Rulemaking Act (Title 63G, Chapter 3) provides: 1) that the office has authority to make nonsubstantive changes; and 2) a process for a person to challenge an administrative rule. The Office has provided this review to comply with the procedures of Section 63G-3-305, and therefore, this rule should be continued. The Office will likely file a notice of proposed rule to repeal Rule R15-5 in the near future.

Agency Authorization Information

Agency head or designee, and title:	Michael Broschinsky, Director	Date:	09/10/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-616	Filing No. 50510

Agency Information

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

General Information

2. Rule catchline:
R277-616. Education for Homeless and Emancipated Students
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board; Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities; Section 53G-6-202 which requires that minors between the ages of 6 and 18 attend school during the school year; Subsection 53G-6-302(6) which makes each school district or charter school responsible for providing educational services for all children of school age who reside in the school district or attend the school; and the McKinney-Vento Homeless Assistance Act of 1987, Title VII, Subtitle B, as amended, 42 U.S.C. 11431 through 11435.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no written comments received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule continues to be necessary because it ensures that homeless children or youth have the opportunity to

attend school with as little disruption as reasonably possible. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	09/04/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R277-921	Filing No. 50555
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Agency Information

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

General Information

2. Rule catchline:
R277-921. Strengthening College and Career Readiness Program
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Utah Constitution Article X, Section 3, which vests the general control and supervision of the public education system in the Board; Subsection 53E-3-401(4) which authorizes the Board to adopt rules in accordance with its responsibilities; and Section 53F-5-204 which requires the Board to make rules regarding the program.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There were no written comments received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule continues to be necessary because it establishes procedures and criteria for applying for and awarding a grant and reporting requirements for a grantee. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent	Date:	09/04/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R357-14	Filing No. 50854
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Agency Information

1. Department:	Governor	
Agency:	Economic Development	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state, zip:	Salt Lake City, UT 84111	
Mailing address:	60 E South Temple	
City, state, zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Dane Ishihara	801-792-8764	dishihara@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R357-14. Electronic Meetings
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
In accordance with Section 52-4-207, this rule establishes the requirements for the Governor's Office of Economic Development (GOED) to meet electronically.
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 comment has been received since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required under Section 52-4-207 in order for GOED to conduct electronic meetings. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Val Hale, Executive Director	Date:	09/03/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R432-101	Filing No. 51072
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Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Licensing	
Room no.:	Suite 100	
Building:	Highland	
Street address:	3760 S. Highland Drive	
City, state, zip:	Salt Lake City, UT 84106	
Mailing address:	PO Box 144103	
City, state, zip:	Salt Lake City, UT 84114-4103	
Contact person(s):		
Name:	Phone:	Email:
Kristi Grimes	801-273-2821	kristigrimes@utah.gov

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

General Information

2. Rule catchline:
R432-101. Specialty Hospital - Psychiatric
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have been no written comments from any party regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to provide regulations for a specialty hospital to provide inpatient psychiatric services. There are facilities currently licensed in this category. The Department agrees with the need to continue this rule.

Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Deputy Director	Date:	08/31/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R432-103	Filing No. 51067
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Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Licensing	
Room no.:	Suite 100	
Building:	Highland	
Street address:	3760 S Highland Drive	
City, state, zip:	Salt Lake City, UT 84106	
Mailing address:	PO Box 144103	
City, state, zip:	Salt Lake City, UT 84114-4103	
Contact person(s):		
Name:	Phone:	Email:
Kristi Grimes	801-273-2821	kristigrimes@utah.gov

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

General Information

2. Rule catchline:
R432-103. Specialty Hospital - Rehabilitation
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have been no written comments from any party regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to provide regulations for a specialty hospital to provide inpatient rehabilitation services. There are facilities currently licensed in this category. The Department agrees with the need to continue this rule.

Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Deputy Director	Date:	09/02/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R432-104	Filing No. 51068
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Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Licensing	
Room no.:	Suite 100	
Building:	Highland	
Street address:	3760 S Highland Drive	
City, state, zip:	Salt Lake City, UT 84106	
Mailing address:	PO Box 144103	
City, state, zip:	Salt Lake City, UT 84114-4103	
Contact person(s):		
Name:	Phone:	Email:
Kristi Grimes	801-273-2821	kristigrimes@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-104. Specialty Hospital-Long-Term Acute Care
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no written comments from any party regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to provide regulations for a long-term acute care specialty hospital to provide inpatient services. There are facilities currently licensed in this category. The Department agrees with the need to continue this rule.

Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Deputy Director	Date:	09/02/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R432-105	Filing No. 51070
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Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Licensing	
Room no.:	Suite 100	
Building:	Highland	
Street address:	3760 S Highland Drive	
City, state, zip:	Salt Lake City, UT 84106	
Mailing address:	PO Box 144103	
City, state, zip:	Salt Lake City, UT 84114-4103	
Contact person(s):		
Name:	Phone:	Email:
Kristi Grimes	801-273-2821	kristigrimes@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-105. Specialty Hospital - Orthopedic
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no written comments from any party regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to provide regulations for a specialty hospital to provide inpatient orthopedic services. There are currently not any hospitals licensed under this category, but it is expected that there may be some in the future. The Department agrees with the need to continue this rule.

Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Deputy Director	Date:	09/02/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R432-500	Filing No. 51083
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Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Licensing	
Room no.:	Suite 100	
Building:	Highland	
Street address:	3760 S Highland Drive	
City, state, zip:	Salt Lake City, UT 84106	
Mailing address:	PO Box 144103	
City, state, zip:	Salt Lake City, UT 84114-4103	
Contact person(s):		
Name:	Phone:	Email:
Kristi Grimes	801-273-2821	kristigrimes@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R432-500. Freestanding Ambulatory Surgical Center Rules

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have been no written comments from any party regarding this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The purpose of this rule is to provide regulations for a freestanding ambulatory surgical center to provide outpatient ambulatory surgical services. There are facilities currently licensed in this category. The Department agrees with the need to continue this rule.

Agency Authorization Information

Agency head or designee, and title:	Joseph K. Miner, MD, Deputy Director	Date:	09/02/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R512-60	Filing No. 51228
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Agency Information

1. Department:	Human Services	
Agency:	Child and Family Services	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Carol Miller	801-557-1772	carolmiller@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R512-60. Children's Account

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 62A-4a-102 authorizes the Division of Child and Family Services (Division) to establish rules in order to provide programs and services that support the strengthening of family values, including the requirements for carrying out the purposes of the Children's Account, with the funding specified in Section 62A-4a-309.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Continuation of this rule is necessary in order for the Division to carry out the purposes of the Children's Account, with the funding specified in Section 62A-4a-309.

Agency Authorization Information

Agency head or designee, and title:	Diane Moore, Director	Date:	08/24/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R651-637	Filing No. 51685
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Agency Information

1. Department:	Natural Resources	
Agency:	Parks and Recreation	
Room no.:	Suite 116	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146001	
City, state, zip:	Salt Lake City, UT 84114-6001	
Contact person(s):		
Name:	Phone:	Email:
Tammy Wright	801-538-7359	tammywright@utah.gov

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

General Information**2. Rule catchline:**

R651-637. Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt

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 79-4-201 states the Division of Parks and Recreation (Division) is under the policy direction of the Board. Section 79-4-304 gives the Board rulemaking authority governing the use of the state park system, including in Subsection (1)(ii) to protect state parks and their natural and cultural resources from misuse or damage, including watersheds, plants, wildlife, and park amenities.

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 on this rule since the last five-year review.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

There should be a continuation of this rule as it allows limited hunting for Mule Deer and Bighorn Sheep on the Island which helps with the management of the herds, gives the public opportunity to hunt on the Island and generates revenue which is put back into the habitat on the Island. Each year biologists meet to recommend the number of permits to be issued taking into consideration the health and viability of the herds.

Agency Authorization Information

Agency head or designee, and title:	Jeff Rasmussen, Director	Date:	09/08/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R657-5	Filing No. 51736
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Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room no.:	Suite 2110
Building:	Department of Natural Resources
Street address:	1594 W North Temple
City, state, zip:	Salt Lake City, UT 84116
Mailing address:	PO Box 146301

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-5. Taking Big Game
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means 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:
No written comments supporting or opposing Rule R657-5 were received since 2015, when the 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 R657-5 provides the procedures, standards, and requirements for taking big game. The provisions adopted in this rule are effective in providing the standards and requirements for taking big game. Continuation of this rule is necessary for continued success of this program.

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, DWR Director	Date:	09/08/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R657-17	Filing No. 51741
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Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources
Room no.:	Suite 2110
Building:	Department of Natural Resources
Street address:	1594 W North Temple

City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-17. Lifetime Hunting and Fishing License
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means 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:
No written comments supporting or opposing Rule R657-17 were received since 2015, when the 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 R657-17 provides the procedures, standards, and requirements for issuing Lifetime hunting and fishing licenses. The provisions adopted in this rule are effective in providing the standards and requirements for using Lifetime hunting and fishing licenses. Continuation of this rule is necessary for continued success of this program.

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, DWR Director	Date:	09/08/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R657-38	Filing No. 51760
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Agency Information

1. Department:	Natural Resources
Agency:	Wildlife Resources

Room no.:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-38. Dedicated Hunter 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 Sections 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:
No written comments supporting or opposing Rule R657-38 were received since 2015, when the 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 R657-38 provides the procedures, standards, and requirements for participating in the Dedicated Hunter program. The provisions adopted in this rule are effective in providing the standards and requirements for Dedicated Hunters. Continuation of this rule is necessary for continued success of this program.

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, DWR Director	Date:	09/08/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R657-41	Filing No.	51763
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Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R657-41. Conservation and Sportsman Permits
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means 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:
No written comments supporting or opposing Rule R657-41 were received since 2015, when the 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 R657-41 provides the procedures, standards, and requirements for issuing Conservation and Sportsman permits. The provisions adopted in this rule are effective in providing the standards and requirements for groups to obtain and use Conservation and Sportsman permits. Continuation of this rule is necessary for continued success of this program.

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, DWR Director	Date:	09/08/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R657-56	Filing No. 51769
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Agency Information

1. Department:	Natural Resources	
Agency:	Wildlife Resources	
Room no.:	Suite 2110	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146301	
City, state, zip:	Salt Lake City, UT 84114-6301	
Contact person(s):		
Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov

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

General Information

2. Rule catchline:
R657-56. Recreational Lease of Private Lands for Free Public Walk-in Access
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means 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:
No written comments supporting or opposing Rule R657-56 were received since 2015, when the 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 R657-56 provides the procedures, standards, and requirements for allowing public access to private lands for hunting and fishing purposes. The provisions adopted in this rule are effective in providing the standards and requirements for allowing public use of private lands. Continuation of this rule is necessary for continued success of this program.

Agency Authorization Information

Agency head or designee, and title:	Mike Fowlks, DWR Director	Date:	09/08/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R671-104	Filing No. 51804
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Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state, zip:	Murray, UT 84107	
Mailing address:	448 E Winchester Street, Suite 300	
City, state, zip:	Murray, UT 84107	
Contact person(s):		
Name:	Phone:	Email:
Brett Varoz	801-261-6464	bopinfo@utah.gov

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

General Information

2. Rule catchline:
R671-104. Language Access
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The Board of Pardons (Board) conducts hearings as authorized by Sections 77-27-7 and 77-27-5. This rule directs the Board to provide interpreters to victims and offenders who are non-English speaking or have limited English proficiency so that they may participate fully in these hearings.
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 regarding this rule 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:
Providing interpreters is fundamental to allowing offenders and victims to exercise their rights during Board hearings regardless of the person's language. This rule should be continued in order to provide equal access to justice.

Agency Authorization Information

Agency head or designee, and title:	Carrie Cochran, Chair	Date:	08/14/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R671-204	Filing No. 51811
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Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state, zip:	Murray, UT 84107	
Mailing address:	448 E Winchester Street, Suite 300	
City, state, zip:	Murray, UT 84107	
Contact person(s):		
Name:	Phone:	Email:
Brett Varoz	801-261-6464	bopinfo@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R671-204. Hearing Continuances
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The Board of Pardons (Board) conducts hearings as authorized by Sections 77-27-7 and 77-27-5. This rule defines the circumstances when a hearing may be continued and sets time limits.
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 regarding this rule 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 the parameters and necessary time limits for continuing hearings. This rule should be continued in order to promote the effective use of continuances while limiting unnecessary delays.

Agency Authorization Information

Agency head or designee, and title:	Carrie Cochran, Chair	Date:	08/14/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R671-314	Filing No. 51832
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Agency Information

1. Department:	Pardons (Board of)	
Agency:	Administration	
Street address:	448 E Winchester Street, Suite 300	
City, state, zip:	Murray, UT 84107	
Mailing address:	448 E Winchester Street, Suite 300	
City, state, zip:	Murray, UT 84107	
Contact person(s):		
Name:	Phone:	Email:
Brett Varoz, Chief Hearing Officer	801-261-6464	bopinfo@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R671-314. Compassionate Release
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
As authorized by the Utah Constitution Article VII, Section 12, and Sections 77-27-5; 77-27-7; and 77-27-9, when a person is committed to prison, the Board of Pardons (Board) determines the timing and conditions of parole or termination of the sentence. This determination may include consideration of exceptional circumstances that warrant a release for compassionate reasons.
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 regarding this rule 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 defines exceptional circumstances when the Board may consider compassionate release and sets parameters on the submission of such requests. This rule

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

is necessary for the orderly consideration of
compassionate release requests and should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carrie Cochran, Chair	Date:	08/14/2020
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Administrative Services

Finance

No. 52867 (Repeal and Reenact): R25-7. Travel-Related Reimbursements for State Employees
Published: 08/01/2020
Effective: 09/07/2020

No. 52932 (Amendment): R25-21. Medical Cannabis Payment Provider Standard
Published: 08/01/2020
Effective: 09/07/2020

Agriculture and Food

Plant Industry

No. 52919 (Amendment): R68-24. Industrial Hemp Research Pilot Program for Growers
Published: 07/15/2020
Effective: 09/04/2020

No. 52917 (Amendment): R68-27. Cannabis Cultivation
Published: 07/15/2020
Effective: 09/04/2020

No. 52992 (Amendment): R68-31. Cannabis Licensing Process
Published: 08/15/2020
Effective: 09/25/2020

Regulatory Services

No. 52987 (Amendment): R70-530. Food Protection
Published: 08/15/2020
Effective: 09/25/2020

Commerce

Occupational and Professional Licensing

No. 52921 (Amendment): R156-55a. Utah Construction Trades Licensing Act Rule
Published: 08/15/2020
Effective: 09/22/2020

No. 52950 (Amendment): R156-79. Hunting Guides and Outfitters Licensing Act Rule
Published: 08/01/2020
Effective: 09/08/2020

Education

Administration

No. 52960 (New Rule): R277-310. International Guest Teachers
Published: 08/01/2020
Effective: 09/24/2020

No. 52961 (Repeal): R277-418. Distance, Blended, Online, or Competency Based Learning Program
Published: 08/01/2020
Effective: 09/24/2020

No. 52988 (Amendment): R277-419. Pupil Accounting
Published: 08/15/2020
Effective: 09/25/2020

No. 52962 (Amendment): R277-488. Dual Language Immersion Program
Published: 08/01/2020
Effective: 09/24/2020

No. 52963 (Repeal): R277-527. International Guest Teachers
Published: 08/01/2020
Effective: 09/24/2020

No. 52973 (Amendment): R277-606. Dropout Prevention and Recovery Program
Published: 08/15/2020
Effective: 09/24/2020

No. 52966 (New Rule): R277-701. Early College Programs
Published: 08/01/2020
Effective: 09/24/2020

No. 52967 (Amendment): R277-707. Enhancement for Accelerated Students Programs
Published: 08/01/2020
Effective: 09/24/2020

No. 52968 (Repeal): R277-713. Concurrent Enrollment of Students in College Courses
Published: 08/01/2020
Effective: 09/24/2020

No. 52969 (New Rule): R277-723. Start Smart Utah Program
Published: 08/01/2020
Effective: 09/24/2020

No. 52989 (Amendment): R277-752. Special Education Intensive Services Fund
Published: 08/15/2020
Effective: 09/25/2020

No. 52970 (Amendment): R277-912. Law Enforcement Related Incident Reporting
Published: 08/01/2020
Effective: 09/24/2020

Environmental Quality

Air Quality

No. 52814 (Amendment): R307-101. Definitions
Published: 07/01/2020
Effective: 09/03/2020

No. 52815 (Amendment): R307-150. Emission Inventories
Published: 07/01/2020
Effective: 09/03/2020

No. 52816 (Amendment): R307-401. Permit: New and Modified Sources
Published: 07/01/2020
Effective: 09/03/2020

No. 52817 (Amendment): R307-415. Fees for Operating Permits
Published: 07/01/2020
Effective: 09/03/2020

No. 52818 (Amendment): R307-801. Purpose and Authority
Published: 07/01/2020
Effective: 09/03/2020

Waste Management and Radiation Control, Waste Management

No. 52923 (Amendment): R315-261. General Requirements – Identification and Listing of Hazardous Waste
Published: 08/01/2020
Effective: 09/14/2020

No. 52924 (Amendment): R315-262. Hazardous Waste Generator Requirements
Published: 08/01/2020
Effective: 09/14/2020

No. 52925 (Amendment): R315-264. General – Purpose, Scope and Applicability
Published: 08/01/2020
Effective: 09/14/2020

No. 52926 (Amendment): R315-265. Incorporation, General – Purpose, Scope, and Applicability
Published: 08/01/2020
Effective: 09/14/2020

No. 52927 (Amendment): R315-266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
Published: 08/01/2020
Effective: 09/14/2020

No. 52928 (Amendment): R315-268. Land Disposal Restrictions
Published: 08/01/2020
Effective: 09/14/2020

No. 52929 (Amendment): R315-270. Hazardous Waste Permit Program – Purpose and Scope of These Rules
Published: 08/01/2020
Effective: 09/14/2020

No. 52930 (Amendment): R315-273. Standards for Universal Waste Management, Petitions to Include Other Wastes Under Rule R315-273 -- General
Published: 08/01/2020
Effective: 09/14/2020

Health

Children's Health Insurance Program

No. 52938 (Amendment): R382-10. Public Health Emergency Provisions
Published: 08/01/2020
Effective: 09/16/2020

Disease Control and Prevention, Epidemiology

No. 52934 (Amendment): R386-702. Communicable Disease Rule
Published: 08/01/2020
Effective: 09/08/2020

No. 52995 (Amendment): R386-800. Immunization Coordination
Published: 08/15/2020
Effective: 09/23/2020

Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health

No. 52750 (Amendment): R388-805. Ryan White Part B Program
Published: 06/01/2020
Effective: 09/01/2020

NOTICES OF RULE EFFECTIVE DATES

Disease Control and Prevention, Environmental Services
No. 52875 (Amendment): R392-101. Food Safety Manager
Certification
Published: 07/15/2020
Effective: 09/15/2020

No. 52876 (Amendment): R392-103. Food Handler
Training and Certificate
Published: 07/15/2020
Effective: 09/15/2020

Health Care Financing, Coverage and Reimbursement Policy
No. 52948 (Amendment): R414-1. Utilization Review
Published: 08/01/2020
Effective: 10/01/2020

No. 52936 (New Rule): R414-1C. Coronavirus Public
Health Emergency Period
Published: 08/01/2020
Effective: 09/07/2020

No. 52949 (Amendment): R414-2a. Limitations
Published: 08/01/2020
Effective: 10/01/2020

No. 52990 (Amendment): R414-42. Telemedicine
Published: 08/15/2020
Effective: 09/22/2020

No. 52939 (Amendment): R414-303. Coronavirus (COVID-
19) Testing Coverage
Published: 08/01/2020
Effective: 09/16/2020

No. 52940 (Amendment): R414-304. Public Health
Emergency Income Provisions
Published: 08/01/2020
Effective: 09/16/2020

No. 52941 (Amendment): R414-308. Public Health
Emergency Provisions
Published: 08/01/2020
Effective: 09/16/2020

No. 52942 (Amendment): R414-311. Public Health
Emergency Provisions
Published: 08/01/2020
Effective: 09/16/2020

No. 52943 (Amendment): R414-312. Public Health
Emergency Provisions
Published: 08/01/2020
Effective: 09/16/2020

No. 52981 (Amendment): R414-312. Definitions
Published: 08/15/2020
Effective: 09/22/2020

No. 52944 (Amendment): R414-320. Public Health
Emergency Provisions
Published: 08/01/2020
Effective: 09/16/2020

No. 52945 (Amendment): R414-502. Approval of Level of
Care
Published: 08/01/2020
Effective: 09/22/2020

No. 52991 (Amendment): R414-504. Nursing Facility
Payments
Published: 08/15/2020
Effective: 10/01/2020

No. 52946 (Amendment): R414-510. Definitions
Published: 08/01/2020
Effective: 09/22/2020

No. 52947 (New Rule): R414-525. Interpretive Services
Invoice Requirements
Published: 08/01/2020
Effective: 10/01/2020

Family Health and Preparedness, Licensing
No. 52937 (Amendment): R432-270. Assisted Living
Facilities
Published: 08/01/2020
Effective: 09/15/2020

Family Health and Preparedness, Primary Care and Rural
Health
No. 52997 (New Rule): R434-20. Behavioral Health
Workforce Reinvestment Initiative
Published: 08/15/2020
Effective: 09/22/2020

Disease Control and Prevention, Laboratory Services
No. 52786 (Amendment): R438-15. Newborn Screening
Published: 06/01/2020
Effective: 09/15/2020

Heritage and Arts

Administration
No. 52959 (New Rule): R450-4. Multicultural Commission
Published: 08/01/2020
Effective: 09/24/2020

Human Services

Administration, Administrative Hearings
No. 52874 (Amendment): R497-100. Adjudicative
Proceedings
Published: 07/15/2020
Effective: 09/01/2020

Insurance

Administration
No. 52980 (Amendment): R590-225. Documents
Incorporated by Reference
Published: 08/15/2020
Effective: 09/22/2020

NOTICES OF RULE EFFECTIVE DATES

No. 52982 (Amendment): R590-237. Rural Health
Notification
Published: 08/15/2020
Effective: 09/22/2020

No. 52843 (Amendment): R657-60. Aquatic Invasive
Species Interdiction
Published: 08/01/2020
Effective: 09/08/2020

Natural Resources

Wildlife Resources

No. 52844 (Repeal and Reenact): R657-56. Walk-in
Access
Published: 08/01/2020
Effective: 09/08/2020

Transportation

Program Development

No. 52931 (Amendment): R926-11. Clean Fuel Vehicle
Decal Program
Published: 08/01/2020
Effective: 09/09/2020

End of the Notices of Rule Effective Dates Section