UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed November 16, 2019, 12:00 a.m. through December 02, 2019, 11:59 p.m.

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Nancy L. Lancaster, Managing Editor

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. 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

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
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.

P R O C L A M A T I O N

Calling the Sixty-Third Legislature Into the Second Special Session, Utah Proclamation No. 2019-2S

WHEREAS, since the adjournment of the 2019 General Session of the Sixty-third Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-third Legislature of the State of Utah into a Second Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 12th day of December 2019, at 5:00 pm, to consider the following:

1. Amendments to state law related to state and local taxes and revenue; and
2. One-time appropriations for behavioral health.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 10th day of December 2019.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2019/2/S

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 November 16, 2019, 12:00 a.m., and December 02, 2019, 11:59 p.m. are included in this, the December 15, 2019, 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 January 14, 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 April 13, 2020, 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: Repeal		
Utah Admin. Code Ref (R no.):	**R25-10**	**Filing No. 52362**

Agency Information

1. Department:	Administrative Services
Agency:	Finance
Room no.:	2110
Building:	State Office Building
Street address:	2110 State Office Building, 450 North State Street
City, state:	Salt Lake City, UT
Mailing address:	Division of Finance, PO Box 141031
City, state, zip:	Salt Lake City, UT 84114-1031

Contact person(s):

Name:	**Phone:**	**Email:**
John Reidhead	801-538-3095	jreidhead@utah.gov

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

General Information

2. Rule or section catchline:

State Entities' Posting of Financial Information to the Utah Public Finance Website

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

During the 2019 General Session, the Legislature passed H.B. 178. This bill transferred responsibility for the Transparency Advisory Board from the Division of Finance to the Department of Administrative Services. This filing repeals the rule from the Division of Finance rules.

4. Summary of the new rule or change:

Rule R25-10 is repealed in its entirety. Rule R13-10, published in the November 15, 2019, Bulletin under DAR No. 44187, replaces this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The provisions of this rule are substantially similar to Rule R13-10, published November 15, 2019, promulgated under Section 63A-1-204.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule applies to participating state entities only.

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

There is no anticipated cost or savings to small businesses. This rule applies to participating state entities only.

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

There is no anticipated cost or savings to non-small businesses. This rule applies to participating state entities only.

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 applies to participating state entities only. There is no anticipated cost or savings to other persons.

F) Compliance costs for affected persons:

Rule R25-10 is repealed in its entirety. It is replaced by a substantially similar rule, Rule R13-10, published on November 15, 2019 Bulletin. The repeal of this rule does not impose compliance costs on 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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0

Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Administrative Rules, Tani Pack Downing, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

I have reviewed and approved this rule. There will not be an impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Tani Pack Downing, 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 63A-3-404		

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	John Reidhead, Division Director	**Date:**	11/20/2019

R25. Administrative Services, Finance.

[~~R25-10. State Entities' Posting of Financial Information to the Utah Public Finance Website.~~

~~R25-10-1. Purpose.~~

~~The purpose of this rule is to establish procedures related to the posting of the participating state entities' financial information to the Utah Public Finance Website (UPFW).~~

~~R25-10-2. Authority.~~

~~This rule is established pursuant to Subsection 63A-3-404, which authorizes the Division of Finance to make rules governing the posting of financial information for participating state entities on the UPFW after consultation with the Utah Transparency Advisory Board.~~

~~R25-10-3. Definitions.~~

~~(1) "Utah Public Finance Website" (UPFW) means the website created in UCA 63A-3-402 which is administered by the Division of Finance and which permits Utah taxpayers to view, understand, and track the use of taxpayer dollars by making public financial information available on the internet without paying a fee.~~

~~(2) "Participating state entities" means the state of Utah, including its executive, legislative, and judicial branches, its departments, divisions, agencies, boards, commissions, councils, committees, and institutions, including institutions of higher education such as colleges, universities, and the Utah System of Technical Colleges, and includes all component units of these entities as defined by the Governmental Accounting Standards Board (GASB).~~

~~(3) "Division" means the Division of Finance of the Department of Administrative Services.~~

~~R25-10-4. Public Financial Information.~~

~~(1) Participating state entities shall submit detail revenue and expense transactions from their general ledger accounting system to the UPFW at least quarterly and within one month after the end of the fiscal quarter. The detail transactions for all participating state entities that are recorded in the central general ledger of the State, FINET, shall be submitted by the Division.~~

~~(2) Participating state entities will submit employee compensation detail information on a basis consistent with its fiscal year to the UPFW at least once per year and within three months after the end of the fiscal year. The employee compensation detail information that is recorded in the central payroll system of the State that is operated by the Division will be submitted by the Division.~~

~~(a) Employee compensation detail information will, at a minimum, break out the following amounts separately for each employee:~~

~~(i) Total wages or salary~~

~~(ii) Total benefits only, benefit detail is not allowed~~

~~(iii) Incentive awards~~
~~(iv) Taxable allowances and reimbursements~~
~~(v) Leave paid, if recorded separately from wages or salary in the participating state entity's payroll system.~~
~~(b) In addition, the following information will be submitted for each employee:~~
~~(i) Name~~
~~(ii) Hourly rate for those employees paid on an hourly basis.~~
~~(iii) Gender~~
~~(iv) Job title~~
~~(3) Entities must not submit any data to the UPFW that is classified as private, protected, or controlled by UCA 63G-2, Government Records Management Act. All detail transactions or records are required to be submitted; however, the words "not provided" shall be inserted into any applicable data field in lieu of private, protected, or controlled information.~~

~~R25-10-5. UPFW Data Submission Procedures.~~
~~(1) Entities must submit data to the UPFW according to the file specifications listed below.~~
~~(a) The public financial information required in R25-10-4 will be submitted to the UPFW in a pipe delimited text file. The detail file layout is available from the Division and is posted on the UPFW under the Helps and FAQs tab.~~
~~(b) Data will be submitted to the UPFW at the detail transaction level. However, the detailed transactions for compensation information for each employee may be summarized into transactions that represent an entire fiscal year.~~
~~(c) Each transaction submitted to the website must contain the information required in the detail file layout including:~~
~~(i) Organization - Categorizes transactions within the entity's organization structure. If available, at least 2 levels of organization will be submitted but not more than 10 levels.~~
~~(ii) Category - Categorizes transactions and further describes the transaction type. If available, at least 2 levels of category will be submitted but not more than 7 levels.~~
~~(iii) Fund - Categorizes transactions by fund types and individuals funds. At least 1 but not more than 4 levels of fund will be submitted.~~

~~KEY: Utah Public Financial Website, transparency, state employees, finance~~
~~Date of Enactment or Last Substantive Amendment: January 23, 2019~~
~~Notice of Continuation: November 20, 2018~~
~~Authorizing, and Implemented or Interpreted Law: 63A-3-404~~]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R25-11**	**Filing No. 52315**

Agency Information

1. Department:	Administrative Services
Agency:	Finance
Room no.:	2110
Building:	State Office Building
Street address:	450 North State Street
City, state:	Salt Lake City, UT 84114
Mailing address:	Division of Finance, PO Box 141031
City, state, zip:	Salt Lake City, UT 84114-1031
Contact person(s):	

Name:	**Phone:**	**Email:**
John Reidhead	801-538-3095	jreidhead@utah.gov

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

General Information

2. Rule or section catchline:

Utah Transparency Advisory Board, Procedures for Electronic Meetings

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

During the 2019 General Session, the Legislature passed H.B. 178. This bill transferred responsibility for the Transparency Advisory Board from the Division of Finance to the Department of Administrative Services. This filing repeals Rule R25-11, which will be replaced with a substantially similar Rule R13-11, published in the November 15, 2019, Bulletin under DAR No. 44188.

4. Summary of the new rule or change:

Rule R25-11 is repealed in its entirety. Rule R13-11, published in the November 15, 2019, Bulletin, replaces this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. This rule is replaced by Rule R13-11, which is substantially similar.

B) Local governments:

There is no anticipated cost or savings to local governments. This rule is replaced by Rule R13-11, which is substantially similar.

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

This rule does not apply to small businesses. It only applies to members of the Utah Transparency Advisory Board.

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

This rule does not apply to non-small businesses. It only

applies to members of the Utah Transparency Advisory Board.

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

This rule does not apply to other persons. It only applies to members of the Utah Transparency Advisory Board. Therefore, there is no anticipated cost or savings to other persons.

F) Compliance costs for affected persons:

This rule affects the method of meeting participation for some members of the Utah Transparency Advisory Board only. It does not impose compliance costs on other 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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Administrative Rules, Tani Pack Downing, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

I have reviewed and approved the repeal of this rule. There will not be an impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Tani Pack Downing, 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 52-4-207	Section 63G-3-201	Section 63A-3-404

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	John Reidhead, Division Director	**Date:**	11/20/2019

R25. Administrative Services, Finance.

[~~R25-11. Utah Transparency Advisory Board, Procedures for Electronic Meetings.~~

~~R25-11-1. Purpose and Authority.~~

~~(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting Utah Transparency Advisory Board meetings by electronic means.~~

~~(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-207, 63G-3-201, and 63A-3-404~~

~~R25-11-2. Meeting Procedure.~~

~~(1) Procedure. The following provisions govern any meeting at which one or more board members appear telephonically or electronically pursuant to Utah Code Section 52-4-207:~~

~~(a) If one or more members of the board may participate in any meeting electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notices shall specify the anchor location where the members of the board who are not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.~~

~~(b) In accordance with Utah Code Section 52-4-202 and Section 52-4-207, notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided at least 24 hours before the meetings on the Public Notice Website and to at least one newspaper of general circulation within the state or to a local media correspondent.~~

~~(c) Notice of the possibility of an electronic meeting shall be given to the board members at least 24 hours before the meeting. In addition, the notice shall describe how a board member may participate in the meeting electronically or telephonically.~~

~~(d) When notice is given of the possibility of a board member(s) appearing electronically or telephonically, any member(s) may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the board. At the commencement of the meeting, or at such time as any member initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the board who are not at the physical location of the meeting shall be confirmed by the chair.~~

~~(e) The anchor location, unless otherwise designated in the notice, shall be in the State Capitol Building, room 415, 350 North State Street, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.~~

~~KEY: electronic meetings, Utah Transparency Advisory Board~~
~~Date of Enactment or Last Substantive Amendment: August 21, 2014~~
~~Notice of Continuation: January 7, 2019~~
~~Authorizing, and Implemented or Interpreted Law: 52-4-207; 63G-3-201; 63A-3-404~~]

NOTICE OF PROPOSED RULE
TYPE OF RULE: New

Utah Admin. Code Ref (R no.):	**R82-1**	**Filing No. 52392**

Agency Information

1. Department:	Alcoholic Beverage Control
Agency:	Administration
Street address:	1625 S 900 W
City, state:	Salt Lake City, Utah
Mailing address:	PO Box 30408
City, state, zip:	Salt Lake City, Utah 84130-0408
Contact person(s):	

Name:	Phone:	Email:
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov

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

General Information

2. Rule or section catchline:

General

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

This new rule will condense and reorganize the administrative code to a format similar to state statute.

4. Summary of the new rule or change:

This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule does not create additional cost or savings.

B) Local governments:

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. This rule does not create additional cost or savings.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.

B) Name and title of department head commenting on the fiscal impacts:

Salvador Petilos, 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 32B-1-103	Section 32B-2-304	Section 32B-1-704
Section 32B-2-202	Section 32B-1-206	Section 32B-1-607
Section 32B-4-414	Section 32B-1-601	

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-1. General.
R82-1-101. Scope and Effective Date.

These rules are adopted pursuant to section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the Department and all licensees and permittees of the Commission.

R82-1-102. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "Act" means the Alcoholic Beverage Control Act, Title 32B.

(2) "Commission" means the Utah Alcoholic Beverage Control Commission.

(3) "Department " or "DABC" means the Utah Department of Alcoholic Beverage Control.

(4) "Director" means the director of the Department of Alcoholic Beverage Control.

(5) "Dispensing System" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

(6) "Guest Room" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn, hotel or resort.

(7) "Manager" means, depending on the context, a:

(a) a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company;

(b) an individual chosen or appointed to direct, supervise, or administer the operations at a licensed business; or

(c) an individual who supervises the furnishing of an alcoholic product to another, regardless of the exact employment title that the person holds.

(8) "Point of Sale" means that portion of a package agency, restaurant, limited restaurant, beer-only restaurant, airport lounge, on-premise banquet premises, reception center, recreational amenity on-premise beer retailer, tavern, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the Department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(9) "Respondent" means a Department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(10) "section" or "subsection" refers to sections and subsections of the Utah Code.

(11) "Staff" or "authorized staff member" means a person duly authorized by the director of the Department to perform a particular act.

(12) "subpart" refers to subparagraphs of this rule.

(13) "Utah Alcoholic Beverage Control Laws" means any Utah statutes, Commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(14) "Warning Sign" means a sign no smaller than 8.5 inches high by 11 inches wide, clearly readable, stating: "Warning: drinking alcoholic beverages during pregnancy can cause birth defects and permanent brain damage for the child. Call the Utah Department of Health at (insert most current toll-free number) with questions or for more information" and "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah." The two warning messages shall be in the same font size but different font styles that are no smaller than 36 point bold. The font size for the health Department contact information shall be no smaller than 20 point bold.

R82-1-103. General Provisions.

(1) Authority. This rule is made pursuant to section 32B-2-202, which authorizes the Commission to act as the general policymaking body regarding alcoholic product in the state and to adopt rules accordingly.

(2) Purpose. The purpose of this rule is to provide administrative guidance to the Department and members of the public.

(3) Interest Assessment on Delinquent Accounts.

The Department may assess the legal rate of interest provided in sections 15-1-1 through -4 for any debt or obligation owed to the Department by a licensee, permittee, package agent, or any other person.

(4) Dishonored Checks.

(a) The Department will assess a $20 charge for any check payable to the Department returned for the following reasons:

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

(b) Receipt of a check payable to the Department which is returned by the bank for any of the reasons listed in subpart (4)(a) of this rule may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the Department offices, 1625 S. 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within 30 days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in subpart (4)(b) of this rule, the Department may require that the licensee, permittee, or package agent transact business with the Department on a "cash only" basis. The determination of when to put a licensee, permittee, or package agency operator on "cash only" basis and how long the licensee, permittee, or package agency operator remains on "cash only" basis shall be at the discretion of the Department and shall be based on the following factors:

(i) dollar amount of the returned check(s);

(ii) the number of returned checks;

(iii) the length of time the licensee, permittee, or package agency operator has had a license, permit, or package agency with the Department;

(iv) the time necessary to collect the returned check(s); and

(v) any other circumstances.

(d) A returned check received by the Department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit may, at the discretion of the Department, require that the person or entity that applied for or held

the permit be on "cash only" status for any future events requiring permits from the Commission.

(e) In addition to the remedies established in this rule, the Department may pursue any legal remedies to effect collection of any returned check

(5) Administrative Handling Fees.

(a) Pursuant to subsection 32B-4-414(1)(b) a person, on a one-time basis, who moves the person's residence to this state from outside of this state may have or possess for personal consumption and not for sale or resale, liquor previously purchased outside the state and brought into this state during the move if the person obtains Department approval before moving the liquor into the state, and the person pays the Department a reasonable administrative handling fee as determined by the Commission.

(b) Pursuant to subsection 32B-4-414(1)(c) a person who as a beneficiary inherits as part of an estate liquor that is located outside the state, may have or possess the liquor and transport or cause the liquor to be transported into the state if the person obtains Department approval before moving the liquor into the state, the person provides sufficient documentation to the Department to establish the person's legal right to the liquor as a beneficiary, and the person pays the Department a reasonable administrative handling fee as determined by the Commission.

(c) The administrative handling fee to process any request for Department approval referenced in subparts (3)(a) and (3)(b) of this rule is $20.

(6) Case Handling Markup

(a) For purposes of the landed case cost defined in section 32B-2-304, "cost of the product" includes a case handling markup determined by the Department.

(b) If a manufacturer and the Department have agreed to allow the manufacturer to ship an alcoholic beverage directly to a state store or package agency without being received and stored by the Department in the Department's warehouse, the manufacturer shall receive a credit equaling the case handling markup for the product that is not warehoused by the Department.

(c) The Department shall collect and remit the case handling markup as outlined in section 32B-2-304.

(7) Listing and Delisting Product: Pursuant to section 32B-2-202, this rule authorizes the director to make internal Department policies in accordance with section 32B-2-206 for Department duties as defined by section 32B- 2-204 for listing and de-listing products to include a program to place orders for products not kept for sale by the Department.

R82-1-104. Advertising.

(1) This rule is made pursuant to subsection 32B-1-206(4) which authorizes the advertising of alcoholic product in this state under guidelines established by the Commission except to the extent prohibited by Title 32B.

(2) Definitions.

(a)(i) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media.

(ii) "Advertisement" or "advertising" does not mean:

(A) labels on products; or

(B) any editorial or other reading material in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule governs the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products by the Department, state stores, or type 1, 2 or 3 package agencies, as described in R82-2-301, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R82-2-301 shall comply with the advertising requirements listed in subpart (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) may not violate any federal laws referenced in subpart (3) of this rule;

(b) may not contain any statement, design, device, or representation that is false or misleading;

(c) may not contain any statement, design, device, or representation that is obscene or indecent;

(d) may not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) may not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) may not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for $...".

(g) may not encourage or condone drunk driving;

(h) may not depict the act of drinking;

(i) may not promote or encourage the sale to or use of alcohol by minors;

(j) may not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) may not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) may not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) may not offer alcoholic beverages without charge;

(n) may not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) may provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. A violation of this rule may result in any administrative penalties authorized by section 32B-3-205, and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to sections 32B-4-304 and -510.

R82-1-105. Label Approvals.

(1) Authority. This rule is pursuant to sections 32B-1-601 through32B-1-608 which give the Commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act,

(2) Purpose.

(a) Pursuant to section 32B-1-604, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first approved by the Department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in sections 32B-1-604 through 32B-1-606.

(c) This rule:

(i) provides supplemental procedures for applying for and processing label and package approvals;

(ii) defines the meaning of certain terms in the Malted Beverages Act; and

(iii) establishes the format of certain words and phrases required on the containers and packaging of certain malt beverages as required by section 32B-1-606.

(3) Application of Rule.

(a) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau Form TTB F5100.31 with the exact size label if printed in color.

(b) An application for approval is required for any revision of a previously approved label.

(c) A "revision" includes any changes to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(d) An application for approval is not required for any changes to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.

(e) Pursuant to section 32B-1-606, a malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) on the front of the container and packaging;

(iv) in a format that is readily legible; and

(v) separate and apart from any descriptive or explanatory information.

(f) Pursuant to section 32B-1-606, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) in a format that is readily legible; and

(iv) separate and apart from any descriptive or explanatory information.

R82-1-106. Alcohol Content.

(1) This rule is made pursuant to sections 32B-1-607, which authorizes the Commission to make rules implementing Part 6, and 32B-2-204, which authorizes the Department to make rules related to measuring the alcohol content of beer.

(2) Before November 1, 2019, a product complies with Title 32B and rules governing labeling if:

(a) the product is beer and if, after sampling, it is determined to contain no more than 3.35% alcohol by weight or 4.18% alcohol by volume; or

(b) the product is heavy beer and if, after sampling, it is determined to contain at least 3.82% alcohol by volume.

(3) On or after November 1, 2019, a product complies with Title 32B and rules governing labeling if:

(a) the product is beer and if, after sampling, it is determined to contain no more than 4.15% alcohol by weight or 5.18% alcohol by volume; or

(b) the product is heavy beer and if, after sampling, it is determined to contain at least 4.82% alcohol by volume.

R82-1-107. Department Training Programs.

(1) Authority and general purpose. This rule is pursuant to 32B-1-704, which requires that the Department to make rules to develop and implement the retail manager and violation training programs.

(2) Application of the rule.

(a) The requirements for the retail manager and violation training programs described in section 32B-1-704.

(b) The Department shall accurately identify each individual who takes and completes a training program by maintaining a database in which individual are identified by the last four digits of their social security number or another four-digit number that the individual chooses and can remember.

(c) The Department will administer a test to ensure an individual taking a training program is focused and actively engaged in the training material throughout the training program.

(d) The Department shall issue a certification card to each individual who has completed a training program. Each licensee shall keep a copy of the card on the licensed premise for each individual required to complete the training program.

(e) A fee of $25 will be charged to each individual for participation in a training program to cover the Department's cost of providing the training program.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R82-2**	**Filing No. 52393**

Agency Information

1. Department:	Alcoholic Beverage Control	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 30408	
City, state, zip:	Salt Lake City, Utah 84130-0408	
Contact person(s):		
Name:	**Phone:**	**Email:**
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Administration
3. Purpose of the new rule or reason for the change:
This new rule will condense and reorganize the administrative code to a format similar to state statute.
4. Summary of the new rule or change:
This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule does not create additional cost or savings.
B) Local governments:
This rule does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
This rule does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
This rule does not create additional cost or savings.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
This rule does not create additional cost or savings.
F) Compliance costs for affected persons:
There are no fees associated with this process. This rule does not create additional cost or savings.
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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.

B) Name and title of department head commenting on the fiscal impacts:

Salvador Petilos, 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 32B-1-103	Section 32B-1-307	Section 32B-1-102
Section 32B-2-202	Section 32B-2-503	Section 32B-2-303

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-2. Administration.
R82-2-101. Notice of Hearings.

(1) These rules are adopted pursuant to section 32B-2-202 regarding the administration of the Department and Commission. They shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

(2) Notice of hearings, other than disciplinary hearings. Public notice shall be made no less than 10 business days before to the day on which the hearing is scheduled to be held.

(3) The rule governing disciplinary hearings is R82-3-103.

R82-2-102. Emergency Meetings.

(1) Purpose. There may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Section 52-4-202 cannot be met. Pursuant to subsection 52-4-202(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of sections 63G-3-201 and 32B-2-202.

(3) Procedure. In addition to the requirements of subsection 52-4-202(5), in convening the meeting and voting in the affirmative to hold such an emergency meeting, the Commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the Commission to hold an emergency meeting to consider matters of an emergency or urgent nature.

R82-2-103. Electronic Meetings.

(1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting Commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of sections 52-4-207, 63G-3-201 and 32B-2-202.

(3) Procedure. The following provisions govern any meeting at which one or more Commissioners appear telephonically or electronically pursuant to section 52-4-207:

(a) If one or more members of the Commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state or to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the Commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a Commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any Commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Commission. At the commencement of the meeting, or at such time as any Commissioner initially appears electronically or telephonically, the Cair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Commission who are not at the physical location of the meeting shall be confirmed by the Chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 S. 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R82-2-104. Utah Government Records and Access Management Act.

(1) Purpose. To provide procedures for access to government records of the Commission and the Department.

(2) Authority. The authority for this rule is subsections 63G-2-204(2)(d) and 63A-12-104 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the Commission or the Department should be written and made to the executive secretary of the Commission or the records officer of the Department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 S. 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the Commission and the Department by contacting the appropriate official specified in paragraph (3) above. The Department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in subsection 63G-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in subpart (3) of this rule.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by section 63G-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the Commission or Department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of section 63G-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in subpart (3) of this rule. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to section 63G-2-603. The request should be made to the appropriate official specified in subpart (3) of this rule.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R82-2-105. Americans with Disabilities Act Grievance Procedures.

(1) Authority and Purpose.

(a) This rule is made under authority of sections 32B-2-202 and 63G-3-201. As required by 28 CFR 35.107, the Department of Alcoholic Beverage Control, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(b) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Department because of a disability.

(2) Definitions.

(a) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the

Department of Human Resource Management assigned to the Department.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Designee" means an individual appointed by the executive director or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the Department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(d) "Director" means the head of the division of the Department affected by a complaint filed under this rule.

(e) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(f) "Executive Director" means the executive director of the Department.

(g) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(h) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department. A "qualified individual" is also an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

(3) Filing of Complaints.

(a) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(b) Qualified individuals shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(c) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Executive Director has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(d) Each complaint shall:

(i) include the complainant's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desired; and

(v) be signed by the complainant or by his or her legal representative.

(e) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(f) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(g) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, subsection 63G-2-302(1)(b) and section 63G-2-304,consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

(4) Investigation of Complaints.

(a) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in (3)(d) and subpart (g) of this rule if it is not made available by the complainant.

(b) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the Department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(c) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(i) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(5) Recommendation and Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(b) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(c) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(6) Appeals.

(a) The complainant may appeal the director's decision to the executive director within 10 working days after the complainant's receipt of the director's decision.

(b) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(c) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

(d) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(e) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal before reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(i) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(f) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(g) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

(7) Record Classification.

(a) Records created in administering this rule are classified as "protected" under subsections 63G-2-305(9), (22), (24), and (25).

(b) After issuing a decision under subpart (5) or a final decision upon appeal under subpart (6), portions of the record pertaining to the complainant's medical condition shall be classified as "private" under subsection 63G-2-302(1)(b) or "controlled" under section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(c) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under subpart (7)(b), classified as "private."

(8) Relationship to Other Laws. This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, sections 34A-5-107 and 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R82-2-106. Sales Restrictions on Products of Limited Availability and Rare, High Demand Products.

(1) Authority and Purpose. This rule is pursuant to sections 32B-1-103, which requires that alcoholic product control be operated as a public business using sound management principles, and 32B-2-202, which authorizes the Department to control liquor merchandise inventory. Some alcoholic beverage products are of very limited availability from their manufacturers and suppliers to retailers including the Department. When the Department perceives that customer demand for these limited products may exceed the Department's current and future stock levels, the Department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the Department. This rule establishes the procedure for allocating rare, high demand products and products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the Department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the Department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the Department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

(3) The Department may make policies governing procedures for the fair distribution of rare, high demand products, including policies for a drawing, when the director determines a special procedure is appropriate.

R82-2-107. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the Commission's powers and duties under section 32B-2-202 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) Sections 32B-1-301 through 32B-1-307 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the Department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency;

(c) Sections 32B-1-301 through 32B-1-307 that allow for the Department to require criminal history background check reports on certain individuals; and

(d) Section 32B-1-102, which authorizes the Commission to define terms.

(2) As used in this rule, a "crime involving moral turpitude" means a crime means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

(3) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b),

must submit to a background check to show the person meets the qualifications of those statutory sections as a condition of employment with the Department, or as a condition of the Commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background checks.

(4) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(ii),(iii), and (iv), a person identified in Subparagraph (1)(b) shall consent to a criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety ("B.C.I.") and the Federal Bureau of Investigation ("F.B.I").

(ii) A person identified in Subparagraph (1)(b) who submitted a criminal background check on or after July 1, 2015 shall not be required to submit to a background check if the Department can confirm that the individual has maintained a regulatory or employment relationship as outlined in the Department's privacy risk mitigation strategy required by subsection 32B-1-307(4)(iv)(b).

(iii) An applicant for an event permit under Title 32B, Chapter9 shall not be required to submit to a background check if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(iv) An applicant for employment with benefits with the Department shall be required to submit to a background check if the Department has made the decision to offer the applicant employment with the Department.

(b) An application that requires background checks(s) may be included on a Commission meeting agenda, and may be considered by the Commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the Department receiving the required criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to a background check in a form acceptable to the Department; and

(iv) the applicant stipulates in writing that if a criminal history background report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the Department.

(c) The Commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. and F.B.I. is processing the criminal history report(s).

(d) Upon the Department's receipt of the criminal history background report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, Department staff shall:

(A) inform the licensee, permittee, or package agency and ask them to either surrender the license or remove the individual with the disqualifying criminal history from their position; and

(B) if the licensee, permittee, or package agency does not comply with subpart (4)(d)(ii) of this rule, issue an order to show cause and the Commission may enter an order accepting a surrender or an order revoking the license, permit, or package agency, depending on the circumstances.

(e) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of criminal history background report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (e).

(f) An applicant for employment with benefits with the Department that requires a background check may be conditionally hired by the Department before receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the Department;

(ii) the applicant has submitted to a background check in a form acceptable to the Department; and

(iii) the applicant stipulates in writing that if a criminal history background report shows a criminal conviction that would disqualify the applicant from employment with the Department, the applicant shall terminate his or her employment with the Department.

(5) Failure to comply with this rule or statutory requirements governing background check information is a basis for the Department to issue an Order to Show Cause.

R82-2-108. Duties of Commission Subcommittees.

(1) This rule is made pursuant to section 32B-2-201.5 and shall govern the duties of the two Commission subcommittees, Compliance Licensing and Enforcement Subcommittee and the Operations and Procurement Subcommittee.

(2) The Compliance Licensing and Enforcement Subcommittee will review and discuss items related to compliance, licensing and enforcement and make recommendations to the full Commission on those items.

(3) The Operations and Procurement Subcommittee will review and discuss items related to operations and procurement and make recommendations to the full Commission on those items.

(4) If a quorum of the full Commission is present, the subcommittee may act on all agenda action items.

(5) A subcommittee quorum is all four standing members.

R82-2-201. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges by a state store or a package agency.

(a) The authority for this rule is 32B-2-202, which authorizes the Department to control liquor merchandise inventory in the state.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The Department will accept for refund or exchange liquor merchandise that is unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the store manager or package agent to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the Department may not be returned.

(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation,

or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(b) Saleable Product. Store managers and package agents are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the store manager or package agent. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the store manager.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition. Returns of $50 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the store manager has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than $500, the store manager or package agent shall fill out a Returned Merchandise Acknowledgment Receipt (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label damaged.

(iii) Outdated, including not listed on the Department's product/price list, and discontinued products.

(iv) Merchandise purchased by catering services.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R82-2-202. Payment for Liquor.

(1) Accepting Licensee Payments: Pursuant to subsection 32B-5-303(1)(c), this rule requires that payments collected by the Department from licensees for the purchase of liquor come from the licensee and authorizes the Department to make internal Department policies in accordance with subsections 32B-2-206(1), (2) and (5) for the acceptance of payments for liquor.

R82-2-203. State Store Hours.

(1) Authority and purpose: As authorized by subsection 32B-2-503(5)(b), this rule establishes the days and hours for state stores operations.

(2) Authorized days of operation: State stores may not operate on any day prohibited by subsection 32B-2-503(5)(a).

(3) Authorized hours of operation: Pursuant to subsection 32B-2-202(1)(b) and (k) and in accordance with subsection 32B-2-206(1) and (2), this rule authorizes the director to set hours of operations for each state store and establish internal Department policies for sales during operational hours based on the following factors:

(a) the locality of the store;

(b) tourist traffic;

(c) demographics;

(d) population to be served;

(e) customer demand in the area;

(f) whether the store is designed for licensee sales; and

(g) budgetary constraints.

R82-2-204. Industry Members in State Stores.

An industry member, as defined in 32B-4-702, shall be limited to the customer areas of a state store except as follows:

(1) An industry member may be allowed in the storage area of a state store with the approval of the store manager for the limited purpose of stocking the industry member's own products; and

(2) An industry member may be allowed in the office or other suitable area of a state store with the approval of the store manager for the purpose of discussing the industry member's products.

R82-2-205. Store Site Selection.

(1) This rule is made pursuant to section 32B-2-202, which requires that criteria and procedures be established for determining the location of a state store.

Before the commission establishes a new state store, the Operations and Procurement Subcommittee will:

(a) determine the feasibility of a new site;

(b) weigh options;

(c) consider the investigation and recommendation of the Department as outlined in section 32B-2-502; and

(d) make its recommendation to the Commission.

R82-2-301. Types of Package Agencies.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Package agencies are retail liquor outlets operated by private persons under contract with the Department for the purpose of selling packaged liquor from facilities other than state liquor stores for off premise consumption. Package agencies are classified into five types:

(a) Type 1 - A package agency under contract with the Department which is operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

(b) Type 2 - A package agency under contract with the Department which is in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

(c) Type 3 - A package agency under contract with the Department, which is not in conjunction with another business, but is in existence for the main purpose of selling liquor.

(d) Type 4 - A package agency under contract with the Department which is located within a facility approved by the Commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A type 4 package agency shall not be open to the general public. A type 4 package agency may also sell liquor other than in a sealed container (i.e. by the drink) as part of room service.

(e) Type 5 - A package agency under contract with the Department which is at a manufacturing facility that has been granted a manufacturing license by the Commission.

(3) The Commission may grant type 4 package agency privileges to a type 1 package agency.

R82-2-302. Advertising, Promotion, and Listing of Products.

(1) Authority. This rule is made pursuant to section 32B-1-206, which authorizes the Commission to make rules regarding how the Department or a package agency may advertise an alcoholic product.

(2) A package agency may not advertise alcoholic beverages except:

(a) a Type 1 package agency, as described in R82-2-301, may provide informational signs on the premises of the hotel or resort directing persons to the location of the hotel's or resort's Type 1 package agency;

(b) a Type 2 package agency, as described in R82-2-301, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

(c) a Type 5 package agency, as described in R82-2-301, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of R82-1-104 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

(a) a Type 1 package agency, as described in R82-2-301, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

(b) a Type 4 package agency, as described in R82-2-301, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

(c) a Type 5 package agency, as described in R82-2-301, may provide a price list on the premises of the winery, distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency.

R82-2-303. Non-Consignment Inventory.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the Department owns the inventory.

R82-2-304. Application for a Package Agency.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies and the process to issue a new package agency.

(2) No application for a package agency will be included on the agenda of a monthly Commission meeting for consideration for issuance of a package agency contract until:

(a) the applicant has first met all requirements of sections 32B-1-304 through 32B-1-307 and the requirements of sections 32B-2-602 and 32B-2-604 have been met; and

(b) the Department has inspected the package agency premise.

(3)(a) All application requirements of subpart (1)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the 10th day of the month will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-2-305. Evaluation Guidelines of Package Agencies.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies and the process to issue a new package agency.

(2) The Commission, after considering information from the applicant for the package agency and from the Department, shall determine whether the package agency shall be classified and operated as a Type 1, 2, 3, 4, or 5 package agency.

(3) After a package agency has been classified and issued, a package agent or the Department may request that the Commission approve a change in the classification of the package agency. Information shall be forwarded to aid in its determination. If the Commission determines that the package agency should be reclassified, it shall approve the request.

(4) Type 2 and 3 package agencies shall:

(a) serve a population of at least 6,000 people comprised of both permanent residents and tourists; and

(b) not be established or maintained within a one-mile radius of another type 2 or 3 package agency unless it can be clearly demonstrated that it is in the best interest of the state to establish and maintain the outlet at that location.

(5)(a) The Department shall report to the Commission on package agency operations as a regular agenda item at each monthly Commission meeting.

(b) Any significant issues with respect to the operations of a particular package agency shall also be reported to the Commission.

(c) Recommended closure by the Department of a package agency due to payment delinquencies over 30 working days, significant inventory shortages, or any other significant operational deficiencies shall be calendared for the Commission's consideration at its next regular monthly meeting or at a special meeting.

R82-2-306. Operational Restrictions.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law. Type 5 package agencies may, in the discretion of the package agent, be open as early as 8:00 a.m. for sales to licensees with the approval of the Department. Type 5 package agencies may also be open on Sundays and state and federal holidays if the package agency is located at a manufacturing facility licensed by the Commission and the manufacturing facility holds a full-service restaurant license, a limited-service restaurant license, or a beer-only restaurant license.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department, provided the package agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the Department. A Type 4 package agency in a resort that is licensed under Title 32B, Chapter 8, may operate 24 hours a day, Monday through Sunday to provide room service to the room of a guest of the resort.

(d) Any change in the hours of operation of any package agency requires prior Department approval, and shall be submitted in writing by the package agent to the Department.

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by section 32B-2-605, which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries, breweries, and distilleries; and

(B) a package agency held by a resort that is licensed under Title 32B, Chapter 8 that does not sell liquor in a manner similar to a state store which is limited to a Type 4 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

(3) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(4) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(5) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(6) Purchase of Inventory. All new package agencies, at the discretion of the Department, will purchase and maintain their inventory of liquor.

R82-2-307. Type 5 Package Agencies.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies, as well as sections 32B-2-504, 32B-2-605, and 32B-5-303.

(2) Purpose. A type 5 package agency is for the limited purpose of allowing a winery, distillery, or brewery to sell at its manufacturing location the packaged liquor product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(3) Authority.

(4) Application of Rule.

(a) The package agency must be located at a manufacturing facility that has been granted a manufacturing license by the Commission. For purpose of this rule, a manufacturing facility includes the parcel of land and, where applicable, building(s) leased or owned by the manufacturing licensee immediately surrounding the manufacturing premise.

(b) The package agency may only sell products produced by the manufacturing licensee and may not carry the products of other alcoholic beverage manufacturers. For the purpose of this rule, products produced by the manufacturing licensee include products that would be assessed tax for sale as determined by 27 CFR Parts 19, 24 and 25.

(c)(i) The product produced by the manufacturing licensee and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the Department and then back to the package agency.

(ii) The bottles for sale at a Type 5 package agency may be moved directly from the manufacturer's storage area to the package agency, provided that proper record-keeping is maintained in a form and manner as required by the Department.

(d) Records required by the Department shall be kept current and available to the Department for auditing purposes for at least three years.

(e) The package agency shall submit to the Department a completed monthly sales report which specifies the variety and number of bottles sold from the package agency in a form and manner as required in the package agency contract.

(d) Direct deliveries to licensees are prohibited. Products must be purchased and picked up by the licensees or their staff at the Type 5 package agency. Sales to the manufacturer's retail licenses may be transported from the manufacturer's storage area directly to the retail licensed premise provided that a record is maintained showing a sale from the type 5 package agency to the retail licensee at the retail price.

(e) The type 5 package agency shall sell products at a price fixed by the Commission and follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with section 32B-2-605 and R82-2-306.

R82-2-308. Consignment Inventory Package Agencies.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) Purpose. At the discretion of the Department, liquor may be provided by the Department to a Type 2 and Type 3 package agency for sale on consignment pursuant to subsection 32B-2-605(5). This rule provides the procedures for such consignment sales.

(3) Application of the Rule.

(a) Consignment Inventory.

(i) The initial amount of consignment inventory furnished to the package agency shall be established by the Department's audit manager.

(ii) The consignment inventory amount shall be posted to the Department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the Department's contract with the package agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, shipment, or payment of money. A copy of the transfer, adjusting shipment, or evidence of payment shall be included in the package agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the package agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the Department's contract with the package agency.

(b) Payments.

(i) All agencies receiving shipments or transfers are required to have an ACH (Automated Clearing House) payment system set up with the Department.

(ii) Statements showing all unpaid debts and unapplied credits will be generated and mailed to the agencies on the 20th or the next available working day of each month. It is the agent's responsibility to review the statement and contact the Department with any discrepancies prior to due date of payment.

(iii) Agents will remit payment to the Department on the 19th or next available working day of the following month after the last statement was generated. Payment will be for the statement total. Payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the Department.

(iv) Insufficient funds, returned checks, and unpaid balances from a previous statement are all past due. The Department may assess the legal rate of interest on the amount owed and the package agency may be referred to the Commission for possible termination of the contract and closure.

(v) All delivery discrepancies shall be resolved through the use of the LQ9 form. Debits or credits shall be issued based on proper completion and submission of the LQ9 form to the Department. Payment shall be made in accordance with the package agency's statement by the due date whether or not any discrepancies have been resolved.

(c) Transfers.

(i) Transfers, up or down, shall be adjusted to the package agency's next payment due the department.

(ii) Transfer in will add to the amount owed to the Department on the next check due to the Department.

(iii) Transfer out will subtract from the amount owed to the Department on the next check due to the Department.

(d) Credit and Debit Card Credits.

(i) Credit for credit and debit cards processed at the package agency will be posted to the package agency's statement.

(ii) It is the agent's responsibility to mail in their settlement report and individual receipts to the Department in order to receive credit.

(e) Audits.

(i) Any package agency that is on a consignment contract shall keep a daily log of sales.

(ii) The auditing division shall audit the package agency at least twice each fiscal year.

(iii) The package agency is subject to a Department audit at any time.

R82-2-309. Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales.

(1)(a) Authority and Purpose. Pursuant to section 32B-2-303, the Department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters, except as otherwise allowed by the Commission.

(b) The Commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by Type 4 package agencies located in hotels and resorts.

(c) The conditions outlined in this section are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms and are not offered to the general public.

(2) Application of Rule.

(a) The Department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from a Type 4 package agency. Special orders may be placed with the Department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The Type 4 package agency must order in full case lots and all sales are final.

(c) If the hotel or resort has a Type 1 package agency with Type 4 privileges, the smaller bottle sized products must be stored in a secure area separate from the Type 1 package agency inventory.

(d) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel or resort, and may not be used for other purposes, or be sold to the general public.

(e) Failure of the Type 4 package agency to strictly adhere to the provisions of this rule is grounds for the Department to terminate its contract with the Type 4 package agency.

R82-2-310. Type 4 Package Agency Room Service - Dispensing.

(1) This rule is made pursuant to section 32B-2-202, which authorizes the Commission to make rules governing package agencies.

(2) A Type 4 package agency that sells liquor other than in a sealed container, i.e. by the drink, as part of room service, shall dispense liquor in accordance with section 32B-5-304 and R82-5-104, Liquor Dispensing Systems.

(3) A Type 4 package agency located in a hotel or resort facility that has a retail license or sublicense may provide room service of liquor in other than a sealed container through the dispensing outlet of the retail license or sublicense under the following conditions:

(a) point of sale control systems must be implemented that will record the amounts of alcoholic beverage products sold by the retail license or sublicense on behalf of the Type 4 package agency;

(b) the alcoholic beverage product cost must be allocated to the Type 4 package agency on at least a quarterly basis pursuant to the record keeping requirements of section 32B-5-302;

(c) dispensing of alcoholic beverages from a retail license or sublicense location may not be made at prohibited hours pertinent to that license or sublicense type; and

(d) a Type 4 package agency held by a resort or hotel licensee that operates seven days a week, 24 hours per day, must have a separate dispensing outlet for use during the times that a sublicense is not allowed to sell liquor.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R82-3**	**Filing No. 52394**

Agency Information

1. Department:	Alcoholic Beverage Control	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 30408	
City, state, zip:	Salt Lake City, Utah 84130-0408	
Contact person(s):		
Name:	**Phone:**	**Email:**
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Disciplinary Actions and Enforcement
3. Purpose of the new rule or reason for the change:
This new rule will condense and reorganize the administrative code to a format similar to state statute.
4. Summary of the new rule or change:
This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule does not create additional cost or savings.
B) Local governments:
This rule does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
This rule does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
This rule does not create additional cost or savings.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
This rule does not create additional cost or savings.
F) Compliance costs for affected persons:
There are no fees associated with this process. This rule does not create additional cost or savings.
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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.

B) Name and title of department head commenting on the fiscal impacts:

Salvador Petilos, 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 32B-3-101	Section 32B-3-205	Section 32B-5-202
Section 32B-2-202	Section 32B-1-102	Section 32B-5-201
Section 32B-3-204		

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-3. Disciplinary Actions and Enforcement.
R82-3-101. Definitions.

As used in this part:

(1) "Decision Officer" means a person who has been appointed by the Commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(2) "Disciplinary Action" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(3) "Hearing Officer" means a person who has been appointed by the Commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the Commission for final action.

(4) "Letter of Admonishment" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(5) "Respondent" means a Department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(6) "Violation Report" means a written report from any law enforcement agency or authorized Department staff member alleging a violation of the Alcoholic Beverage Control Act or rules of the Commission by a Department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

R82-3-102. Violation Schedule.

(1)(a) Authority. This rule is pursuant to sections 32B-2-202 and 32B-3-101 through 207, which authorize the Commission to establish criteria and procedures for imposing sanctions against licensees and permittees as well as their officers, employees, and agents who violate statutes and Commission rules relating to alcoholic beverages.

(b) For purposes of this rule, holders of certificates of approval are also considered licensees.

(c) The Commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension.

(d) The Commission also may impose a fine against an officer, employee or agent of a licensee or permittee.

(e) Violations are adjudicated under procedures contained in sections 32B-3-101 to -207 and disciplinary hearings under R82-3-103.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the Commission for violations of the alcoholic beverage laws. It shall be used by Department decision officers in processing violations,

and by hearing officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the Commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all Commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under sections 32B-9-204 and -305.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain fundamental licensing and permitting requirements may result in immediate suspension or forfeiture of the license or permit. Such failures are administered by issuance of an order to show cause requiring the licensee or permittee to provide the Commission with proof of qualification to maintain their license or permit, as outlined in R82-3-104.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in R82-3-101, or been found by the Commission to be in violation of the Act or Commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the Commission.

(d) In addition to the penalty classifications contained in this rule, the Commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any Commission licensee or permittee for a period determined by the Commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the Department's sales list and a suspension of the Department's purchase of those products for a period determined by the Commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded, encouraged, or intentionally aided another to engage in the violation; and

(iv) require a licensee to have a written responsible alcohol service plan as provided in R82-3-107.

(e) When the Commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the Commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The Commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The Department and Commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or Department compliance officer(s) to revocation of the license or permit or up to a $25,000 fine or both. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the Department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or Department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or Department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: a written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department. The penalty shall range from a $100 to $500 fine for the licensee or permittee, and a letter of admonishment to a $25 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of minor violation: a one- to five-day suspension of the license or permit and employment of the officer, employee or agent, and/or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of minor violation: a six day suspension to revocation of the license or permit and a six to 10-day suspension of the employment of the officer, employee or agent, or a $500 to $25,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent, or both a suspension to revocation and fine.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension or the monetary penalties for each of the charges in their respective categories, or both. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit or up to a $25,000 fine and a combination of penalties.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department. The penalty shall range from a letter of admonishment to a $1000 fine for the licensee or permittee, and a letter of admonishment to a $50 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of moderate violation: a three to 10-day suspension of the license or permit and a three to 10-day suspension of the employment of the officer, employee or agent, and/or a $500 to $1000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of moderate violation: a 10 to 20 day suspension of the license or permit and a 10 to 20 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $2000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(iv) More than three occurrences of the same type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a $2000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension or the sum of the monetary penalties for each of the charges in their respective categories or both.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department on the first occurrence. The penalty shall range from a five-day suspension to revocation of the license or permit or up to a $25,000 fine or both.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a $500 to $3000 fine for the licensee or permittee and up to a $300 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of serious violation: a 10 to 90-day suspension of the license or permit and a 10 to 90-day suspension of the employment of the officer, employee or agent, and/or a $1000 to $9000 fine for the licensee or permittee and up to a $350 fine for the officer, employee or agent.

(iii) More than two occurrences of the same type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a $9000 to $25,000 fine for the licensee or permittee and up to a $700 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by Title 32B, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the Department and military installations. Penalty range: Written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department on the first occurrence. The penalty shall range from a ten-day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or Department compliance officer(s) shall be forwarded to the Department. The penalty shall range from a 10-day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $25,000 fine to the licensee or permittee and up to a $300 fine for the officer, employee or agent.

(ii) More than one occurrence of the same type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent or a $3000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent, or both suspension and fine.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension or the sum of the monetary penalties for each of the charges in their respective categories or both.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this subpart of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days	Revoke License
Minor				
1st	X X			
2nd		100 to 500		
3rd		200 to 500	1 to 5	
Over 3		500 to 25,000	6 to	X
Moderate				
1st	X	to 1,000		
2nd		500 to 1,000	3 to 10	
3rd		1,000 to 2,000	10 to 20	
Over 3		2,000 to 25,000	15 to	X
Serious				
1st		500 to 3,000	5 to 30	
2nd		1,000 to 9,000	10 to 90	
Over 2		9,000 to 25,000	15 to	X
Grave				
1st		1,000 to 25,000	10 to	X
Over 1		3,000 to 25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this subpart of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days

Minor				
1st	X	X		
2nd		X	to 25	
3rd			to 50	1 to 5
Over 3			to 75	6 to 10
Moderate				
1st		X	to 50	
2nd			to 75	3 to 10
3rd			to 100	10 to 20
Over 3			to 150	15 to 30
Serious				
1st			to 300	5 to 30
2nd			to 350	10 to 90
Over 2			to 700	15 to 120
Grave				
1st			to 300	10 to 120
Over 1			to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The Commission and hearing officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Mitigating circumstances include:

(i) no prior violation history;

(ii) good faith effort to prevent a violation;

(iii) existence of written policies governing employee conduct;

(iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility; and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Aggravating circumstances include:

(i) prior warnings about compliance problems;

(ii) prior violation history;

(iii) lack of written policies governing employee conduct;

(iv) multiple violations during the course of the investigation;

(v) efforts to conceal a violation;

(vi) intentional nature of the violation;

(vii) the violation involved more than one patron or employee;

(viii) the violation involved a minor and, if so, the age of the minor; and

(ix) whether the violation resulted in injury or death.

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative Rulemaking Act. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the Department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" (January 2012 edition) and is incorporated by reference as part of this rule.

R82-3-103. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to section 32B-2-202 and shall govern the procedure for disciplinary actions under the jurisdiction of the Commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The Department or Commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in section 63G-4-502.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), and sections 32B-3-102 through 32B-3-207.

(e) Penalties.

(i) This rule shall govern the imposition of any penalty against a Commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.

(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a Commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R82-3-107 , the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any Commission licensee, permittee, or certificate of approval holder for a period determined by the Commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the Department's sales list and a suspension of the Department's purchase of those products for a period determined by the Commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.

(iii) Department administrative costs are the hourly pay rate plus benefits of each Department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for Department overhead costs, the amount billed to the Department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the Department. The Commission may also assess additional costs if a respondent fails to appear before the Commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total Department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. A hearing officer, in the course of conducting a hearing, may swear in witnesses. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under section 32B-4-504.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability

company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the Department office, 1625 S. 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.

(j) Hearing Officers.

(i) The Commission or the director may appoint hearing officers to receive evidence in disciplinary proceedings, and to submit to the Commission orders containing written findings of fact, conclusions of law, and recommendations for Commission action.

(ii) If fairness to the respondent is not compromised, the Commission or director may substitute one hearing officer for another during any proceeding.

(iii) A person who acts as a hearing officer at one phase of a proceeding need not continue as hearing officer through all phases of a proceeding.

(iv) Nothing precludes the Commission from acting as hearing officer over all or any portion of an adjudication proceeding.

(v) At any time during an adjudicative proceeding the hearing officer may hold a conference with the Department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in section 32B-1-102 and Title 63G, Chapter 4 apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The hearing officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the Department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the Commission or hearing officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the Department shall review the report, and the alleged violator's violation history, and in accordance with R82-3-102 , determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under section 63G-4-102, no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the Department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the law enforcement agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within 10 days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the Commission.

(iii) A copy of the law enforcement agency or Department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the Department within 10 days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the respondent; and

(C) any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may

be withdrawn, and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the Commission for final approval. Upon Commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's Department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the Commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time before the Commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a hearing officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under subpart (2)(b)(i) of this rule;

(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or

(C) the Commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the Department determines that it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the hearing officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a hearing officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the hearing officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the hearing officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Department;

(B) The Department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. (insert name of the respondent)";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and sections 63G-4-202 and 63G-4-203 unless a hearing officer converts the matter to a formal proceeding pursuant to subparts (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and sections 63G-4-204 to -209;

(F) The date, time and place of any prehearing conference with the hearing officer;

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the law enforcement agency or Department staff member making the violation report; and

(II) the penalty sought, which may include assessment of costs under section 32B-3-205if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation, if revocation is sought by the Department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the hearing officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The hearing officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's Department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the Department, and, if applicable, any law enforcement agency that referred the alleged violation to the Department.

(v) The hearing officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the hearing officer, with copies sent by mail to each respondent and to the Department.

(vi) Amendment to Pleading. The hearing officer may, upon motion of the respondent or the Department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the Department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the Department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he or she has read the pleading and that he or she has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The hearing officer may hold a prehearing conference with the respondent and the Department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the Department and respondent or their authorized attorney or representative, and by the hearing officer. The stay shall take effect

immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the Commission. No further action shall be required with respect to any action or issue so stayed until the Commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the Commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the Department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the Commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the Commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the Department shall notify the respondent and the hearing officer whether it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the Department does not seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the Department does seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the hearing officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The Department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The hearing officer shall notify the respondent and Department in writing of the date, time and place of the hearing at least 10 days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the hearing officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The hearing officer shall proceed to prepare and serve on respondent an order pursuant to R82-3-103.

(ii) All hearings shall be presided over by the hearing officer.

(iii) The respondent named in the notice of agency action and the Department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the hearing officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the Commission, and of technical or scientific facts within the Commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his or her experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the hearing officer when requested by a respondent or the Department, or may be issued by the hearing officer on his or her own motion.

(vii) A respondent shall have access to information contained in the Department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the hearing officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The hearing officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The hearing officer shall cause an official record of the hearing to be made, at the Department's expense, as follows:

(A) the record of the proceedings may be made by means of an audio or video recorder or other recording device at the Department's expense.

(B) the record may also be made by means of a certified shorthand reporter employed by the Department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the Department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his or her own expense, may have a person approved by the Department, prepare a transcript of the hearing, subject to any restrictions that the Department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the Department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The Department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The hearing officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the hearing officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) the Department; (2) respondent; (3) rebuttal by the Department.

(xiii) Time limits. The hearing officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the Department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the hearing officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the hearing officer may, in his or her discretion, permit a respondent and the Department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the hearing officer.

(d) Disposition.

(i) Hearing officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the hearing officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final Commission action; and

(VI) notice that a respondent or the Department having objections to the hearing officer's order may file written objections with the hearing officer within 10 days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the Department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the hearing officer's order shall be promptly mailed to the respondent and the Department.

(D) The hearing officer shall wait 10 days from service of his or her order for written objections, if any. The hearing officer may then amend or supplement his or her findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the hearing officer and any written objections timely filed, shall be submitted to the Commission for final consideration.

(F) The hearing officer or presiding officer may grant a motion to file a late objection for good cause or excusable neglect.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular Commission meeting for consideration by the Commission. Copies of the order, together with any objections filed shall be forwarded to the Commission, and the Commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The Commission shall be deemed a substitute hearing officer for this final stage of the informal adjudicative proceeding pursuant to section 63G-4-103. This stage is not considered a "review of an order by an agency or a superior agency" under sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the Commission. The Commission may, in its discretion, permit the respondent and the Department to present oral presentations.

(D) After the Commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to section 32B-3-204(4) and subsection 63G-4-203(1)(i) containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the Commission and effective date of the action taken; and

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with sections 63G-4-401, -402, -404, and -405 and 32B-3-207.

(E) The Commission may adopt in whole or in part, any portion(s) of the initial hearing officer's order.

(F) The order shall be based on the facts appearing in the Department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than 10 days, or a revocation of the license, permit, or certificate of approval.

(H) The Commission, after it has rendered its final decision and order, may direct the Department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the Commission.

(I) A copy of the Commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the Commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with sections 63G-4-402, 63G-4-404, and -63G-4-405, and 32B-3-207.

(4) The Formal Adjudicative Process.

(a) Conversion Procedures. If a hearing officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to subparts (2)(c)(iii) or (iv) of this rule:

(i) the hearing officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and sections 63G-4-204 to -209;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action; and

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the Department. Extensions of time to file a response are not favored, but may be granted by the hearing officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the hearing officer may enter an order of default and proceed to prepare and serve his or her final order pursuant to subpart (4)(e). The response shall be signed by the respondent, or by an authorized

agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. (insert name of respondent)";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks; and

(H) a statement summarizing the reasons that the relief requested should be granted;

(iv) In addition to Subsections (4)(a)(i), (ii), and (iii), if the hearing officer converts an informal adjudicative proceeding to a formal adjudicative proceeding, the hearing officer may:

(A) permit or require pleadings in addition to the notice of agency action and the response, with all additional pleadings being filed with the hearing officer and copies sent by mail to each party; and

(B) upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded.

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the hearing officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the Department's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The hearing officer shall grant a petition for intervention if the hearing officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The hearing officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the hearing officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the hearing officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the hearing officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the hearing officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the hearing officer when requested by any party, or may be issued by the hearing officer on his or her own motion.

(d) The Formal Hearing.

(i) Notice. The hearing officer shall notify the parties in writing of the date, time, and place of the hearing at least 10 days in advance of the hearing. The hearing officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the hearing officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The hearing officer shall proceed to prepare and serve on respondent his or her order pursuant to R82-3-103(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the hearing officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The hearing officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The hearing officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The hearing officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The hearing officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his or her experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the hearing officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The hearing officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the hearing officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the hearing officer may, in his or her discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the hearing officer.

(xi) Record of Hearing. The hearing officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the Department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the Department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the Department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the Department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his or her own expense, may have a person approved by the Department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the Department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The Department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to subsections 32B-3-203(3)(b) and (c).

(e) Disposition.

(i) Hearing officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the hearing officer, the hearing officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R82-3-103(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final Commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action; and

(VI) notice that a respondent or the Department having objections to the hearing officer's order may file written objections with the hearing officer within 10 days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

(B) A copy of the hearing officer's order shall be promptly mailed to the parties.

(C) The hearing officer shall wait 10 days from service of his or her order for written objections, if any. The hearing officer may then amend or supplement his or her findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the hearing officer and any written objections timely filed, shall be submitted to the Commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular Commission meeting for consideration by the Commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the Commission, and the Commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The Commission shall be deemed a substitute hearing officer for this final stage of the formal adjudicative proceeding pursuant to subsections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the Commission. The Commission may, in its discretion, permit the parties to present oral presentations.

(D) After the Commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to subections 32B-3-204(4) and 63G-4-208(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on

hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R82-3-103(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the Commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within 10 days of the service of the order;

(VII) notice of the right to seek judicial review of the order within 30 days of the date of its issuance in the court of appeals in accordance with sections 32B-3-207 and 63G-4-403, -404, -405.

(E) The Commission may adopt in whole or in part, any portion(s) of the initial hearing officer's order.

(F) The Commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The Commission, after it has rendered its final decision and order, may direct the Department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the Commission.

(H) A copy of the Commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the Commission may file, within 10 days of service of the order, a request for reconsideration with the Commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence before the formal hearing, and why the evidence would affect the Commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the Commission's order.

(K) Within 20 days of the filing of a request for reconsideration, the Commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the Commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the Commission does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the Commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with sections 63G-4-403, -404, 405 and 32B-3-207.

R82-3-104. Orders to Show Cause.

(1)(a) When a licensee or permittee fails to maintain the fundamental, minimum qualifications provided by law for holding a license or permit, the Department shall issue an Order to Show Cause to the licensee or permittee.

(b) A failure to maintain fundamental, minimum qualifications includes but is not limited to a failure to maintain insurance or a bond, a failure to notify the Department regarding a change of ownership as described in section 32B-5-310, a failure to maintain records showing the appropriate amount of food sales for the license type, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit.

(2) The Order to Show Cause shall require the licensee or permittee to provide the Commission with proof that the licensee or permittee maintains the minimum qualifications to hold the license or permit.

(3) An Order to Show Cause issued by the Department shall:

(a) identify the time and place that a hearing on the Order to Show Cause shall be conducted;

(b) identify the qualification or qualifications that the licensee or permittee is alleged to have failed to maintain; and

(c) be sent to the address on file of the licensee or permittee via certified mail no later than 10 calendar days before the day on which the hearing described in (3)(a) is scheduled to be held.

(4) If a licensee or permittee provides the Department with proof that the licensee or permittee maintains the minimum qualifications to hold the license or permit before the scheduled hearing, the Department shall notify the chair of the Commission and the Commission may:

(a) cancel the hearing;

(b) remove the Order to Show Cause from the hearing agenda; or

(c) require the licensee or permittee to attend the hearing and provide the Commission with proof of minimum qualifications.

(5) If a licensee or permittee fails to provide the Commission with proof that the licensee or permittee maintains the minimum qualifications to hold the license or permit at a scheduled hearing, the Commission shall suspend or revoke the license or permit or hold the hearing on the order to show cause until the next Commission meeting.

(6) Orders to Show Cause issued pursuant to this rule are not required to comply with the Administrative Procedures Act or R82-3-103.

R82-3-105. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the Commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under subsections 32B-2-202(1)(c) and (e), and the Commission's authority to adjudicate violations of Title 32B in accordance with subsections 32B-2-202(1)(p), 32B-3-204(4), and 205(1).

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R82-3-103 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the Commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the Commission at their meetings to expedite the handling of letters of

admonishment and settlement agreements that meet the criteria of subpart (2) of this rule.

(b) Consent calendar items shall be briefly summarized by Department staff or the assistant attorney general assigned to the Department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The Commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the Commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the Department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R82-3-102, the licensee or permittee, absent good cause, shall be in attendance at the Commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the Commission. Individual employees of a licensee or permittee are not required to be in attendance at the Commission meeting.

(e) Any Commissioner may have an item removed from the consent calendar if the Commissioner feels that further inquiry is necessary before reaching a final decision. In the event a Commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular Commission meeting. Otherwise, the action recommended by Department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the Commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs associated with a consent calendar item shall be paid on or before the day of the Commission meeting unless otherwise provided by order of the Commission.

R82-3-106. Commission Declaratory Orders.

(1) Authority. As required by section 63G-4-503, and as authorized by section 32B-2-202, this rule provides the procedures for the submission, review, and disposition of petitions for Commission declaratory orders on the applicability of statutes administered by the Commission and Department, rules promulgated by the Commission, and orders issued by the Commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the Commission, a rule promulgated by the Commission, or an order issued by the Commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the Commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular workdays; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The Commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the Department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The Commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information before making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with Department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R82-3-107. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the Commission's powers and duties under sections 32B-1-102, 32B-2-202, 32B-5-201 and 202 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule requires a licensee to provide a Responsible Alcohol Service Plan ("RASP") with their initial application, upon renewal if the RASP has had a substantial change, or if the licensee has been found by the Commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21.

(3) Definitions.

(a) "Intoxication" and "intoxicated" are as defined in section 32B-1-102(48).

(b) "Licensed Business" is a person or business entity licensed by the Commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(c) "Manager" means a person chosen or appointed to manage, direct, supervise, or administer the operations at a licensed business, regardless of the person's title.

(d) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(e) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(f) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The Commission may direct that a licensed business that has been found by the Commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the Department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall, at a minimum, maintain a RASP as a condition of continued licensing and relicensing by the Commission.

(b) Any RASP at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in Title 32B, Chapter 15; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the Commission, the Department and by law enforcement officers.

(f) Any licensed business that fails to submit to the Department a Plan as directed by the Commission pursuant to subpart (4)(a) of this rule, or to have a Plan available for inspection as required by subpart (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the Commission.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R82-4**	**Filing No. 52395**

Agency Information

1. Department:	Alcoholic Beverage Control	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 30408	
City, state, zip:	Salt Lake City, Utah 84130-0408	
Contact person(s):		
Name:	**Phone:**	**Email:**
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Criminal Offenses and Procedure
3. Purpose of the new rule or reason for the change:
This new rule will condense and reorganize the administrative code to a format similar to state statute.

4. Summary of the new rule or change:

This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule does not create additional cost or savings.

B) Local governments:

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. This rule does not create additional cost or savings.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.

B) Name and title of department head commenting on the fiscal impacts:

Salvador Petilos, 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 32B-1-401	Section 32B-1-405	Section 32B-1-404
Section 32B-2-202	Section 32B-1-407	Section 32B-1-411

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-4. Criminal Offenses and Procedure.
R82-4-101. Age Verification.

(1) Authority. Sections 32B-1-401, 32B-1-404, 32B-1-405, 32B-1-407 and 32B-4-411.

(2) Purpose.

(a) Section 32B-1-407 requires applicable licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by Commission rule.

(b) This rule:

(i) establishes the minimum technology specifications of electronic age verification devices;

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the applicable licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32B, Alcoholic Beverage Control Act.

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two-dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; and

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

(C) the number assigned to the individual's proof of age by the issuing authority;

(D) the individual's the birth date;

(E) the individual's gender; and

(F) the status and expiration date of the individual's proof of age; and

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

(A) the type of proof of age identification document presented;

(B) the number assigned to the individual's proof of age document by the issuing authority;

(C) the expiration date of the proof of age identification document;

(D) the date the proof of age identification document was presented;

(E) the individual's name; and

(F) the individual's date of birth.

(c) Any data collected either electronically or otherwise:

(i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;

(ii) may be acquired by law enforcement, or other investigative agencies for any purpose under sections 32B-6-406 - 407;

(iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;

(iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and

(v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.

(d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under section 32B-1-405.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R82-5**	**Filing No. 52403**

Agency Information

1. Department:	Alcoholic Beverage Control
Agency:	Administration
Street address:	1625 S 900 W
City, state:	Salt Lake City, Utah
Mailing address:	PO Box 30408
City, state, zip:	Salt Lake City, Utah 84130-0408

Contact person(s):		
Name:	**Phone:**	**Email:**
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
General Retail License Provisions
3. Purpose of the new rule or reason for the change:
This new rule will condense and reorganize the administrative code to a format similar to state statute.
4. Summary of the new rule or change:
This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule does not create additional cost or savings.
B) Local governments:
This rule does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
This rule does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
This rule does not create additional cost or savings.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
This rule does not create additional cost or savings.
F) Compliance costs for affected persons:
There are no fees associated with this process. This rule does not create additional cost or savings.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
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Non-Small Businesses	$0	$0	$0
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Fiscal Benefits			
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Local Government	$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 sign-off on regulatory impact:
The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.
B) Name and title of department head commenting on the fiscal impacts:
Salvador Petilos, 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 32B-1-102	Section 32B-5-301	Section 32B-5-310
Section 32B-2-202	Section 32B-2-206	

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-5. General Retail License Provisions.
R82-5-101. Definitions.

(1) Authority. This rule is made pursuant to sections 32B-1-102 and 32B-2-202.

(2) Definitions. As used in this rule:

(a) "Dispensing System" means a system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the Commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and

(iii) that is in total at least 30,000 square feet.

(3)(a) A "banquet contract" means an agreement between an on-premise banquet licensee and a third party host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

R82-5-102. Licensing, Ownership, and Transfer of License.

(1) This rule is pursuant to section 32B-5-310, which authorizes the Department to make rules governing requirements for interim alcoholic beverage management agreements.

(2) Licenses are issued to persons. A licensee must communicate any contemplated action or transaction that may alter an organizational structure or ownership interest of the person to whom a license is issued to the Department so staff may ensure there is no violation of section 32B-5-310.

(3) An interim alcoholic beverage management agreement is required if a buyer will be performing the day-to-day operations of the business before the Commission approves the transfer of the license from seller to buyer.

(4)(a) Before a retail licensee enters into an interim alcoholic beverage management agreement, it shall provide the proposed interim alcoholic beverage management agreement to the Department for its approval.

(b) The Department shall create a checklist of information that an interim alcoholic beverage management agreement must contain.

(c) The Department shall review a proposed interim alcoholic beverage management agreement and, no later than 15 business days after the day on which the agreement is received by the Department:

(i) approve the interim alcoholic beverage management agreement if it contains all the necessary information; or

(ii) return the proposed interim alcoholic beverage management agreement to the licensee, if the agreement is lacking in information or specificity, with guidance on how to remedy any errors or omissions.

(5) Once an interim alcoholic beverage management agreement has been approved by the Department, the seller may allow the buyer to use their license to purchase alcoholic product from the Department, but all revenue from the sale of alcohol during the transition period must be retained by the buyer, less the cost of reimbursing the seller for the cost of the alcoholic product paid to the Department.

(6) The seller must maintain the required bond, insurance, and business license during the transition period, as these are statutory requirements to hold a license, but the buyer may agree to reimburse the seller for any necessary costs incurred to maintain the bond, insurance, and business license.

(7) Nothing in this rule authorizes a licensee to close business without approval from the Department or Commission, as required by statute.

R82-5-103. Application.

(1) No license or sublicense application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a license until:

(a) The applicant has first met all requirements of sections 32B-1-304 and 32B-5-201 through 207; and

(b) the Department has inspected the applicant's premise(s).

(2)(a) All application requirements of subpart (1)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in subpart (2)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

(3) Subpart (1)(a) of this rule does not preclude the Commission from considering an application for conditional licensure, pursuant to section 32B-5-205.

(4)(a) Applicants may apply for a Master Full-Service Restaurant or Master Limited Service Restaurant License, as defined by sections 32B-6-206 and 32B-6-306 so long as five or more locations are indicated as sublicenses on the application.

(b) The five or more locations described in subpart (4)(a) of this rule must be owned by the same person or entity.

(c) Locations that do not already have a full or limited service restaurant license must meet all requirements for licensing as a full service or limited service restaurant under subpart (1) of this rule.

(d) Once the master license is granted, the licensee may add additional locations by filing an application approved by the Department demonstrating that the location meets all application requirements under subpart (1) of this rule.

(5) If an applicant has at any time been denied a license or permit based on the locality within which the proposed licensed premises is located, no further application from the applicant pertaining to the same premises or building location shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(6) If an applicant has at any time been denied a license or permit based on the person's ability to manage and operate a retail license of the type for which the person is applying, no further application from the applicant shall be considered unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(7) If an applicant has at any time been denied a license based on the nature or type of retail operation of the proposed retail licensee, no further application shall be considered for that license type unless the applicant submits a report evidencing a substantial change in the circumstances that previously caused the denial, of an application.

(8) If an applicant has at any time been denied a license or permit based on any other factor the Commission considers necessary, the Commission may, in its discretion determine under what circumstances in which a further application will be considered.

(9) The Commission may prescribe a time period between the denial and hearing a request for further application.

R82-5-104. Liquor Dispensing Systems.

(1) This rule is made pursuant to sections 32B-5-301, which requires retail licensees and retail licensee staff to comply with rules made by the Commission regarding general operational requirements of a retail licensed establishment, and 32B-5-304, which requires the Department to approve a liquor dispensing system.

(2) Purpose. This rule describes the minimum requirements for a liquor dispensing system, which is required by section 32B-5-304, and how the Department approves a liquor dispensing system.

(3)(a) A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the Department.

(b) After the Department's approval, a licensee may only change its dispensing system with prior approval by the Department.

(4) A dispensing system may be approved by the Department if it meets the following minimum requirements:

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces;

(b) has a meter which counts the number of pours dispensed; and

(c) the margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(5) Types of systems. Dispensing systems may be of various types, including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(6) Licensee Responsibility.

(a) The licensee is responsible for verifying that the system, when initially installed, meets the specifications which listed in subpart (1) of this rule. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the approved specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(7) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b)(i) Voluntary consent is given that representatives of the Department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes.

(ii) A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote storage alcoholic beverage dispensing system, defined in R82-5-105, which has been approved by the Department must be in a locked storage area identified on the licensee's floorplan. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must:

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The Commission adopts federal regulations 27 CFR 31.201 and 26 USC Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

(v) The records described in subpart (4)(g) of this rule must be made available for inspection and audit by the Department or law enforcement.

(h) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(i) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the Department may:

(i) require the alteration or removal of any system; and

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R82-5-105. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in section 32B-1-102 shall include the location of any licensed restaurant, limited restaurant, beer-only restaurant, bar, or on-premise beer retailer operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license or hotel license under Title 32B, Chapter 8. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in section 32B-1-102 shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of section 32B-5-302;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive Department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R82-5-106. Order and Return Procedures.

The following procedures shall be followed when a licensee orders liquor from or returns liquor to any state liquor store, package agency, or Department satellite warehouse:

(1)(a) The licensee must place the order in advance to allow Department personnel sufficient time to assemble the order.

(b) The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order.

(c) The order shall include the business name of the licensee, Department licensee number, and list the products ordered specifying each product by code number and quantity.

(d) If the licensee utilizes the services of a liquor transporter, as described in section 32B-17-201, the licensee shall provide that information when the licensee places the order.

(2)(a) The licensee shall allow at least four hours for Department personnel to assemble the order for pick-up.

(b) When the order is complete, the licensee will be notified by phone and given the total cost of the order.

(c) The licensee may pay for the product with any form of legal tender.

(d) The Department may make policies governing acceptable forms of payment, consistent with this rule.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the Department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(c) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R82-5-107. Identification.

(1) This rule is made pursuant to section 32B-5-301. The purpose of this rule is to ensure that an individual who sells, dispenses, or provides alcoholic beverages is easily identifiable to a member of the public, Department staff, or law enforcement.

(2) Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the Department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R82-5-108. Menus and Price Lists.

(1) Authority. This rule is made pursuant to sections 32B-2-206, 32B-2-202 and 32B-5-305. The purpose of this rule is to provide consumers with information and prevent discounting of alcohol or unlawful promotions.

(2) Contents of Alcoholic Beverage Menu.

(a)(i) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all liquor, mixed drinks, wine, beer, and heavy beer.

(ii) The list or menu described in subpart (2)(a)(i) of this rule shall include any charges for the service of packaged wines or heavy beer.

(b) A printed menu, master beverage price list, or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or employee of a licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R82-5-109. Sale of Alcoholic Beverages by Licensees to Patrons.

(1) Authority. This rule is made pursuant to sections 32B-6-205, 32B-6-305, 32B-6-406 and 407, 32B-6-505, 32B-6-605, 32B-6-706, 32B-6-805, 32B-6-905, and Title 32B, Chapters 8a and 8b.

(2)(a) A licensee that is required to maintain a percentage of food sales by statute shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food, as relevant to the licensee. These records shall be available for inspection and audit by representatives of the Department and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than statutorily required for any quarterly period or that a variety of food is not available for sale, depending on the requirements of the license, the Department shall immediately notify the licensee and may put the licensee on a probationary status and closely monitor the licensee's compliance with statutory requirements during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the Department that of the licensee's food sales or food availability meet or exceed the required levels.

(c) Failure of the licensee to provide satisfactory proof of the required food percentage or availability of a variety of food for sale after notification, as described in subpart (2)(b) of this rule, may result in issuance of an order to show cause by the Department to determine why the license should not be revoked by the Commission, as described in R82-3-104.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R82-6**	**Filing No. 52405**

Agency Information

1. Department:	Alcoholic Beverage Control
Agency:	Administration
Street address:	1625 S 900 W
City, state:	Salt Lake City, Utah
Mailing address:	PO Box 30408
City, state, zip:	Salt Lake City, Utah 84130-0408
Contact person(s):	

Name:	**Phone:**	**Email:**
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov

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

General Information

2. Rule or section catchline:

Specific Retail Provisions

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

This new rule will condense and reorganize the administrative code to a format similar to state statute.

4. Summary of the new rule or change:

This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule does not create additional cost or savings.

B) Local governments:

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. This rule does not create additional cost or savings.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.

B) Name and title of department head commenting on the fiscal impacts:

Salvador Petilos, 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 32B-1-102	Section 32B-6-302	Section 32B-6-405
Section 32B-2-202	Section 32B-6-905	Section 32B-1-501
Section 32B-6-202	Section 32B-6-404	Section 32B-2-303

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-6. Specific Retail Provisions.
R82-6-101. General Provisions.

Reserved.

R82-6-201. Restaurants -- Grandfathered Bar Structures

(1) Authority. This rule is made pursuant to the general authority described in section 32B-1-102; the authority to make rules regarding full restaurants in sections 32B-6-202 and 32B-6-205; the authority to make rules regarding limited restaurants in sections 32B-6-302 and 32B-6-305; and the authority to make rules regarding for beer only restaurants found in section 32B-6-905.

(2) The purpose of this rule is to define terms for full service, limited, and beer only restaurant licenses as required by Title 32B, Chapter 6.

(3) Definitions.

(a) "Actively engaged in the construction of the restaurant" means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "Remodels the grandfathered bar structure" means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "Remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to subsection 32B-5-303(3), the licensee must first apply for and receive approval from the Department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the Department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

(e) "remodels the grandfathered bar structure or dining area" for purposes of subsection 32B-6-205.3(4)(a)(ii) means that:

(i) the grandfathered bar structure or dining area has been altered or reconfigured to:

(A) extend the length of the existing bar structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons from the dining area.

(f) "remodels the grandfathered bar structure or dining area" does not:

(i) preclude making cosmetic changes or enhancements to the existing bar structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(g) Pursuant to subsection 32B-5-303(3), the licensee must first apply for and receive approval from the Department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage, dispensing, or consumption area must first be reviewed and approved by the Department to determine whether it is:

(i) an acceptable use of an existing bar structure or dining area; or

(ii) a remodel of a "grandfathered bar structure or dining area".

R82-6-202. Restaurants -- Alcoholic Flavorings.

(1) Authority. This rule is made pursuant to the authority described in section 32B-1-102 and the authority to make rules regarding full restaurants in sections 32B-6-202 and 32B-6-205; the express authority to make rules regarding limited restaurants in sections 32B-6-302 and 32B-6-305; and the express authority to make rules regarding for beer only restaurants found in section 32B-6-905.

(2) Purpose. The purpose of this rule is to clarify the use of alcoholic products in food production.

(3) Restaurant licensees may use alcoholic products as in beverages only during the authorized selling hours under the restaurant liquor license.

(4) Alcoholic product flavoring may be used in the preparation of food items at any time if plainly and conspicuously labeled "cooking flavoring."

(5) No licensee employee under the age of 21 years may handle alcoholic product flavorings except when engaged in food preparation.

(6) Nothing in this rule authorizes a finished food product to contain alcohol in excess of 0.5% alcohol by volume, which would render it an alcoholic product subject to Title 32B.

R82-6-301. Reserved.

Reserved.

R82-6-401. Bars -- Bar Licensing.

(1)(a) At the time the Commission grants a bar establishment license the Commission must designate whether the bar establishment qualifies to operate as an equity, fraternal, or bar based on criteria in sections 32B-6-404 and 405.

(b) After any bar establishment license is granted, a bar establishment may request that the Commission approve a change in the bar establishment's classification in writing supported by evidence to establish that the bar establishment qualifies to operate under the new class designation based on the criteria in sections 32B-6-404 and 405.

(c) The Department shall conduct an investigation for the purpose of gathering information and making a recommendation to the Commission as to whether or not the request should be granted. The information shall be forwarded to the Commission to aid in its determination.

(d) If the Commission determines that the bar establishment has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the Commission shall approve the request.

R82-6-402. Bars -- Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202, general licensing procedures and section 32B-6-405 for issuing an equity or fraternal bar establishment licenses, which authorizes the Commission to refuse to issue a license if the bylaws are not reasonable and consistent with the purpose of the type of license.

(2) Purpose. This rule furthers the intent of section 32B-6-407 that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

R82-6-403. Bars -- Minors in Lounge or Bar Areas.

(1) Pursuant to subsection 32B-6-406(5), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, or fraternal bar establishment. A minor may not be on the premises of a bar license except to the extent allowed under section 32B-6-406.1, and may not be admitted into, use, or be on the premises of any lounge or bar area of a bar license.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in section 32B-1-102(7);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

R82-6-404. Bars -- Sexually Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to sections 32B-1-501 through 32B-1-506, which prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the Commission and require them to appear or perform only in a tavern or bar and only upon a stage or in a designated area approved by the Commission.

(2) Purpose. This rule establishes guidelines used by the Commission to approve stages and designated performance areas in a tavern or bar where sexually oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity" means a state of dress as defined in section 32B-1-102.

(b) "Sexually-oriented entertainer" has the same meaning as that term is defined in section 32B-1-102.

(4) Application of Rule.

(a) A sexually oriented entertainer may appear or perform seminude only on the premises of a tavern or bar.

(b) A tavern or bar licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of sections 32B-1-502 through 32B-1-506;

(ii) a patron to be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the Commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for Commission approval a floorplan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or bar license from the Commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or bar licensee of the Commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or bar licensee of the Commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the Commission.

(ii) The Commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of subparts (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R82-6-501. Airport Lounge -- Reserved.

Reserved.

R82-6-601. On Premise Banquet -- On-Premise Banquet License Room Service - Mini-Bottle 187 ml Wine Sales.

(1) Purpose. Pursuant to section 32B-2-303, the Department may not purchase or stock spirituous liquor in containers smaller than 200 milliliters, except as otherwise allowed by the Commission. The Commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to registered guests of sleeping rooms and are not offered to the general public.

(2) Application of Rule.

(a) The Department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the Department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel or resort, and may not be used for other banquet catering services, kept in a minibar, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the Department to take disciplinary action against the on-premise banquet licensee.

R82-6-602. On Premise Banquet -- Reporting Requirement for Banquet Licensees.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-605.

(2) Purpose. This rule implements the requirement of section 32B-6-605, which requires the Commission to provide by rule procedures for on-premise banquet licensees or sublicensees to report scheduled banquet events to the Department to allow random inspections of banquets by authorized representatives of the Commission, the Department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee and an on-premise banquet sublicense licensed under Title 32B, Chapter 8 and Chapter 8b shall file with the Department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R82-5-101.

(b)(i) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered, submitted by mail, or submitted electronically.

(ii) If the licensee adds an event for a quarter after the licensee has already turned in the report, as described i subpart (3)(b)(i) of this rule, the licensee shall promptly contact the licensee's compliance officer to supplement the report.

(c) Each report shall include the name and specific location of each event and the name of the third-party host of the event.

(d) The Department shall make copies of the reports available to a commissioner, authorized representative of the

Department, and any law enforcement officer upon request to be used for the purpose stated in subpart (2) of this rule.

(e) The Department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to sections 63G-2-305 and -309;

(ii) any report filed shall be classified by the Department as protected pursuant to section 63G-2-305; and

(iii) any report filed shall be used by the Department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file a quarterly report may result in disciplinary action pursuant to sections 32B-3-201 to 32B-3-207, and R82-3-102 and 103.

R82-6-701. On Premise Beer Retailer -- Reserved.

Reserved.

R82-6-801. Reception Center -- Reporting Requirement for Reception Center Licensees.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-805.

(2) Purpose. This rule implements the requirement of section 32B-6-805~~,~~ which requires the Commission to provide by rule procedures for reception center licensees to report scheduled events to the Department to allow random inspections of events by authorized representatives of the Commission, the Department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) A reception center licensee licensed under section 32B-6-805 shall file with the Department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter.

(b)(i) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered, submitted by mail, or submitted electronically.

(ii) If the licensee adds an event for a quarter after the licensee has already turned in the report, as described in subpart (3)(b)(i) of this rule, the licensee shall promptly contract the licensee's compliance officer to supplement the report.

(c) Each report shall include the name and specific location of each event and the name of the third-party host of the event.

(d) The Department shall make copies of the reports available to a commissioner, authorized representative of the Department, and any law enforcement officer upon request to be used for the purpose stated in subpart (2) of this rule.

(e) The Department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to sections 63G-2-305 and -309;

(ii) any report filed shall be classified by the Department as protected pursuant to section 63G-2-305; and

(iii) any report filed shall be used by the Department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file a quarterly report may result in disciplinary action pursuant to sections 32B-3-201 through 32B-3-207, and R82-3-102 and 103.

R82-6-802. Reception Center -- Agreement For Alcoholic Beverage Service and Table Service.

(1) Authority. This rule is pursuant to the Commission's powers and duties under section 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to section 32B-6-805.

(2) Definitions. "Third Party Host" is a party that contracts with the reception center licensee to provide alcoholic beverage service at an event to be held on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(a) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, the reception center licensee may not contract with a third party host to hold an event that is open to the public where an alcoholic product is sold or offered for sale.

(b) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, a third-party host may not collect a cover charge or entry fee for admission to the private event.

(c) With the exception of a nonprofit organization holding an event as described in section 32B-6-805, a third-party host may not receive any proceeds from the sale of alcoholic product from the event.

(d) A Reception Center Licensee may host an event for an immediate family member provided that the event is not an event that is open to the public where an alcoholic product is sold or offered for sale, and the Reception Center Licensee does not collect a cover charge or entry fee to the event.

(3) A wine service may be performed by the server at the patron's table. The wine may be opened and poured by the server.

(4) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table.

(5) A patron's table may be located in waiting, patio, garden and dining areas that are on the premises of the reception center, previously approved by the Department.

R82-6-901. Reserved.

Reserved.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE
TYPE OF RULE: New

Utah Admin. Code Ref (R no.):	R82-7	Filing No. 52407

Agency Information

1. Department:	Alcoholic Beverage Control
Agency:	Administration
Street address:	1625 S 900 W
City, state:	Salt Lake City, Utah
Mailing address:	PO Box 30408
City, state, zip:	Salt Lake City, Utah 84130-0408

Contact person(s):

Name:	Phone:	Email:
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov

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

General Information

2. Rule or section catchline:

Off-Premise

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

This new rule will condense and reorganize the administrative code to a format similar to state statute.

4. Summary of the new rule or change:

This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule does not create additional cost or savings.

B) Local governments:

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. This rule does not create additional cost or savings.

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 Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Alcoholic

Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.
B) Name and title of department head commenting on the fiscal impacts:
Salvador Petilos, 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 32B-7-202	Section 32B-2-202	Section 32B-7-408

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-7. Off-Premise.
R82-7-101. Separation of Alcoholic Beverages from Non-Alcoholic Beverages and Required Signage.

(1) Authority and General Purpose. This rule is pursuant to section 32B-7-202 that requires:

(a) an off-premise beer retailer to prominently display a sign in each area where beer is sold, an easily readable sign that reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully," and requires the Commission to define by rule the format of the sign.

(2) Application of the Rule.

(a) Sign requirements.

(i) The sign required by section 32B-7-202 shall be:

(A) prominently posted in all areas where beer is sold;

(B) easily readable by the consumer; and

(C) in print that is no smaller than .5 inches, bold type.

(ii) The print on the sign must be clearly readable and on a solid, contrasting background.

(iii) The size of the sign, and the size of the print must be sufficiently large so as to be readable, and clearly and unambiguously convey to a consumer that the beverage products displayed in that area contain alcohol. In no instance may the sign be smaller than 8.5 inches x 3.5 inches.

(iv) Additional signs may be necessary depending on the size and type of display area. For example, an entire aisle devoted to beer products may require more than one sign to adequately inform the consumer.

R82-7-102. Off-Premise Beer Retailer State License and Master Off-Premise Beer Retailer State License.

(1) Authority and General Purpose. This rule is pursuant to subsection 32B-2-202(1)(c) which requires the Commission to set policy by written rules that establishes criteria and for issuing and denying licenses and section 32B-7-408, which authorizes the Commission to make rules establishing how a person may apply for a master off-premise beer retailer state license.

(2) No license application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a license until in accordance with subsection 32B-7-404(2):

(a) The applicant has submitted a complete application to the Department in accordance with sections 32B-7-402 or 32B-7-408; and

(b) the Department has completed an investigation and inspected the proposed licensed premises.

(c) A "complete application" includes the Department's application form and all supplemental materials listed on the Department's application checklist.

(3)(a) All application requirements of subpart (2)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (2)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in subpart (3)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

(4) Subpart (2)(a) of this rule does not preclude the Commission from considering an application for a conditional license under the terms and conditions of section 32B-7-406.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R82-8a**	**Filing No. 52408**

Agency Information

1. Department:	Alcoholic Beverage Control	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 30408	
City, state, zip:	Salt Lake City, Utah 84130-0408	
Contact person(s):		
Name:	**Phone:**	**Email:**
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Resorts

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

This new rule will condense and reorganize the administrative code to a format similar to state statute.

4. Summary of the new rule or change:

This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule does not create additional cost or savings.

B) Local governments:

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. This rule does not create additional cost or savings.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.

B) Name and title of department head commenting on the fiscal impacts:

Salvador Petilos, 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 32B-1-102	Section 32B-2-202	Section 32B-8-402

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-8. Resorts.
R82-8a-101. Definitions.

(1) Authority. The Commission makes the following definitions, pursuant to section 32B-1-102.

(2) Definitions.

(a) "Lounge or bar area" means:

(i) the bar structure as defined in section 32B-1-102;

(ii) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(iii) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret, or night club.

(b)(i) "Resort spa" means a facility within the boundary of a resort building that provides professionally administered personal care treatments such as massages, facials, hair care, and nail care.

(ii) Treatment providers who work at a resort spa must be licensed under Title 58, Division of Professional Licensing Act.

(iii) The resort spa also must hold a license to conduct business as a spa or similar operation under local licensing laws.

R82-8a-102. Applicability of Rules.

(1) Section 32B-8-402 requires that a person operating under a resort sublicense comply with the operational restrictions of Title 32B, Alcoholic Beverage Control Act, for the type of license applicable to the sublicense, except where otherwise provided. For example, a bar sublicensee must comply with the operational restrictions found in sections 32B-5-301 through 32B-5-310 and 32B-6-406 that are applicable to a bar licensee.

(2) This rule requires that a person operating under a resort sublicense comply with the operational restrictions found in any Commission rule for the type of license applicable to the sublicense, except where otherwise provided.

R82-8a-103. Application for licensure -- Operational Requirements.

(1)(a) Application. Pursuant to sections 32B-5-203 and 32B-8-204 and -302, a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted.

(b) If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with section 32B-8-302 and this rule.

(2) Minors in Lounge or Bar Areas.

(a) Pursuant to Section 32B-8-304, a minor may be on the premises of a resort spa if accompanied by a person 21 years of age or older, but may not be admitted into, use, or be on the premises of any lounge or bar area of a resort spa.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R82-10**	**Filing No. 52409**

Agency Information

1. Department:	Alcoholic Beverage Control	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 30408	
City, state, zip:	Salt Lake City, Utah 84130-0408	
Contact person(s):		
Name:	**Phone:**	**Email:**
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Special Use Permits

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

This new rule will condense and reorganize the administrative code to a format similar to state statute.

4. Summary of the new rule or change:

This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule does not create additional cost or savings.

B) Local governments:

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

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

This rule does not create additional cost or savings.

F) Compliance costs for affected persons:

There are no fees associated with this process. This rule does not create additional cost or savings.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:
The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.
B) Name and title of department head commenting on the fiscal impacts:
Salvador Petilos, 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 32B, Chapter 10	Section 32B-10-6	Section 32B-4-401
Section 32B-2-202		

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-10. Special Use Permits
R82-10-101. Application.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Special Use Permit Act, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee applicant.

(2) An application for a special use permit will only be included on the agenda of a monthly Commission meeting for consideration for issuance of a special use permit if:

(a) the applicant has first met all requirements of sections 32B-1-304 and 32B-10-202 and 32B-10-205, including submission of a completed application, payment of application and permit fees if required for the type of permit being sought, statement of purpose for which the applicant applies for the permit, types of alcoholic product the person intends to use under the permit, written consent of local authority, a bond if required, and a floor plan if required; and

(b) the Department has inspected the premise where the applicant intends to utilize the permit.

(3)(a) All application requirements of subpart (2)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (2)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

c) A completed application filed after the deadline in subpart (3)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-10-102. Direct Delivery.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Special Use Permit Act, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee applicant.

(2) Industrial, manufacturing, scientific, educational, and health care special use permittees may purchase alcohol directly from the manufacturer and have it shipped directly to the permittee's address, provided the alcohol is used for industrial, manufacturing, scientific, educational, or health care purposes.

R82-10-201. Reserved.

Reserved.

R82-10-301. Public Service Permittee Operating Guidelines.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Special Use Permit Act, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee applicant.

(2) A public service permittee that operates on an interstate basis may purchase liquor outside of the state and bring it into the state and purchase liquor within the state and sell, store and serve it to passengers traveling on the permittee's public conveyance for consumption while en route on the conveyance. However, all liquor utilized within a public service permittee's hospitality room must be purchased from a state liquor store or package agency within this state.

(3) All liquor transported from outside the state to the permittee's storage facility shall be carried in sealed conveyances which may be inspected at any time by the Department.

(4) A public service permittee shall keep available and open for audit during regular business hours, complete and accurate records of alcoholic product shipments to and from their storage facility. Records shall be kept for a minimum of three years.

(5) A public service permittee shall allow the Department, through its auditors or examiners, to audit all records relating to the storage, sale, consumption and transportation of alcoholic products by the permittee.

(6) All public service permittees which utilize a hospitality room shall display in a prominent place a "warning sign," as defined in R82-1-102.

R82-10-401. Industry Rep Special Use.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Special Use Permit Act, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee applicant.

(2) No license application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a local industry representative license until the applicant has first met all requirements of sections 32B-1-304 and 32B-11-606, and 32B-11-604, including submission of a completed application, payment of application and licensing fees, verification the person is a resident of Utah, a Utah partnership, a Utah corporation, or a Utah limited liability company, and an affidavit stating the name and address of any manufacturer, supplier, or importer the person will represent.

(3)(a) All application requirements of subpart (2) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (2)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in subpart (3)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-10-402. Industry Participation in Educational Seminars Involving Liquor, Wine, and Heavy Beer.

(1) Authority. This rule is pursuant to sections 32B-4-401 and 32B-4-701 through 32B-4-708. These provisions: preclude an industry member from selling, shipping, transporting, furnishing or supplying or causing the selling, shipping, transporting, furnishing or supplying of liquor, wine, and heavy beer products to another within this state other than the Department, a military installation, a holder of a special use permit to the extent authorized in the permit, and a bonded liquor warehouse; preclude an industry member from supplying anything of value except as allowed by law; preclude an industry member from giving away any of its alcoholic products to any person except for testing, analysis, and sampling purposes by the Department and local industry representative licensees to the extent authorized by 32B, Chapter 10, Special Use Permit Act; allow an industry member to participate in educational seminars involving the Department, retailers, holders of educational or scientific special use permits, or other industry members under certain conditions, but preclude the use of samples at such seminars; and allow an industry member to serve alcoholic products to others at a private social function hosted by the industry member so long as the product is not served as part of a promotion of the industry member's products or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

(2) Definitions. For purposes of this rule:

(a) "Educational seminar" means an educational class involving the study of alcoholic beverages attended only by students who have registered in advance for the course, a privately-hosted event or social function held by a private group engaged in the study of alcoholic beverages, and a private training session held by a retailer for the purpose of educating the retailer and the retailer's employees of the qualities and characteristics of alcoholic beverages. An educational seminar does not include a seminar to which the general public is invited to attend.

(b) "Industry member" means a liquor, wine or heavy beer manufacturer, supplier, importer, wholesaler, or any of its affiliates, subsidiaries, officers, directors, agents, employees, or representatives.

(c)(i) "Private event" means a specific social, business, or recreational event for which an entire room, area, or hall is leased , rented, or reserved, in advance by an identified group, and the event is limited in attendance to people who are specifically designated and their guests.

(ii) "Private event" does not include an event to which the general public is invited whether for an admission fee or not.

(d) "Retailer" means the holder of an alcoholic beverage license or permit issued by the Commission to allow the holder to engage in the sale of alcoholic beverages to consumers, or any of the holder's agents, officers, directors, shareholders, partners, or employees.

(e)(i) "Sample" means liquor, wine and heavy beer that is placed in the possession of the Department for testing, analysis, and sampling by the Department, or for testing, analysis, and sampling by local industry representatives on the premises of the Department. Samples are furnished by industry members to the Department for these purposes at no cost, and are labeled by the Department as samples.

(ii) Sample does not include liquor, wine and heavy beer that is sold by the Department at retail after taxes and markup have been included.

(3) General Purpose. This rule authorizes industry representatives, under certain restrictions, to attend and participate in educational seminars where liquor, wine and heavy beer products are analyzed, tested, and tasted.

(4) Application of Rule.

(a) An industry member may attend and participate in an educational seminar where liquor, wine and heavy beer products are analyzed, tested, and tasted only as the invited guest of the host of the seminar. An industry member may not directly or indirectly host, organize, or otherwise arrange for an educational seminar where such products are present.

(b) Liquor, wine and heavy beer products used at an educational seminar must be purchased by the host from the Department at full retail. An industry member may not directly or indirectly furnish or otherwise provide the liquor, wine and heavy beer products for the seminar. No liquor, wine or heavy beer samples may be present or used at an educational seminar. Tastings involving samples may occur only on the Department's premises in accordance with section 32B-4-705.

(c) An industry member may be invited by the host to lecture, and analyze, test, and taste the liquor, wine and heavy beer products during the industry member's presentation at an educational seminar.

(d) An educational seminar where liquor, wine and heavy beer products are present may not be used by an industry member to introduce retailers to new products which are not presently listed by the Department for sale in this state.

(e) An educational seminar may not be open to the general public.

R82-10-501. Educational Wine Judging Seminars.

(1) Definition of Applicant. An applicant is any person or organization who is applying for an educational wine judging seminar permit, whose purpose is to inform and educate about the qualities and characteristics of wines.

(2) Application. The applicant must meet the requirements and qualifications for a scientific or educational special use permit found in sections 32B-1-304 and 32B-10-202. In addition, the applicant must submit to the Department a detailed proposal of the seminar which must include the qualifications of the judges, the number of wines being submitted by the wineries, and the location of the seminar. Additional information may be requested by the Commission or Department to properly evaluate the application.

(3) The applicant must post a cash or corporate surety bond in the penal sum of $1,000 payable to the Department, which the permittee has procured and must maintain for as long as the permittee continues to operate as a special use permittee. The bond shall be in a form approved by the attorney general, conditioned upon the permittee's faithful compliance with 32B, Chapter 10, Special Use Permit Act and the rules of the Commission. If the surety bond is canceled due to the permittee's negligence, a $300 reinstatement fee may be assessed. No part of any cash bond so posted may be withdrawn during the period the permit is in effect. A bond filed by a permittee may be forfeited if the permit is finally revoked.

(4) The application for the educational wine judging seminar permit must be completed and submitted 90 days before the seminar date.

(5) Restrictions. Any person granted an educational wine judging seminar permit must meet the following requirements and restrictions:

(a) The techniques used in judging the wines must meet internationally accepted techniques of sensory or laboratory evaluation, and the wines used may not be consumed.

(b) All unopened bottles must be returned to the Department and any wine product residual in open bottles must be destroyed by the permittee.

(c) The educational wine judging seminar permit has an automatic expiration date of three days following the scheduled ending date of the seminar.

(d) The permittee must comply with R82-1-104 regarding advertising of the seminar.

(6) Procedures for Handling the Seminar.

(a) The permittee must order all wines used in the seminar from the Department. The Department will order the wines from the wineries designating on the order that they are for a wine judging seminar. The permittee must make prior arrangements with the wineries to have the wines sent to the Department at no charge and freight prepaid.

(b) The wines will be entered into the Department's accounting system at no cost and will be given a special Department number, designating the wines as those to be used with an educational wine judging seminar permit and not to be consumed.

(c) The wines will be delivered to the permittee from the Department. After the seminar, the permittee will return all unopened bottles of wine to the Department and the permittee will destroy any other residual wine products left. The permittee will pay to the Department a fee of two dollars for every bottle of wine used in the judging seminar.

(d) All wines returned to the Department become the property of the state and will be destroyed under controlled conditions or will be given a new Department number and sold in the state's retail outlets, which profits will be property of the state.

R82-10-601. Religious Wine Permits.

(1) Authority. This rule is made pursuant to the implicit authority Title 32B, Chapter 10, Part 6, Religious Use of Alcoholic Products, and the explicit authority of section 32B-2-202, which authorizes the Commission to make rules regarding the procedures and criteria for a permittee.

(2) Purpose. This rule outlines the procedures for a religious wine permit holder to purchase wine for religious purposes, and the procedures Department personnel shall follow to process the purchase.

(3) Application of Rule.

(a) The permit holder may purchase any generally listed wine directly off the shelf of any state store or package agency at a charge of cost plus freight. The cashier shall first verify that the purchasing religious organization is a holder of a permit on file in the Department's licensee or permittee data base. The cashier shall determine the cost plus freight price of the wine. The wine may be purchased only with cash or a check belonging to the religious organization, and not with an individual's personal check or credit card. Checks shall be deposited in the ordinary course of business with other checks.

(b) The permit holder may order wine for religious purposes directly from a winery and have the winery ship the wine prepaid at a charge of cost plus freight to the Department's central administrative warehouse. The warehouse shall deliver the wine to the state store or package agency nearest to the permit holder's church. The state store or package agency shall notify the permit holder when the product is available for pick-up.

(c)(i) The permit holder may place a special order for wines not generally listed by the Department only if the winery will not sell directly to the permit holder.

(ii) Special orders may be placed only with the special order clerk at the Department's administrative office.

(iii) No special orders may be placed with a state store or package agency.

(iv) The special order clerk shall verify that the purchasing religious organization is on file in the Department's licensee or permittee data base, place the order, assign it a special order code number, assess a charge of cost plus freight, and have the wine delivered to the state store or package agency nearest to the permit holder's church.

(v) The state store or package agency shall notify the permit holder when the product is available for pick-up.

(vi) All procedures for processing the purchase that are outlined in (3)(a) above shall be followed by the state store or package agency to complete the sale.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R82-11**	**Filing No. 52411**

Agency Information

1. Department:	Alcoholic Beverage Control	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state:	Salt Lake City, Utah	
Mailing address:	PO Box 30408	
City, state, zip:	Salt Lake City, Utah 84130-0408	
Contact person(s):		
Name:	**Phone:**	**Email:**
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Manufacturing
3. Purpose of the new rule or reason for the change:
This new rule will condense and reorganize the administrative code to a format similar to state statute.
4. Summary of the new rule or change:
This new rules are adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule does not create additional cost or savings.
B) Local governments:
This rule does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
This rule does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
This rule does not create additional cost or savings.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
This rule does not create additional cost or savings.
F) Compliance costs for affected persons:
There are no fees associated with this process. This rule does not create additional cost or savings.
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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.

B) Name and title of department head commenting on the fiscal impacts:

Salvador Petilos, 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 32B-11-208	Section 32B-2-202	Section 32B-11-210

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-11. Manufacturing.
R82-11-101. Authority, Purpose, Definition.

(1) This rule is enacted pursuant to sections 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure, 32B-11-208, which authorizes the Commission to make rules regarding the general operational requirements of a manufacturing licensee, and 32B-11-210, which authorizes the Commission to define "educational information."

(2) The purpose of this rule is to provide guidance to manufacturing licensees who wish to provide tastings.

(3) "Educational Information" means a presentation of information whose primary purpose is imparting knowledge related to the history, culture, significance, agriculture, manufacture, flavor profile, the effects of alcohol, or any combination of the foregoing.

R82-11-102. Application Guidelines.

(1) This rule is enacted pursuant to sections 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure, and 32B-11-208, which authorizes the Commission to make rules regarding the general operational requirements of a manufacturing licensee.

(2) The purpose of this rule is to provide guidance to prospective manufacturing licensees.

(3) No license application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a manufacturing license until:

(a) A complete application including all documents and supplemental materials listed on the Department's application checklist have been submitted to the Department.

(b) the Department has inspected the manufacturer premise; and

(c) an investigation is conducted and a recommendation can be made as required by section 32B-11-206.

(4)(a) All application requirements of subpart (2)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (2)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in subpart (3)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-11-103. Out of State Business.

(1)(a) Purpose. Pursuant to section 32B-11-201, brewers located outside the state must obtain a certificate of approval from the Department before selling or delivering beer containing an alcohol content of less than 4% alcohol by volume before November 1, 2019 and less than 5% alcohol by volume on or after November 1, 2019 to licensed beer wholesalers in this state, or if a small brewer, to licensed beer wholesalers or retailers in this state.

These certificates must be renewed annually.

(b) In addition to issuing certificates of approval to brewers who actually produce the beer, the Department has also issued certificates to (1) importers that hold federal permits, and have the contractual rights to distribute and market beer for foreign breweries; and (2) marketing agents that distribute and market beer for domestic breweries. The Department has also allowed brewers with a certificate of approval to market the products on behalf of other brewers under that certificate. However, this has resulted in a loss of direct regulatory authority over the breweries that actually produce the beer.

(c) This rule ensures that each producer of beer obtain its own certificate of approval to allow its beer to be sold or delivered in this state.

(2) Application of Rule.

(a) A certificate of approval to sell or deliver beer in this state under section 32B-11-201 may be issued only to the company that is ultimately responsible for producing the beer. The company holding the certificate may not allow another brewery to sell or deliver beer to this state under the certificate holder's certificate. A certificate of approval may not be issued to any third party such as an importer or marketing agent that does not actually manufacture or produce alcoholic beverages.

(b)(i) This rule does not preclude the company that holds the certificate of approval from having its brand of beer produced by another brewery under contract under the brand name of the certificate holder's company.

(ii) A certificate holder is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state and any violations committed by the contract brewery will be the responsibility of the certificate holder.

(c)(i) A distillery or winery that has beer produced for it by a brewery under contract under the distillery's or winery's brand name is deemed to be a "brewery" for purposes of section 32B-11-201, and may be issued a certificate of approval.

(ii) A distillery or winery described in Subsection (2)(c)(i) is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the distillery or winery that holds the certificate.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R82-13**	**Filing No. 52412**

Agency Information

1. Department:	Alcoholic Beverage Control
Agency:	Administration
Street address:	1625 S 900 W
City, state:	Salt Lake City, Utah
Mailing address:	PO Box 30408
City, state, zip:	Salt Lake City, Utah 84130-0408

Contact person(s):		
Name:	**Phone:**	**Email:**
Vickie Ashby	801-977-6801	vickieashby@utah.gov
RuthAnne Oakey-Frost	801-977-6800	rfrost@utah.gov
Angela Micklos	801-977-6800	afmicklos@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Wholesaler
3. Purpose of the new rule or reason for the change:
This new rule will condense and reorganize the administrative code to a format similar to state statute.
4. Summary of the new rule or change:
This new rule is adopted pursuant to Section 32B-2-202 and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule does not create additional cost or savings.
B) Local governments:
This rule does not create additional cost or savings.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
This rule does not create additional cost or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
This rule does not create additional cost or savings.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an ***agency***)**:**
This rule does not create additional cost or savings.
F) Compliance costs for affected persons:
There are no fees associated with this process. This rule

does not create additional cost or savings.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Alcoholic Beverage Control, Salvador Petilos, 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 new rule will condense and reorganize the administrative code to a format similar to state statute.

B) Name and title of department head commenting on the fiscal impacts:

Salvador Petilos, 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 32B, Chapter 13	Section 32B-2-202	

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	Salvador Petilos, Executive Director	**Date:**	12/02/2019

R82. Alcoholic Beverage Control, Administration.
R82-13. Wholesaler.
R82-13-101. Application.

(1)(a) The authority for this rule is implied in Title 32B, Chapter 13, Beer Wholesaling License Act and explicit in section 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure.

(b) The purpose of this rule is to clarify the process by which a person applies for a beer wholesaler license.

(2) No license application will be included on the agenda of a monthly Commission meeting for consideration for issuance of a beer wholesaler license until:

(a) The applicant has first met all requirements of sections 32B-1-304 (qualifications to hold the license), and 32B-13-202, 32B-13-204 and 32B-13-206 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as a beer wholesaler license, a bond, a statement of the brands of beer the applicant is authorized to sell and distribute, statement of the territories in which the applicant is

authorized to sell and distribute beer under an agreement required by 32B-11-201 or 32B-11-503, and public liability insurance); and

(b) the Department has inspected the beer wholesaler premise.

(3)(a) All application requirements of subpart (2)(a) of this rule must be filed with the Department no later than the 10th day of the month in order for the application to be included on that month's Commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of subpart (2)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in subpart (3)(a) of this rule will not be considered by the Commission that month, but will be included on the agenda of the Commission meeting the following month.

R82-13-102. Transfer of a Wholesale License, Conditions of Transfer, Change of Trade Name.

(1)(a) The authority for this rule is implied in Title 32B, Chapter 13, Beer Wholesaling License Act and explicit in section 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure.

(b) The purpose of this rule is to clarify the process by which a person applies for a beer wholesaler license.

(2)(a) The holder of one or more wholesaler licenses may assign and transfer the license to any qualified person in accordance with the provisions of these rules.

(b) Notwithstanding Subsection (2)(a), no assignment and transfer may result in both a change of license and change of location.

(3) The holder of the wholesaler license shall first execute a proposed assignment and transfer of the license. The assignee or transferee shall apply to the Commission for approval of the assignment and transfer, and shall furnish any information the Commission may require.

(4) The assignment and transfer shall not be of any force and effect until the Commission has approved it.

(5) The assignee or transferee shall not take possession of the premises, or exercise any of the rights of a license until the Commission has approved the assignment and transfer.

(6) No assignment and transfer shall be made within 30 days after the holder of a wholesaler license has been granted a change of location.

(7) No change of location shall be granted within 90 days after assignment and transfer of a wholesaler license.

(8) In approving any assignment and transfer of a wholesaler license, the Commission may impose special conditions relating to any future connection of the former licensee or any of his or her employees with the business of the assignee or transferee.

(a) Before the imposition of any special conditions, the Commission shall hold a hearing to allow the former licensee or any of his or her employees to attend and provide information to the Commission.

(b) The Commission shall provide written notice to all parties involved at least 10 days before the hearing.

(9) No wholesaler license may be assigned to any person who does not qualify for the license under sections 32B-1-304 and 32B-13-202 through 206.

(10)(a) A change of trade name may coincide with the transfer of the wholesaler license, with the Commission's approval.

(b) Any licensed wholesaler may adopt a trade name or change the trade name by applying to the Commission on forms provided by the Department and upon receiving the Commission's approval.

R82-13-103. Change in Partners.

(1) The authority for this rule is implied in Title 32B, Chapter 13, Beer Wholesaling License Act and explicit in section 32B-2-202, which authorizes the Commission to make rules governing criteria and procedures for licensure.

(2) If the wholesaler licensee is a partnership, the sale of a partnership interest or any change in partners shall be considered an assignment and transfer of the wholesaler license held by one partnership within the meaning of R82-13-103.

(3) However, if the wholesaler licensee is a partnership, and a partner should die dissolving the partnership, that partnership license shall remain in effect on a temporary basis for one month, unless or until the Commission directs otherwise.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 32B-2-202

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R156-60**	**Filing No. 52391**

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 East 300 South	
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:**
Larry Marx	801-530-6254	lmarx@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Mental Health Professional Practice Act Rule
3. Purpose of the new rule or reason for the change:
After careful consideration of the numerous individual comments submitted regarding the Division of

Occupational and Professional Licensing's (Division) first drafts of a rule regulating conversion therapy, Governor Herbert has directed the Division to file this new rule amendment. The previous drafts were published as DAR File No. 43993 in the September 1, 2019, issue of the Utah State Bulletin, Vol. 2019, No. 17, at pages 9 -13, and DAR File No. 44031 in the September 15, 2019, issue of the Utah State Bulletin Vol. 2019, No. 18, at pages 17-21. This current rule filing takes into account input from many stakeholders on specific, technical aspects of the language in the previous drafts, and has been created around the carefully crafted and effective language of H.B. 399, passed in the 2019 General Session.

4. Summary of the new rule or change:

In Section R156-60-102, the proposed amendments to this section update references, and define the term "conversion therapy".

In Section R156-60-502, the proposed amendments to this section add to the definition of unprofessional conduct "providing conversion therapy to a patient or client who is younger than 18 years old", and specify that this definition does not apply to 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 to 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.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division estimates that these proposed amendments may result in a potential increase of two additional complaints of unprofessional conduct each year, requiring two investigations consisting of approximately 20 hours per investigation. This may result in a cost to Division investigations of approximately $1,000 per fiscal year ongoing. The amendments are not expected to impact existing Division practices or procedures or other state practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any state agencies that may be acting as employers of licensed individuals engaging in the practice of mental health therapy to experience any measurable fiscal impacts. Except as described above, the Division estimates that these proposed amendments will have no measurable impact on state government revenues or expenditures, beyond a minimal cost to the Division of approximately $75 to disseminate the rule once the proposed amendments are made effective.

B) Local governments:

The Division estimates that these proposed amendments will have no measurable impact on local governments' revenues or expenditures. None of these amendments are expected to impact local governments' practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any local governments that may be acting as employers of licensed individuals engaging in the practice of mental health therapy to experience any measurable fiscal impacts.

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

These proposed amendments will regulate individuals licensed under Title 58 who are practicing within their respective licensing acts and engage in the practice of mental health therapy. These amendments may therefore indirectly affect the estimated 1,132 small businesses in Utah comprising establishments of licensees engaged in the practice of mental health therapy or 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). However, these proposed amendments are not expected to result in any measurable fiscal impact for small businesses.

First, these amendments update the rule in accordance with guidance from multiple stakeholders, including clear practice guidelines and position statements already existing in the industry including from the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, and the Substance Abuse and Mental Health Services Administration. The practices of most small businesses are, or should be, already consistent with these existing professional practice guidelines and position statements.

Second, the proposed amendments will only affect licensees who violate the rule and are disciplined for unprofessional conduct, and as described below for other persons it is estimated that for the typical licensee, the proposed amendments will have no direct or indirect fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most small businesses will never be impacted.

Finally, although a small business employing a licensee who is disciplined for unprofessional conduct may face indirect financial costs for such noncompliance, it is impossible to estimate what such indirect costs might be with any accuracy at present, not only because any such violations are unforeseeable, but because any indirect costs from such unforeseen violations that any small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

In sum, the scope of these proposed amendments is so narrow that they will not affect the vast majority of small businesses, and will not result in a measurable fiscal impact to small businesses.

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

These proposed amendments will regulate individuals licensed under Title 58 who are practicing within their respective licensing acts and engage in the practice of mental health therapy. These amendments may therefore indirectly affect the estimated 72 non-small businesses in Utah comprising establishments of licensees engaged in the practice of mental health therapy or 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). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses.

First, the amendments update the rule in accordance with guidance from multiple stakeholders and clear practice guidelines and position statements already existing in the industry, including from the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, and the Substance Abuse and Mental Health Services Administration. The practices of most non-small businesses are, or should be, already consistent with existing professional practice guidelines and position statements.

Second, the proposed amendments will only affect licensees who violate the rules and are disciplined for unprofessional conduct, and as described for other persons it is estimated that for the typical licensee, the proposed amendments will have no direct or indirect fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most non-small businesses will never be impacted.

Finally, although a non-small business employing a licensee who is disciplined for unprofessional conduct may face indirect financial costs for such noncompliance, it is impossible to estimate what such indirect costs might be with any accuracy at present, not only because any such violations are unforeseeable, but because any indirect costs from such unforeseen violations that any non-small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

In sum, the scope of these proposed amendments is so narrow that they will not affect the vast majority of non-small businesses, and will not result in a measurable fiscal impact 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***)**:**

The following individuals licensed under Title 58 may be affected by these proposed amendments: Approximately 4,209 licensed clinical social workers, 1,384 licensed certified social workers, and 30 licensed certified social worker interns. Approximately 1,485 licensed clinical mental health counselors, 2 licensed volunteer clinical mental health counselors, 382 licensed associate clinical mental health counselors, and 7 licensed associate clinical mental health counselor externs. Approximately 787 licensed marriage and family therapists, 181 licensed associate marriage and family therapists, and 3 associate marriage and family therapist externs. However, no measurable fiscal impact to any of these persons is expected.

First, the proposed amendments will only affect licensees who violate the rules and are sanctioned, so that most licensees will never be impacted. The amendments update the rule in accordance with practice guidelines and position statements already existing across the mental health professions, and the practices of most licensees are or should be already consistent with existing professional practice guidelines and position statements. Further, the goal of the rules is to provide a deterrent, such that there is a $0 net impact on all parties involved and minimal occasions to sanction a licensee for noncompliance. Therefore, for the typical licensee, these proposed amendments are expected to have no direct or indirect fiscal impact.

Second, although a licensee who is disciplined for unprofessional conduct may experience a fiscal impact, it is impossible to estimate what such costs might be with any accuracy at present, both because they would apply only in cases of unforeseeable violations, and because any potential costs would depend on the unique characteristics and actions of each individual licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

F) Compliance costs for affected persons:

As described above for other persons, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$1,075	$1,000	$1,000
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$1,075**	**$1,000**	**$1,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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:	**($1,075)**	**($1,000)**	**($1,000)**

H) Department head sign-off on regulatory impact:

I have reviewed the proposed filing for the above-referenced rule and considered the fiscal impact that the rule may have on businesses. I direct that my comments about the rule's fiscal impact on businesses be inserted at the appropriate place on the notice form to be filed with the Office of Administrative Rules for publication of this rulemaking action. Francine A. Giani, Executive Director, Department of Commerce

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

In Section R156-60-102, the proposed amendments to this section update references, and define the term "conversion therapy."

In Section R156-60-502, the proposed amendments to this section add to the definition of unprofessional conduct "providing conversion therapy to a patient or client who is younger than 18 years old," and specify that this definition does not apply to 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 to 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.

Small Businesses (less than 50 employees): These proposed amendments will regulate individuals licensed under Title 58 who are practicing within their respective licensing acts and engage in the practice of mental health therapy. These amendments may therefore indirectly affect the estimated 1,132 small businesses in Utah comprising establishments of licensees engaged in the practice of mental health therapy or 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, and 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for small business.

Non-Small Businesses (50 or more employees): These proposed amendments will regulate individuals licensed under Title 58 who are practicing within their respective licensing acts and engage in the practice of mental health therapy. These amendments may therefore indirectly affect the estimated 72 non-small businesses in Utah comprising establishments of licensees engaged in the practice of mental health therapy or 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, and 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Francine A. Giani, 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

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:**	11/27/2019

R156. Commerce, Occupational and Professional Licensing.
R156-60. Mental Health Professional Practice Act Rule.
R156-60-102. 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) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 [~~or Fourth Edition: DSM-IV~~]published by the American Psychiatric Association;

(b) [~~2013~~]2015 ICD-[~~9~~]10-CM for Physicians, [~~Volumes 1 and 2~~]Professional Edition published by the American Medical Association; or

(c) ICD-10-CM [~~2013~~]2019: The Complete Official Draft Code Set published by the American Medical Association.

(2) "Client or patient" means an individual who, when competent requests, or when not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist agrees verbally or in writing to provide professional services to that individual, or 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 Subsection 58-60-205(1)(f), 58-60-305(1)(f), and 58-60-405(1)(f), means:

(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 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.

([~~4~~]5) "Employee" means an individual who is or should be treated as a W-2 employee by the Internal Revenue Service.

([~~5~~]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.

([~~6~~]7) "On-the-job training program" means a program that:

(a) is applicable 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 by a qualified individual licensed under this chapter which includes supervision meetings on at least a weekly basis when the supervisee and supervisor are physically present in the same room at the same time.

R156-60-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) when providing services remotely:

([~~1~~]a) failing to practice according to professional standards of care in the delivery of services remotely;

([~~2~~]b) failing to protect the security of electronic, confidential data and information; or

([~~3~~]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.

KEY: licensing, mental health, therapists
Date of Enactment or Last Substantive Amendment: [~~September 21, 2015~~]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.):	**R156-61**	**Filing No. 52388**

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 East 300 South	
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:**
Larry Marx	801-530-6254	lmarx@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Psychologist Licensing Act Rule

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

After careful consideration of the numerous individual comments submitted regarding the Division of Occupational and Professional Licensing's (Division) first drafts of a rule regulating conversion therapy, Governor Herbert has directed the Division to file this rule amendment. The previous drafts were published as DAR File No. 43994 in the September 1, 2019, issue of the Utah State Bulletin, Vol. 2019, No. 17, at pages 13 -18, and DAR File No. 44032 in the September 15, 2019, issue of the Utah State Bulletin Vol. 2019, No. 18, at pages 21-25. This current rule filing takes into account input from many stakeholders on specific, technical aspects of the language in the previous drafts, and has been created around the carefully crafted and effective language of H.B. 399, passed in the 2019 General Session.

4. Summary of the new rule or change:

In Section R156-61-102, the proposed amendments to this section update references, and define the term "conversion therapy".

In Section R156-61-502, the proposed amendments to this section add to the definition of unprofessional conduct "providing conversion therapy to a patient or client who is younger than 18 years old", and specify that this definition does not apply to a clergy member or religious counselor who is acting substantially in a pastoral or religious capacity and not in the capacity of a psychologist, or to a parent or grandparent who is a psychologist and who is acting substantially in the capacity of a parent or grandparent and not in the capacity of a psychologist. The proposed amendments also update references.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division estimates that these proposed amendments may result in a potential increase of two additional complaints of unprofessional conduct each year, requiring two investigations consisting of approximately 20 hours per investigation. This may result in a cost to Division investigations of approximately $1,000 per fiscal year ongoing. The amendments are not expected to impact existing Division practices or procedures, or other state practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any state agencies that may be acting as employers of licensed psychologists to experience any measurable fiscal impacts. Except as described above, the Division estimates that these proposed amendments will have no measurable impact on state government revenues or expenditures, beyond a minimal cost to the Division of approximately $75 to disseminate the rule once the proposed amendments are made effective.

B) Local governments:

The Division estimates that these proposed amendments will have no measurable impact on local governments' revenues or expenditures. None of these amendments are expected to impact local governments' practices or procedures. Additionally, as described below in the analysis for small businesses and non-small businesses, the Division does not expect any local governments that may be acting as employers of licensed psychologists to experience any measurable fiscal impacts.

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

These proposed amendments will regulate licensed psychologists practicing in Utah, which may indirectly affect the estimated 1,132 small businesses in Utah comprising establishments of licensees engaged in the practice of psychology, or who may employ licensed psychologists, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for small businesses.

First, the amendments update the rule in accordance with input from multiple stakeholders and clear practice guidelines and position statements already existing in the industry, including from the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, and the Substance Abuse and Mental Health Services Administration. The practices of most small businesses are, or should be, already consistent with existing professional practice guidelines and position statements.

Second, the proposed amendments will only affect licensees who violate the rules and are disciplined for unprofessional conduct, and as described below for other persons it is estimated that for the typical licensee, the proposed amendments will have no direct or indirect fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most small businesses will never be impacted.

Finally, although a small business employing a licensee who is disciplined for unprofessional conduct may face indirect financial costs for such noncompliance, it is impossible to estimate what such indirect costs might be with any accuracy at present, not only because any such violations are unforeseeable, but because any indirect costs from such unforeseen violations that any small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

In sum, the scope of these proposed amendments is so narrow that they will not affect the vast majority of small businesses, and will not result in a measurable fiscal impact to small businesses.

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

These proposed amendments will regulate licensed psychologists practicing in Utah, which may indirectly affect the estimated 72 non-small businesses in Utah comprising establishments of licensees engaged in the practice of psychology or who may employ licensed psychologists, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses.

First, the amendments update the rule in accordance with input from multiple stakeholders and clear practice guidelines and position statements already existing in the industry, including from the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, and the Substance Abuse and Mental Health Services Administration. The practices of most non-small businesses are, or should be, already consistent with existing professional practice guidelines and position statements.

Second, the proposed amendments will only affect licensees who violate the rules and are disciplined for unprofessional conduct, and as described above for other persons, it is estimated that for the typical licensee, the proposed amendments will have no direct or indirect fiscal impact. Accordingly, any impact from non-compliance will never be uniformly felt across the industry, and most non-small businesses will never be impacted.

Finally, although a non-small business employing a licensee who is disciplined for unprofessional conduct may face indirect financial costs for such noncompliance, it is impossible to estimate what such indirect costs might be with any accuracy at present, not only because any such violations are unforeseeable, but because any indirect costs from such unforeseen violations that any non-small business may potentially experience from any potential sanctions will vary widely depending on the unique characteristics of the employer and the individual characteristics and actions of each licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

In sum, the scope of these proposed amendments is so narrow that they will not affect the vast majority of non-small businesses, and will not result in a measurable fiscal impact 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 approximately 1,058 licensed psychologists and 36 licensed psychology residents in Utah that will be affected by these proposed amendments. No measurable fiscal impact to these persons is expected.

First, the proposed amendments will only affect licensees who violate the rules and are sanctioned, so that most licensees will never be impacted. The amendments update this rule in accordance with clear practice guidelines and position statements already existing in the industry, and the practices of most licensees are or should be already consistent with existing professional practice guidelines and position statements.

Further, the goal of the rule is to provide a deterrent, such that there is a $0 net impact on all parties involved and minimal occasions to sanction a licensee for noncompliance. Therefore, for the typical licensee, the proposed amendments are expected to have no direct or indirect fiscal impact.

Second, although a licensee who is disciplined for unprofessional conduct may experience a fiscal impact, it is impossible to estimate what such costs might be with any accuracy at present, both because they would apply only in cases of unforeseeable violations, and because any potential costs would depend on the unique characteristics and actions of each individual licensee. This relevant data is unavailable and the cost of acquiring any such data is prohibitively expensive.

F) Compliance costs for affected persons:

As described above for other persons, the Division does not anticipate any compliance costs for any affected persons from these proposed amendments.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$1,075	$1,000	$1,000
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$1,075**	**$1,000**	**$1,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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:	**($1,075)**	**($1,000)**	**($1,000)**

H) Department head sign-off on regulatory impact:

I have reviewed the proposed filing for the above-referenced rule and considered the fiscal impact that these rule amendments may have on businesses. I direct that my comments about the rule's fiscal impact on businesses be inserted at the appropriate place on the notice form to be filed with the Office of Administrative Rules for publication of this rulemaking action. Francine A. Giani, Executive Director, Department of Commerce

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

In Section R156-61-102, the proposed amendments to this section update references, and define the term "conversion therapy."

In Section R156-61-502, the proposed amendments to this section add to the definition of unprofessional conduct "providing conversion therapy to a patient or client who is younger than 18 years old," and specify that this definition does not apply to a clergy member or religious counselor who is acting substantially in a pastoral or religious capacity and not in the capacity of a psychologist, or to a parent or grandparent who is a psychologist and who is acting substantially in the capacity of a parent or grandparent and not in the capacity of a psychologist.

Small Businesses (less than 50 employees): These proposed amendments will regulate licensed psychologists practicing in Utah, which may indirectly affect the estimated 1,132 small businesses in Utah comprising establishments of licensees engaged in the practice of psychology or who may employ licensed psychologists, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, and 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for small businesses.

Non-Small Businesses (50 or more employees): These proposed amendments will regulate licensed psychologists practicing in Utah, which may indirectly affect the estimated 72 non-small businesses in Utah comprising establishments of licensees engaged in the practice of psychology or who may employ licensed psychologists, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, and 624190). However, these proposed amendments are not expected to result in any measurable fiscal impact for non-small businesses.
B) Name and title of department head commenting on the fiscal impacts:
Francine A. Giani, 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 58-61-101

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)	Ethical Principles of Psychologists and Code of Conduct
Publisher	American Psychological Association (APA)
Issue, or version	January 1, 2017

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)	ASPPB Code of Conduct
Publisher	Association of State and Provincial Psychology Boards (ASPPB)
Date Issued	January 1, 2018

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:**	11/27/2019

R156. Commerce, Occupational and Professional Licensing.
R156-61. Psychologist Licensing Act Rule.
R156-61-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the following:

(a) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition: DSM-5 [~~or Fourth Edition: DSM-IV~~]published by the American Psychiatric Association;

(b) [~~2013~~]2015 ICD-[~~9~~]10-CM for Physicians, [~~Volumes 1 and 2~~]Professional Edition published by the American Medical Association; or

(c) ICD-10-CM [~~2013~~]2019: The Complete Official Draft Code Set published by the American Medical Association.

(2) "CoA" means Committee on Accreditation of the American Psychological Association.

(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 Subsection 58-61-304(1)(f), means:

(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 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 40 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.

([4]5) "On-the-job training program approved by the Division", as used in Subsection 58-61-301(1)(b), means a program that meets the standards established in Section R156-61-601.

([~~5~~]6)(a) "Predoctoral internship" refers to a formal training program that meets the minimum requirements of the Association of Psychology Postdoctoral and Internship Centers (APPIC) offered to culminate a doctoral degree in clinical, counseling, or school psychology.

(b) A training program may be a full-time one year program or a half-time two year program.

([~~6~~]7)(a) "Program accredited by the CoA", as used in Subsections R156-61-302a(1), means a psychology department program that, as of the date on which a student completes a doctoral psychology degree program:

(i) has obtained an accreditation from the CoA; or

(ii)(A) has applied to the CoA for accreditation;

(B) has been approved by the CoA for a site visit, which is to occur within the ensuing six years; and

(C) has not previously been denied accreditation by the CoA.

([~~7~~]8)(a) "Program of respecialization", as used in Subsection R156-61-302a(3), is a formal program designed to prepare someone with a doctoral degree in psychology with the necessary skills to practice psychology.

(b) The respecialization activities shall include substantial requirements that are formally offered as an organized sequence of course work and supervised practicum leading to a certificate (or similar recognition) by an educational body that offers a doctoral degree qualifying for licensure in the same area of practice as that of the certificate.

(9)(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

([~~8~~]10) "Qualified faculty", as used in Subsection 58-1-307(1)(b), means a university faculty member who provides pre-doctoral supervision of clinical or counseling experience in a university setting who:

(i) is licensed in Utah as a psychologist; and

(ii) is training students in the context of a doctoral program leading to licensure.

([~~9~~]11) "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

[~~(10)~~](a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61-304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

R156-61-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, [~~June 1, 2010~~]January 1, 2017 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, [~~2005~~]January 1, 2018 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

(4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(5) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(6) failing to establish and maintain appropriate professional boundaries with a client or former client;

(7) 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;

(8) engaging in sexual activities or sexual contact with a client with or without client consent;

(9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(10) 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 could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;

(11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;

(12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(14) 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;

(15) exploiting a client for personal gain;

(16) using a professional client relationship to exploit a client or other person for personal gain;

(17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(19) failure to cooperate with the Division during an investigation

(20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience;

(21) supervising a residency program of an individual who is not certified as a psychology resident; [~~or~~]

(22) when 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

(23)(a) providing conversion therapy to a patient or client who is younger than 18 years old; and

(b) Subsection (23)(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 psychologist; or

(ii) a parent or grandparent who is a psychologist and who is acting substantially in the capacity of a parent or grandparent and not in the capacity of a psychologist.

KEY: licensing, psychologists
Date of Enactment or Last Substantive Amendment: [~~June 15, 2015~~]2020
Notice of Continuation: September 18, 2018
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-61-101

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-100**	**Filing No. 52356**

Agency Information

1. Department:	Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
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:
Definitions for Utah State Board of Education (Board) Rules
3. Purpose of the new rule or reason for the change:
This change is being proposed because Utah State Board of Education (Board) needs a consistent definition of "social emotional learning."
4. Summary of the new rule or change:
This rule defines the term "social emotional learning" for all rules in Title R277. Education, Administration.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have fiscal impact on state government revenues or expenditures. It defines social emotional learning to improve consistency of its incorporation in Utah schools.

B) Local governments:

This rule change is not expected to have material impacts on local governments' revenues or expenditures. It defines social emotional learning to improve consistency of its incorporation in Utah schools. Local education agencies (LEAs) may need to update rules to align local definitions with this new definition in rule; however, these are activities LEAs can accomplish using existing resources.

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

This rule change is not expected to have material fiscal impacts on small businesses' revenues or expenditures. It defines social emotional learning to improve consistency of its incorporation in Utah schools. LEAs may contract with small businesses in the state to improve social emotional learning. However, the definition adopted in rule aligns with the definition from the Collaborative for Academic, Social, and Emotional Learning (CASEL), which is widely known and utilized within the field. Therefore, this rule change is not expected to have material fiscal impacts on small businesses within the state.

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 (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 impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It defines social emotional learning to improve consistency of its incorporation in Utah schools. LEAs may contract with these persons to improve social emotional learning. However, the definition adopted in rule aligns with the definition from the CASEL, which is widely known and utilized within the field. Therefore, this rule change is not expected to have material fiscal impacts on persons other than small businesses, businesses, or local government entities.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, 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 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.
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):		
Utah Constitution Article X, Section 3	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:	01/14/2019

10. This rule change MAY become effective on:	01/21/2019
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 of Policy	Date:	11/15/2019

R277. Education, Administration.
R277-100. Definitions for Utah State Board of Education (Board) Rules.
R277-100-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(2) The purpose of this rule is to provide definitions that are used in the Board rules beginning with R277.

R277-100-2. Definitions.

(1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.

(2) "Agency" means:

(a) an entity governed by the Board;

(b) an LEA; or

(c) a grant sub-recipient.

(3) "Board" means the State Board of Education.

(4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53G, Chapter 5, Charter Schools, and Board rule.

(5) "Comprehensive dropout intervention and prevention program" means a program that:

(a) addresses needs of students who are not succeeding in a traditional school environment;

(b) provides targeted instruction that increases student credit-earning rates toward graduation; and

(c) partners with community entities to provide a continuum of services with the focus of preparing students for life after high school.

([~~5~~]6) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

([~~6~~]7) "Dual enrollment student" means a student who:

(a) is enrolled simultaneously in:

(i) a private school or home school; and

(ii) a public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which the LEA provides instruction.

([~~7~~]8) "Educator" means an individual licensed under Section 53E-6-201 and who meets the requirements of Board rule.

(9) "ESSA" or the "Every Student Succeeds Act" means the Congressional act, which reauthorized the Elementary and Secondary Education Act of 1965, which is found at 20 U.S.C. 6301, et seq.

([~~8~~]10)(a) "Evaluate" or "review" means to observe and assess a program receiving state or federal funds with an objective of making recommendations, if appropriate, for necessary changes or improvement.

(b) An "evaluation" or "review" may include providing training and technical assistance on program-related matters and performing on-site reviews of program operations.

([~~9~~]11)(a) "External audit" means an appraisal activity established under the direction of an individual or entity outside of the subject agency to examine and evaluate the adequacy and effectiveness of:

(i) agency control systems;

(ii) compliance;

(iii) performance; and

(iv) financial position.

(b) An external audit is conducted in accordance with current professional and industry technical standards, as applicable, for external audits.

(1[~~0~~]2)(a) "Home school student" means a student who:

(a) attends a home school pursuant to Section 53G-6-204; and

(b) is not counted by an LEA in membership for purposes of generating state or federal funding.

(1[~~1~~]3) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

(1[~~2~~]4) "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

(1[~~3~~]5)(a) "Internal audit" means an independent appraisal activity established within an agency as a control system to examine and objectively evaluate the adequacy and effectiveness of other internal control systems within the agency.

(b) An "internal audit" is conducted in accordance with the current:

(i) International Standards for the Professional Practice of Internal Auditing; or

(ii) Government Auditing Standards, issued by the Comptroller General of the United States.

(1[~~4~~]6)(a) "LEA" or "local education agency" means a school district or charter school.

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(1[~~5~~]7)(a) "LEA governing board" means:

(i) for a school district, a local school board; and

(ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

([~~16~~]18)(a) "Monitor" or "oversee" means to formally supervise, inspect, or examine the compliance, performance, or finances of a program receiving state or federal education funding.

(b) A monitoring or oversight program may include:

(i) review of financial and performance reports required of the subject program;

(ii) follow-up to ensure the subject program takes timely and appropriate actions to correct identified deficiencies;

(iii) supervising remedial action recommended by audit or monitoring findings or required by Board rule; and

(iv) any function performed in an evaluation or review.

([~~17~~]19) "Parent" means a parent or guardian who has established residency of a child under Sections 53G-6-302, 53G-6-303, or 53G-6-402, or another applicable Utah guardianship provision.

([~~18~~]20) "Plan for College and Career Readiness" or "SEOP" means a student education occupation plan for college and career readiness that is a developmentally organized intervention process that includes:

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

(21) "Preschool" means a school in which all the students enrolled are pre-kindergarten.

([~~19~~]22)(a) "Private school student" means a student who:

(a) attends a private school; and

(b) is not counted by an LEA in membership for purposes of generating state or federal funding.

(23) "Program" means an instructional environment that does not meet the criteria to be classified a school, as described in Subsection (26).

(2[~~0~~]4) "Public school student" means a student who:

(a) attends an LEA governed public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding.

(25) "School" means an instructional environment that:

(a) is governed by an LEA board;

(b) has an assigned administrator;

(c) has enrolled students that generate average daily membership hours during the school year;

(d) has assigned instructional staff;

(e) provides instruction in the Utah core standards;

(f) has one or more grade groups in the range from kindergarten through grade 12; and

(g) is not a program for students enrolled in another public school.

(26) "Social emotional learning" or "SEL" means the process through which students acquire and effectively apply the knowledge, attitude, and skills necessary to:

(a) understand and manage emotions;

(b) set and achieve positive goals;

(c) feel and show empathy for others;

(d) establish and maintain positive relationships;

(e) make responsible decisions; and

(f) self-advocate.

(2[~~1~~]7) "Split enrollment student" means a student who is:

(a) regularly enrolled at two schools within two LEAs at the same time;

(b) eligible for graduation and other services at both schools; and

(c) subject to the split enrollment provisions of R277-419, counted by each LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which each LEA provides instruction.

([~~22~~]28) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53G-5-201.

([~~23~~]29) "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

[~~(24)~~](30) "USDB" means the Utah Schools for the Deaf and the Blind.

KEY: Board of Education, rules, definitions
Date of Enactment or Last Substantive Amendment: [~~March 13, 2019~~]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.):	**R277-324**	**Filing No. 52357**

Agency Information

1. Department:	Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
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:

Paraprofessional/Paraeducator Programs, Assignments, and Qualifications

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

This new rule is largely the same as the repealed Rule R277-524. It is being created to continue the existing language of Rule R277-524. But, makes all the stylistic correction to that language to ensure it is in compliance with the rulewriting manual. The renumbering will allow for this rule to be moved to a different part of Title R277 that is more in line with the content of this rule. (EDITOR'S NOTE: The proposed repeal of Rule R277-524 is under Filing No. 52358 in this issue, December 15, 2109, of the Bulletin.)

4. Summary of the new rule or change:

This new rule outlines the requirements that a local education agency (LEA) must follow to employ paraprofessionals within the LEA. These requirements include the education, qualifications, experience, and approved activities that a paraprofessional need and can participate in. This rule is identical in content to repealed Rule R277-524 with stylistic updates.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule is not expected to have any fiscal impact on state government revenues or expenditures. It includes language from Rule R277-524 and incorporates formatting and technical changes to comply with the rulewriting manual. The original edits proposed for Rule R277-524 are now reflected in this new rule.

B) Local governments:

This rule is not expected to have any material impact on local governments' revenues or expenditures. It includes language from Rule R277-524 and incorporates formatting and technical changes to comply with the rulewriting manual. The original edits proposed for Rule R277-524 are now reflected in this new rule.

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

This rule is not expected to have any material fiscal impact on small businesses' revenues or expenditures. It includes language from Rule R277-524 and incorporates formatting and technical changes to comply with the rulewriting manual. The original edits proposed for Rule R277-524 are now reflected in this new 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 (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 is not expected to have any material fiscal impact on the revenues or expenditures for persons other than small businesses, businesses, or local government entities. It includes language from Rule R277-524 and incorporates formatting and technical changes to comply with the rulewriting manual. The original edits proposed for Rule R277-524 are now reflected in this new rule.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, 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 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 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):

Utah Constitution Article X, Section 3	Subsection 53F-2-411(4)	Subsection 53E-3-501(1)(a)(i)
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:	01/14/2019

10. This rule change MAY become effective on:	01/21/2019

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 of Policy	**Date:**	11/15/2019

R277. Education, Administration.

R277-324. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications.

R277-324-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-3-501(1)(a)(i), which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and

(d) Subsection 53F-2-411(4), which requires the Board to establish a rule that creates the funding distribution for money appropriated to paraeducator programs.

(2) The purpose of this rule is to:

(a) designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals;

(b) establish the formula for distribution of Paraeducator funding under Section 53F-2-411 to eligible schools; and

(c) provide minimum standards for use of funds and reporting requirements.

R277-324-2. Definitions.

(1) "Direct supervision of a licensed teacher" means:

(a) the teacher prepares the lesson and plans the instruction support activities the paraprofessional carries out, and the teacher evaluates the achievement of the students with whom the paraprofessional works; and

(b) the paraprofessional works in close and frequent proximity with the teacher.

(2) "Eligible school," means the same as the term is defined in Subsection 53F-2-411(1)(a).

(3) "Paraeducator funding" means supplemental state funding provided under Section 53F-2-411 to Title I schools identified as in need of improvement under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801 to hire additional paraeducators to assist students in achieving academic success.

(4) "Paraprofessional" or "paraeducator" means the same as the term is defined in Subsection 53F-2-411(1)(b).

R277-324-3. Appropriate Assignments or Duties for Paraprofessionals.

Paraprofessionals may:

(1) provide individual or small group assistance or tutoring to students under the direct supervision of a licensed teacher during times when students would not otherwise be receiving instruction from a teacher;

(2) assist with classroom organization and management, such as organizing instructional or other materials;

(3) provide assistance in computer laboratories;

(4) conduct parental involvement activities;

(5) provide support in library or media centers;

(6) act as translators; or

(7) provide supervision for students in non-instructional settings.

R277-324-4. Requirements for Paraprofessionals.

(1) Paraprofessionals hired before January 6, 2002 who function under Subsection R277-504-3(1), and work in programs supported by Title I funds shall meet at least one of the following requirements:

(a) complete at least two years (minimum of 48 semester hours) at an accredited higher education institution;

(b) obtain an associates (or higher) degree from an accredited higher education institution; or

(c) satisfy a rigorous state assessment, approved by the Board or LEA governing board, that demonstrates:

(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

(2) Paraprofessionals hired after January 6, 2002 in programs supported by Title I funds shall meet at least one of the following requirements:

(a) earn a secondary school diploma or a recognized equivalent;

(b) complete at least two years (minimum of 48 semester hours) at an accredited higher education institution;

(c) obtain an associates (or higher) degree from an accredited higher education institution; or

(d) has satisfy a rigorous state or local assessment about the individual's knowledge of an ability to assist students in core courses under state or federal law.

(3) The individual shall satisfactorily complete a criminal background check consistent with Section 53G-11-402 and Rule R277-516.

R277-324-5. Variances.

The provisions of this rule do not apply to:

(1) a paraprofessional who is proficient in English and a language other than English who provides translator services; or

(2) a paraprofessional who is involved as a parent or similar responsibilities.

R277-324-6. Use of Funds.

An LEA may use Title I funds in addition to other funds available and identified by the LEA to support ongoing training and professional development for paraprofessionals.

R277-324-7. Funding Distribution.

The Superintendent shall divide the funds provided under Section 53F-2-411 equally to eligible schools.

R277-324-8. Responsibilities of Eligible Schools Receiving Paraeducator Funding.

(1) A paraeducator hired with paraeducator funding shall:

(a) meet the qualifications described in Section R277-324-4; and

(b) provides additional aid in the classroom to assist students in achieving academic success.

(2) Schools accepting these funds shall provide an annual report as directed by the Superintendent that includes the following:

(a) the number of paraeducators hired with program money;

(b) school funding, in addition to funds provided under this rule, the school used to supplement program money to hire paraeducators; and

(c) accountability measures, including student test scores and other student assessment elements for students served by the program.

KEY: paraprofessional qualifications
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(a)(i); 53F-2-411(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-400**	**Filing No. 52355**

Agency Information

1. Department:	Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
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:

School Facility Emergency and Safety

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

This rule is updated to reflect the most current practices around evidence-based interventions through multi-disciplinary teams. This rule filing also updates the protocols for responding to community-based emergencies.

4. Summary of the new rule or change:

This rule filing creates a new requirement for schools with resources available to establish multi-disciplinary teams to address preventative measures for individual students. This rule filing also adds new protocols for a school to utilize in the school building when responding to an emergency in the community.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are not expected to have a material fiscal impact on state government revenues or expenditures. They require local education agencies (LEAs) to have in place crisis response protocols, create processes to notify staff during a crisis in a timely manner, and support students during and after a crisis. The State Board of Education (Board) provides training to LEAs on best practices related to these requirements. The agency believes existing resources are sufficient to carry out these state-level activities.

B) Local governments:

These rule changes may have a material impact on local governments' revenues or expenditures. They require LEAs to have in place crisis response protocols, create processes to notify staff during a crisis in a timely manner, and support students during and after a crisis. The Board provides training to LEAs on best practices related to these requirements, helping to minimize training-related costs for LEAs. Since crisis response systems and protocols vary significantly by LEA, the agency cannot estimate these fiscal impacts.

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

These rule changes are not expected to have a direct fiscal impact on small businesses' revenues or expenditures. They require LEAs to have in place crisis response protocols, create processes to notify staff during a crisis in a timely manner, and support students during and after a crisis. The Board provides training to LEAs on best practices related to these requirements. LEAs may contract with small businesses in the state to meet the new requirements under the rule changes. However, these contracts and activities are at an LEA's discretion. Therefore, these rule changes are not expected to have direct fiscal impact on small businesses' revenues or expenditures.

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 (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. These proposed rule changes are not expected to have any fiscal impact on

non-small businesses' revenues or expenditures because there are no applicable non-small businesses and they do 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***)**:**

These rule changes are not expected to have a direct fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. They require LEAs to have in place crisis response protocols, create processes to notify staff during a crisis in a timely manner, and support students during and after a crisis. The Board provides training to LEAs on best practices related to these requirements. LEAs may contract with persons other than small businesses, businesses, or local government entities in the state to meet the new requirements under these rule changes. However, these contracts and activities are at an LEA's discretion. Therefore, these rule changes are not expected to have a direct fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, 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. These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable Non-small businesses and they do not require any expenditures of or generate revenue for non-small businesses. These rule changes have 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):

Utah Constitution Article X, Section 3	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:	01/14/2019

10. This rule change MAY become effective on:	01/21/2019

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 of Policy	**Date:**	11/15/2019

R277. Education, Administration.
R277-400. School Facility Emergency and Safety.
R277-400-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(2) The purpose of this rule is to:

(a) establish general criteria for emergency preparedness and emergency response plans; and

(b) direct an LEA to:

(i) develop prevention, intervention, and response measures; and

(ii) prepare staff and students to respond promptly and appropriately to school emergencies[~~.~~]; and

(c) protect the health and safety of all students.

R277-400-2. Definitions.

(1) "Crisis" means an event that leads to physical or emotional distress;

(2) "Crisis Response" means a protocol for the actions to take and individuals to involve following a crisis event.

(3) "Elementary School" means a school with grades K-6.

([~~1~~]4) "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance that could reasonably endanger the safety of school children or disrupt the operation of the school.

([~~2~~]5) "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect school property, or regulate the operation of schools during an emergency occurring within an LEA or a school.

([~~3~~]6) "Emergency Response Plan" means a plan developed by an LEA or a school to prepare and protect students and staff in the event of school violence emergencies.

([4]7) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

([~~5~~]8) "Plan(s)" means an LEA's or a school's emergency preparedness and emergency response plan.

(9) "Safe Messaging" means strategies and styles for communicating about the topic of suicide.

(10) "SafeUT" means the crisis line established in Section 53B-17-1202;

(11) "Secondary School" means a school with any of the grades 7-12.

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

(1) By July 1 of each year, an LEA shall certify to the Superintendent that the LEA's emergency preparedness and emergency response plan has been:

(a) practiced at the school level; and

(b) presented to and reviewed by its teachers, administrators, students and guardians, local law enforcement, and public safety representatives consistent with Subsection 53G-4-402(18).

[~~(2) An LEA shall reference the LEA's Emergency Response plan as part of an LEA's annual application for state or federal Safe and Drug Free School funds.~~]

([~~3~~]2)(a) An LEA's plans shall be designed to meet individual school needs and features.

(b) An LEA may direct schools within the LEA to develop and implement individual plans.

([4]3)(a) An LEA shall appoint a committee to prepare or modify plans to satisfy this Rule R277-400 and Section 53G-4-402(18).

(b) The committee shall consist of appropriate school and community representatives, which may include:

(i) school and LEA administrators;

(ii) teachers;

(iii) parents;

(iv) community and municipal governmental officers; and

(v) fire and law enforcement personnel.

(c) The committee shall include governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels.

([~~5~~]4) An LEA shall review plans at least once every three years.

([~~6~~]5) The Superintendent shall develop Emergency Response Plan models under Subsection 53G-4-402(18)(c).

R277-400-4. Notice and Preparation.

(1) Each school shall file a copy of plans required by this Rule R277-400 with the LEA superintendent or charter school director.

(2) At the beginning of each school year, an LEA or school shall provide a written notice to parents and staff of sections of an LEA's and school's plans that are applicable to that school.

(3) A school shall designate an Emergency Preparedness/Emergency Response week each year before April 30 which shall have activities that may include:

(a) community, student and teacher awareness;

(b) emergency preparedness or response training; or

(c) other activities as outlined in Sections R277-400-7 and 8.

(4) A school's emergency response plan shall include procedures to notify students, to the extent practicable, who are off campus at the time of a school violence emergency consistent with Subsection 53G-4-402(18)(b)(v).

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

(1) An LEA's or a school's plan shall include:

(a) procedures to ensure reasonably adequate educational services and supervision are provided for during an emergency including an extended emergency situation;

(b) evacuation procedures that provide reasonable care and supervision of a student until the student is released to a responsible party.

(i) An LEA or school shall not release a student grade 8 or below[~~who is under 15 years old~~] unless a parent or other responsible person has been notified and assumed responsibility for the student.

(ii) A school official may release a student grade 9 and above[~~who is 15 years old or older~~] without such notification if authorized by the LEA or school and the school official determines:

(A) the student is reasonably responsible; and

(B) notification is not practicable.

(c)(i) as determined by a local board or governing authority, procedures regarding access to public school buildings by:

(A) students;

(B) community members;

(C) lessees;

(D) invitees; and

(E) others.

(ii) procedures regarding access:

(A) may include restricted access for some individuals;

(B) shall address building access during identified time periods; and

(C) shall address possession and use of school keys by designated administrators and employees.

(d) resources and materials available for emergency training for an LEA's employees.

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

(1) An LEA's or a school's plan shall provide procedures for a student to receive age appropriate emergency preparedness training including:

(a) rescue techniques;

(b) first aid;

(c) safety measures appropriate for specific emergencies; and

(d) other emergency skills.

(2) During each school year, an elementary school shall conduct emergency drills at least once each month during school time.

(3) An LEA shall alternate one of the following practices or drills with required fire drills:

(a) shelter in place;

(b) earthquake;

(c) lock down or lock out for violence;

(d) bomb threat;

(e) civil disturbance;

(f) flood;

(g) hazardous materials spill;

(h) utility failure;

(i) wind or other types of severe weather;

(j) parent and student reunification;

(k) shelter and mass care for natural and technological hazards; or

(l) an emergency drill appropriate for the particular school location.

(4)(a) Fire drills shall include the complete evacuation of all persons from the school building or the portion of the building used for educational purposes.

(b) An LEA or a school may make an exception for the staff member responsible for notifying the local fire emergency contact and handling emergency communications.

(5) Each school shall have one fire drill in the first 10 days of the regular school year and one fire drill every other month during the school year.

(6) A secondary school shall conduct all drills in accordance with Section 15A-5-202.5

(7) An LEA shall notify the local fire department prior to each fire drill if notice is required by the local fire chief.

(8) When a fire alarm system is provided, an LEA shall initiate by activation of the fire alarm system.

(9) Schools that include both elementary and secondary grades in the school shall comply with the elementary emergency drill requirements.

(10) In cooperation with the LEA's local law enforcement agency, an LEA shall:

(a) establish a parent and student reunification plan for each school within the LEA;

(b) as part of the LEA's registration and enrollment process, annually provide parents a summary of parental expectations and notification procedures related to the LEA's parent and student reunification plan; and

(c) require each school within the LEA to publish the information described in Subsection (12)(b) on the school's website.

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

(1) For purposes of emergency response review and coordination an LEA shall:

(a) provide an annual training for LEA and school building staff regarding an employee's roles, responsibilities, and priorities in the emergency response plan.

(b) require a school to conduct at least one annual drill for school emergencies in addition to the drills required under Section 15A-5-202.5 and R277-400-6 by October 1.

(c) require a school to review existing security measures and procedures within the school and make necessary adjustments as funding permits.

(d) develop standards and protections for participants and attendees at school-related activities, especially school-related activities off school property.

(2) An LEA or school shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

R277-400-8. Prevention and Intervention.

(1) An LEA shall provide a school comprehensive violence prevention and intervention strategies as part of a school's regular curriculum including:

(a) resource lessons and materials on anger management;

(b) conflict resolution; and

(c) respect for diversity and other cultures.

(2) As part of a violence prevention and intervention strategy in subsection (1), a school may provide age-appropriate

instruction on firearm safety including appropriate steps to take if a student sees a firearm or facsimile in school.

(3) An LEA shall also develop or incorporate to the extent resources permit;[~~student assistance programs including:~~]

(a) care teams;

[~~(b) school intervention programs; and~~

~~(c) interagency case management teams.~~]

(b) tiered student assistance programs;

(c) social-emotional learning;

(d) support though multi-disciplinary teams, such as care teams, that may:

(i) review school safety related data;

(ii) conduct threat assessments;

(iii) consult on case-specific interventions and disciplinary actions;

(iv) involve parents in the intervention process; and

(v) suggest referrals to resources as appropriate;

(4) An LEA's multi-disciplinary school team as described in Subsection R277-400-8(3) may include:

(a) administration personnel;

(b) local law enforcement or a school resource officer;

(c) a mental health professional; and

(d) a general education or special education teacher.

[~~(4)~~](5) In developing student assistance programs, an LEA may coordinate with other state agencies and the Superintendent.

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

(1) An LEA shall be able to respond to a school or community crisis by:

(a) developing a staff notification process to inform staff of a crisis in a timely manner;

(b) identifying and keeping record of:

(i) crisis response professionals who may assist in crisis response; and

(ii) resources and community partnerships for follow-up or intensive care after a crisis.

(c) adopting a student and parent notification policy that utilizes safe messaging; and

(d) establishing a multi-disciplinary team as described in Subsection R277-400-8(3) to identify interventions for students who may be highly impacted by a crisis.

(2) If an LEA has implemented SafeUT, the LEA shall identify one or more SafeUT liaisons who:

(a) provide information from SafeUT to relevant stakeholders;

(b) communicate with SafeUT concerning updates and feedback; and

(c) attend an annual SafeUT training provided by the Superintendent.

R277-400-[9]10. Cooperation With Governmental Entities.

(1) As appropriate, an LEA may enter into cooperative agreements with other governmental entities to establish proper coordination and support during emergencies.

(2)(a) An LEA shall cooperate with other governmental entities to provide emergency relief services.

(b) An LEA's or a school's plans shall contain procedures for assessing and providing the following for public emergency needs:

(a) school facilities;

(b) equipment; and

(c) personnel.

(3) A plan shall delineate communication channels and lines of authority within the LEA, city, county, and state.

(a) The Superintendent, is the chief officer for emergencies involving more than one LEA, or for state or federal assistance; and

(b) A local governing board, through its superintendent or director, is the chief officer for an LEA emergencies.

R277-400-11[0]. Fiscal Accountability.

(1) An LEA or a school plan shall address procedures for recording an LEA's funds expected for:

(a) emergencies;

(b) assessing and repairing damage; and

(c) seeking reimbursement for emergency expenditures.

R277-400-12[1]. School Carbon Monoxide Detection.

(1) A new educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 9, Sections 915 through 915.4.5

(2) An existing educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 11, Section 1103.9.

(3) Where required, an LEA shall provide a carbon monoxide detection system where a fuel-burning appliance, a fuel-burning fireplace, or a fuel-burning forced air furnace is present consistent with IFC 915.1.

(4) An LEA shall install each carbon monoxide detection system consistent with NFPA 720 and the manufacturer's instructions, and listed systems as complying with UL 2034 and UL 2075.

(5) An LEA shall install each carbon monoxide detection system in the locations specified in NFPA 720.

(6) A combination carbon monoxide smoke detector is an acceptable alternative to a carbon monoxide detection system if the combination carbon monoxide/smoke detector is listed consistent with UL 2075 and UL 268.

(7)(a) Each carbon monoxide detection system shall receive primary power from the building wiring if the wiring is served from a commercial source.

(b) If primary power is interrupted, a battery shall provide each carbon monoxide detection system with power.

(c) The wiring for a carbon monoxide detection system shall be permanent and without a disconnecting switch other than that required for over-current protection.

(8) An LEA shall maintain all carbon monoxide detection systems consistent with IFC 915 and NFPA 720.

(9) Performance-based alternative design of carbon monoxide detection systems is acceptable consistent with NFPA 720, Section 6.5.5.6.

(10) An LEA shall monitor carbon monoxide detection systems remotely consistent with NFPA 720.

(11) An LEA shall replace a carbon monoxide detection system that becomes inoperable or begins to produce end-of-life signals.

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

Date of Enactment or Last Substantive Amendment: [~~April 8, 2019~~]2020

Notice of Continuation: February 8, 2019

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-4-402(1)(b)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R277-524**	**Filing No. 52358**

Agency Information

1. Department:	Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
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:

Paraprofessional/Paraeducator Programs, Assignments, and Qualifications

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

This rule is being repealed because it is being replaced by the new proposed Rule R277-324. Please see Rule R277-324 for the updated version of this rule. (EDITOR'S NOTE: The proposed new Rule R277-324 is under Filing No. 52357 in this issue, December 15, 2109, of the Bulletin.)

4. Summary of the new rule or change:

This rule is being repealed in its entirety and the information moved into a rule of Title R277 that is more conducive to the content of this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule repeal is not expected to have any fiscal impact on state government revenues or expenditures. The original edits proposed for this rule are now reflected in the proposed new Rule R277-324.

B) Local governments:

This rule repeal is not expected to have any material impact on local governments' revenues or expenditures. The original edits proposed for this rule are now reflected in the proposed new Rule R277-324.

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

This rule repeal is not expected to have any material fiscal impacts on small businesses' revenues or expenditures. The original edits proposed for this rule are now reflected in the proposed new Rule R277-324.

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 (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 repeal 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 repeal is not expected to have any material fiscal impacts on the revenues or expenditures for persons other than small businesses, businesses, or local government entities. The original edits proposed for this rule are now reflected in the proposed new Rule R277-324.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0

Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, 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 repeal 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 repeal 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):

Utah Constitution Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(a)(i)

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:	01/14/2019

10. This rule change MAY become effective on:	01/21/2019

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 of Policy	**Date:**	11/19/2019

R277. Education, Administration.

~~**[R277-524. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications.**~~

~~**R277-524-1. Authority and Purpose.**~~

~~A. 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 gives the Board authority to adopt rules in accordance with its responsibilities, Subsection 53E-3-501(1)(a)(i), which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and NCLB, P.L. 107-110, Title 1, Sec. 1119 which requires that each local education agency receiving assistance under this part shall ensure that all paraprofessionals shall be appropriately qualified.~~

~~B. The purpose of this rule is to designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals hired before and after January 6, 2002 consistent with NCLB requirements.~~

~~C. This rule establishes the formula for distribution of Paraeducator funding under Section 53F-2-411 to eligible schools. The rule provides minimum standards for use of funds and reporting requirements.~~

R277-524-2. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB).

C. "Direct supervision of a licensed teacher" means:

(1) the teacher prepares the lesson and plans the instruction support activities the paraprofessional carries out, and the teacher evaluates the achievement of the students with whom the paraprofessional works; and

(2) the paraprofessional works in close and frequent proximity with the teacher.

D. "Eligible school," for purposes of this rule and the Paraeducator Funding Program, means a Title I school that is one of the state's lowest-performing Title I priority schools as defined by ESEA.

E. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

F. "Paraeducator funding" means supplemental state funding provided under Section 53F-2-411 to Title I schools identified as in need of improvement under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801 to hire additional paraeducators to assist students in achieving academic success.

G. "Paraprofessional" or "paraeducator" means an individual who works under the supervision of a teacher or other licensed/certificated professional who has identified responsibilities in the public school classroom.

R277-524-3. Appropriate Assignments or Duties for Paraprofessionals.

Paraprofessionals may:

A. provide individual or small group assistance or tutoring to students under the direct supervision of a licensed teacher during times when students would not otherwise be receiving instruction from a teacher.

B. assist with classroom organization and management, such as organizing instructional or other materials;

C. provide assistance in computer laboratories;

D. conduct parental involvement activities;

E. provide support in library or media centers;

F. act as translators;

G. provide supervision for students in non-instructional settings.

R277-524-4. Requirements for Paraprofessionals.

A. Paraprofessionals hired before January 6, 2002 who function under R277-504-3A, and working in programs supported by Title I funds shall satisfy one of the following:

(1) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(2) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(3) The individual has satisfied a rigorous state assessment, approved by the Board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate; or

(4) The individual has satisfied a rigorous local assessment, approved by the local board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

B. Paraprofessionals hired after January 6, 2002 in programs supported by Title I funds shall satisfy R277-524-4B(1)(2)(3) or (4).

(1) Individual shall have earned a secondary school diploma or a recognized equivalent; and

(2) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(3) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(4) The individual has satisfied a rigorous state or local assessment about the individual's knowledge of an ability to assist students in core courses under NCLB.

C. The individual shall satisfactorily complete a criminal background check consistent with Section 53G-11-402 and R277-516.

R277-524-5. Variances.

The provisions of this rule do not apply to:

A. paraprofessionals who are proficient in English and a language other than English who provide translator services; or

B. paraprofessionals who have only parental involvement or similar responsibilities.

R277-524-6. Use of Funds.

Local education agencies may use Title I funds in addition to other funds available and identified by the local education agency to support ongoing training and professional development for paraprofessionals.

R277-524-7. Board Responsibilities.

A. The Board shall annually distribute funds provided under Section 53F-2-411 to eligible Title I schools. The funds shall be divided equally among eligible schools.

B. The Board shall submit an annual report to the Public Education Appropriations Subcommittee on the implementation of this program.

R277-524-8. Responsibilities of Eligible Schools Receiving Paraeducator Funding.

A. Paraeducators hired with these funds shall meet the qualifications under R277-524-4.

B. Paraeducators hired with these funds shall provide additional aid in the classroom to assist students in achieving academic success as defined in R277-524-3A.

C. Schools that accept the Paraeducator Funding shall demonstrate, as required by USOE reporting, that funds are used to supplement other state and federal funds to provide paraeducator services.

D. Schools accepting these funds shall provide an annual report as directed by the USOE that includes the following:

(1) the number of paraeducators hired with program money;

~~(2) school funding, in addition to funds provided under this rule, the school used to supplement program money to hire paraeducators; and~~

~~(3) accountability measures, including student test scores and other student assessment elements for students served by the program.~~

~~**KEY: paraprofessional qualifications, NCLB**~~
~~**Date of Enactment or Last Substantive Amendment: May 8, 2014**~~
~~**Notice of Continuation: March 14, 2019**~~
~~**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(a)(i); P.L. 107-110, Title 1, Sec. 1119]**~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-609**	**Filing No. 52359**

Agency Information

1. Department:	Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
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:

Standards for LEA Discipline Plans and Emergency Safety Interventions

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

These changes are to bring this rule in compliance with H.B. 239 passed in the 2017 General Session by incorporating the juvenile justice reform language passed in that legislation.

4. Summary of the new rule or change:

The changes largely encompass adding language requiring local education agencies (LEAs) to utilize evidence based interventions and the least restrictive methods when considering discipline options. This rule filing also changes the language regarding the maximum about of time a student may be physically restrained by school staff.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are not expected to have any fiscal impact on state government revenues or expenditures. These changes were made to reflect current best practices for school discipline plans and interventions, and include restorative practices, positive behavior interventions and supports, and emergency safety interventions. These rule changes include LEAs adopting consistent processes to collect student discipline data and incident or infraction data in their plans. However, data collection itself was already a requirement. These changes are not expected to have an independent fiscal impact.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. These changes were made to reflect current best practices for school discipline plans and interventions, and include restorative practices, positive behavior interventions and supports, and emergency safety interventions. These rule changes include LEAs adopting consistent processes to collect student discipline data and incident or infraction data in their plans. However, data collection itself was already a requirement. These changes are not expected to have an independent fiscal impact.

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

These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because the rule is about LEA discipline plans and emergency safety interventions, and thus do not apply to small businesses.

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 (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. These proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and they do 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***)**:**

These rule changes are not expected to have any material fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. This rule is about LEA discipline plans and emergency safety interventions and thus does not apply to persons other than small businesses, businesses, or local government entities.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, 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. These proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and they do not require any expenditures of, or generate, revenue for non-small businesses.

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):

Utah Constitution Article X, Section 3	Section 53E-3-509	Section 53G-8-302
Subsection 53E-3-401(4)	Section 53G-8-702	Section 53G-8-202
Subsection 53E-3-501(1)(b)(v)		

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:	01/14/2019

10. This rule change MAY become effective on:	01/21/2019

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 of Policy	**Date:**	11/15/2019

R277. Education, Administration.
R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.
R277-609-1. 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)(b)(v), which requires the Board to establish rules concerning discipline and control;

(d) Section 53E-3-509, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction;

(e) Section 53G-8-702, which requires the Board to adopt rules regarding training programs for school principals and school resource officers;[~~ and~~]

(f) Section 53G-8-202, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards[~~.~~]; and

(g) Section 53G-8-302, which describes the instances when a school employee may use reasonable and necessary physical restraint.

(2)(a) The purpose of this rule is to outline requirements for school discipline plans, restorative practices and related policies.

(b) An LEA's written policies shall include provisions to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

R277-609-2. Definitions.

(1) "Discipline" includes:

(a) imposed discipline; and

(b) self-discipline.

(2) "Disruptive student behavior" includes:

(a) the grounds for suspension or expulsion described in Section 53G-8-205; and

(b) the conduct described in Subsection 53G-8-209(2)(b).

(3)(a) "Emergency safety intervention" or "ESI" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others.

(b) An "emergency safety intervention" is not for disciplinary purposes.

(4) "Emergency safety intervention committee" or "ESI Committee" means an emergency safety intervention committee described in Section R277-609-7.

(5) "Evidence-based" means the same as defined in Section 53G-8-211.

[~~(4)~~](6) "Functional Behavior Assessment" or "FBA" means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

[~~(5)~~](7) "Immediate danger" means the imminent danger of physical violence or aggression towards self or others, which is likely to cause serious physical harm.

[~~(6)~~](8) "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

[~~(7)~~](9) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

[~~(8)~~](10) "Physical restraint" has the same meaning as the defined in Section 53G-8-301[~~means personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely.~~]

[~~(9)~~](12) "Plan" means an LEA and school-wide written model for prevention and intervention addressing student behavior management, restorative practices, and discipline procedures for students.

(12) "Positive behavior interventions and support" means an implementation framework for maximizing the selection and use of evidence-based prevention practices along a multi-tiered continuum that supports the academic, social, emotional, and behavioral competence of a student.

[~~(10)~~](13) "Program" means an instructional or behavioral program[~~,~~] including[~~ a program~~]:

(a) [~~provided by~~]contracted services offered by private providers under the direct supervision of public school staff;

(b) a program that receives public funding; or

(c) a program for which the Board has regulatory authority.

[~~(11)~~](14) "Policy" means standards and procedures that include:

(a) the provisions of Section 53G-8-202 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that:

(i) defines hazing, bullying, and cyber-bullying;

(ii) prohibits hazing and bullying;

(iii) requires [~~annual discussion and~~]training regarding:[~~designed to~~]

(A) the prevention of hazing, bullying, cyber-bullying, and discipline[~~, and emergency safety interventions,~~] among school employees and students; and

(B) the use of restorative practices, positive behavior interventions and supports, and emergency safety interventions; and

(iv) provides for enforcement through employment action or student discipline.

[~~(12)~~](15) "Qualifying minor" means a school-age minor who:

(a) is at least nine years old; or

(b) turns nine years old at any time during the school year.

[~~(13)~~](16) "Restorative justice program" means the same as that term is defined in Section 53G-8-211.

(17) "Restorative practice" means the building and sustaining of relationships among students, school personnel, families and community members to build and strengthen social connections within communities and hold individuals accountable to restore relationships when harm has occurred.

[~~(14)~~](18) "School" means any public elementary or secondary school or charter school.

[~~(15) "School board" means:~~
~~(a) a local school board; or~~
~~(b) a local charter board.~~]

[~~(16)~~](19) "School employee" means:

(a) a school teacher;

(b) a school staff member;

(c) a school administrator; or

(d) any other person employed, directly or indirectly, by an LEA.

[~~(17)~~](20) "Seclusionary time out" means that a student is:

(a) placed in a safe enclosed area by school personnel in accordance with the requirements of Rules R392-200 and R710-4;

(b) purposefully isolated from adults and peers; and

(c) prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

[~~(18)~~](21) "Section 504 accommodation plan," required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

[~~(19)~~](22) "Self-Discipline" means a personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

[~~(20)~~](23) "Student with a qualifying offense" means a qualifying minor who committed an alleged class C misdemeanor, infraction, status offense on school property, or truancy.

R277-609-3. Incorporation of Least Restricted Behavioral Interventions (LRBI) Technical Assistance Manual by Reference.

(1) This rule incorporates by reference the LRBI Technical Assistance Manual, dated September 2015, which provides guidance and information in creating successful behavioral systems and supports within Utah's public schools that:

(a) promote positive behaviors while preventing negative or risky behaviors; and

(b) create a safe learning environment that enhances all student outcomes.

(2) A copy of the manual is located at:

(a) https://www.schools.utah.gov/file/d6715b0b-9125-4132-86d3-179d8629a895; and

(b) the Utah State Board of Education.

R277-609-4. LEA Responsibility to Develop Plans.

(1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, [~~and~~]school discipline and restorative practices.

(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.

(3) A plan described in Subsection (1) shall include:

(a) the definitions of Section 53G-8-210;

(b) written standards for student behavior expectations, including school and classroom management;

(c) effective instructional practices for teaching student expectations, including:

(i) self-discipline;

(ii) citizenship;

(iii) civic skills; and

(iv) [~~social skills~~]social emotional skills;

(d) systematic methods for reinforcement of expected behaviors;

(e) uniform and equitable methods for correction of student behavior;

(f) consistent processes to collect student discipline data and incident or infraction data, including collection of the number of days of student suspensions;

[~~(f)~~](g) uniform and equitable methods for at least annual school level data-based evaluations of efficiency and effectiveness;

[~~(g)~~](h) an ongoing staff development program related to development of:

(i) student behavior expectations;

(ii) effective instructional practices for teaching and reinforcing behavior expectations;

(iii) effective intervention strategies; and

(iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;

[~~(h)~~](i) procedures for ongoing training of appropriate school personnel in:

(i) crisis [~~intervention~~]management[~~training~~];

(ii) emergency safety interventions[~~professional development~~]; and

(iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;

[~~(i)~~](j) policies and procedures relating to the use and abuse of alcohol, [~~and~~]controlled substances, and other harmful trends by students;

[~~(j)~~](k) policies and procedures, consistent with requirements of Rule R277-613, related to:

(i) bullying;

(ii) cyber-bullying;

(iv) hazing; and

(v) retaliation;

[~~(k)~~](l) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:

(i) physical restraint, subject to the requirements of Section R277-609-5, except when the physical restraint is allowed as described in Subsection 53G-8-302(2);

(ii) prone, or face-down, physical restraint;

(iii) supine, or face-up, physical restraint;

(iv) physical restraint that obstructs the airway of a student or adversely affects a student's primary mode of communication;

(v) mechanical restraint, except:

(A) protective or stabilizing restraints;

(B) restraints required by law, including seatbelts or any other safety equipment when used to secure students during transportation; and

(C) any device used by a law enforcement officer in carrying out law enforcement duties;

(vi) chemical restraint, except as:

(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;

(vii) seclusionary time out, subject to the requirements of Section R277-609-5, except when a student presents an immediate danger of serious physical harm to self or others; and

(viii) for a student with a disability, emergency safety interventions written into a student's IEP, as a planned intervention, unless:

(A) school personnel, the family, and the IEP team agree less restrictive means [~~which meet circumstances described in Section R277-608-5~~]have been attempted;

(B) a FBA has been conducted; and

(C) a positive behavior intervention, [~~plan~~]based on data analysis has been written into the plan and implemented[~~.~~](;)

[~~(l)~~](m) direction for dealing with bullying and disruptive students;

[~~(m)~~](n) direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address student behavior, including students who engage in disruptive student behaviors as described in Section 53G-8-210;

[~~(n)~~](o) identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;

[~~(o)~~](p) identification of individuals who shall receive notices of disruptive and bullying student behavior;

[~~(p)~~](q) a requirement to provide for documentation of an alleged class B misdemeanor or a nonperson class A misdemeanor prior to referral of students with an alleged class B misdemeanor or a nonperson class A misdemeanor to juvenile court;

[~~(q)~~](r) strategies to provide for necessary adult supervision;

[~~(R)~~](s) a requirement that policies be clearly written and consistently enforced;

[~~(s)~~](t) notice to employees that violation of this rule may result in employee discipline or action;

[~~(t)~~](u) gang prevention and intervention policies in accordance with Subsection 53E-3-509(1);

[~~(u)~~](v) provisions that account for an individual LEA's or school's unique needs or circumstances, including:

(i) the role of law enforcement;

(ii) emergency medical services; and

(iii) a provision for publication of notice to parents and school employees of policies by reasonable means; and

(iv) a plan for referral for a student with a qualifying office to alternative school-related interventions, including:

(A) a mobile crisis outreach team, as defined in Section 78A-6-105;

(B) a receiving center operated by the Division of Juvenile Justice Services in accordance with Section 62A-7-104;

(C) a youth court; or

[~~(v)~~](w) a comparable restorative justice program.

(4) A plan described in Subsection (1) may include:

(a) the provisions of Subsection 53E-3-509(2); and

(b) a plan for training administrators and school resource officers in accordance with Section 53G-8-702.

R277-609-5. Physical Restraint and Seclusionary Time Out.

(1) When used consistently with an LEA plan under Subsection R277-609-4(1)[~~;~~]:

(a) a physical restraint must be immediately terminated when:

(i) a student is no longer an immediate danger to self or others; or

(ii) a student is in severe distress; and

(b) the use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria, as outlined in LEA policies, must be implemented.

(2) If a public education employee physically restrains a student, the school or the public education employee shall [~~immediately notify~~]provide notice as soon as reasonably possible and before the student leaves the school as described in Section R277-609-10[~~:~~

~~(a)~~] the student's parent[~~, or guardian; and~~

~~(b) school administration~~].

(3) A public education employee may not use physical restraint on a student for more than the shortest of the following before stopping, releasing, and reassessing the intervention used:

(a) the amount of time described in the LEA's emergency intervention training program;

(b) 30 minutes[~~.~~]; or

(c) when law enforcement arrives or reasonable in extreme circumstances.

[~~(4) In addition to the notice described in Subsection (2), if a public education employee physically restrains a student for more than fifteen minutes, the school or the public education employee shall immediately notify:~~

~~(a) the student's parent or guardian; and~~

~~(b) school administration.~~]

[~~(5)~~](4) A[~~n LEA~~] public education employee may not use physical restraint as a means of discipline or punishment.

[~~(6)~~](5) If a public education employee uses seclusionary time out, the public education employee shall:

(a) use the minimum time necessary to ensure safety;

(b) use release criteria as outlined in LEA policies;

(c) ensure that any door remains unlocked consistent with the fire and public safety requirements described in R392-200 and R710-4;

(d) maintain the student within line of sight of the public education employee;

(e) use the seclusionary time out consistent with the LEA's plan described in Section R277-609-4; and

(f) ensure that the enclosed area meets the fire and public safety requirements described in R392-200 and R710-4.

[~~(7)~~](6) If a student is placed in seclusionary time out, the school or the public education employee shall [~~immediately notify~~]provide notice as soon as reasonably possible and before the student leaves the school:

(a) the student's parent[~~ or guardian~~]; and

(b) school administration.

[~~(8)~~](7) A public education employee may not place a student in a seclusionary time out for more than 30 minutes.

[~~(9)~~](8) In addition to the notice described in Subsection (7), if a public education employee places a student in seclusionary time out for more than fifteen minutes, the school or the public education employee shall immediately [~~notify~~]provide notice:

(a) the student's parent or guardian; and

(b) school administration.

[~~(10)~~](9) Seclusionary time out may only be used for maintaining safety.

[~~(11)~~](10) A public education employee may not use seclusionary time out as a means of discipline or punishment.

R277-609-6. Implementation.

(1) An LEA shall implement strategies and policies consistent with the LEA's plan required in Section R277-609-4.

(2) An LEA shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to [~~administrative~~]suspension or court referral.

(3) An LEA shall implement positive behavior interventions, [~~and~~]supports, and restorative practices as part of the LEA's continuum of behavior interventions strategies.

[~~(4) Nothing in state law or this rule restricts an LEA from implementing policies to allow for suspension of students of any age consistent with due process requirements and consistent with all requirements of the Individuals with Disabilities Education Act 2004.~~]

R277-609-7. LEA Emergency Safety Intervention (ESI) Committees.

(1) An LEA shall establish an Emergency Safety Intervention (ESI) Committee[~~before September 1, 2015~~].

(2) [~~The~~]An LEA's ESI Committee:

(a) shall include:

(i) at least two administrators;

(ii) at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and

(iii) at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;

(b) shall meet often enough to monitor the use of emergency safety intervention in the LEA;

(c) shall determine and recommend professional development needs; and

(d) shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions[~~.~~]; and

(e) shall ensure that each emergency incident where a school employee uses an emergency safety intervention is documented in the LEA's student information system and reported to the Superintendent through the Board's UTREx system.

R277-609-8. LEA Reporting.

(1) An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.

(2) The Superintendent shall define the procedures for the collection, maintenance, and review of records described in Subsection (1).

(3) An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.

(4)(a) An LEA shall submit all required UTREx discipline data and incident or infraction data elements, and suspensions to the Superintendent no later than June 30[~~, 2018~~] of each year.

(b) Beginning in the 2018-19 school year, an LEA shall submit all required UTREx discipline data and incident or infraction data elements as part of the LEA's daily UTREx submission.

R277-609-9. Special Education Exception(s) to this Rule.

(1) An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.

(2) The Superintendent shall periodically review:

(a) all LEA special education behavior intervention[~~plans~~], procedures, [~~or~~]and manuals; and

(b) emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System.

R277-609-10. Parent[~~/Guardian~~] Notification and Court Referral.

(1) LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

(2) An LEA shall establish policies that:

(a) provide notice to parents and information about resources available to assist a parent in resolving the parent's school-age minors' disruptive behavior;

(b) provide for notices of disruptive behavior to be issued by schools to qualifying minors and parents consistent with:

(i) numbers of disruptions, suspensions, and timelines in accordance with Section 53G-8-210;

(ii) school resources available;

(iii) cooperation from the appropriate juvenile court in accessing student school records, including:

(A) attendance;

(B) grades;

(C) behavioral reports; and

(D) other available student school data; and

(iv) provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

(3)(a) When [~~a crisis situation occurs that requires the use of~~]an emergency safety intervention is used to protect [~~the~~]a student or others from harm, a school shall:[~~notify the LEA and~~]

(i) provide notice the student's parent as soon as reasonably possibly and before the student leaves the school;[~~or guardian as soon as possible and no later than the end of the school day.~~]

(ii) provide notice to school administration; and

(iii) provide documentation of the emergency safety intervention to the LEA's ESI Committee described in R277-609-7.

(b) In addition to the notice described in Subsection (3)(a), if [~~a crisis situation~~]the use of an emergency safety intervention occurs for more than fifteen minutes, the school shall immediately [~~notify~~]provide a second notification to:

(i) the student's parent or guardian; and

(ii) school administration.

(d) A notice described in Subsection (3)(a) shall be documented within student information systems (SIS) records.

(4)(a) A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during [~~a crisis situation~~]the use of the emergency safety intervention upon request of the parent or guardian.

(b) Within 24 hours of [~~a crisis situation~~]the school using an emergency safety intervention with a student, a school shall [~~notify~~]provide notice a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during [~~a crisis situation~~]the use of the emergency safety intervention.

(c) A parent or guardian may request a time to meet with school staff and administration to [~~discuss a crisis situation~~]discuss the use of an emergency safety intervention.

R277-609-11. Model Policies.

(1) The Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

(2) The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

R277-609-12. LEA Compliance.

If an LEA fails to comply with this rule, the Superintendent may withhold funds in accordance with Rule R277-114 or impose any other sanction authorized by law.

KEY: disciplinary actions, disruptive students, emergency safety interventions
Date of Enactment or Last Substantive Amendment: [~~May 8, 2018~~]2020
Notice of Continuation: October 14, 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501(1)(b)(v); 53E-3-509; 53G-8-202; 53G-8-702, 53G-8-302

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R277-724**	**Filing No. 52360**

Agency Information

1. Department:	Education	
Agency:	Administration	
Street address:	250 E 500 S	
City, state:	Salt Lake City, UT 84084	
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:

Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program

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

This rule is being updated to fit the rulewriting manual and fit the style requirements of the State Board of Education.

4. Summary of the new rule or change:

All changes in this rule are technical in nature, reorder certain sections, and update the writing to meet the rulewriting manual requirements.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are not expected to have any fiscal impact on state government revenues or expenditures. This rule is being amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah. These changes are not substantive, and thus are not expected to have a fiscal impact.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments' revenues or expenditures. This rule is being amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah. These changes are not substantive, and thus are not expected to have a fiscal impact.

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

These rule changes are not expected to have any material fiscal impact on small businesses' revenues or expenditures because this rule is about the child and adult care food program and thus, do not apply to small businesses.

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 (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. These proposed rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and they do 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***)**:**

These rule changes are not expected to have any material fiscal impact on persons other than small businesses', businesses', or local government entities' revenues or expenditures. This rule is being amended to provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah. These changes are not substantive, and thus, are not expected to have a fiscal impact.

F) Compliance costs for affected persons:

There are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The Program Analyst at the Utah State Board of Education, Jill Curry, 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. These rule changes are not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and they do not require any expenditures of or generate revenue for non-small businesses. These rule changes have 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):

Utah Constitution Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(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:	01/14/2019

10. This rule change MAY become effective on:	01/21/2019

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 of Policy	**Date:**	11/19/2019

R277. Education, Administration.
R277-724. Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program.

R277-724-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-3-501(3), which authorizes the Board to administer and distribute funds made available through programs of the federal government.

(2) The purpose of this rule is to establish eligibility criteria for new sponsoring organizations to recruit facilities for child care centers and day care homes in unserved areas.

R277-724-[1]2. Definitions.

[A.](1) "Child and Adult Care Food Program (CACFP)" means [the section of the USOE that administers]the program that:

(a) facilitates the initiation, maintenance, and expansion of non-profit food services [programs]for children in non-residential centers and homes which provide child care[.];and[The definition also includes the administration of]

(b) administers food service programs for non-residential adult day care.

[B. "Board" means the Utah State Board of Education.]

[C.](2)(a) "Child care center" means any public or private nonprofit organization, or any proprietary title XX center, licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age.

(b) A [C]child care center[s] may participate in the CACFP as independent centers or under the auspices of a sponsoring organization.

[D.](3) "Day care home" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

[E.](4) "Facilities" means a sponsored center or a family day care home.

[F.](5) "Institution" means an organization with whom the [USOE]Board has an agreement to accept final administrative and financial responsibility for CACFP operation.

[G.](6) "Recruited facilities" means potential daycare centers or homes that a prospective sponsoring organization is seeking[s] to enroll in CACFP participation.

[H.](7) "Service area" means the geographic area from which a sponsoring organization draws its client facilities.

[I.](8) "Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in:

([1]a) one or more day care homes;

([2]b) a child care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

([3]c) two or more child care centers, outside-school-hours care centers, or adult day care centers are part of the organization; or

([4]d) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers.

[J.](9) "State agency" means the state educational agency or any other State agency that has been designated by the Governor or other appropriate executive or by the legislative authority of the state, and has been approved by the Department to administer the Program within the state.

[K. "USOE" means the Utah State Office of Education.]

[R277-724-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Subsection 53E-3-501(3), which authorizes the Board to administer and distribute funds made available through programs of the federal government and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish eligibility criteria for new sponsors to recruit participants for child care centers and day care homes in unserved areas.]

R277-724-3. Criteria for Sponsoring Organizations and Recruiting Facilities.

[The following criteria shall be met before a sponsor is approved:]

[A.](1) [The]To be approved as a participant in the CACFP, a sponsoring organization shall provide the following assurances to the Superintendent that the sponsoring organization's recruited facilities:

(a) are not currently participating or were recently terminated for convenience by another sponsoring organization due to being outside the sponsoring organization's service area;[and]

[B.](b) [The recruited facilities]have not been terminated for cause[,];

(c) have no unresolved serious deficiency pending with another sponsoring organization; and

(d) do not owe a refund to another sponsoring organization.[; and]

[C.](2) [The]Prior to approval, a sponsoring organization shall provide a state agency certification[ies] that other sponsoring organizations are unable to accommodate the [targeted]recruited facilities or the area(s) where the recruited facilities[it/they] are located because:

([1]a) other sponsoring organizations generate insufficient resources to properly train and monitor facilities; or

([2]b) supervising additional facilities would threaten a currently participating sponsoring organization's viability, capability or accountability.

R277-724-4. New and Renewing Institution Performance Standards.

[A.](1) [The]A new or renewing institution shall ensure to the Superintendent at the time of approval or renewal that:

[(1) it is](a) the institution is financially viable and program funds are spent and accounted for consistent with the requirements of federal law and regulations;

[(2) that management practices are in effect to ensure that](b) the institution and participating facilities operate in accordance with federal law and regulations; and

[(3) it](c) the institution has internal controls and other management systems in effect [to ensure fiscal accountability and to ensure that]allowing for fiscal accountability and the CACFP to operate[s] in accordance with federal law and regulations.

[B. The USOE Child Nutrition Program Section](2) The Superintendent shall regulate and ensure that these performance criteria are met consistent with federal law and regulations.

KEY: facilities, food programs
Date of Enactment or Last Substantive Amendment: [January 15, 2004]2020
Notice of Continuation: March 13, 2019

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-501(3); 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R307-401**	**Filing No. 52316**

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Room no.:	Fourth Floor	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT84116-3085	
Mailing address:	PO Box 144820	
City, state, zip:	Salt Lake City, UT 84116-3085	
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:

Permit: New and Modified Sources

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

These amendments add and update definitions and testing requirements. These changes will allow sources to discontinue testing after three years of operation if testing demonstrates the emissions have consistently remained below exemption levels. Changes have also been made to clarify that sub-slab vapor mitigation systems are exempt from this rule's testing requirements.

4. Summary of the new rule or change:

Section R307-401-2 is amended to add definitions for "air strippers," "soil aeration," "soil vapor extraction," and "vapor mitigation system." Section R307-401-10 adds "Vapor Mitigation System" to Source Category Exemptions. Sections R307-401-15 and R307-401-16 are being amended to update testing requirements, which will allow sources to discontinue testing after three years of operation if testing demonstrates the emissions have consistently remained below exemption levels.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are expected to have an unknown savings to the state budget as it will limit the need for Division of Air Quality staff to review testing submissions. The savings is unknown because information regarding how many of these would be submitted is unavailable.

B) Local governments:

These rule changes are not expected to have a fiscal impact on local governments.

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

These rule changes could result in a cost savings to small businesses that operate or own sub-slab vapor extraction systems, as this rule exempts them from certain notice of intent and approval order requirements. The aggregate savings is not possible to calculate as the number of soil vapor extractions (SVEs) operating at any given time is not readily available. However, the savings are estimated to range between $2,800 and $3,500 per sampling event per stack.

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

These amendments will result in an unknown savings to non-small businesses. Information on how many instances the exemption will apply to an owner or operator of sub-slab vapor mitigation systems is not readily available. However, it is estimated that the savings will range between $2,800 and $3,500 per sampling event for each vent riser. Each system will have a specific vent riser count requirement. Stacks can range from 4 to 10 per project. As currently written, the rule requires each stack to be tested five times in the first year and twice a year after the first year for the life of the project. At a four-stack site this could cost up to $70,000 in the first year, and up to $28,000 each subsequent year. Testing would be required for the life of the project.

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 rule changes are not expected to have a fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities.

F) Compliance costs for affected persons:

There are no additional compliance requirements added to this rule through amendments; therefore, there are no compliance costs for affected persons.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The interim 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:

These amendments will result in an unknown savings to non-small businesses, and could result in savings to small businesses. Information on how many instances the exemption will apply to an owner or operator of sub-slab vapor mitigation systems is not readily available. However, it is estimated that the savings will range between $2,800 and $3,500 per sampling event for each vent riser. Each system will have a specific vent riser count requirement. Stacks can range from four to 10 per project. As currently written, this rule requires each stack to be tested five times in the first year and twice a year after the first year for the life of the project. At a four-stack site this could cost up to $70,000 in the first year, and up to $28,000 each subsequent year. Testing would be required for the life of the project.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, 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 19-2-108	Section 19-2-104	

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:	01/15/2020

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

On:	**At:**	**At:**
01/15/2020	01:00 PM	Multi Agency State Office Building 195 N 1950 W, Fourth Floor, Salt Lake City, UT 84116

10. This rule change MAY become effective on:	03/04/2020

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:**	11/02/2019

R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.
R307-401-2. Definitions.

"Actual emissions" (a) means the actual rate of emissions of an air pollutant from an emissions unit, as determined in accordance with R307-401-2(b) through R307-401-2(d).

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

Air Strippers" are systems designed to pump groundwater to the surface for treatment, usually by aeration.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air pollutant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

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

"Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Soil Aeration" is an ex-situ treatment process where excavated soil from a remediation project is spread in a thin layer to encourage biodegradation of soil contamination. Biodegradation may be stimulated through aeration or the addition of minerals, nutrients, and/or moisture.

"Soil Vapor Extraction", or SVE, is a system designed to extract vapor phase contaminants from the subsurface. SVE systems are often combined with other technologies, such as air sparging or vacuum-enhanced recovery systems.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air pollutant.

"Vapor Mitigation System", or VMS, is a sub-slab system whose primary purpose is mitigating vapor intrusion into an occupied, or occupiable, structure and is not intended or designed for the remediation of contaminated soil or groundwater. This definition includes both active and passive systems. Passive systems consist of a vapor barrier either below or above the slab of a structure and a venting system installed under a structure to divert vapor from beneath the structure to the sides or roofline of a structure. Active systems are similar to passive systems but incorporate a blower or fan to actively extract air from beneath the structure.

R307-401-10. Source Category Exemptions.

The source categories described in R307-401-10 are exempt from the requirement to obtain an approval order found in R307-401-5 through R307-401-8. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

(5) A well site as defined in 40 CFR 60.5430a, including centralized tank batteries, that is not a major source as defined in R307-101-2, and is registered with the Division as required by R307-505.

(6) A gasoline dispensing facility as defined in 40 CFR 63.11132 that is not a major source as defined in R307-101-2. These sources shall comply with the applicable requirements of R307-328 and 40 CFR 63 Subpart CCCCCC: National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(7) A Vapor Mitigation System as defined in R307-401-2.

R307-401-15. Air Strippers and Soil Vapor Extraction Systems[~~Venting Projects~~].

R307-401-15 applies to remediation systems with the potential to generate air emissions, such as air strippers and soil vapor extraction (SVE) as defined in R307-401-2.

(1) The owner or operator of an air stripper or SVE remediation system[~~soil venting system that is used to remediate contaminated groundwater or soil~~] is exempt from the notice of intent and approval order requirements of R307-401-5 through R307-401-8 if the following conditions are met:

(a) [~~the estimated total air~~]actual emissions of volatile organic compounds from a given project are less than 5 tons per year; and[~~the de minimis emissions listed in R307-401-9(1)(a), and~~]

(b) emission rates of[~~the level of any one hazardous air pollutant or any combination of~~] hazardous air pollutants are[~~is~~] below their respective threshold values contained[~~the levels listed~~] in R307-410-5(1)(c)(i)(C).

(2) The owner or operator shall submit documentation to the director that demonstrates the project meets the exemption criteria[~~requirements~~] in R307-401-15(1)[~~to the director prior to beginning the remediation project~~]. Required documentation includes, but is not limited to:

(a) project summary, including location, system description, operational schedule, and schedule for construction;

(b) emission calculations and any laboratory sampling data used in calculations; and

(c) plans and specifications for the system and equipment.

(3) After beginning the soil remediation project, the owner [~~or operator shall submit emissions information to the director to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in R307-401-15(1) are not exceeded.~~]or operator shall conduct testing to demonstrate compliance with the exemption levels in R307-401-15(1)(1) and (b). Monitoring and reporting shall be conducted as follows:

(a) [~~Emissions estimates of volatile organic compounds shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8260c or 8261a, or the most recent EPA revision of either test method if approved by the director.~~]Emissions for air strippers shall be based on the following:

(i) influent and effluent water samples analyzed for volatile organic compounds and hazardous air pollutants using the most recent version of USEPA Test Method 8260, Method 8021, or other EPA approved testing methods acceptable to the director; and

(ii) design water flow rate of the system or the water flow rates measured during the sample period.

(b) [~~Emissions estimates of hazardous air pollutants shall be based on test data obtained in accordance with the test method in EPA document SW-846, Test #8021B or the most recent EPA revision of the test method if approved by the director.~~]Emissions for SVE systems shall be based on the following:

(i) Air samples collected from a sample port in the exhaust stack of the SVE system and analyzed for volatile organic compounds and hazardous air pollutants using USEPA test method TO-15, or other EPA approved testing methods acceptable to the director.

(ii) Design air flow rate of the system or the air flow rates measured at the outlet of the SVE system during the sample period. Flow rates should be measured and reported at actual conditions.

(c) [~~Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the director within one month of sampling.~~]Within one month of sampling, the owner or operator shall submit to the director the sample results, estimated emissions of volatile organic compounds, and estimated emission rates of hazardous air pollutants.

(d) [~~The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the director.~~]Samples shall be collected at the following frequencies or more frequently as determined necessary by the director:

(i) no less than twenty-eight days and no more than thirty-one days (i.e., monthly) after startup for the first quarter;

(ii) quarterly for the remainder of the first year; and

(iii) semi-annually thereafter for the life of the project or as allowed in R307-401-15(3)(f).

(e) If an SVE or air stripper system is restarted after rehabilitation or an extended period of shutdown, the owner or operator shall recommence the sampling schedule in R307-415(3)(d), unless otherwise approved by the director.

(f) The owner or operator may request to discontinue sampling after three years of operation. To discontinue sampling, the owner or operator must submit to the director a request to discontinue monitoring.

(i) The request must include documentation demonstrating emissions have remained below the exemption levels in R307-401-15(1)(a) and (b) since startup of the system.

(ii) The request is subject to approval from the director upon consultation with other regulatory agencies involved in the project, such as Division of Environmental Response and Remediation or Division of Waste Management and Radiation Control.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil vapor extraction system that is[~~venting project~~] exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. [~~De minimis Emissions From~~]Soil Aeration Projects.

R307-401-16 applies to soil aeration projects used to conduct soil remediation.[~~An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through R307-401-8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or~~

~~operator submits the following information to the director prior to beginning the remediation project:~~]

(1) [~~documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);~~]The owner or operator of a soil aeration project is not subject to the notice of intent and approval order requirements of R307-401-5 through R307-401-8, if the following conditions are met:

(a) emissions of volatile organic compounds from a given soil aeration project are less than 5 tons per year; and

(b) emission rates of hazardous air pollutants are below their respective threshold values contained in R307-410-(1)(c)(i)(C).

(2) [~~documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and~~]The owner or operator shall submit documentation to the director demonstrating the project meets the exemption criteria in R307-401-16(1). The owner or operator shall receive approval from the director for the exemption prior to beginning the remediation project. Required documentation includes, but is not limited to:

(a) calculated emissions of volatile organic compounds and estimated emission rates of hazardous air pollutants from all soils to be treated from the soil aeration project.

(b) Emission calculations shall be based on soil samples of the soils to be remediated. Samples shall be analyzed for volatile organic compounds and hazardous air pollutants using the most recent version of USEPA Test Method 8260, Method 8021, or other EPA approved testing methods acceptable to the director. Emission calculations should be based on the methodology in EPA guidance "Air Emissions from the Treatment of Soils Contaminated with Petroleum Fuels and Other Substances" (EPA-600/R-92-124) or other methodology acceptable to the director.

(c) Location where soil aeration will occur and where the remediated material originated.

(3) [~~the location of the remediation and where the remediated material originated.~~]The owner or operator is exempt from the reporting requirements in R307-401-16(2) if excavated soils are disposed of at a disposal or treatment facility, such as a landfill, solid waste management facility, or a landfarm facility, that is owned or operated by a third party and operates under an existing approval order.

KEY: air pollution, permits, approval orders, greenhouse gases
Date of Enactment or Last Substantive Amendment: [~~June 6, 2019~~]2020
Notice of Continuation: May 15, 2017
Authorizing, and Implemented or Interpreted Law: 19-2-104(3)(q); 19-2-108

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R381-60**	**Filing No. 52369**

Agency Information

1. Department:	Health
Agency:	Child Care Center Licensing Committee
Building:	Highland
Street address:	3760 S Highland Drive
City, state:	Salt Lake City, UT 84106
Mailing address:	PO Box 142003
City, state, zip:	Salt Lake City, UT 84114

Contact person(s):		
Name:	**Phone:**	**Email:**
Simon Bolivar	801-803-4618	sbolivar@utah.gov

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

General Information

2. Rule or section catchline:

Hourly Child Care Centers

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

The Department of Health (Department) and the Center Licensing Committee (Division) have collected suggested amendments to this rule throughout the year. These amendments are necessary to clarify language and to simplify processes, so interpretation of and compliance with the rules are even more consistent.

4. Summary of the new rule or change:

These proposed amendments include new and clarification of definitions, simplification of language, deletion of small unnecessary parts of the rules, needed renumbering, and a better and simplified language for the current background check process.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division does not anticipate any additional costs or savings due to these proposed rule changes.

B) Local governments:

These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because there are no licensed centers operated by local governments to whom these changes will affect.

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

The Division expects some savings associated with these proposed amendments to the background check rules that will benefit all child care providers. Since the Department uses the FBI Rap Back system, it is no longer required for providers to resubmit background check information for their covered individuals once every year. By not doing so, child care providers will not have

to pay the $18 fee to renew their covered individuals' background check. That will save providers from the annual costs of renewing background checks.

The majority of child care centers in the state operate as small businesses. There are 16 Hourly Centers with approximately 121 individuals associated with these facilities who, because of these proposed rule amendments, will not have to pay for the renewal of the background check. This will save providers about $2,178 per year.

The Division does not expect any costs associated with these proposed rule amendments.

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

The Division does not anticipate any additional costs or savings due to these proposed rule changes.

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

The Division does not anticipate any additional costs or savings due to these proposed rule changes.

F) Compliance costs for affected persons:

The Division does not anticipate any additional costs due to these proposed rule changes.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$2,178	$2,178	$2,178
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$2,178**	**$2,178**	**$2,178**
Net Fiscal Benefits:	**$2,178**	**$2,178**	**$2,178**

H) Department head sign-off on regulatory impact:

The executive director of the Department, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These rule changes clarify requirements, simplify processes, and remove the requirement that child care providers pay for and have a background clearance run on each employee annually because now the process is automated.

There is no fiscal cost to businesses from any of these rule changes.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 63G, Chapter 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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:**	11/21/2019

R381. Health, Child Care Center Licensing Committee.
R381-60. Hourly Child Care Centers.
R381-60-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background check that may result in a denial from Child Care Licensing.

(4) "Background Check Denial" means that an individual has failed the background check and is prohibited from being involved with a child care program.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Business Days/Hours" means the days of the week and times the facility is open for business.

(8) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(9) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(10) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(11) "Child Care" means continuous care and supervision of 5 or more qualifying children that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(12) "Child Care Center Licensing Committee" means the Child Care Center Licensing Committee created in the Utah Child Care Licensing Act.

(13) "Child Care Program" means a person or business that offers child care.

(14) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(15) "Conditional Status" means that the provider is at risk of losing their child care license because compliance with licensing rules has not been maintained.

(16) "Covered Individual" means any of the following individuals involved with a child care program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(e) a caregiver;

(f) a volunteer, except a parent of a child enrolled in the child care program;

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

(h) anyone who has unsupervised contact with a child in care.

(17) "CPSC" means the Consumer Product Safety Commission.

(18) "Crib" means an infant's bed with sides to protect them from falling including a bassinet, porta-crib, and play pen.

[~~(18)~~](19) "Department" means the Utah Department of Health.

[~~(19)~~](20) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

[~~(20)~~](21) "Director" means a person who meets the director qualifications in this rule, and who assumes the child care program's day-to-day responsibilities for compliance with Child Care Licensing rules.

[~~(21)~~](22) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

[~~(22)~~](23) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

[~~(23)~~](24) "Facility" means a child care program or the premises approved by the Department to be used for child care.

[~~(24)~~](25) "Group" means the children who are [~~supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.~~]assigned to and supervised by one or more caregivers.

[~~(25)~~](26) "Group Size" means the number of children in a group.

[~~(26)~~](27) "Guest" means an individual who is not a covered individual and is at the child care facility with the provider's permission.

[~~(27)~~](28) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

[~~(28)~~](29) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

[~~(29)~~](30) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

[~~(30)~~](31) "Infant" means a child who is younger than 12 months of age.

[~~(31)~~](32) "Infectious Disease" means an illness that is capable of being spread from one person to another.

[~~(32)~~](33) "Involved with Child Care" means to do any of the following at or for a child care program [~~licensed by the Department~~]:

(a) [~~provide child~~]care for or supervise children;

(b) volunteer[~~at a child care program~~];

(c) own, operate, direct,[~~or be employed at a child care program~~];

(d) reside[~~at a facility where child care is provided~~]; [~~or~~]

(e) count in the caregiver-to-child ratio; or

(f) have unsupervised contact with a child in care.[~~be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.~~]

[~~(33)~~](34) "License" means a license issued by the Department to provide child care services.

[~~(34)~~](35) "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

[~~(35)~~](36) "LIS Supported Finding" means background check information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

[~~(36)~~](37) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

[~~(37)~~](38) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

[~~(38)~~](39) "Parent" means the parent or legal guardian of a child in care.

[~~(39)~~](40) "Person" means an individual or a business entity.

[~~(40)~~](41) "Physical Abuse" means causing nonaccidental physical harm to a child.

[~~(41)~~](42) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one child to stand on, and upon which the children can move freely.

[~~(42)~~](43) "Preschooler" means a child age 2 through 4 years old.

[~~(43)~~](44) "Protective Barrier" means a structure such as bars, lattice, or a panel that is around an elevated platform and is intended to prevent accidental or deliberate movement through or access to something.

[~~(44)~~](45) "Protective Cushioning" means a shock-absorbing surface under and around play equipment that reduces the severity of injuries from falls.

[~~(45)~~](46) "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

[~~(46)~~](47) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

[~~(47)~~](48) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(49) "Room" will be defined as follows:

When a large room is divided into smaller rooms or areas with barriers such as furniture or with half walls, the room or area will be considered:

(a) One room, when the room is divided by a solid barrier that is 24 inches or less, whether the barrier is movable or immovable.

(b) One room, when the room is divided by a solid barrier that is between 25 and 40 inches in height and there is an opening in the barrier through which caregivers and children can move freely.

(c) Two rooms, when the room is divided by a solid barrier that is between 25 and 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked such as with a child safety gate. This applies to a diaper changing station that is located behind a closed gate.

(d) Two rooms, when the room is divided by a solid barrier that is over 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked such as with a child safety gate. If there is an opening through which caregivers and children can move freely and it the opening is not blocked, refer to the instructions for a large opening, archway, or doorway.

When two rooms or areas are connected by a large opening, archway, or doorway, the rooms or areas will be considered:

(e) One room, when the width of the opening or archway is equal to or greater than the combined width of the walls on each side of the opening or archway in the larger of the two rooms or areas, and there is no furniture or other dividers blocking the opening or archway. Otherwise this will be considered two rooms.

(f) Two rooms, when the width of the opening or archway is smaller than the combined width of the walls on each side of the opening or archway in the larger of the two rooms or areas.

When in outdoor areas separated by interior fences, consider it:

(g) One area, when the interior fence is 24 inches or lower in height, whether or not the fence has an opening.

(h) One area, when the interior fence is 40 inches or lower in height with an opening through which caregivers and children can move freely.

(i) Two areas, when the interior fence is higher than 24 inches and there is no opening.

(j) Two areas, when the interior fence is higher than 40 inches whether or not the fence has an opening.

[~~(48)~~](50) "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

[~~(49)~~](51) "School-Age Child" means a child age 5 through 12 years old.

[~~(50)~~](52) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

[~~(51)~~](53) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

[~~(52)~~](54) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

[~~(53)~~](55) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

[~~(54)~~](56) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as a protruding open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

[~~(55)~~](57) "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

[~~(56)~~](58) "Toddler" means a child [~~aged~~]age 12 through 23 months.

[~~(57)~~](59) "Unrelated Child" means a child who is not a "related child" as defined in R381-60-2([~~46~~]48).

[~~(58)~~](60) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background check.

[~~(59)~~](61) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

[~~(60)~~](62) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

[~~(61)~~](63) "Working Days" means the days of the week the Department is open for business.

R381-60-3. License Required.

(1) A person or persons shall be licensed as an hourly child care center if they provide care:

(a) in the absence of the child's parent;

(b) in a place other than the provider's home or the child's home;

(c) for 5 or more children;

(d) for 4 or more hours per day, and no child is cared for on a regular schedule;

(e) for each individual child for less than 24 hours per day,

(f) on an ongoing basis for 4 or more weeks in a year, and

(g) for direct or indirect compensation.

(2) The Department may not license, nor is a license required for:

(a) a person who cares for related children only, or

(b) a person who provides care on a sporadic basis only.

(3) [~~According to Foster Care Services rule R501-12-4(8)(f)(d), a provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.~~]A provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program, unless the part of the building requesting a CCL license is physically separated from the other building services.

R381-60-4. License Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care license shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of the educational credentials of the person who will be the director as required in R381-60-7[~~(4)~~];

(f) a copy of a completed Department health and safety plan form;

(g) CCL background checks for all covered individuals as required in R381-60-8;

(h) [~~a current copy of the Department's~~]new provider training [~~certificate of attendance~~]completion no more than six months before the date of the application; and

(i) all required fees, which are nonrefundable.

(2) The applicant shall pass a Department's inspection of the facility before a new license or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall [~~include~~]verify compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

[~~(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;~~]

[~~(c)~~](b) exit doors shall operate properly and shall be well maintained;

[~~(d)~~](c) obstructions in exits, aisles, corridors, and stairways shall be removed;

[~~(e)~~](d) exit doors shall be unlocked from the inside during business hours;

[~~(f)~~](e) exits shall be clearly identified;

[~~(g)~~](f) there shall be at least one unobstructed fire extinguisher[~~s~~] on each level of the building[~~that are of an X minimum rate and appropriate to the type of hazard~~], currently charged and serviced, and mounted not more than 5 feet above the floor;

[~~(h)~~](g) there shall be working smoke detectors that are properly installed on each level of the building; and

[~~(i)~~](h) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the provider serves food and the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall [~~include~~]verify compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) cooks shall use hair restraints and wear clean outer clothing;

(f) according to Food Code 2-103-11, only necessary staff shall be present in the kitchen;

(g) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(h) chemicals shall be stored away from food and food service items;

(i) food shall be properly stored, kept to the proper temperature, and in good condition; and

(j) there shall be a working handwashing sink in the kitchen and handwashing instructions posted by the sink.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be licensed, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a license if, within the 5 years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their license by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a license for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new license at least 30 days before any of the following changes occur:

(a) a change of the child care facility's location, or

(b) a change that transfers 50 percent or more ownership or controlling interest to a new individual or entity.

(12) The provider shall submit a complete application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;

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

(c) a change in the regulation category of the program;

(d) a change in the name of the provider;

(e) an addition or loss of a director; or

(f) a change in ownership that does not require a new license.

(13) The Department may amend a license after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) A license is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R381-60-8. Background Checks.

[~~(1) Before a new covered individual becomes involved with child care in the program, the provider shall:~~

~~(a) have the individual submit an online background check form,~~

~~(b) authorize the individual's background check form,~~

~~(c) pay all required fees, and~~

~~(d) receive written notice from CCL that the individual passed the background check.~~

~~(2) The provider shall ensure that an online background check form is submitted and authorized, and that background check fees are paid within 10 working days from when a child who resides in the facility turns 12 years old.~~

~~(3) The provider shall ensure that a CCL background check for each individual age 18 years or older includes fingerprints and fingerprints fees.~~

~~(4) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.~~

~~(5) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.~~

~~(6) Fingerprints are not required if the covered individual has:~~

~~(a) previously submitted fingerprints to CCL for a Next Generation, national criminal history check;~~

~~(b) resided in Utah continuously since the fingerprints were submitted; and~~

~~(c) kept their CCL background check current.~~

~~(7) Background checks are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background check card.~~

~~(8) At least 2 weeks before the end of the renewal month that is written on a covered individual's background check card, the provider shall:~~

~~(a) have the individual submit an online CCL background check form and fingerprints if not previously submitted,~~

~~(b) authorize the individual's background check form through the provider portal, and~~

~~(c) pay all required fees.~~

~~(9) The following background findings may deny a covered individual from being involved with child care:~~

~~(a) LIS supported findings,~~

~~(b) the individual's name appears on the Utah or national sex offender registry,~~

~~(c) any felony convictions,~~

~~(d) any Misdemeanor A convictions, or~~

~~(e) Misdemeanor B and C convictions for the reasons listed in R381-60-8(10).~~

~~(10) The following convictions, regardless of severity, may result in a background check denial:~~

~~(a) unlawful sale or furnishing alcohol to minors;~~

~~(b) sexual enticing of a minor;~~

~~(c) cruelty to animals, including dogfighting;~~

~~(d) bestiality;~~

~~(e) lewdness, including lewdness involving a child;~~

~~(f) voyeurism;~~

~~(g) providing dangerous weapons to a minor;~~

~~(h) a parent providing a firearm to a violent minor;~~

~~(i) a parent knowing of a minor's possession of a dangerous weapon;~~

~~(j) sales of firearms to juveniles;~~

~~(k) pornographic material or performance;~~

~~(l) sexual solicitation;~~

~~(m) prostitution and related crimes;~~

~~(n) contributing to the delinquency of a minor;~~

~~(o) any crime against a person;~~

~~(p) a sexual exploitation act;~~

~~(q) leaving a child unattended in a vehicle; and~~

~~(r) driving under the influence (DUI) while a child is present in the vehicle.~~

~~(11) A covered individual with a Class A misdemeanor background finding not listed in R381-60-8(10) may be involved with child care when:~~

~~(a) 10 or more years have passed since the Class A misdemeanor offense, and~~

~~(b) there is no other conviction for the individual in the past 10 years.~~

~~(12) A covered individual with a Class A misdemeanor background finding not listed in R381-60-8(10) may be involved with child care for up to 6 months if:~~

~~(a) 5 to 9 years have passed since the offense,~~

~~(b) there is no other conviction since the Class A misdemeanor offense,~~

~~(c) the individual provides to the Department documentation of an active petition for expungement, and~~

~~(d) the provider ensures that the individual does not have unsupervised contact with any child in care.~~

~~(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.~~]

(1) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:

(a) verify that the individual has a current CCL background check, and

(b) associate that individual with their facility.

(2) Before a new covered individual who does not show in the CCL provider portal search becomes involved with child care in the program, the provider shall:

(a) have the individual submit an online background check form and fingerprints for individuals age 18 years and older,

(b) authorize the individual's background check through the CCL provider's portal,

(c) pay all required fees, and

(d) receive written notice from CCL that the individual passed the background check.

(3) A covered individual without a current background check will not show in the CCL provider portal search. The Department may not consider a covered individual's background check current when the covered individual has:

(a) failed to pass a CCL background check;

(b) moved outside of Utah; or

(c) not been associated with an active, CCL approved child care facility for the past 180 days.

(4) Within 10 working days from when a child who resides in the facility turns 12 years old, the provider shall:

(a) ensure that an online background check form is submitted,

(b) authorize the child's background check through the CCL provider's portal, and

(c) pay all required fees.

(5) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(6) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(7) The following background findings may deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions, or

(d) for any of the reasons listed under R381-100-8(8).

(8) The following convictions, regardless of severity, may result in a background check denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

[~~(14)~~](9) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background check was conducted.

[~~(15)~~](10) The Department may rely on the criminal background check findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

[~~(16)~~](11) If the provider has a background check denial, the Department may suspend or deny their license until the reason for the denial is resolved.

[~~(17)~~](12) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

[~~(18)~~](13) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

[~~(19)~~](14) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

[~~(20)~~](15) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

[~~(21)~~](16) The Executive Director of the Department of Health may overturn a background check denial when the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R381-60-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Poisonous and harmful plants shall be inaccessible to children.

(3) Sharp objects, edges, corners, or points that could cut or puncture skin shall be inaccessible to children.

(4) Choking hazards shall be inaccessible to children to children younger than 3 years of age.

(5) Strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck shall be inaccessible to children.

(6) Tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways shall be inaccessible to children.

(7) For children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons shall be inaccessible to children.

(8) Standing water that measures 2 inches or deeper and 5 by 5 inches or greater in diameter shall be inaccessible to children.

(9) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(10) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(11) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(12) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(13) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(14) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in center vehicles any time a child is in care.

(15) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(16) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(17) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(18) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(19) Infant walkers with wheels shall be inaccessible to children.

(20) [~~In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used.~~]Tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and, in compliance with the Utah Indoor Clean Air Act, not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R381-60-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) The highest designated play surface on stationary play equipment used by infants or toddlers shall not exceed 3 feet in height.

(3) Swings used by infants or toddlers shall have enclosed seats.

(4) Stationary play equipment shall have a surrounding use zone that extends from the outermost edge of the equipment. With the exception of swings, stationary play equipment that is:

(a) used by infants or toddlers shall have at least a 3-foot use zone if any designated play surface is higher than 18 inches,

(b) used by preschoolers shall have at least a 6-foot use zone if any designated play surface is higher than 20 inches, and

(c) used by school-age children shall have at least a 6-foot use zone if any designated play surface is higher than 30 inches.

(5) The use zone in the front and rear of a single-axis, enclosed swing shall extend at least twice the distance of the swing pivot point to the swing seat.

(6) The use zone in the front and rear of a single-axis swing shall extend at least twice the distance of the swing pivot point to the ground.

(7) The use zone for a multi-axis swing, such as a tire swing, shall extend:

(a) at least the measurement of the suspending rope or chain plus 3 feet, if the swing is used by infants or toddlers; or

(b) at least the measurement of the suspending rope or chain plus 6 feet, if the swing is used by preschoolers or school-age children.

(8) The use zone for a merry-go-round shall extend:

(a) at least 3 feet in all directions from its outermost edge if the merry-go-round is used by infants or toddlers, or

(b) at least 6 feet in all directions from its outermost edge if the merry-go-round is used by preschoolers or school-age children.

(9) The use zone for a spring rocker shall extend:

(a) at least 3 feet from the outermost edge of the rocker when at rest; or

(b) at least 6 feet from the outermost edge of the rocker when at rest if the seat is higher than 20 inches, and the rocker is used by preschoolers or school-age children.

(10) The following use zones shall not overlap the use zone of any other piece of play equipment:

(a) the use zone in front of a slide;

(b) the use zone in the front and rear of any single-axis swing, including a single-axis enclosed swing;

(c) the use zone of a multi-axis swing; and

(d) the use zone of a merry-go-round if the platform diameter measures 20 inches or more.

(11) Unless prohibited in R381-[~~10~~]60-19(10), the use zones of play equipment may overlap when:

(a) the equipment is used by infants or toddlers, and there is at least 3 feet between the pieces of equipment; or

(b) the equipment is used by preschoolers or school-age children and there is at least 6 feet between the pieces of equipment if the designated play surface is 30 inches or lower, or there is at least 9 feet between the pieces of equipment if the designated play surface is higher than 30 inches.

(12) Stationary play equipment without moving parts children sit or stand on shall not be placed on concrete, asphalt, dirt, a bare floor, or any other hard surface, but may be placed on grass or other cushioning, if the highest designated play surface measures between:

(a) 6 to 18 inches if used by infants or toddlers,

(b) 6 to 20 inches if used by preschoolers, and

(c) 6 to 30 inches if used by school-age children.

(13) Protective cushioning shall cover the entire surface of each required use zone and its depth or thickness shall be determined by the highest designated play surface of the equipment.

(14) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 2.

(a) the provider shall ensure that the cushioning is periodically checked for compaction and loosened to the depth listed in Table 2 if compacted; and

(b) if the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 2

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 7'	9"	not allowed	9"	not allowed	6"
Over 7' up to 8'	9"	not allowed	9"	not allowed	6"
Over 8' up to 9'	9"	not allowed	9"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	9"	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(15) If shredded wood products are used as protective cushioning:

(a) the provider shall keep on-site for review by the Department documentation from the manufacturer that the wood product meets ASTM Specification F1292,

(b) there shall be adequate drainage under the material, and

(c) the depth of the shredded wood shall meet the CPSC guidelines in Table 3.

TABLE 3

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	9"	9"	9"
Over 8' up to 9'	9"	9"	9"
Over 9' up to 10'	9"	9"	9"
Over 10' up to 11'	9"	9"	9"
Over 11'	9"	not allowed	not allowed

(16) If a unitary cushioning is used, the provider shall ensure that the material meets the standard established in ASTM Specification F1292. The provider shall maintain on-site for review by the Department documentation from the manufacturer that the material meets these specifications.

(17) If a unitary cushioning is used, the provider shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(18) A play equipment platform that is more than:

(a) 18 inches above the floor or ground and used by infants or toddlers shall have a protective barrier that is at least 24 inches high,

(b) 30 inches above the floor or ground and used by preschoolers shall have a protective barrier that is at least 29 inches high, and

(c) 48 inches above the floor or ground and used by school-age children shall have a protective barrier that is at least 38 inches high.

(19) There shall be no gap greater than 3-1/2 inches in or under a required protective barrier on a play equipment platform.

(20) Stationary play equipment shall be stable [~~and~~]or securely anchored.

(21) There shall be no trampolines on the premises that are accessible to any child in care.

(22) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(23) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(24) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(25) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

KEY: child care, child care facilities, hourly child care centers
Date of Enactment or Last Substantive Amendment: [~~August 10, 2018~~]2020
Authorizing, and Implemented or Interpreted Law: 26-39-203(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R381-70**	**Filing No. 52378**

Agency Information

1. Department:	Health
Agency:	Child Care Center Licensing Committee
Building:	Highland
Street address:	3760 S Highland Drive
City, state:	Salt Lake City, UT 84106
Mailing address:	PO Box 142003
City, state, zip:	Salt Lake City, UT 84114

Contact person(s):		
Name:	**Phone:**	**Email:**
Simon Bolivar	801-803-4618	sbolivar@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Out of School Time Programs

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

The Department of Health (Department) and the Center Licensing Committee (Division) have collected suggested amendments to this rule throughout the year. These amendments are necessary to clarify language and to simplify processes, so interpretation of and compliance with the rules are even more consistent.

4. Summary of the new rule or change:

These proposed amendments include new and clarification of definitions, simplification of language, deletion of small unnecessary parts of the rules, needed renumbering, and a better and simplified language for the current background check process.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division does not anticipate any additional costs or savings due to these proposed rule changes.

B) Local governments:

These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because there are no licensed centers operated by local governments to whom these changes will affect.

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

The Division expects some savings associated with these proposed amendments to the background check rules that will benefit all child care providers. Since the Department uses the FBI Rap Back system, it is no longer required for providers to resubmit background check information for their covered individuals once every year. By not doing so, child care providers will not have to pay the $18 fee to renew their covered individuals' background check. That will save providers from the annual costs of renewing background checks.

The majority of child care centers in the state operate as small businesses. There are 12 Out of School Time Programs with approximately 183 individuals associated with these facilities who, because of these proposed rule amendments, will not have to pay for the renewal of the background check. This will save providers about $3,294 per year.

The Division does not expect any costs associated with these proposed rule amendments.

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

The Division does not anticipate any additional costs or savings due to these proposed rule changes.

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

The Division does not anticipate any additional costs or savings due to these proposed rule changes.

F) Compliance costs for affected persons:

The Division does not anticipate any additional costs due to these proposed rule changes.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$3,294	$3,294	$3,294
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$3,294**	**$3,294**	**$3,294**
Net Fiscal Benefits:	**$3,294**	**$3,294**	**$3,294**

H) Department head sign-off on regulatory impact:

The executive director of the Department, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These rule changes clarify requirements, simplify processes, and remove the requirement that child care providers pay for and have a background clearance run on each employee annually because now the process is automated.

There is no fiscal impact to businesses from any of these proposed changes.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 63G, Chapter 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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:**	11/21/2019

R381. Health, Child Care Center Licensing Committee.
R381-70. Out of School Time Child Care Programs.
R381-70-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background check that may result in a denial from Child Care Licensing.

(4) "Background Check Denial" means that an individual has failed the background check and is prohibited from being involved with a program licensed by Child Care Licensing.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Business Days/Hours" means the days of the week and times the facility is open for business.

(8) "Capacity" means the maximum number of children allowed in the program at any given time.

(9) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(10) "Child Care Center Licensing Committee" means the Child Care Center Licensing Committee created in the Utah Child Care Licensing Act.

(11) "Conditional Status" means that the provider is at risk of losing their program's license because compliance with licensing rules has not been maintained.

(12) "Covered Individual" means any of the following individuals involved with the program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(f) a volunteer, except a parent of a child enrolled in the program; and

(h) anyone who has unsupervised contact with a child in the program.

(13) "CPSC" means the Consumer Product Safety Commission.

(14) "Department" means the Utah Department of Health.

(15) "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(16) "Director" means a person who meets the director qualifications in this rule, and who assumes the program's day-to-day responsibilities for compliance with Child Care Licensing rules.

(17) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(18) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(19) "Facility" means a program or the premises approved by the Department and licensed by Child Care Licensing.

(20) "Group" means the children who are assigned to and supervised by one or more staff members.

(21) "Group Size" means the number of children in a group.

(22) "Guest" means an individual who is not a covered individual and is at the facility with the provider's permission.

(23) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(24) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(25) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a safety device;

(c) behind a properly secured safety gate;

(d) located in a cupboard or on a shelf that is at least 48 inches above the floor; or

(e) in a bathroom, locked or secured with a safety device.

(26) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(27) "Involved with Children" means to do any of the following at or for an out-of-school-time program ~~licensed by Child Care Licensing~~:

(a) supervise or be assigned to work with children [~~in the program~~];

(b) volunteer [~~at an out-of-school-time program~~];

(c) own, operate, direct[~~, or be employed at an out-of-school-time program~~];

(d) reside [~~at a facility where an out-of-school-time program operates~~]; [~~or~~]

(e) count in the caregiver-to-child ratio; or

(f) have unsupervised contact with a child in care. [~~be present at a facility while an out-of-school-time program operates, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the program's facility.~~]

(28) "License" means a license issued by the Department to provide out-of-school-time program services.

(29) "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(30) "LIS Supported Finding" means background check information from the Licensing Information System (LIS) database for

child abuse and neglect, maintained by the Utah Department of Human Services.

(31) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(32) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

(33) "Parent" means the parent or legal guardian of a child in the program.

(34) "Person" means an individual or a business entity.

(35) "Physical Abuse" means causing nonaccidental physical harm to a child.

(36) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one child to stand on, and upon which the children can move freely.

(37) "Protective Barrier" means a structure such as bars, lattice, or a panel that is around an elevated platform and is intended to prevent accidental or deliberate movement through or access to something.

(38) "Protective Cushioning" means a shock-absorbing surface under and around play equipment that reduces the severity of injuries from falls.

(39) "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(40) "Qualifying Child" means:

(a) a child who is between 5 and 13 years old and is the child of a person other than the provider or a staff member, and

(b) a child with a disability who is between 5 and 18 years old and is the child of a person other than the provider or a staff member.

(41) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(42) "Room" will be defined as follows:

When a large room is divided into smaller rooms or areas with barriers such as furniture or with half walls, the room or area will be considered:

(a) One room, when the room is divided by a solid barrier that is 24 inches or less, whether the barrier is movable or immovable.

(b) One room, when the room is divided by a solid barrier that is between 25 and 40 inches in height and there is an opening in the barrier through which caregivers and children can move freely.

(c) Two rooms, when the room is divided by a solid barrier that is between 25 and 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked such as with a child safety gate. This applies to a diaper changing station that is located behind a closed gate.

(d) Two rooms, when the room is divided by a solid barrier that is over 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked such as with a child safety gate. If there is an opening through which caregivers and children can move freely and it the opening is not blocked, refer to the instructions for a large opening, archway, or doorway.

When two rooms or areas are connected by a large opening, archway, or doorway, the rooms or areas will be considered:

(e) One room, when the width of the opening or archway is equal to or greater than the combined width of the walls on each side of the opening or archway in the larger of the two rooms or areas, and there is no furniture or other dividers blocking the opening or archway. Otherwise this will be considered two rooms.

(f) Two rooms, when the width of the opening or archway is smaller than the combined width of the walls on each side of the opening or archway, in the larger of the two rooms or areas.

When in outdoor areas separated by interior fences, consider it:

(g) One area, when the interior fence is 24 inches or lower in height, whether or not the fence has an opening.

(h) One area when the interior fence is 40 inches or lower in height with an opening through which caregivers and children can move freely.

(i) Two areas, when the interior fence is higher than 24 inches and there is no opening.

(j) Two areas, when the interior fence is higher than 40 inches whether or not the fence has an opening.

[~~(42)~~](43) "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

[~~(43)~~](44) "School-Age Child" means a child age 5 through 12 years old.

[~~(44)~~](45) "Services" means the supervision and response to the needs of 5 or more qualifying children:

(a) in the absence of the children's parents,

(b) in a place other than the provider's home or the child's home,

(c) for less than 24 hours a day, and

(d) for direct or indirect compensation.

[~~(45)~~](46) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

[~~(46)~~](47) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

[~~(47)~~](48) "Staff-to-Child Ratio" means the number of staff responsible for a specific number of children.

[~~(48)~~](49) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

[~~(49)~~](50) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as a protruding open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

[~~(50)~~](51) "Substitute" means an individual who temporarily assumes the responsibilities to supervise and work with the children when the assigned staff member is not present.

[~~(51)~~](52) "Unrelated Child" means a child who is not a "related child" as defined in R381-70-2([~~40~~]41).

[~~(52)~~](53) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a staff member who is at least 18 years old and has passed a Child Care Licensing background check.

[~~(53)~~](54) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

[~~(54)~~](55) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

[~~(55)~~](56) "Working Days" means the days of the week the Department is open for business.

R381-70-3. License Required.

(1) A person or persons shall be licensed as an out-of-school-time program if they provide services:

(a) in the absence of the child's parent;

(b) in a place other than the provider's home or the child's home;

(c) for 5 or more qualifying children;

(d) for each individual child for less than 24 hours per day;

(e) on an ongoing basis, on 3 or more days a week and for 30 or more days in a calendar year;

[~~(f) either for 2 or more hours per day on days when school is in session for the child receiving services and 4 or more hours per day on days when school is not in session for the children receiving services, or the provider offers services for 4 or more hours per day on days when school is not in session for the children receiving services;~~]

[~~(g)~~](f) to children who are at least 5 years of age; and

[~~(h)~~](g) for direct or indirect compensation.

(2) The Department may not license, nor is a license required for:

(a) a person who serves related children only, or

(b) a person who provides services on a sporadic basis only.

(3) [~~According to Foster Care Services rule R501-12-4(8)(f)(d), a provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.~~]A provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program, unless the part of the building requesting a CCL license is physically separated from the other building services.

R381-70-4. License Application, Renewal, Changes, and Variances.

(1) An applicant for a new license shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of the educational credentials of the person who will be the director as required in R381-70-7[~~(4)~~];

(f) a copy of a completed Department health and safety plan;

(g) CCL background checks for all covered individuals as required in R381-70-8;

(h) [~~a current copy of the Department's~~] new provider training [~~certificate of attendance~~]completion no more than six months before the date of the application; and

(i) all required fees, which are nonrefundable.

(2) The applicant shall pass a Department's inspection of the facility before a new license or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall [~~include~~]verify compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

[~~(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;~~]

[~~(c)~~](b) exit doors shall operate properly and shall be well maintained;

[~~(d)~~](c) obstructions in exits, aisles, corridors, and stairways shall be removed;

[~~(e)~~](d) exit doors shall be unlocked from the inside during business hours;

[~~(f)~~](e) exits shall be clearly identified;

[~~(g)~~](f) there shall be at least one unobstructed fire extinguisher[~~s~~] on each level of the building [~~that are of an X minimum rate and appropriate to the type of hazard~~], currently charged and serviced, and mounted not more than 5 feet above the floor;

[~~(h)~~](g) there shall be working smoke detectors that are properly installed on each level of the building; and

[~~(i)~~](h) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the provider serves food and the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall [~~include~~]verify compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) cooks shall use hair restraints and wear clean outer clothing;

(f) according to Food Code 2-103-11, only necessary staff shall be present in the kitchen;

(g) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(h) chemicals shall be stored away from food and food service items;

(i) food shall be properly stored, kept to the proper temperature, and in good condition; and

(j) there shall be a working handwashing sink in the kitchen and handwashing instructions posted by the sink.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be licensed, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a license if, within the 5 years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure; or

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their license by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a license for a provider who is no longer providing services.

(11) The provider shall submit a complete application for a new license at least 30 days before any of the following changes occur:

(a) a change of the facility's location, or

(b) a change that transfers 50 percent or more ownership or controlling interest to a new individual or entity.

(12) The provider shall submit a complete application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where services are provided;

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

(c) a change in the regulation category of the program;

(d) a change in the name of the provider;

(e) an addition or loss of a director; or

(f) a change in ownership that does not require a new license.

(13) The Department may amend a license after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) A license is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R381-70-8. Background Checks.

~~[(1) Before a new covered individual becomes involved with child care in the program, the provider shall:~~

~~(a) have the individual submit an online background check form,~~

~~(b) authorize the individual's background check form,~~

~~(c) pay all required fees, and~~

~~(d) receive written notice from CCL that the individual passed the background check.~~

~~(2) The provider shall ensure that an online background check form is submitted and background check authorized, and that background check fees are paid within 10 working days from when a child who resides in the facility turns 12 years old.~~

~~(3) The provider shall ensure that a CCL background check for each individual age 18 years or older includes fingerprints and fingerprints fees.]~~

~~(4) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.~~

~~(5) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.~~

~~(6) Fingerprints are not required if the covered individual has:~~

~~(a) previously submitted fingerprints to CCL for a Next Generation, national criminal history check;~~

~~(b) resided in Utah continuously since the fingerprints were submitted; and~~

~~(c) kept their CCL background check current.~~

~~(7) Background checks are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background check card.~~

~~(8) At least 2 weeks before the end of the renewal month that is written on a covered individual's background check card, the provider shall:~~

~~(a) have the individual submit an online CCL background check form and fingerprints if not previously submitted,~~

~~(b) authorize the individual's background check form through the provider portal, and~~

~~(c) pay all required fees.~~

~~(9) The following background findings may deny a covered individual from being involved with child care:~~

~~(a) LIS supported findings,~~

~~(b) the individual's name appears on the Utah or national sex offender registry,~~

~~(c) any felony convictions,~~

~~(d) any Misdemeanor A convictions, or~~

~~(e) Misdemeanor B and C convictions for the reasons listed in R381-100-8(10).~~

~~(10) The following convictions, regardless of severity, may result in a background check denial:~~

~~(a) unlawful sale or furnishing alcohol to minors;~~

~~(b) sexual enticing of a minor;~~

~~(c) cruelty to animals, including dogfighting;~~

~~(d) bestiality;~~

~~(e) lewdness, including lewdness involving a child;~~

~~(f) voyeurism;~~

~~(g) providing dangerous weapons to a minor;~~

~~(h) a parent providing a firearm to a violent minor;~~

~~(i) a parent knowing of a minor's possession of a dangerous weapon;~~

~~(j) sales of firearms to juveniles;~~

~~(k) pornographic material or performance;~~

~~(l) sexual solicitation;~~

~~(m) prostitution and related crimes;~~

~~(n) contributing to the delinquency of a minor;~~

~~(o) any crime against a person;~~

~~(p) a sexual exploitation act;~~

~~(q) leaving a child unattended in a vehicle; and~~

~~(r) driving under the influence (DUI) while a child is present in the vehicle.~~

~~(11) A covered individual with a Class A misdemeanor background finding not listed in R381-100-8(10) may be involved with child care when:~~

~~(a) 10 or more years have passed since the Class A misdemeanor offense, and~~

~~(b) there is no other conviction for the individual in the past 10 years.~~

~~(12) A covered individual with a Class A misdemeanor background finding not listed in R381-100-8(10) may be involved with child care for up to 6 months if:~~

~~(a) 5 to 9 years have passed since the offense,~~

~~(b) there is no other conviction since the Class A misdemeanor offense,~~

~~(c) the individual provides to the Department documentation of an active petition for expungement, and~~

~~(d) the provider ensures that the individual does not have unsupervised contact with any child in care.~~

~~(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.~~]

(1) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:

(a) verify that the individual has a current CCL background check, and

(b) associate that individual with their facility.

(2) Before a new covered individual who does not show in the CCL provider portal search becomes involved with child care in the program, the provider shall:

(a) have the individual submit an online background check form and fingerprints for individuals age 18 years and older,

(b) authorize the individual's background check through the CCL provider's portal,

(c) pay all required fees, and

(d) receive written notice from CCL that the individual passed the background check.

(3) A covered individual without a current background check will not show in the CCL provider portal search. The Department may not consider a covered individual's background check current when the covered individual has:

(a) (a) failed to pass a CCL background check;

(b) moved outside of Utah; or

(c) not been associated with an active, CCL approved child care facility for the past 180 days.

(4) Within 10 working days from when a child who resides in the facility turns 12 years old, the provider shall:

(a) ensure that an online background check form is submitted,

(b) authorize the child's background check through the CCL provider's portal, and

(c) pay all required fees.

(5) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(6) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(7) The following background findings may deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions, or

(d) for any of the reasons listed under R381-100-8(8).

(8) The following convictions, regardless of severity, may result in a background check denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

[~~(14)~~](9) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background check was conducted.

[~~(15)~~](10) The Department may rely on the criminal background check findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

[~~(16)~~](11) If the provider has a background check denial, the Department may suspend or deny their license until the reason for the denial is resolved.

[~~(17)~~](12) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall

prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

[~~(18)~~](13) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

[~~(19)~~](14) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

[~~(20)~~](15) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

[~~(21)~~](16) The Executive Director of the Department of Health may overturn a background check denial when the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R381-70-10. Ratios and Group Size.

(1) The provider shall maintain the staff-to-child ratio of at least one staff member for every 20 children.

(2) The provider shall not exceed the maximum group size of 40 children per group.

(3) There shall be at least 2 staff members present when there are more than 8 children on the premises.

(4) The provider's or an employee's child is not counted in the staff-to-child ratio when the parent of the child is working at the facility, but the child is counted in the group size.

(5) Staff who are 16 or 17 years old may be included in the staff-to-child ratio, but shall not have unsupervised contact with any child being served.

(6) Volunteers may be included in the staff-to-child ratio if they:

(a) are at least 16 years old,

(b) receive at least 2.5 hours of preservice training before counting in the staff-to-child ratio, and

(c) complete at least 1/2 hour of child related training for each month they volunteer 40 hours or more.

(7) Student interns who are registered in a high school or college child care course may count in the staff-to-child ratio when requirements in R381-70-7(14)(a)-(c) are met.

(8) Guests shall not count in staff-to-child ratios.

R381-70-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Poisonous and harmful plants shall be inaccessible to children.

(3) Razors and other similar blades shall be inaccessible to children.

(4) Strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck shall be inaccessible to children.

(5) Tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways shall be inaccessible to children.

(6) Exits shall be free of any blocking objects.

(7) Standing water that measures 2 inches or deeper and 5 by 5 inches or greater in diameter shall be inaccessible to children.

(8) Toxic or hazardous chemicals such as insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(9) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(10) Children shall be protected from items that cause electrical shock such as live electrical wires.

(11) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(12) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(13) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in program vehicles any time a child is present.

(14) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(15) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(16) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(17) [~~In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:~~]Tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and, in compliance with the Utah Indoor Clean Air Act, not used:

(a) in the facility or any other building where a child is being served,

(b) in any vehicle that is transporting a child in the program,

(c) within 25 feet of any entrance to the facility or other building occupied by a child being served, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child being served.

R381-70-16. Food and Nutrition.

(1) On days when services are provided for 3 or more hours, the provider shall ensure that each child is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP [~~menus~~]meal pattern requirements, the standard Department-approved menus, or menus approved by a registered [~~dietician~~]dietitian. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) programs that are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name,

(b) refrigerated if needed, and

(c) consumed only by that child.

R381-70-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) With the exception of swings, stationary play equipment with any designated play surface higher than 30 inches shall have at least a 6-foot use zone measured from the outermost edge of the equipment.

(3) The use zone in the front and rear of a single-axis swing shall extend at least twice the distance of the swing pivot point to the ground.

(4) The use zone for the sides of a single-axis swing shall extend at least 6 feet from the outermost edge of the swing.

(5) The use zone for a multi-axis swing, such as a tire swing, shall extend at least the measurement of the suspending rope or chain plus 6 feet.

(6) The use zone for a merry-go-round shall extend at least 6 feet in all directions from its outermost edge.

(7) The use zone for a spring rocker shall extend at least 6 feet from the outermost edge of the rocker when at rest if the seat is higher than 20 inches.

(8) The following use zones shall not overlap the use zone of any other piece of play equipment:

(a) the use zone in front of a slide,

(b) the use zone in the front and rear of any single-axis swing,

(c) the use zone of a multi-axis swing, and

(d) the use zone of a merry-go-round if the platform diameter measures 20 inches or more.

(9) Unless prohibited in R381-70-19(8), the use zones of play equipment may overlap when:

(a) there is at least 6 feet between the pieces of equipment if the designated play surface is 30 inches or lower, or (b) there is at least 9 feet between the pieces of equipment if the designated play surface is higher than 30 inches.

(10) Stationary play equipment without moving parts children sit or stand on shall not be placed on concrete, asphalt, dirt, a bare floor, or any other hard surface, but may be placed on grass or other cushioning, if the highest designated play surface measures between 6 to 30 inches.

(11) Protective cushioning shall cover the entire surface of each required use zone and its depth or thickness shall be determined by the highest designated play surface of the equipment.

(12) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1.

(a) the provider shall ensure that the cushioning is periodically checked for compaction and loosened to the depth listed in Table 1 if compacted; and

(b) if the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 7'	9"	not allowed	9"	not allowed	6"
Over 7' up to 8'	9"	not allowed	9"	not allowed	6"
Over 8' up to 9'	9"	not allowed	9"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	9"	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(13) If shredded wood products are used as protective cushioning:

(a) the provider shall keep on-site for review by the Department documentation from the manufacturer that the wood product meets ASTM Specification F1292,

(b) there shall be adequate drainage under the material, and

(c) the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
4' high or less	6"	6"	6"

Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	9"	9"	9"
Over 8' up to 9'	9"	9"	9"
Over 9' up to 10'	9"	9"	9"
Over 10' up to 11'	9"	9"	9"
Over 11'	9"	not allowed	not allowed

(14) If a unitary cushioning is used, the provider shall ensure that the material meets the standard established in ASTM Specification F1292. The provider shall maintain on-site for review by the Department documentation from the manufacturer that the material meets these specifications.

(15) If a unitary cushioning is used, the provider shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(16) A play equipment platform that is more than 48 inches above the floor or ground shall have a protective barrier that is at least 38 inches high.

(17) There shall be no gap greater than 3-1/2 inches in or under a required protective barrier on a play equipment platform.

(18) Stationary play equipment shall be stable [~~and~~]or securely anchored.

(19) There shall be no trampolines on the premises that are accessible to any child in the program.

(20) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(21) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(22) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(23) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

KEY: child care facilities, child care, child care centers, out of school time child care programs
Date of Enactment or Last Substantive Amendment: [~~August 10, 2018~~]2020
Authorizing, and Implemented or Interpreted Law: 26-39-203(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R381-100**	**Filing No. 52371**

Agency Information

1. Department:	Health
Agency	Child Care Center Licensing Committee
Building:	Highland
Street address:	3760 S Highland Drive
City, state:	Salt Lake City, UT 84106
Mailing address:	PO Box 142003
City, state, zip:	Salt Lake City, UT 84114
Contact person(s):	

Name:	**Phone:**	**Email:**
Simon Bolivar	801-803-4618	sbolivar@utah.gov

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

General Information

2. Rule or section catchline:

Child Care Centers

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

The Department of Health (Department) and the Center Licensing Committee (Division) have collected suggested amendments to this rule throughout the year. These amendments are necessary to clarify language and to simplify processes, so interpretation of and compliance with the rules are even more consistent.

4. Summary of the new rule or change:

These proposed amendments include new and clarification of definitions, simplification of language, deletion of small unnecessary parts of the rules, needed renumbering, and a better and simplified language for the current background check process.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The Division does not anticipate any additional costs or savings due to these proposed rule changes.

B) Local governments:

These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because there are no licensed centers operated by local governments to whom these changes will affect. There is only one business in the child care industry (NAICS 624410) in Utah operated by a local government, but that facility is exempt from the requirements of this rule.

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

The Division expects some savings associated with these proposed amendments to the background check rules that will benefit all child care providers. Since the Department uses the FBI Rap Back system, it is no longer required for providers to resubmit background check information for their covered individuals once every year. By not doing so, child care providers will not have to pay the $18 fee to renew their covered individuals'

background check. That will save providers from the annual costs of renewing background checks.

The majority of child care centers in the state operate as small businesses. There are 329 Centers with approximately 2,606 individuals associated with these facilities who, because of these proposed rule amendments, will not have to pay for the renewal of the background check. This will save providers about $46,908 per year.

The Division does not expect any costs associated with these proposed rule amendments.

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

The Division expects some savings associated with these proposed amendments to the background check rules that will benefit all child care providers. Since the Department uses the FBI Rap Back system, it is no longer required for providers to resubmit background check information for their covered individuals once every year. By not doing so, child care providers will not have to pay the $18 fee to renew their covered individuals' background check. That will save providers from the annual costs of renewing background checks.

According to the NAICS, codes 6244-624410, there about 10 non-small child care businesses in the state. There are approximately 390 individuals associated with these facilities who, because of these proposed rule amendments, will not have to pay for the renewal of the background check. This will save providers about $7,020 per year.

The Division does not expect any costs associated with these proposed rule amendments.

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

The Division does not anticipate any additional costs or savings due to these proposed rule changes.

F) Compliance costs for affected persons:

The Division does not anticipate any additional costs due to these proposed rule changes.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$46,908	$46,908	$46,908
Non-Small Businesses	$7,020	$7,020	$7,020
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$53,928**	**$53,928**	**$53,928**
Net Fiscal Benefits:	**$53,928**	**$53,928**	**$53,928**

H) Department head sign-off on regulatory impact:

The executive director of the Department, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These rule changes clarify requirements, simplify processes, and remove the requirement that child care providers pay for and have a background clearance run on each employee annually because now the process is automated.

There is no fiscal cost to businesses from any of these rule changes.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 63G, Chapter 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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:**	11/21/2019

R381. Health, Child Care Center Licensing Committee.
R381-100. Child Care Centers.
R381-100-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background check that may result in a denial from Child Care Licensing.

(4) "Background Check Denial" means that an individual has failed the background check and is prohibited from being involved with a child care program.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Business Days/Hours" means the days of the week and times the facility is open for business.

(8) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(9) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(10) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(11) "Child Care" means continuous care and supervision of 5 or more qualifying children that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(12) "Child Care Center Licensing Committee" means the Child Care Center Licensing Committee created in the Utah Child Care Licensing Act.

(13) "Child Care Program" means a person or business that offers child care.

(14) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(15) "Conditional Status" means that the provider is at risk of losing their child care license because compliance with licensing rules has not been maintained.

(16) "Covered Individual" means any of the following individuals involved with a child care program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(e) a caregiver;

(f) a volunteer, except a parent of a child enrolled in the child care program;

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

(h) anyone who has unsupervised contact with a child in care.

(17) "CPSC" means the Consumer Product Safety Commission.

(18) "Crib" means an infant's bed with sides to protect them from falling including a bassinet, porta-crib, and play pen.

[~~(18)~~](19) "Department" means the Utah Department of Health.

[~~(19)~~](20)"Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

[~~(20)~~](21) "Director" means a person who meets the director qualifications in this rule, and who assumes the child care program's day-to-day responsibilities for compliance with Child Care Licensing rules.

[~~(21)~~](22) "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

[~~(22)~~](23) "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

[~~(23)~~](24) "Facility" means a child care program or the premises approved by the Department to be used for child care.

[~~(24)~~](25) "Group" means the children who are ~~supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.~~assigned to and supervised by one or more caregivers.

[~~(25)~~](26) "Group Size" means the number of children in a group.

[~~(26)~~](27) "Guest" means an individual who is not a covered individual and is at the child care facility with the provider's permission.

[~~(27)~~](28) "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

[~~(28)~~](29) "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

[~~(29)~~](30) "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

[~~(30)~~](31) "Infant" means a child who is younger than 12 months of age.

[~~(31)~~](32) "Infectious Disease" means an illness that is capable of being spread from one person to another.

[~~(32)~~](33) "Involved with Child Care" means to do any of the following at or for a child care program [~~licensed by the Department~~]:

(a) [~~provide child~~] care for or supervise children;

(b) volunteer [~~at a child care program~~];

(c) own, operate, direct, [~~or be employed at a child care program~~];

(d) reside [~~at a facility where child care is provided~~]; [~~or~~]

(e) count in the caregiver-to-child ratio; or

(f) have unsupervised contact with a child in care. [~~be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.~~]

[~~(33)~~](34) "License" means a license issued by the Department to provide child care services.

[~~(34)~~](35) "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

[~~(35)~~](36) "LIS Supported Finding" means background check information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

[~~(36)~~](37) "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

[~~(37)~~](38) "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

[~~(38)~~](39) "Parent" means the parent or legal guardian of a child in care.

[~~(39)~~](40) "Person" means an individual or a business entity.

[~~(40)~~](41) "Physical Abuse" means causing nonaccidental physical harm to a child.

[~~(41)~~](42) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one child to stand on, and upon which the children can move freely.

[~~(42)~~](43) "Preschooler" means a child age 2 through 4 years old.

[~~(43)~~](44) "Protective Barrier" means a structure such as bars, lattice, or a panel that is around an elevated platform and is intended to prevent accidental or deliberate movement through or access to something.

[~~(44)~~](45) "Protective Cushioning" means a shock-absorbing surface under and around play equipment that reduces the severity of injuries from falls.

[~~(45)~~](46) "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

[~~(46)~~](47) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

[~~(47)~~](48) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(49) "Room" will be defined as follows:

When a large room is divided into smaller rooms or areas with barriers such as furniture or with half walls, the room or area will be considered:

(a) One room, when the room is divided by a solid barrier that is 24 inches or less, whether the barrier is movable or immovable.

(b) One room, when the room is divided by a solid barrier that is between 25 and 40 inches in height and there is an opening in the barrier through which caregivers and children can move freely.

(c) Two rooms, when the room is divided by a solid barrier that is between 25 and 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked such as with a child safety gate. This applies to a diaper changing station that is located behind a closed gate.

(d) Two rooms, when the room is divided by a solid barrier that is over 40 inches in height and there is no opening in the barrier through which caregivers and children can move freely, or there is an opening between the two sides but the opening is blocked such as with a child safety gate. If there is an opening through which caregivers and children can move freely and it the opening is not blocked, refer to the instructions for a large opening, archway, or doorway.

When two rooms or areas are connected by a large opening, archway, or doorway, the rooms or areas will be considered:

(e) One room, when the width of the opening or archway is equal to or greater than the combined width of the walls on each side of the opening or archway, in the larger of the two rooms or areas, and there is no furniture or other dividers blocking the opening or archway. Otherwise this will be considered two rooms.

(f) Two rooms, when the width of the opening or archway is smaller than the combined width of the walls on each side of the opening or archway, in the larger of the two rooms or areas.

When in outdoor areas separated by interior fences, consider it:

(g) One area, when the interior fence is 24 inches or lower in height, whether or not the fence has an opening.

(h) One area, when the interior fence is 40 inches or lower in height with an opening through which caregivers and children can move freely.

(i) Two areas when the interior fence is higher than 24 inches and there is no opening.

(j) Two areas, when the interior fence is higher than 40 inches whether or not the fence has an opening.

[~~(48)~~](50) "Sanitize" means to use a chemical product to remove [~~soil and~~] bacteria from a surface or object.

[~~(49)~~](51) "School-Age Child" means a child age 5 through 12 years old.

[~~(50)~~](52) "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

[~~(51)~~](53) "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

[~~(52)~~](54) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

[~~(53)~~](55) "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

[~~(54)~~](56) "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as a protruding open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

[~~(55)~~](57) "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

[~~(56)~~](58) "Toddler" means a child age 12 through 23 months.

[~~(57)~~](59) "Unrelated Child" means a child who is not a "related child" as defined in R381-100-2([~~46~~]48).

[~~(58)~~](60) "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background check.

[~~(59)~~](61) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

[~~(60)~~](62) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

[~~(61)~~](63) "Working Days" means the days of the week the Department is open for business.

R381-100-3. License Required.

(1) A person or persons shall be licensed as a child care center if they provide care:

(a) in the absence of the child's parent,

(b) in a place other than the provider's home or the child's home,

(c) for 5 or more children,

[~~(d) for 4 or more hours per day;~~]

[~~(e)~~](d) for each individual child for less than 24 hours per day,

[~~(f)~~](e) on an ongoing basis for 4 or more weeks in a year, and

[~~(g)~~](f) for direct or indirect compensation.

(2) The Department may not license, nor is a license required for:

(a) a person who cares for related children only, or

(b) a person who provides care on a sporadic basis only.

(3) [~~According to Foster Care Services rule R501-12-4(8)(f)(d), a provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.~~]A provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program, unless the part of the building requesting a CCL license is physically separated from the other building services.

R381-100-4. License Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care license shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of the educational credentials of the person who will be the director as required in R381-100-7[~~(4)~~];

(f) a copy of a completed Department health and safety plan form;

(g) CCL background checks for all covered individuals as required in R381-100-8;

(h) [~~a Department's~~]new provider training [~~certificate of attendance~~]completion no more than six months before the date of the application; and

(i) all required fees, which are nonrefundable.

(2) The applicant shall pass a Department's inspection of the facility before a new license or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall [~~include~~]verify compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

[~~(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;~~]

[~~(c)~~](b) exit doors shall operate properly and shall be well maintained;

[~~(d)~~](c) obstructions in exits, aisles, corridors, and stairways shall be removed;

[~~(e)~~](d) exit doors shall be unlocked from the inside during business hours;

[~~(f)~~](e) exits shall be clearly identified;

[~~(g)~~](f) there shall be at least one unobstructed fire extinguisher[~~s~~] on each level of the building [~~that are of an X minimum rate and appropriate to the type of hazard~~], currently charged and serviced, and mounted not more than 5 feet above the floor;

[~~(h)~~](g) there shall be working smoke detectors that are properly installed on each level of the building; and

[~~(i)~~](h) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the provider serves food and the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall [~~include~~]verify compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) cooks shall use hair restraints and wear clean outer clothing;

(f) according to Food Code 2-103-11, only necessary staff shall be present in the kitchen;

(g) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(h) chemicals shall be stored away from food and food service items;

(i) food shall be properly stored, kept to the proper temperature, and in good condition; and

(j) there shall be a working handwashing sink in the kitchen and handwashing instructions posted by the sink.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be licensed, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a license if, within the 5 years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their license by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a license for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new license at least 30 days before any of the following changes occur:

(a) a change of the child care facility's location, or

(b) a change that transfers 50 percent or more ownership or controlling interest to a new individual or entity.

(12) The provider shall submit a complete application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;

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

(c) a change in the regulation category of the program;

(d) a change in the name of the provider;

(e) an addition or loss of a director; or

(f) a change in ownership that does not require a new license.

(13) The Department may amend a license after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) A license is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R381-100-8. Background Checks.

[~~(1) Before a new covered individual becomes involved with child care in the program, the provider shall:~~

~~(a) have the individual submit an online background check form,~~

~~(b) authorize the individual's background check form,~~

~~(c) pay all required fees, and~~

~~(d) receive written notice from CCL that the individual passed the background check.~~

~~(2) The provider shall ensure that an online background check form is submitted and background check authorized, and that background check fees are paid within 10 working days from when a child who resides in the facility turns 12 years old.~~

~~(3) The provider shall ensure that a CCL background check for each individual age 18 years or older includes fingerprints and fingerprints fees.~~]

~~(4) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.~~

~~(5) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.~~

~~(6) Fingerprints are not required if the covered individual has:~~

~~(a) previously submitted fingerprints to CCL for a Next Generation, national criminal history check;~~

~~(b) resided in Utah continuously since the fingerprints were submitted; and~~

~~(c) kept their CCL background check current.~~

~~(7) Background checks are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background check card.~~

~~(8) At least 2 weeks before the end of the renewal month that is written on a covered individual's background check card, the provider shall:~~

~~(a) have the individual submit an online CCL background check form and fingerprints if not previously submitted,~~

~~(b) authorize the individual's background check form through the provider portal, and~~

~~(c) pay all required fees.~~

~~(9) The following background findings may deny a covered individual from being involved with child care:~~

~~(a) LIS supported findings,~~

~~(b) the individual's name appears on the Utah or national sex offender registry,~~

~~(c) any felony convictions,~~

~~(d) any Misdemeanor A convictions, or~~

~~(e) Misdemeanor B and C convictions for the reasons listed in R381-100-8(10).~~

~~(10) The following convictions, regardless of severity, may result in a background check denial:~~

~~(a) unlawful sale or furnishing alcohol to minors;~~

~~(b) sexual enticing of a minor;~~

~~(c) cruelty to animals, including dogfighting;~~

~~(d) bestiality;~~

~~(e) lewdness, including lewdness involving a child;~~

~~(f) voyeurism;~~

~~(g) providing dangerous weapons to a minor;~~

~~(h) a parent providing a firearm to a violent minor;~~

~~(i) a parent knowing of a minor's possession of a dangerous weapon;~~

~~(j) sales of firearms to juveniles;~~

~~(k) pornographic material or performance;~~

~~(l) sexual solicitation;~~

~~(m) prostitution and related crimes;~~

~~(n) contributing to the delinquency of a minor;~~

~~(o) any crime against a person;~~

~~(p) a sexual exploitation act;~~

~~(q) leaving a child unattended in a vehicle; and~~

~~(r) driving under the influence (DUI) while a child is present in the vehicle.~~

~~(11) A covered individual with a Class A misdemeanor background finding not listed in R381-100-8(10) may be involved with child care when:~~

~~(a) 10 or more years have passed since the Class A misdemeanor offense, and~~

~~(b) there is no other conviction for the individual in the past 10 years.~~

~~(12) A covered individual with a Class A misdemeanor background finding not listed in R381-100-8(10) may be involved with child care for up to 6 months if:~~

~~(a) 5 to 9 years have passed since the offense,~~

~~(b) there is no other conviction since the Class A misdemeanor offense,~~

~~(c) the individual provides to the Department documentation of an active petition for expungement, and~~

~~(d) the provider ensures that the individual does not have unsupervised contact with any child in care.~~

~~(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.~~]

(1) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:

(a) verify that the individual has a current CCL background check, and

(b) associate that individual with their facility.

(2) Before a new covered individual who does not show in the CCL provider portal search becomes involved with child care in the program, the provider shall:

(a) have the individual submit an online background check form and fingerprints for individuals age 18 years and older,

(b) authorize the individual's background check through the CCL provider's portal,

(c) pay all required fees, and

(d) receive written notice from CCL that the individual passed the background check.

(3) A covered individual without a current background check will not show in the CCL provider portal search. The Department may not consider a covered individual's background check current when the covered individual has:

(a) failed to pass a CCL background check;

(b) moved outside of Utah; or

(c) not been associated with an active, CCL approved child care facility for the past 180 days.

(4) Within 10 working days from when a child who resides in the facility turns 12 years old, the provider shall:

(a) ensure that an online background check form is submitted,

(b) authorize the child's background check through the CCL provider's portal, and

(c) pay all required fees.

(5) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(6) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(7) The following background findings may deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions, or
(d) for any of the reasons listed under R381-100-8(8).
(8) The following convictions, regardless of severity, may result in a background check denial:
(a) unlawful sale or furnishing alcohol to minors;
(b) sexual enticing of a minor;
(c) cruelty to animals, including dogfighting;
(d) bestiality;
(e) lewdness, including lewdness involving a child;
(f) voyeurism;
(g) providing dangerous weapons to a minor;
(h) a parent providing a firearm to a violent minor;
(i) a parent knowing of a minor's possession of a dangerous weapon;
(j) sales of firearms to juveniles;
(k) pornographic material or performance;
(l) sexual solicitation;
(m) prostitution and related crimes;
(n) contributing to the delinquency of a minor;
(o) any crime against a person;
(p) a sexual exploitation act;
(q) leaving a child unattended in a vehicle; and
(r) driving under the influence (DUI) while a child is present in the vehicle.

[~~(14)~~](9) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background check was conducted.

[~~(15)~~](10) The Department may rely on the criminal background check findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

[~~(16)~~](11) If the provider has a background check denial, the Department may suspend or deny their license until the reason for the denial is resolved.

[~~(17)~~](12) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

[~~(18)~~](13) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

[~~(19)~~](14) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

[~~(20)~~](15) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

[~~(21)~~](16) The Executive Director of the Department of Health may overturn a background check denial when the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R381-100-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Poisonous and harmful plants shall be inaccessible to children.

(3) Sharp objects, edges, corners, or points that could cut or puncture skin shall be inaccessible to children.

(4) Choking hazards shall be inaccessible to children younger than 3 years of age.

(5) Strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck shall be inaccessible to children.

(6) Tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways shall be inaccessible to children.

(7) For children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons shall be inaccessible to children.

(8) Standing water that measures 2 inches or deeper and 5 by 5 inches or greater in diameter shall be inaccessible to children.

(9) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(10) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(11) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(12) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(13) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(14) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in center vehicles any time a child is in care.

(15) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(16) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(17) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(18) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(19) Infant walkers with wheels shall be inaccessible to children.

(20) [~~In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:~~]Tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and, in compliance with the Utah Indoor Clean Air Act, not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R381-100-16. Food and Nutrition.

(1) The provider shall ensure that each child age 2 years and older is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP [~~menus~~]meal pattern requirements, the standard Department-approved menus, or menus approved by a registered [~~dietician~~]dietitian. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) providers who are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, or sanitary highchair trays, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name,

(b) refrigerated if needed, and

(c) consumed only by that child.

R381-100-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) The highest designated play surface on stationary play equipment used by infants or toddlers shall not exceed 3 feet in height.

(3) Swings used by infants or toddlers shall have enclosed seats.

(4) Stationary play equipment shall have a surrounding use zone that extends from the outermost edge of the equipment. With the exception of swings, stationary play equipment that is:

(a) used by infants or toddlers shall have at least a 3-foot use zone if any designated play surface is higher than 18 inches,

(b) used by preschoolers shall have at least a 6-foot use zone if any designated play surface is higher than 20 inches, and

(c) used by school-age children shall have at least a 6-foot use zone if any designated play surface is higher than 30 inches.

(5) The use zone in the front and rear of a single-axis, enclosed swing shall extend at least twice the distance of the swing pivot point to the swing seat.

(6) The use zone in the front and rear of a single-axis swing shall extend at least twice the distance of the swing pivot point to the ground.

(7) The use zone for a multi-axis swing, such as a tire swing, shall extend:

(a) at least the measurement of the suspending rope or chain plus 3 feet, if the swing is used by infants or toddlers; or

(b) at least the measurement of the suspending rope or chain plus 6 feet, if the swing is used by preschoolers or school-age children.

(8) The use zone for a merry-go-round shall extend:

(a) at least 3 feet in all directions from its outermost edge if the merry-go-round is used by infants or toddlers, or

(b) at least 6 feet in all directions from its outermost edge if the merry-go-round is used by preschoolers or school-age children.

(9) The use zone for a spring rocker shall extend:

(a) at least 3 feet from the outermost edge of the rocker when at rest; or

(b) at least 6 feet from the outermost edge of the rocker when at rest if the seat is higher than 20 inches, and the rocker is used by preschoolers or school-age children.

(10) The following use zones shall not overlap the use zone of any other piece of play equipment:

(a) the use zone in front of a slide;

(b) the use zone in the front and rear of any single-axis swing, including a single-axis enclosed swing;

(c) the use zone of a multi-axis swing; and

(d) the use zone of a merry-go-round if the platform diameter measures 20 inches or more.

(11) Unless prohibited in R381-100-19(10), the use zones of play equipment may overlap when:

(a) the equipment is used by infants or toddlers, and there is at least 3 feet between the pieces of equipment; or

(b) the equipment is used by preschoolers or school-age children and there is at least 6 feet between the pieces of equipment if the designated play surface is 30 inches or lower, or there is at least 9 feet between the pieces of equipment if the designated play surface is higher than 30 inches.

(12) Stationary play equipment without moving parts children sit or stand on shall not be placed on concrete, asphalt, dirt, a bare floor, or any other hard surface, but may be placed on grass or other cushioning, if the highest designated play surface measures between:

(a) 6 to 18 inches if used by infants or toddlers,

(b) 6 to 20 inches if used by preschoolers, and

(c) 6 to 30 inches if used by school-age children.

(13) Protective cushioning shall cover the entire surface of each required use zone and its depth or thickness shall be determined by the highest designated play surface of the equipment.

(14) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 14.

(a) the provider shall ensure that the cushioning is periodically checked for compaction and loosened to the depth listed in Table 14 if compacted; and

(b) if the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 14

Depths of Protective Cushioning Required for Sand, Gravel, and Shredded Tires

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Fine Sand	Coarse Sand	Fine Gravel	Medium Gravel	Shredded Tires
4' high or less	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"
Over 5' up to 6'	6"	9"	6"	9"	6"
Over 6' up to 7'	9"	not allowed	9"	not allowed	6"
Over 7' up to 8'	9"	not allowed	9"	not allowed	6"
Over 8' up to 9'	9"	not allowed	9"	not allowed	6"
Over 9' up to 10'	not allowed	not allowed	9"	not allowed	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"

(15) If shredded wood products are used as protective cushioning:

(a) the provider shall keep on-site for review by the Department documentation from the manufacturer that the wood product meets ASTM Specification F1292,

(b) there shall be adequate drainage under the material, and

(c) the depth of the shredded wood shall meet the CPSC guidelines in Table 15.

TABLE 15

Depths of Protective Cushioning Required for Shredded Wood Products

Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood Fibers	Wood Chips	Double Shredded Bark Mulch
4' high or less	6"	6"	6"
Over 4' up to 5'	6"	6"	6"
Over 5' up to 6'	6"	6"	6"
Over 6' up to 7'	9"	6"	9"
Over 7' up to 8'	9"	9"	9"
Over 8' up to 9'	9"	9"	9"
Over 9' up to 10'	9"	9"	9"
Over 10' up to 11'	9"	9"	9"
Over 11'	9"	not allowed	not allowed

(16) If a unitary cushioning is used, the provider shall ensure that the material meets the standard established in ASTM Specification F1292. The provider shall maintain on-site for review by the Department documentation from the manufacturer that the material meets these specifications.

(17) If a unitary cushioning is used, the provider shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(18) A play equipment platform that is more than:

(a) 18 inches above the floor or ground and used by infants or toddlers shall have a protective barrier that is at least 24 inches high,

(b) 30 inches above the floor or ground and used by preschoolers shall have a protective barrier that is at least 29 inches high, and

(c) 48 inches above the floor or ground and used by school-age children shall have a protective barrier that is at least 38 inches high.

(19) There shall be no gap greater than 3-1/2 inches in or under a required protective barrier on a play equipment platform.

(20) Stationary play equipment shall be stable [~~and~~]or securely anchored.

(21) There shall be no trampolines on the premises that are accessible to any child in care.

(22) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(23) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(24) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(25) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

KEY: child care facilities, child care, child care centers
Date of Enactment or Last Substantive Amendment: [~~August 10, 2018~~]2020
Authorizing, and Implemented or Interpreted Law: 26-39-203(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R398-30**	**Filing No. 52376**

Agency Information

1. Department:	Health
Agency:	Family Health and Preparedness, Children with Special Health Care Needs
Room no.:	2025
Building:	Family Health Services Building
Street address:	44 N Mario Capecchi Drive
City, state:	Salt Lake City, UT 84113-1105
Mailing address:	PO Box 144610
City, state, zip:	Salt Lake City, UT 84114-4610

Contact person(s):		
Name:	**Phone:**	**Email:**
Joyce McStotts	801-584-8239	jmcstotts@utah.gov

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

General Information

2. Rule or section catchline:

Children's Organ Transplants

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

The rule was reviewed in anticipation of completing the five-year review.

4. Summary of the new rule or change:

This amendment updates definitions and makes grammatical changes.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Minimal Cost--May have a slight cost if reprint of rule is needed. The changes update definitions and make grammatical changes.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments' revenues and expenditures as funding for this rule are personal donations from individual tax returns.

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

This rule change is not expected to have any fiscal impact on small businesses' revenues and expenditures as funding for this rule are personal donations from individual tax returns.

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

This rule change is not expected to have any fiscal impact on non-small businesses' revenues and expenditures as funding for this rule are personal donations from individual tax returns.

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

This rule change is not expected to have any fiscal impact on persons other than small businesses', non-small businesses', or local government entities' revenues and expenditures as funding for this rule are personal donations from individual tax returns.

F) Compliance costs for affected persons:

This rule change is not expected to have any compliance cost for affected persons as funding for this rule are personal donations from individual tax returns.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Health, Joseph K. Miner, MD, 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 there is no fiscal impact on businesses.
B) Name and title of department head commenting on the fiscal impacts:
Joseph K. Miner, MD, 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 63G, Chapter 3	Section 26-1-5	

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:**	11/21/2019

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-30. Children's Organ Transplant[s]Fund.
R398-30-1. Authority and Purpose.

(1) Authority for this rule is found in [~~Title 63G, Chapter 3~~]UCA 26-1-5.

(2) The purpose of this rule is to set forth the process and criteria to determine eligibility for and the awarding of financial assistance to children who need organ transplants.

R398-30-2. Definitions.

(1) "Department" means Utah Department of Health, Children with Special Health Care Needs (CSHCN) Bureau.

(2) "Fund" means the Kurt Oscarson Children's Organ Transplant Fund UCA 26-18z.

[~~(2)~~](3) "Initial Medical Expenses" means medical expenses incurred from evaluation of transplant need until two years post-transplant or until the age of 18. This includes[~~:~~]; assessments and evaluations of prospective listed organ transplant recipients and potential organ donors, surgical costs, treatment, COBRA payments, and spend-downs or other related costs for Medicaid or other public assistance eligibility, but does not include travel and living expenses for recipients or families.

[~~(1)~~](4) "Recipient" means a person who:

(a) is under the age of 18;

(i) is listed for an organ transplant or has received a transplant;

(ii) has resided, or whose legal guardian has resided in Utah for at least six months prior to applying for financial assistance; and

(b) maintains Utah residency while using the fund.

[~~(3)~~](5) "Responsible party" means the adult individual who signed the [~~transplant~~]fund contract for the transplant recipient [~~in order~~]to receive the financial assistance.

R398-30-3. Allowable Medical Expenses and Organ Transplants.

Recipients may apply for financial assistance for eligible medical expenses for any type and as many organ transplants as needed for the recipient up until age 18. Each recipient shall have a maximum lifetime benefit of $10,000 based on [~~the~~]fund availability and balance. The committee may award a lower lifetime benefit. The fund may pay eligible expenses up to age 20 for services rendered to the recipient while under the age of 18.

R398-30-4. Application Review and Determining Eligibility.

(1) Eligibility for awarding financial assistance shall be based on:

(a) documentation, through physician assessment and evaluation;

(b) whether the person is listed or has received an organ transplant;

(c) verification and status of prior application efforts to other funding sources such as[~~:~~]; Medicaid, CHIP, and SSI;

(d) submission by the applicant of a current Patient Financial Responsibility form; and

(e) committee review of an approved[~~Kurt Oscarson~~][~~F~~]fund application.

(2) If the recipient account is closed, the recipient, upon reapplication, will receive a priority review of a new application, so long as the recipient meets eligibility criteria at the time of reapplication.

R398-30-5. Awarding Financial Assistance to Recipients.

(1) Prior to awarding financial assistance, the committee shall review the recipient's application for assistance to determine:

(a) the needs of the recipient both [~~physically~~]medically and financially; and

(b) the existence of other financial assistance, including the availability of insurance or other state aid.

(2) Each listed or transplant recipient must apply for Medicaid, Children's Health Insurance Program assistance, or other public health coverage provided by the state, before the committee agrees to award any financial assistance.

(3) As part of the review process, the responsible party of the recipient [~~S~~]shall sign a release to allow all medical records of the child to be released to the [~~Utah~~]Department[~~ of Health~~].

(4) As a part of the review process, the [~~C~~]committee shall consider:

(a) the success rate of the particular organ transplant procedure needed by the child; and

(b) the extent of the threat to the child's life without the organ transplant.

(5) In addition, the committee shall consider the availability of funds [~~in the Children's Organ Transplant fund~~]before awarding financial assistance. The committee may create a waiting list and prioritize the list by financial and medical needs. A financial assistance award is not an entitlement. The [~~Children's Organ Transplant~~]fund should not incur a deficit.

(6) The [~~Utah~~]Department [~~of Health~~]shall create a recipient file [~~which~~]that shall include information such as: the application, related documentation, correspondence, repayment plans, repayment amounts and the approved contract. This file and documentation will be stored securely for [~~10~~]ten years after the recipient reaches the age of 18.

(7) The committee may review and determine if the recipient is ineligible to receive funds when:

(a) the recipient's account has been reviewed and found to be inactive for two years;

(b) the [~~Utah~~]Department [~~of Health~~]has made three documented attempts to contact the responsible party or recipient to discuss inactivity without response;

(c) there is a violation of the terms of the executed contract;

(d) two years have passed since the transplant; or

(e) the recipient is no longer a Utah resident.

R398-30-6. Terms for Repayment of Financial Assistance Loans.

(1) Financial assistance shall be given in the form of an interest free loan. Terms, including amount and time frame for repayment of loans shall be set forth in an initial contract as agreed to by the responsible party and the [~~Utah~~]Department[~~ of Health~~];

(2) Repayment shall be determined by the Committee prior to the contract being signed;

(3) Medical expenses shall be submitted within 24 months after an eligible service was rendered;

(4) Repayments shall begin monthly starting 24 months after the first check has been issued from the[~~ Kurt Oscarson~~] [~~F~~]fund;

(5) The [~~Utah~~]Department [~~of Health~~]shall send out annual invoices on the account status and repayment amount to the responsible party;

(6) The responsible party will be accountable for repayment of the loan; and

(7) The account may go to collections if repayment is not received within the established timeframe as outlined in the contract.

R398-30-7. Waiver or Adjustment of Loan Repayment.

Prior to an account going to collections or if requested by the responsible party, the Committee shall review the file and circumstances involved to determine if an adjustment or waiver should be made to the repayment amount or conditions.

KEY: organ transplants
Date of Enactment or Last Substantive Amendment: April 20, 2015
Authorizing, and Implemented or Interpreted Law: 26-1-5

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R414-49**	**Filing No. 52389**

Agency Information

1. Department:	Health
Agency:	Health Care Financing, Coverage and Reimbursement Policy
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state:	Salt Lake City, UT
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:

Dental, Oral and Maxillofacial Surgeons and Orthodontia

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

The purpose of these changes is to implement S.B. 11, passed during the 2019 General Session, in accordance with a dental amendment to the 1115 Demonstration Waiver.

4. Summary of the new rule or change:

These amendments implement limited dental services to Aged members that include porcelain and cast crowns. It also provides porcelain and cast crowns to Targeted Adult Medicaid members.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is an estimated ongoing total fund cost of $3,797,000 by state fiscal year (SFY) 2022.

B) Local governments:

There are no direct, measurable costs to local governments because they do not fund or provide dental services under the Medicaid program.

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

By SFY 2022, small businesses will see a share of revenue based on a total amount of $3,797,000.

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

By SFY 2022, non-small businesses will see a share of revenue based on a total amount of $3,797,000.

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***)**:**

By SFY 2022, Medicaid providers will see a share of revenue based on a total amount of $3,797,000. Adult Medicaid members, who become eligible for dental services, will also see out-of-pocket savings based on that amount.

F) Compliance costs for affected persons:

There are no compliance costs to a single Medicaid provider or to a Medicaid member because these changes can only result in increased revenue and out-of-pocket savings.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$1,829,500	$3,664,000	$3,797,000
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$1,829,500**	**$3,664,000**	**$3,797,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$1,280,650	$2,564,800	$2,657,900
Non-Small Businesses	$274,425	$549,600	$569,550
Other Persons	$274,425	$549,600	$569,550
Total Fiscal Benefits:	**$1,829,500**	**$3,664,000**	**$3,797,000**
Net Fiscal Benefits:	**$0**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The executive director of the Department of Health, Joseph K. Miner, MD, 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 increased revenue with the expansion of dental services to the adult Medicaid population.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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:	01/14/2020

10. This rule change MAY become effective on:	02/01/2020
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:**	11/27/2019

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia.
R414-49-6. Targeted Adult Medicaid (TAM).

This section defines the scope of dental services available to eligible Targeted Adult Medicaid members who are actively receiving treatment in a substance abuse treatment program as defined in Section 62A-2-101, licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities. Services are authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

(1) Program Access Requirements.

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

(b) Dental services for this population are provided through the University of Utah School of Dentistry (SOD)[~~.~~], and its contracted providers.

(c) Before performing any dental services, SOD shall obtain verification of active treatment for substance use disorder (SUD) from the substance abuse treatment program. The SOD shall then submit an SUD verification form to Medicaid for each eligible TAM member. The SUD verification form is available in "All Providers General Attachments" on the Utah Medicaid website at https://medicaid.utah.gov.

(2) Coverage and Limitations.

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic. Multiple exams for the same date of service are not covered.

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(i) Porcelain and cast crowns (porcelain fused to metal).

(3) Medicaid does not cover the following types of dental services:

(a) Composite resin fillings on posterior teeth;

[~~(b) Cast crowns (porcelain fused to metal) on posterior permanent teeth or on primary teeth;~~]

([~~c~~]b) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

([~~d~~]c) Fixed bridges or pontics;

([~~e~~]d) All types of dental implants;

([~~f~~]e) Tooth transplantation;

([~~g~~]f) Ridge augmentation;

([~~h~~]g) Osteotomies;

([~~i~~]h) Vestibuloplasty;

([~~j~~]i) Alveoloplasty;

([~~k~~]j) Occlusal appliances, habit control appliances or interceptive orthodontic treatment;

([~~l~~]k) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

([~~m~~]l) Procedures such as arthrostomy, meniscectomy, or condylectomy;

([~~n~~]m) Nitrous oxide analgesia;

([~~o~~]n) House calls;

([~~p~~]o) Consultation or second opinions not requested by Medicaid;

([~~q~~]p) Services provided without prior authorization;

([~~r~~]q) General anesthesia for removal of an erupted tooth;

([~~s~~]r) Oral sedation for behavior management;

([~~t~~]s) Temporary dentures or temporary stayplate partial dentures;

([~~u~~]t) Limited orthodontic treatment, including removable appliance therapies;

([~~v~~]u) Removable appliances in conjunction with fixed banded treatment; and

([~~w~~]v) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

(4) Dental Spend-Ups.

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes responsibility for the difference in fees for the following dental procedures:

(i) Covered amalgam fillings to non-covered composite resin fillings; and

(ii) Covered stainless, [~~steel crowns to non-covered porcelain or~~]porcelain and cast crowns (porcelain fused to metal) to cast gold crowns.[~~; and~~

~~(iii) Covered anterior stainless steel crowns (deciduous) to non-covered anterior stainless steel crowns with facings (composite facings added or commercial or lab prepared facings).~~]

R414-49-7. Aged Members.

This section defines the scope of dental services available to Aged members eligible for Traditional Medicaid who are 65 years of age or older, as defined in 42 U.S.C Sec. 1382c(a)(1)(A). Services are

authorized by a federal waiver of Medicaid requirements approved by the Centers for Medicare and Medicaid Services, and allowed under Section 1115 of the Social Security Act.

(1) Program Access Requirements.

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

(b) Dental services for this population are provided through the University of Utah School of Dentistry (SOD), and its contracted providers.

(2) Coverage and Limitations.

(a) Dental services are provided only within the parameters of generally accepted standards of dental practice and are subject to limitations and exclusions established by Medicaid.

(b) Dental services are subject to limitations and exclusions of medical necessity and utilization control considerations or conditions.

(c) Additional service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

(d) Medicaid will reimburse one evaluation per member per day, even if more than one provider is involved from the same office or clinic. Multiple exams for the same date of service are not covered.

(e) Medicaid includes in the global payment, and does not reimburse separately, denture adjustments performed by the original provider within six months of a member receiving a denture.

(f) Medicaid may cover third molar extractions when at least one of the third molars has documented pathology that requires extraction. By discretion, a provider may remove the remaining third molars during the same procedure.

(g) Medicaid covers the treatment of temporomandibular joint fractures, but does not cover other temporomandibular joint treatments.

(h) The laboratory or pathologist must submit claims directly to Medicaid for payment of laboratory services.

(i) Porcelain and cast crowns (porcelain fused to metal).

(3) Medicaid does not cover the following types of dental services:

(a) Composite resin fillings on posterior teeth;

(b) Pulpotomies or pulpectomies on permanent teeth, except in the case of an open apex;

(c) Fixed bridges or pontics;

(d) All types of dental implants;

(e) Tooth transplantation;

(f) Ridge augmentation;

(g) Osteotomies;

(h) Vestibuloplasty;

(i) Alveoloplasty;

(j) Occlusal appliances, habit control appliances or interceptive orthodontic treatment;

(k) Treatment for temporomandibular joint syndrome, sequela, subluxation, or other therapies;

(l) Procedures such as arthrostomy, meniscectomy, or condylectomy;

(m) Nitrous oxide analgesia;

(n) House calls;

(o) Consultation or second opinions not requested by Medicaid;

(p) Services provided without prior authorization;

(q) General anesthesia for removal of an erupted tooth;

(r) Oral sedation for behavior management;

(s) Temporary dentures or temporary stayplate partial dentures;

(t) Limited orthodontic treatment, including removable appliance therapies;

(u) Removable appliances in conjunction with fixed banded treatment; and

(v) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth.

(4) Dental Spend-Ups.

(a) A Medicaid member may choose to upgrade a covered service to a non-covered service if the member assumes responsibility for the difference in fees for the following dental procedures:

(i) Covered amalgam fillings to non-covered composite resin fillings; and

(ii) Covered stainless, porcelain and cast crowns (porcelain fused to metal) to cast gold crowns.

R414-49-[~~7~~]8. Emergency Dental.

This section defines the scope of dental services available to members who are otherwise eligible under the Medicaid program.

(1) Program Access Requirements.

(a) Dental services are available only through an enrolled dental provider that complies with all relevant laws and policy.

(2) Coverage and Limitations.

(a) Emergency dental services are the treatment of a sudden and acute onset of a dental condition that requires immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental or medical health.

(b) Emergency dental service limitations and exclusions are maintained in the Coverage and Reimbursement Code Look-up Tool and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual. These limitations and exclusions are updated in the Medicaid Information Bulletin.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~April 22, 2019~~]2020
Notice of Continuation: May 31, 2019
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.):	**R414-320-2**	**Filing No. 52390**

Agency Information

1. Department:	Health
Agency:	Health Care Financing, Coverage and Reimbursement Policy
Building:	Cannon Health Building
Street address:	288 N 1460 W
City, state:	Salt Lake City, UT
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:

Definitions

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

The purpose of this change is to increase the maximum out-of-pocket deductible for Medicaid members, to allow more members to become eligible for employer-sponsored insurance (ESI) under Utah's Premium Partnership for Health Insurance (UPP).

4. Summary of the new rule or change:

These amendments increase the maximum out-of-pocket UPP deductible for a qualified health plan to $4,000, thus boosting the number of eligible Medicaid members in the UPP program. It also makes other technical changes and removes the definition for "Avenue H", as this marketplace for health care no longer exists.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There may be a minimal cost to the state budget to coincide with the slight increase in eligibility for the UPP program. Nevertheless, there is no data to quantify the number of members who will become eligible, nor the types of services they will require.

B) Local governments:

There is no impact on local governments because they neither fund nor provide services under the UPP program.

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

Some small businesses may see a modest increase in revenue to coincide with the slight increase in eligibility for the UPP program. Nevertheless, there is no data to quantify the number of members who will become eligible, nor the types of services they will require.

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

Some non-small businesses may see a modest increase in revenue to coincide with the slight increase in eligibility for the UPP program. Nevertheless, there is no data to quantify the number of members who will become eligible, nor the types of services they will require.

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***)**:**

Some Medicaid and non-Medicaid providers may see a modest increase in revenue to coincide with the slight increase in eligibility for the UPP program. Nevertheless, there is no data to quantify the number of members who will become eligible, nor the types of services they will require. Medicaid members may also see minimal, unquantifiable out-of-pocket savings.

F) Compliance costs for affected persons:

There are no compliance costs because these changes can only result in increased revenue and out-of-pocket savings.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Health, Joseph K. Miner, MD, 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 these proposed rule changes will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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	Section 26-40-102
Pub. L. No. 111-148		

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:**	11/27/2019

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.

R414-320-2. Definitions.

The definitions in Section 26-40-102 and Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Adult" means an individual who is 19 years of age or older.

(2) [~~"Avenue H" means Utah's Health Marketplace where Utah employers and their employees can find information about available employer-sponsored health insurance plans, select a plan, and enroll online.~~

~~(3)~~]"Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

([~~4~~]3) "Children's Health Insurance Program" or (CHIP) means the program for medical benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

([~~5~~]4) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

([~~6~~]5) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through the Utah Health Exchange.

([~~7~~]6) "Enrollee" means an individual who applies for and is found eligible for the UPP program, and is receiving UPP benefits.

([~~8~~]7) "Open enrollment" means a period during which the eligibility agency accepts applications for the UPP program.

([~~9~~]8) "Primary Care Network" or (PCN) means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

([~~10~~]9) "Public Institution" means an institution that is the responsibility of a governmental unit or is under the administrative control of a governmental unit.

(1[~~1~~]0) "Review month" means the last month of the certification period for an enrollee during which the eligibility agency redetermines the enrollee's eligibility for a new certification period.

(1[~~2~~]1) "UPP Qualified Health Plan" means a health plan that meets all of the following requirements:

(a) Health plan coverage includes:

(i) physician visits;

(ii) hospital inpatient services;

(iii) pharmacy services;

(iv) well child visits; and

(v) children's immunizations.

(b) Lifetime maximum benefits must be at least $1,000,000.

(c) The deductible may not exceed $4,000[~~2,500~~] per individual.

(d) The plan must pay at least 70% of an inpatient stay after the deductible.

(e) The employer contributes at least 50% of the cost of the employee's health insurance premium when the plan is offered directly through the employer. If the employer offers plans through the Utah Health Exchange, the employer must contribute at least 50% of the

cost of the employee's health insurance premium for either the employer's default plan or the plan the employee selects. If the plan is a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan, the employer does not have to contribute to the premium.

(f) The plan does not cover any abortion services; or the plan only covers abortion services in the case where the life of the mother would be endangered if the fetus were carried to term or in the case of rape or incest.

(1[~~3~~]2) "Utah's Premium Partnership for Health Insurance" or (UPP) means a medical assistance program that provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan, including employer-sponsored health plans available under Avenue H, or COBRA coverage that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

KEY: CHIP, Medicaid, PCN, UPP
Date of Enactment or Last Substantive Amendment: [~~June 28, 2016~~]2020
Notice of Continuation: February 1, 2016
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.):	**R428-1**	**Filing No. 52354**

Agency Information

1. Department:	Health	
Agency:	Center for Health Data, Health Care Statistics	
Room no.:	106	
Building:	Cannon Health	
Street address:	280 N 1460 W	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 144004	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Mike Martin	801-538-9205	mikemartin@utah.gov
Stephanie Saperstein	801-538-6460	stephaniesaperstein@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Health Data Plan and Incorporated Documents
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to update data submittal guide for the All Payer Claims Database (APCD) from Version 3.1 to Version 4.0.
4. Summary of the new rule or change:
The changes update material incorporated by reference to reflect technical requirements expected for compliance; specifically clarify effective dates for the All Payer Claims Database (Version 3.1 and Version 4) Data Submittal Guide. A summary of anticipated changes to the manual can be found at: (https://gitlab.com/UtahOHCS/APCD_DSG/blob/master/CHANGELOG.md) Draft copy of Version 4 can be found at: https://gitlab.com/UtahOHCS/APCD_DSG/blob/master/APCD_UT_DSG.md

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule iterates forward to the current versions of documents. The Utah Department of Health (Department) determines enactment of the amended version will not create any cost or savings impact to the state budget or the Department's budget, since these 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 since they are not directly affected by this rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
None--Small businesses are not impacted by these rule changes, with all potentially impacted having more than 50 employees. As a result, this rule will have no effect on small businesses' budgets for costs or savings.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons)**:**
Some data suppliers will need to program changes to their system in order to be consistent with the updated guidelines. According to our research with APCD data carriers, some suppliers may incur cost while others report $0 as an estimate for compliance. Overall, we estimate a one-time compliance cost of $700 per carrier (approximately 8 hours x DTS approved rate of $88 per hour) to comply with proposed APCD DSG 4.0.

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 aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because these proposed rule changes do not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.

F) Compliance costs for affected persons:

The Division anticipates that some APCD carriers will need to make programming changes to implement the additional flexibility and clarifications. By agreement with the APCD data suppliers, changes to the APCD DSG are limited to once per calendar year, so they should anticipate these changes as part of their normal business process in preparation for next year. The burden of these changes is consistent with that understanding. Based on figures reported in Box 5D and current APCD submission roster, an industry cost of $29,400 (42 active carriers x $700) is estimated to comply with proposed APCD DSG 3.1

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$29,400	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$29,400**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$-29,400**	**$0**	**$0**

H) Department head sign-off on regulatory impact:

The executive director of the Department of Health, Joseph K. Miner, MD, 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 rule amendment may fiscally impact businesses who are data submitters up to $700 to program changes.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 26-33a-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 All-Payer Claims Database Data Submission Guide Version 4.0
Publisher	Utah Department of Health
Date Issued	11/01/2019
Issue, or version	4.0

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)	Utah All-Payer Claims Database Data Submission Guide Version 3.0
Publisher	Utah Department of Health
Date Issued	03/15/2017
Issue, or version	3.1

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:**	10/29/2019

R428. Health, Center for Health Data, Health Care Statistics.
R428-1. Health Data Plan and Incorporated Documents.
R428-1-1. Legal Authority.

This rule is promulgated in accordance with Title 26, Chapter 33a.

R428-1-2. Purpose.

This rule adopts and incorporates documents related to the collection, analysis, and dissemination of data covered in this title.

R428-1-3. Health Data Plan Adoption.

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

R428-1-4. Incorporation by Reference.

The following documents are adopted and incorporated by reference:

(1) "Utah Healthcare Facility Data Submission Guide" means:

(a) Utah Healthcare Facility Data Submission Guide, Version 2 for data submissions required on or after February 16, 2018;

(b) Utah Healthcare Facility Data Submission Guide, Version 2.1 for data submissions required on or after May 16, 2019;

(2) "NCQA Survey Specifications" means:

(a) HEDIS 2017, Volume 3: Specifications for Survey Measures, published by NCQA for data submissions required before January 1, 2018, and

(b) HEDIS 2018, Volume 3: Specifications for Survey Measures, published by NCQA for data submissions required on or after January 1, 2018;

(3) "NCQA HEDIS Specifications" means:

(a) HEDIS 2017, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA for data submissions required before January 1, 2018, and

(b) HEDIS 2018, Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures, published by NCQA for data submissions required on or after January 1, 2018;

(4) "Data Submission Guide for Claims Data" means:

(a) [~~Utah All-Payer Claims Database Data Submission Guide Version 3.0 for data submissions required before March 1, 2018, and~~

~~(b)~~]Utah All-Payer Claims Database Data Submission Guide Version 3.1 (as corrected on March 15, 2018) for data submissions required [~~on or after~~]before March 1, [~~2018.~~]2020, and

(b) Utah All-Payer Claims Database Data Submission Guide Version 4.0 for data submissions required on or after March 1, 2020.

KEY: APCD, health, health policy, health planning
Date of Enactment or Last Substantive Amendment: [~~May 1, 2019~~]2020
Notice of Continuation: November 10, 2016
Authorizing, and Implemented or Interpreted Law: 26-33a-104

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R430-8**	**Filing No. 52372**

Agency Information

1. Department:	Health
Agency:	Family Health and Preparedness, Child Care Licensing
Building:	Highland
Street address:	3760 S Highland Drive
City, state:	Salt Lake City, UT
Mailing address:	PO Box 142003
City, state, zip:	Salt Lake City, UT 84114

Contact person(s):		
Name:	**Phone:**	**Email:**
Simon Bolivar	801-803-4618	sbolivar@utah.gov

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

General Information

2. Rule or section catchline:

Exemptions From Child Care Licensing

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

The Department of Health (Department) has collected suggested amendments to this rule throughout the year. These amendments are necessary to clarify language and to simplify processes, so interpretation of and compliance with the rules are even more consistent with statute and current practice.

4. Summary of the new rule or change:

These proposed amendments include clarification of definitions, simplification of language, deletion of small unnecessary parts of the rules, needed renumbering, and a better and simplified language for the current background check process.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Child Care Licensing (Agency) does not anticipate any additional costs or savings due to these proposed rule changes.

B) Local governments:

These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because there are no licensed centers operated by local governments to whom these changes will affect.

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

The Agency expects some savings associated with these proposed amendments to the background check rules that will benefit all child care providers. Since the Department uses the FBI Rap Back system, it is no longer required for providers to resubmit background check information for their covered individuals once every year. By not doing so, child care providers will not have to pay the $18 fee to renew their covered individuals' background check. That will save providers from the annual costs of renewing background checks.

The exempt child care providers in the state operate as small businesses. There are 858 residential and center providers with approximately 1,449 individuals associated with these facilities who, because of these proposed rule amendments, will not have to pay for the renewal of the background check. This will save providers about $26,082 per year.

The Agency does not expect any costs associated with these proposed rule amendments.

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

The Agency does not anticipate any additional costs or savings due to these proposed rule changes.

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 Agency does not anticipate any additional costs or savings due to these proposed rule changes.

F) Compliance costs for affected persons:

The Agency does not anticipate any additional costs due to these proposed rule changes.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0

Small Businesses	$26,082	$26,082	$26,082
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$26,082**	**$26,082**	**$26,082**
Net Fiscal Benefits:	**$26,082**	**$26,082**	**$26,082**

H) Department head sign-off on regulatory impact:

The executive director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These rule changes clarify requirements, simplify processes, and remove the requirement that child care providers pay for and have a background clearance run on each employee annually because now the process is automated.

There is no fiscal cost to businesses from any of these rule changes.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 63G, Chapter 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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:**	11/21/2019

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-8. Exemptions From Child Care Licensing.
R430-8-2. Definitions.

(1) "Background Finding" means information that may result in an individual failing to pass a background check from Child Care Licensing.

(2) "Background Check Denial" means that an individual has failed to pass the background check and is prohibited from being involved with a child care program.

(3) "Calendar Week" means from Sunday through Saturday.

(4) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(5) "Child Care" means continuous care and supervision of 5 or more qualifying children that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(6) "Child Care Program" means a person or business that offers child care.

(7) "Covered Individual" means any of the following individuals involved with a child care program:

(a) an owner;

(b) a director;

(c) a member of the governing body;

(d) an employee;

(e) a caregiver;

(f) a volunteer, except a parent of a child enrolled in the child care program;

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

(h) anyone who has unsupervised contact with a child in care.

(8) "Department" means the Utah Department of Health.

(9) "Facility" means a child care program or the premises used for child care.

(10) "Involved with Child Care" means to do any of the following at or for a child care program:

(a) [~~provide child~~] care for or supervise children;

(b) volunteer [~~at a child care program~~];

(c) own, operate, direct[~~, or be employed at a child care program~~];

(d) reside [~~at a facility where child care is provided~~]; [~~or~~]

(e) count in the caregiver-to-child ratio; or

(f) have unsupervised contact with a child in care.[~~be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.~~]

(11) "LIS Supported Finding" means background check information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(12) "Parochial Education Institution" means an institution that meets all of the following criteria:

(a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;

(b) has a governing board that actively supervises and directs the educational curriculum used by the institution and exercises oversight over the health and safety of the children in the program;

(c) is owned and operated by a religious institution that is registered with the federal government as 501(c)(3) religious organization;

(d) is not directly funded at public expense;

(e) does not receive:

(i) child care grant or subsidy funds, directly or indirectly, from the Department of Workforce Services; or

(ii) child care food program funds, directly or indirectly, from the State Office of Education; and

(f) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.

(13) "Private Education Institution" means an institution that meets all of the following criteria:

(a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;

(b) has a governing board that actively supervises and directs the educational curriculum used by the institution, and exercises oversight over the health and safety of the children in the program;

(c) is not directly funded at public expense;

(d) does not receive:

(i) child care grant or subsidy funds, directly or indirectly, from the Department of Workforce Services; or

(ii) child care food program funds, directly or indirectly, from the State Office of Education; and

(e) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.

(14) "Public School" means a school, including a charter school, that is directly funded at public expense and is regulated by a board of education governed by Title 53A, Chapter 3, Local School Boards.

(15) "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(16) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(17) "Relative Care" means care provided to a qualifying child by or in the home of the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, uncle, step-aunt, step-uncle, great-aunt, or great-uncle.

(18) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

R430-8-3. License or Certificate and Background Check Not Required.

(1) The following types of care do not require a child care license or certificate from, or the submission of background check documents to, the Department:

(a) Care provided on no more than two days during any calendar week;

(b) Care provided in the home of the provider for less than four hours per day, or for fewer than five unrelated children in the home at one time;

(c) Care provided in the home of the provider on a sporadic basis only;

(d) Care provided by a facility or program owned or operated by an agency of the United States government;

(e) a group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;

(f) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(g) care provided at a residential support program that is licensed by the Department of Human Services.

R430-8-4. [~~Background Check~~]Exempt Application and Public Notice Required.

(1) The following types of care do not require a child care license or certificate from the Department, but do require the provider to meet the [~~background check~~]application and public notice requirements outlined in this rule:

(a) Care provided to a qualifying child as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution;

(b) Care provided to a qualifying child by a public or private institution of higher education, if the care is provided in connection with a course of study or program, relating to the education or study of children, that is provided to students of the institution of higher education;

(c) Care provided to a qualifying child at a public school by an organization other than the public school, if:

(i) the care is provided under contract with the public school or on school property; or

(ii) the public school accepts responsibility and oversight for the care provided by the organization;

(d) Care provided to a qualifying child as part of a summer camp that operates on federal land pursuant to a federal permit;

(e) Care provided by an organization that:

(i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code;

(ii) provides care pursuant to a written agreement with:

(A) a municipality, as defined in Section 10-1-104, that provides oversight for the program; or

(B) a county that provides oversight for the program; and

(iii) provides care to a child who is over the age of four and under the age of 13;

(f) Care provided to a qualifying child at a facility where:

(i) the parent or guardian of the qualifying child is at all times physically present in the building where the care is provided and the parent or guardian is near enough to reach the child within five minutes if needed,

(ii) the duration of the care is less than four hours for an individual qualifying child in any one day,

(iii) the care is provided on a sporadic basis,

(iv) the care does not include diapering a qualifying child, and

(v) the care does not include preparing or serving meals to a qualifying child.

(2) Providers listed in this subsection shall submit annually to the Department an application for verification of license exempt status, on the form provided by the Department.

(3) Providers listed in this subsection shall post, in a conspicuous location near the entrance of the provider's facility, a notice prepared by the Department that:

(a) states that the facility is exempt from licensure and certification; and

(b) provides the department's contact information for submitting a complaint.

(4) Substantiated complaint allegations against providers listed in this subsection will be posted by the Department on the Child Care Licensing website.

R430-8-5. Background Check Requirements and Appeals.

[~~(1) The requirements of this subsection apply to all facilities listed in subsection R430-8-4(1) above.~~

~~(2) The provider shall submit to the Department background checks and fees for all covered individuals as defined in R430-8-2(7).~~

~~(3) Before a new covered individual becomes involved with child care in the program, the provider shall:~~

~~(a) have the individual submit an online background check form,~~

~~(b) authorize the individual's background check form,~~

~~(c) pay all required fees, and~~

~~(d) receive written notice from CCL that the individual passed the background check.~~

~~(4) The provider shall ensure that a CCL background check for each individual age 18 years or older includes fingerprints for a Next Generation, national criminal history check and fingerprints fees.~~

~~(5) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.~~

~~(6) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.~~

~~(7) Fingerprints are not required if the covered individual has:~~

~~(a) previously submitted fingerprints to CCL for a Next Generation, national criminal history check;~~

~~(b) resided in Utah continuously since the fingerprints were submitted; and~~

~~(c) kept their CCL background check current.~~

~~(8) Background checks are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background check card issued by the Department.~~

~~(9) At least 2 weeks before the end of the month that is written on a covered individual's background check card, the provider shall:~~

~~(a) have the individual submit an online CCL background check form,~~

~~(b) authorize the individual's background check form, and~~

~~(c) pay all required fees.~~

~~(10) The following background findings may deny a covered individual from being involved with child care:~~

~~(a) LIS supported findings,~~

~~(b) the individual's name appears on the Utah or national sex offender registry,~~

~~(c) any felony convictions,~~

~~(d) any Misdemeanor A convictions, or~~

~~(e) Misdemeanor B and C convictions for the reasons listed in R430-8-6(10).~~

~~(11) The following convictions, regardless of severity, may result in a background check denial:~~

~~(a) unlawful sale or furnishing alcohol to minors;~~

~~(b) sexual enticing of a minor;~~

~~(c) cruelty to animals, including dogfighting;~~

~~(d) bestiality;~~

~~(e) lewdness, including lewdness involving a child;~~

~~(f) voyeurism;~~

~~(g) providing dangerous weapons to a minor;~~

~~(h) a parent providing a firearm to a violent minor;~~

~~(i) a parent knowing of a minor's possession of a dangerous weapon;~~

~~(j) sales of firearms to juveniles;~~

~~(k) pornographic material or performance;~~

~~(l) sexual solicitation;~~

~~(m) prostitution and related crimes;~~

~~(n) contributing to the delinquency of a minor;~~

~~(o) any crime against a person;~~

~~(p) a sexual exploitation act;~~

~~(q) leaving a child unattended in a vehicle; and~~

~~(r) driving under the influence (DUI) while a child is present in the vehicle.~~

~~(12) A covered individual with a Class A misdemeanor background finding not listed in R430-8-6(11) may be involved with child care when:~~

~~(a) 10 or more years have passed since the Class A misdemeanor offense, and~~

~~(b) there is no other conviction for the individual in the past 10 years.~~

~~(13) A covered individual with a Class A misdemeanor background finding not listed in R430-8-6(11) may be involved with child care for up to 6 months if:~~

~~(a) 5 to 9 years have passed since the offense,~~

~~(b) there is no other conviction since the Class A misdemeanor offense,~~

~~(c) the individual provides to the Department documentation of an active petition for expungement, and~~

~~(d) the provider ensures that the individual does not have unsupervised contact with any child in care.~~

~~(14) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.~~]

(1) An exempt provider who cares for a qualifying child as part of a program administered by an educational institution that is regulated by the State Board of Education is not subject to the background check requirements listed below, unless required by the Child Care and Development Block Grant, 42 U.S.C. Secs. 9857-9858r.

(2) Except as provided in (1) above, the requirements of this subsection apply to all facilities listed in subsection R430-8-4(1).

(3) The provider shall submit to the Department background checks and fees for all covered individuals as defined in R430-8-2(7).

(4) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:

(a) verify that the individual has a current CCL background check, and

(b) associate that individual with their facility.

(5) Before a new covered individual who does not show in the CCL provider portal search becomes involved with child care in the program, the provider shall:

(a) have the individual submit an online background check form and fingerprints for individuals age 18 years and older,

(b) authorize the individual's background check through the CCL provider's portal,

(c) pay all required fees, and

(d) receive written notice from CCL that the individual passed the background check.

(6) A covered individual without a current background check will not show in the CCL provider portal search. The Department may not consider a covered individual's background check current when the covered individual has:

(a) failed to pass a CCL background check;

(b) moved outside of Utah; or

(c) not been associated with an active, CCL approved child care facility for the past 180 days.

(7) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(8) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(9) The following background findings may deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions, or

(d) for any of the reasons listed under R430-8-5(9).

(10) The following convictions, regardless of severity, may result in a background check denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

[~~(15)~~](11) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to nonviolent drug offenses that occurred 10 or more years before the CCL background check was conducted.

[~~(16)~~](12) The Department may rely on the criminal background check findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

[~~(17)~~](13) If the provider has a background check denial, the Department may suspend or deny their exemption approval until the reason for the denial is resolved.

[~~(18)~~](14) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

[~~(19)~~](15) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

[~~(20)~~](16) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

[~~(21)~~](17) The Executive Director of the Department of Health may overturn a background check denial when the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

[~~(22)~~](18) An applicant or exempt provider may appeal any Department decision within 15 working days of being informed in writing of the decision.

KEY: child care facilities
Date of Enactment or Last Substantive Amendment: [~~August 10, 2018~~]2020
Notice of Continuation: April 17, 2019
Authorizing, and Implemented or Interpreted Law: 26-39

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R430-50**	**Filing No. 52373**

Agency Information

1. Department:	Health
Agency:	Family Health and Preparedness, Child Care Licensing
Building:	Highland
Street address:	3760 S Highland Drive
City, state:	Salt Lake City, UT
Mailing address:	PO Box 142003

City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Simon Bolivar	801-803-4618	sbolivar@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Residential Certificate Child Care

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

The Department of Health (Department) has collected suggested amendments to this rule throughout the year. These amendments are necessary to clarify language and to simplify processes, so interpretation of and compliance with the rules are even more consistent.

4. Summary of the new rule or change:

These proposed amendments include new and clarification of definitions, simplification of language, deletion of small unnecessary parts of the rules, needed renumbering, and a better and simplified language for the current background check process.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Child Care Licensing (Agency) does not anticipate any additional costs or savings due to these proposed rule changes.

B) Local governments:

These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because there are no Residential Certificate child care providers operated by local governments to whom these changes will affect.

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

The Agency expects some savings associated with these proposed amendments to the background check rules that will benefit all child care providers. Since the Department uses the FBI Rap Back system, it is no longer required for providers to resubmit background check information for their covered individuals once every year. By not doing so, child care providers will not have to pay the $18 fee to renew their covered individuals' background check. That will save providers from the annual costs of renewing background checks.

All residential child care providers in the state operate as small businesses. There are 74 Residential Certificate Child Care providers with approximately 103 individuals associated with these facilities who, because of these proposed rule amendments, will not have to pay for the renewal of the background check. This will save providers about $1,854 per year.

The Agency does not expect any costs associated with these proposed rule amendments.

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

The Agency does not anticipate any additional costs or savings due to these proposed rule changes because all residential providers operate as small businesses.

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

The Agency does not anticipate any additional costs or savings due to these proposed rule changes because all residential providers operate as small businesses.

F) Compliance costs for affected persons:

The Agency does not anticipate any additional costs due to these proposed rule changes.

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

Regulatory Impact Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0

Local Government	$0	$0	$0
Small Businesses	$1,854	$1,854	$1,854
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$1,854**	**$1,854**	**$1,854**
Net Fiscal Benefits:	**$1,854**	**$1,854**	**$1,854**

H) Department head sign-off on regulatory impact:

The executive director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These rule changes clarify requirements, simplify processes, and remove the requirement that child care providers pay for and have a background clearance run on each employee annually because now the process is automated.

There is no fiscal cost to businesses from any of these rule changes.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 63G, Chapter 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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:**	11/21/2019

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-50. Residential Certificate Child Care.
R430-50-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background check that may result in a denial from Child Care Licensing.

(4) "Background Check Denial" means that an individual has failed the background check and is prohibited from being involved with a child care facility.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Business Days/Hours" means the days of the week and times the facility is open for business.

(8) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(9) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(10) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(11) "Child Care" means continuous care and supervision of 5 or more qualifying children, that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(12) "Child Care Hours" means the days and times during which the provider is open for business.

(13) "Child Care Program" means a person or business that offers child care.

(14) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(15) "Conditional Status" means that the provider is at risk of losing their child care certificate because compliance with licensing rules has not been maintained.

(16) "Covered Individual" means any of the following individuals involved with a child care facility:

(a) an owner;

(b) an employee;

(c) a caregiver;

(d) a volunteer, except a parent of a child enrolled in the child care program;

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

(f) anyone who has unsupervised contact with a child in care.

(17) "CPSC" means the Consumer Product Safety Commission.

(18) "Crib" means an infant's bed with sides to protect them from falling, including a basinet, porta-crib, and play pen.

(19)[~~(18)~~] "Department" means the Utah Department of Health.

(20)[~~(19)~~] "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(21)[~~(20)~~] "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(22)[~~(21)~~] "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(23)[~~(22)~~] "Facility" means a child care program or the premises approved by the Department to be used for child care.

(24)[~~(23)~~] "Group" means the children who are ~~supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.~~assigned to and supervised by one or more caregivers.

(25)[~~(24)~~] "Group Size" means the number of children in a group.

(26)[~~(25)~~] "Guest" means an individual who is not a covered individual and is on the premises with the provider's permission.

(27)[~~(26)~~] "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(28)[~~(27)~~] "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(29)[~~(28)~~] "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(30)[~~(29)~~] "Infant" means a child who is younger than 12 months of age.

(31)[~~(30)~~] "Infectious Disease" means an illness that is capable of being spread from one person to another.

(32)[~~(31)~~] "Involved with Child Care" means to do any of the following at or for a child care facility [~~certified by the Department~~]:

(a) [~~provide child~~]care for or supervise children;

(b) volunteer[~~at a child care facility~~];

(c) own, operate, direct,[~~or be employed at a child care facility~~];

(d) reside[~~at a facility where child care is provided~~]; [~~or~~]

(e) count in the caregiver-to-child ratio; or

(f) have unsupervised contact with a child in care.[~~be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.~~]

(33)[~~(32)~~] "LIS Supported Finding" means background check information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(34)[~~(33)~~] "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(35)[~~(34)~~] "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

(36)[~~(35)~~] "Parent" means the parent or legal guardian of a child in care.

(37)[~~(36)~~] "Person" means an individual or a business entity.

(38)[~~(37)~~] "Physical Abuse" means causing nonaccidental physical harm to a child.

(39)[~~(38)~~] "Preschooler" means a child age 2 through 4 years old.

(40)[~~(39)~~] "Provider" means the legally responsible person or business that holds a valid certificate from Child Care Licensing.

(41)[~~(40)~~] "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(42)[~~(41)~~] "Residential Child Care" means care that takes place in a child care provider's home.

(43)[~~(42)~~] "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(44)[~~(43)~~] "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

(45)[~~(44)~~] "School-Age Child" means a child age 5 through 12 years old.

(46)[~~(45)~~] "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

(47)[~~(46)~~] "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

(48)[~~(47)~~] "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(49)[~~(48)~~] "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is

meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(50)[~~(49)~~] "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as a[~~n~~] protruding open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(51)[~~(50)~~] "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

(52)[~~(51)~~] "Toddler" means a child age 12 through 23 months.

(53)[~~(52)~~] "Unrelated Child" means a child who is not a "related child" as defined in R430-50-2([~~41~~]43).

(54)[~~(53)~~] "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background check.

(55)[~~(54)~~] "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(56)[~~(55)~~] "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(57)[~~(56)~~] "Working Days" means the days of the week the Department is open for business.

R430-50-3. Certificate Required.

(1) A person or persons shall be certified as a residential child care provider under this rule if they provide child care:

(a) in the home where they reside;

(b) in the absence of the child's parent;

(c) for 5 to 8 unrelated children;

(d) for 4 or more hours per day;

(e) for each individual child for less than 24 hours per day;

[~~(e)~~](f) on a regularly scheduled, ongoing basis; and

[~~(f)~~](g) for direct or indirect compensation.

(2) The Department may not certify, nor is a certificate is required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

(3) [~~According to Foster Care Services rule R501-12-4(8)(f), a provider may not be certified to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.~~]A provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program, unless the part of the building requesting a CCL license is physically separated from the other building services.

R430-50-4. Certificate Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care certificate shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of a completed Department health and safety plan form;

(f) CCL background checks for all covered individuals as required in R430-50-8;

(g) [~~a current copy of the Department's~~]new provider training [~~certificate of attendance~~]completion no more than six months before the date of the application;

(h) all required fees, which are nonrefundable; and

(i) a signed Affidavit of Lawful Presence form provided by the Department.

(2) The applicant shall pass a Department's inspection of the facility before a new certificate or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new certificate or a renewal of a certificate shall [~~include~~]verify compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

[~~(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;~~]

[~~(c)~~](b) exit doors shall operate properly and shall be well maintained;

[~~(d)~~](c) obstructions in exits, aisles, corridors, and stairways shall be removed;

[~~(e)~~](d) on each level of the building [~~that are of an X minimum rate and appropriate to the type of hazard~~], currently charged and serviced, and mounted not more than 5 feet above the floor;

[~~(f)~~](e) there shall be working smoke detectors that are properly installed on each level of the building; and

[~~(g)~~](f) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new certificate or a renewal of a certificate shall [~~include~~]verify compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(f) chemicals shall be stored away from food and food service items;

(g) food shall be properly stored, kept to the proper temperature, and in good condition; and

(h) there shall be a working handwashing sink in the kitchen.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be

certified, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a certificate if, within the 5 years preceding the application date, the applicant held a license or a certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care certificate expires at midnight on the last day of the month shown on the certificate, unless the certificate was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current certificate expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their certificate by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a certificate for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new certificate at least 30 days before a change of the child care facility's location.

(12) The provider shall submit a complete application to amend an existing certificate at least 30 days before any of the following changes:

(a) an increase or decrease of capacity, including any change to the amount of usable space where child care is provided;

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

(c) a change in the regulation category of the program;

(d) a change in the name of the provider; or

(e) a transfer of business ownership to a spouse or to any other household member.

(13) The Department may amend a certificate after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended certificate remains the same as the previous certificate.

(14) A certificate is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R430-50-8. Background Checks.

[~~(1) Before a new covered individual becomes involved with child care in the program, the provider shall:~~

~~(a) have the individual submit an online background check form,~~

~~(b) authorize the individual's background check form,~~

~~(c) pay all required fees, and~~

~~(d) receive written notice from CCL that the individual passed the background check.~~

~~(2) The provider shall ensure that an online background check form is submitted and authorized, and that background check fees are paid within 10 working days from when a child who resides in the facility turns 12 years old.~~

~~(3) The provider shall ensure that a CCL background check for each individual age 18 years or older includes fingerprints and fingerprints fees.~~

~~(4) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.~~

~~(5) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.~~

~~(6) Fingerprints are not required if the covered individual has:~~

~~(a) previously submitted fingerprints to CCL for a Next Generation, national criminal history check;~~

~~(b) resided in Utah continuously since the fingerprints were submitted; and~~

~~(c) kept their CCL background check current.~~

~~(7) Background checks are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background check card.~~

~~(8) At least 2 weeks before the end of the renewal month that is written on a covered individual's background check card, the provider shall:~~

~~(a) have the individual submit an online CCL background check form and fingerprints if not previously submitted,~~

~~(b) authorize the individual's background check form through the provider portal, and~~

~~(c) pay all required fees.~~

~~(9) The following background findings shall deny a covered individual from being involved with child care:~~

~~(a) LIS supported findings,~~

~~(b) the individual's name appears on the Utah or national sex offender registry,~~

~~(c) any felony convictions,~~

~~(d) any Misdemeanor A convictions, or~~

~~(e) Misdemeanor B and C convictions for the reasons listed in R430-50-8(10).~~

~~(10) The following convictions, regardless of severity, may result in a background check denial:~~

~~(a) unlawful sale or furnishing alcohol to minors;~~

~~(b) sexual enticing of a minor;~~

~~(c) cruelty to animals, including dogfighting;~~

~~(d) bestiality;~~

~~(e) lewdness, including lewdness involving a child;~~

~~(f) voyeurism;~~

~~(g) providing dangerous weapons to a minor;~~

~~(h) a parent providing a firearm to a violent minor;~~

~~(i) a parent knowing of a minor's possession of a dangerous weapon;~~

~~(j) sales of firearms to juveniles;~~

~~(k) pornographic material or performance;~~

~~(l) sexual solicitation;~~

~~(m) prostitution and related crimes;~~

~~(n) contributing to the delinquency of a minor;~~

~~(o) any crime against a person;~~

~~(p) a sexual exploitation act;~~

~~(q) leaving a child unattended in a vehicle; and~~

~~(r) driving under the influence (DUI) while a child is present in the vehicle.~~

~~(11) A covered individual with a Class A misdemeanor background finding not listed in R430-50-8(10) may be involved with child care when:~~

~~(a) 10 or more years have passed since the Class A misdemeanor offense, and~~

~~(b) there is no other conviction for the individual in the past 10 years.~~

~~(12) A covered individual with a Class A misdemeanor background finding not listed in R430-50-8(10) may be involved with child care for up to 6 months if:~~

~~(a) 5 to 9 years have passed since the offense,~~

~~(b) there is no other conviction since the Class A misdemeanor offense,~~

~~(c) the individual provides to the Department documentation of an active petition for expungement, and~~

~~(d) the provider ensures that the individual does not have unsupervised contact with any child in care.~~

~~(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.~~]

(1) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:

(a) verify that the individual has a current CCL background check, and

(b) associate that individual with their facility.

(2) Before a new covered individual who does not show in the CCL provider portal search becomes involved with child care in the program, the provider shall:

(a) have the individual submit an online background check form and fingerprints for individuals age 18 years and older,

(b) authorize the individual's background check through the CCL provider's portal,

(c) pay all required fees, and

(d) receive written notice from CCL that the individual passed the background check.

(3) A covered individual without a current background check will not show in the CCL provider portal search. The Department may not consider a covered individual's background check current when the covered individual has:

(a) failed to pass a CCL background check;

(b) moved outside of Utah; or

(c) not been associated with an active, CCL approved child care facility for the past 180 days.

(4) Within 10 working days from when a child who resides in the facility turns 12 years old, the provider shall:

(a) ensure that an online background check form is submitted,

(b) authorize the child's background check through the CCL provider's portal, and

(c) pay all required fees.

(5) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.

(6) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.

(7) The following background findings may deny a covered individual from being involved with child care:

(a) LIS supported findings,

(b) the individual's name appears on the Utah or national sex offender registry,

(c) any felony convictions, or

(d) for any of the reasons listed under R381-100-8(8).

(8) The following convictions, regardless of severity, may result in a background check denial:

(a) unlawful sale or furnishing alcohol to minors;

(b) sexual enticing of a minor;

(c) cruelty to animals, including dogfighting;

(d) bestiality;

(e) lewdness, including lewdness involving a child;

(f) voyeurism;

(g) providing dangerous weapons to a minor;

(h) a parent providing a firearm to a violent minor;

(i) a parent knowing of a minor's possession of a dangerous weapon;

(j) sales of firearms to juveniles;

(k) pornographic material or performance;

(l) sexual solicitation;

(m) prostitution and related crimes;

(n) contributing to the delinquency of a minor;

(o) any crime against a person;

(p) a sexual exploitation act;

(q) leaving a child unattended in a vehicle; and

(r) driving under the influence (DUI) while a child is present in the vehicle.

[~~(14)~~](9) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background check was conducted.

[~~(15)~~](10) The Department may rely on the criminal background check findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a certificate or employment based on that evidence.

[~~(16)~~](11) If the provider has a background check denial, the Department may suspend or deny their certificate until the reason for the denial is resolved.

[~~(17)~~](12) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall

prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

[~~(18)~~](13) If a covered individual is denied a certificate or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

[~~(19)~~](14) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

[~~(20)~~](15) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the certificate.

[~~(21)~~](16) The Executive Director of the Department of Health may overturn a background check denial when the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R430-50-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Poisonous and harmful plants shall be inaccessible to children.

(3) Sharp objects, edges, corners, or points that could cut or puncture skin shall be inaccessible to children.

(4) Choking hazards shall be inaccessible to children to children younger than 3 years of age.

(5) Strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck shall be inaccessible to children.

(6) Tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways shall be inaccessible to children.

(7) For children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons shall be inaccessible to children.

(8) Standing water that measures 2 inches or deeper and 5 by 5 inches or greater in diameter shall be inaccessible to children.

(9) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(10) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(11) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(12) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(13) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(14) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in program vehicles any time a child is in care.

(15) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(16) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(17) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(18) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(19) Infant walkers with wheels shall be inaccessible to children.

(20) [~~In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:~~]Tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and, in compliance with the Utah Indoor Clean Air Act, not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R430-50-16. Food and Nutrition.

(1) The provider shall ensure that each child age 2 years and older is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP [~~menus~~]meal pattern requirements, the standard Department-approved menus, or menus approved by a registered [~~dietician~~]dietitian. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) providers who are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, or sanitary highchair trays, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name or individually identified,

(b) refrigerated if needed, and

(c) consumed only by that child.

R430-50-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(3) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(4) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(5) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(6) Cushioning for stationary play equipment shall cover the entire surface of each required use zone.

(7) If ASTM cushioning is used, the provider shall keep on-site for review by the Department the documentation from the manufacturer that the material meets ASTM Specification F1292.

(8) Stationary play equipment with a designated play surface that measures 6 inches or higher shall not be placed on a hard surface such as concrete, asphalt, dirt, or the bare floor, but may be placed on grass or other cushioning.

(9) Except for trampolines, stationary play equipment that is 18 inches or higher shall:

(a) have a 3-foot use zone that is free of hard objects or surfaces and that extends from the outermost edge of the equipment; and

(b) be stable [~~and~~]or securely anchored.

(10) A trampoline shall be considered accessible to children in care unless the trampoline:

(a) is enclosed behind at least a 3-foot high, locked fence or barrier;

(b) has no jumping mat;

(c) is placed upside down, or

(d) is enclosed within at least a 6-foot-high safety net that is locked.

(11) An accessible trampoline without a safety net enclosure shall be placed at least 6 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences.

(12) An accessible trampoline with a safety net enclosure shall be place at least 3 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences if the net:

(a) is properly installed and used as specified by the manufacturer,

(b) is in good repair, and

(c) is at least 6 feet tall.

(13) An accessible trampoline shall be placed over grass, 6-inch-deep cushioning, or ASTM-approved cushioning. Cushioning shall extend at least 6 feet from the outermost edge of the trampoline frame, or at least 3 feet from the outermost edge of the trampoline frame if a net is used as specified in R430-50-19(12).

(14) There shall be no ladders or other objects within the use zone of an accessible trampoline that a child could use to climb on the trampoline.

(15) An accessible trampoline shall have shock-absorbing pads that completely cover its springs, hooks, and frame.

(16) Before a child in care uses a trampoline, the provider shall have written permission from that child's parent or legal guardian[~~the child's parent shall sign a Department-approved permission form that the provider keeps on-site for review by the Department~~].

(17) When a trampoline is being used by a child in care:

(a) a caregiver shall be at the trampoline supervising,

(b) only one person at a time shall use a trampoline,

(c) no child in care shall be allowed to do somersaults or flips on the trampoline,

(d) no one shall be allowed to play under the trampoline when it is in use, and

(e) only school age children in care shall be allowed to use the trampoline.

KEY: child care facilities, residential certification
Date of Enactment or Last Substantive Amendment: [~~August 10, 2018~~]2020
Notice of Continuation: May 9, 2018
Authorizing, and Implemented or Interpreted Law: 26-39

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R430-90**	**Filing No. 52374**

Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Child Care Licensing	
Building:	Highland	
Street address:	3760 S Highland Drive	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 142003	
City, state, zip:	Salt Lake City, UT 84114	
Contact person(s):		
Name:	**Phone:**	**Email:**
Simon Bolivar	801-803-4618	sbolivar@utah.gov

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

General Information

2. Rule or section catchline:

Licensed Family Child Care

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

The Department of Health (Department) has collected suggested amendments to this rule throughout the year. These amendments are necessary to clarify language and to simplify processes, so interpretation of and compliance with the rules are even more consistent.

4. Summary of the new rule or change:

These proposed amendments include new and clarification of definitions, simplification of language, deletion of small unnecessary parts of the rules, needed renumbering, and a better and simplified language for the current background check process.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

Child Care Licensing (Agency) does not anticipate any additional costs or savings due to these proposed rule changes.

B) Local governments:

These proposed amendments are not expected to have any fiscal impact on local governments' revenues or expenditures because there are no licensed family child care providers operated by local governments to whom these changes will affect.

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

The Agency expects some savings associated with these proposed amendments to the background check rules that will benefit all child care providers. Since the Department uses the FBI Rap Back system, it is no longer required for providers to resubmit background check information for their covered individuals once every year. By not doing so, child care providers will not have to pay the $18 fee to renew their covered individuals' background check. That will save providers from the annual costs of renewing background checks.

All home child care providers in the state operate as small businesses. There are 763 Licensed Family Child Care providers with approximately 1,015 individuals associated with these facilities who, because of these proposed rule amendments, will not have to pay for the renewal of the background check. This will save providers about $18,270 per year.

The Agency does not expect any costs associated with these proposed rule amendments.

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

The Agency does not anticipate any additional costs or savings due to these proposed rule changes because all family providers operate as small businesses.

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

The Agency does not anticipate any additional costs or savings due to these proposed rule changes because all family providers operate as small businesses.

F) Compliance costs for affected persons:

The Agency does not anticipate any additional costs due to these proposed rule changes.

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

Regulatory Impact Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$18,270	$18,270	$18,270
Non-Small Businesses	$0	$0	$0

Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$18,270**	**$18,270**	**$18,270**
Net Fiscal Benefits:	**$18,270**	**$18,270**	**$18,270**

H) Department head sign-off on regulatory impact:

The executive director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

These rule changes clarify requirements, simplify processes, and remove the requirement that child care providers pay for and have a background clearance run on each employee annually because now the process is automated.

There is no fiscal cost to businesses from any of these rule changes.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 63G, Chapter 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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:**	11/21/2019

R430. Health, Family Health and Preparedness, Child Care Licensing.
R430-90. Licensed Family Child Care.
R430-90-2. Definitions.

(1) "Applicant" means a person or business who has applied for a new or a renewal of a license, certificate, or exemption from Child Care Licensing.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Background Finding" means information in a background check that may result in a denial from Child Care Licensing.

(4) "Background Check Denial" means that an individual has failed the background check and is prohibited from being involved with a child care facility.

(5) "Barrier" means an enclosing structure such as a fence, wall, bars, railing, or solid panel to prevent accidental or deliberate movement through or access to something.

(6) "Body Fluid" means blood, urine, feces, vomit, mucus, and/or saliva.

(7) "Business Days/Hours" means the days of the week and times the facility is open for business.

(8) "Capacity" means the maximum number of children for whom care can be provided at any given time.

(9) "Caregiver-to-Child Ratio" means the number of caregivers responsible for a specific number of children.

(10) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.

(11) "Child Care" means continuous care and supervision of 5 or more qualifying children, that is:

(a) in place of care ordinarily provided by a parent in the parent's home,

(b) for less than 24 hours a day, and

(c) for direct or indirect compensation.

(12) "Child Care Hours" means the days and times during which the provider is open for business.

(13) "Child Care Program" means a person or business that offers child care.

(14) "Choking Hazard" means an object or a removable part on an object with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches that could be caught in a child's throat blocking their airway and making it difficult or impossible to breathe.

(15) "Conditional Status" means that the provider is at risk of losing their child care license because compliance with licensing rules has not been maintained.

(16) "Covered Individual" means any of the following individuals involved with a child care facility:

(a) an owner;

(b) an employee;

(c) a caregiver;

(d) a volunteer, except a parent of a child enrolled in the child care program;

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

(f) anyone who has unsupervised contact with a child in care.

(17) "CPSC" means the Consumer Product Safety Commission.

(18) "Crib" means an infant's bed with sides to protect them from falling, including a basinet, porta-crib, and play pen.

(19)[~~(18)~~] "Department" means the Utah Department of Health.

(20)[~~(19)~~] "Designated Play Surface" means any accessible elevated surface for standing, walking, crawling, sitting or climbing; or an accessible flat surface at least 2 by 2 inches in size and having an angle less than 30 degrees from horizontal.

(21)[~~(20)~~] "Emotional Abuse" means behavior that could harm a child's emotional development, such as threatening, intimidating, humiliating, demeaning, criticizing, rejecting, using profane language, and/or using inappropriate physical restraint.

(22)[~~(21)~~] "Entrapment Hazard" means an opening greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter where a child's body could fit through but the child's head could not fit through, potentially causing a child's entrapment and strangulation.

(23)[~~(22)~~] "Facility" means a child care program or the premises approved by the Department to be used for child care.

(23) "Group" means the children who are supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.

(24)[~~(23)~~] "Group" means the children who are ~~supervised by one or more caregivers in an individual room or in an area within a room that is defined by furniture or other partition.~~assigned to and supervised by one or more caregivers.

(25)[~~(24)~~] "Group Size" means the number of children in a group.

(26)[~~(25)~~] "Guest" means an individual who is not a covered individual and is on the premises with the provider's permission.

(27)[~~(26)~~] "Health Care Provider" means a licensed health professional, such as a physician, dentist, nurse practitioner, or physician's assistant.

(28)[~~(27)~~] "Homeless" means anyone who lacks a fixed, regular, and adequate nighttime residence as described in the McKinney-Vento Act. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA)

(29)[~~(28)~~] "Inaccessible" means out of reach of children by being:

(a) locked, such as in a locked room, cupboard, or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf that is at least 36 inches above the floor; or

(e) in a bathroom, at least 36 inches above any surface from where a child could stand or climb.

(30)[~~(29)~~] "Infant" means a child who is younger than 12 months of age.

(31)[~~(30)~~] "Infectious Disease" means an illness that is capable of being spread from one person to another.

(32)[~~(31)~~] "Involved with Child Care" means to do any of the following at or for a child care facility [~~licensed by the Department~~]:

(a) [~~provide child~~]care for or supervise children;

(b) volunteer[~~at a child care facility~~];

(c) own, operate, direct[~~, or be employed at a child care facility~~];

(d) reside[~~at a facility where child care is provided~~]; [~~or~~]

(e) count in the caregiver-to-child ratio; or

(f) have unsupervised contact with a child in care.[~~be present at a facility while care is being provided, except for authorized guests or parents who are dropping off a child, picking up a child, or attending a scheduled event at the child care facility.~~]

(33)[~~(32)~~] "License" means a license issued by the Department to provide child care services.

(34)[~~(33)~~] "Licensee" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(35)[~~(34)~~] "LIS Supported Finding" means background check information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.

(36)[~~(35)~~] "McKinney-Vento Act" means a federal law that requires protections and services for children and youth who are homeless including those with disabilities. McKinney-Vento Homeless Assistance Act (Title IX, Part A of ESSA).

(37)[~~(36)~~] "Over-the-Counter Medication" means medication that can be purchased without a written prescription including herbal remedies, vitamins, and mineral supplements.

(38)[~~(37)~~] "Parent" means the parent or legal guardian of a child in care.

(39)[~~(38)~~] "Person" means an individual or a business entity.

(40)[~~(39)~~] "Physical Abuse" means causing nonaccidental physical harm to a child.

(41)[~~(40)~~] "Preschooler" means a child age 2 through 4 years old.

(42)[~~(41)~~] "Provider" means the legally responsible person or business that holds a valid license from Child Care Licensing.

(43)[~~(42)~~] "Qualifying Child" means:

(a) a child who is younger than 13 years old and is the child of a person other than the child care provider or caregiver,

(b) a child with a disability who is younger than 18 years old and is the child of a person other than the provider or caregiver, or

(c) a child who is younger than 4 years old and is the child of the provider or a caregiver.

(44)[~~(43)~~] "Residential Child Care" means care that takes place in a child care provider's home.

(45)[~~(44)~~] "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(46)[~~(45)~~] "Sanitize" means to use a chemical product to remove soil and bacteria from a surface or object.

(47)[~~(46)~~] "School-Age Child" means a child age 5 through 12 years old.

(48)[~~(47)~~] "Sexual Abuse" means abuse as defined in Utah Code, Title 76-5-404(1).

(49)[~~(48)~~] "Sexually Explicit Material" means any depiction of sexually explicit conduct as defined in Utah Code, Title 76-5b-103(10).

(50)[~~(49)~~] "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, playpen, or bed.

(51)[~~(50)~~] "Stationary Play Equipment" means equipment such as a climber, slide, swing, merry-go-round, or spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse that sits on the ground or floor and has no attached equipment, such as a slide, swing, or climber.

(52)[~~(51)~~] "Strangulation Hazard" means something on which a child's clothes or drawstrings could become caught, or something in which a child could become entangled such as:

(a) a protruding bolt end that extends more than 2 threads beyond the face of the nut;

(b) hardware that forms a hook or leaves a gap or space between components such as an open S-hook; or

(c) a rope, cord, or chain that is attached to a structure and is long enough to encircle a child's neck.

(53)[~~(52)~~] "Substitute" means a person who assumes a caregiver's duties when the caregiver is not present.

(54)[~~(53)~~] "Toddler" means a child age 12 through 23 months.

(55)[~~(54)~~] "Unrelated Child" means a child who is not a "related child" as defined in R430-90-2([~~43~~]45).

(56)[~~(55)~~] "Unsupervised Contact" means being with, caring for, communicating with, or touching a child in the absence of a caregiver or other employee who is at least 18 years old and has passed a Child Care Licensing background check.

(57)[~~(56)~~] "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(58)[~~(57)~~] "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

(59)[~~(58)~~] "Working Days" means the days of the week the Department is open for business.

R430-90-3. License Required.

(1) A person or persons shall be licensed under this rule if they provide child care:

(a) in the home where they reside;

(b) in the absence of the child's parent;

(c) for 5 [~~to 16~~]or more unrelated children;

(d) for 4 or more hours per day;

(e) for each individual child for less than 24 hours per day;

[~~(e)~~](f) on a regularly scheduled, ongoing basis; and

[~~(f)~~](g) for direct or indirect compensation.

(2) The Department may not license, nor is a license required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

(3) [~~According to Foster Care Services rule R501-12-4(8)(f), a provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.~~]A provider may not be licensed to provide child care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program, unless the part of the building requesting a CCL license is physically separated from the other building services.

R430-90-4. License Application, Renewal, Changes, and Variances.

(1) An applicant for a new child care license shall submit to the Department:

(a) an online application;

(b) a copy of a current local fire clearance or a statement from the local fire authority that a fire inspection is not required;

(c) a copy of a current local health department kitchen clearance for a facility providing food service or a statement from the local health department that a kitchen inspection is not required;

(d) a copy of a current local business license or a statement from the city that a business license is not required;

(e) a copy of a completed Department health and safety plan form;

(f) CCL background checks for all covered individuals as required in R430-90-8;

(g) [~~a current copy of the Department's~~]new provider training [~~certificate of attendance~~]completion no more than six months before the date of the application;

(h) all required fees, which are nonrefundable; and

(i) a signed Affidavit of Lawful Presence form provided by the Department.

(2) The applicant shall pass a Department's inspection of the facility before a new license or a renewal is issued.

(3) If the local fire authority states that a fire inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall [~~include~~]verify compliance with the following:

(a) address numbers and/or letters shall be readable from the street;

[~~(b) address numbers and/or letters shall be at least 4 inches in height and 1/2 inch thick;~~]

[~~(c)~~](b) exit doors shall operate properly and shall be well maintained;

[~~(d)~~](c) obstructions in exits, aisles, corridors, and stairways shall be removed;

[~~(e)~~](d) on each level of the building [~~that are of an X minimum rate and appropriate to the type of hazard~~], currently charged and serviced, and mounted not more than 5 feet above the floor;

[~~(f)~~](e) there shall be working smoke detectors that are properly installed on each level of the building; and

[~~(g)~~](f) boiler, mechanical, and electrical panel rooms shall not be used for storage.

(4) If the local health department states that a kitchen inspection is not required, a Department's CCL inspection for a new license or a renewal of a license shall [~~include~~]verify compliance with the following:

(a) the refrigerator shall be clean, in good repair, and working at or below 41 degrees Fahrenheit;

(b) there shall be a working thermometer in the refrigerator;

(c) there shall be a working stem thermometer available to check cook and hot hold temperatures;

(d) cooks shall have a current food handler's permit available on-site for review by the Department;

(e) reusable food holders, utensils, and food preparation surfaces shall be washed, rinsed, and sanitized with an approved sanitizer before each use;

(f) chemicals shall be stored away from food and food service items;

(g) food shall be properly stored, kept to the proper temperature, and in good condition; and

(h) there shall be a working handwashing sink in the kitchen.

(5) If the applicant does not complete the application process within 6 months of first submitting any portion of the application, the Department may deny the application and to be licensed, the applicant shall reapply. This includes resubmitting all required documentation, repaying licensing fees, and passing another inspection of the facility.

(6) The Department may deny an application for a license if, within the 5 years preceding the application date, the applicant held a license or certificate that was:

(a) closed under an immediate closure;

(b) revoked;

(c) closed as a result of a settlement agreement resulting from a notice of intent to revoke, a notice of revocation, or a notice of immediate closure;

(d) voluntarily closed after an inspection of the facility found rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the provider not closed voluntarily; or

(e) voluntarily closed having unpaid fees or civil money penalties issued by the Department.

(7) Each child care license expires at midnight on the last day of the month shown on the license, unless the license was previously revoked by the Department, or voluntarily closed by the provider.

(8) Within 30 to 90 days before a current license expires, the provider shall submit for renewal:

(a) an online renewal request,

(b) applicable renewal fees,

(c) any previous unpaid fees,

(d) a copy of a current business license,

(e) a copy of a current fire inspection report, and

(f) a copy of a current kitchen inspection report.

(9) A provider who fails to renew their license by the expiration date may have an additional 30 days to complete the renewal process if they pay a late fee.

(10) The Department may not renew a license for a provider who is no longer caring for children.

(11) The provider shall submit a complete application for a new license at least 30 days before a change of the child care facility's location.

(12) The provider shall submit a complete application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of licensed capacity, including any change to the amount of usable indoor or outdoor space where child care is provided;

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

(c) a change in the regulation category of the program;

(d) a change in the name of the provider; or

(e) a transfer of business ownership to a spouse or to any other household member.

(13) The Department may amend a license after verifying that the applicant is in compliance with all applicable rules and required fees have been paid. The expiration date of the amended license remains the same as the previous license.

(14) A license is not assignable or transferable and shall only be amended by the Department.

(15) If an applicant or provider cannot comply with a rule but can meet the intent of the rule in another way, they may apply for a variance to that rule by submitting a request to the Department.

(16) The Department may:

(a) require additional information before acting on the variance request, and

(b) impose health and safety requirements as a condition of granting a variance.

(17) The provider shall comply with the existing rule until a variance is approved.

(18) If a variance is approved, the provider shall keep a copy of the written approval on-site for review by parents and the Department.

(19) The Department may grant variances for up to 12 months.

(20) The Department may revoke a variance if:

(a) the provider is not meeting the intent of the rule as stated in their approved variance;

(b) the provider fails to comply with the conditions of the variance; or

(c) a change in statute, rule, or case law affects the basis for the variance.

R430-90-8. Background Checks.

[~~(1) Before a new covered individual becomes involved with child care in the program, the provider shall:~~

~~(a) have the individual submit an online background check form,~~

~~(b) authorize the individual's background check form,~~

~~(c) pay all required fees, and~~

~~(d) receive written notice from CCL that the individual passed the background check.~~

~~(2) The provider shall ensure that an online background check form is submitted and authorized, and that background check fees are paid within 10 working days from when a child who resides in the facility turns 12 years old.~~

~~(3) The provider shall ensure that a CCL background check for each individual age 18 years or older includes fingerprints and fingerprints fees.~~

~~(4) The fingerprints shall be prepared by a local law enforcement agency or an agency approved by local law enforcement.~~

~~(5) If fingerprints are submitted through Live Scan (electronically), the agency taking the fingerprints shall follow the Department's guidelines.~~

~~(6) Fingerprints are not required if the covered individual has:~~

~~(a) previously submitted fingerprints to CCL for a Next Generation, national criminal history check;~~

~~(b) resided in Utah continuously since the fingerprints were submitted; and~~

~~(c) kept their CCL background check current.~~

~~(7) Background checks are valid for 1 year and shall be renewed before the last day of the month listed on the covered individual's background check card.~~

~~(8) At least 2 weeks before the end of the renewal month that is written on a covered individual's background check card, the provider shall:~~

~~(a) have the individual submit an online CCL background check form and fingerprints if not previously submitted,~~

~~(b) authorize the individual's background check form through the provider portal, and~~

~~(c) pay all required fees.~~

~~(9) The following background findings shall deny a covered individual from being involved with child care:~~

~~(a) LIS supported findings,~~

~~(b) the individual's name appears on the Utah or national sex offender registry;~~
~~(c) any felony convictions,~~
~~(d) any Misdemeanor A convictions, or~~
~~(e) Misdemeanor B and C convictions for the reasons listed in R430-90-8(10).~~
~~(10) The following convictions, regardless of severity, may result in a background check denial:~~
~~(a) unlawful sale or furnishing alcohol to minors;~~
~~(b) sexual enticing of a minor;~~
~~(c) cruelty to animals, including dogfighting;~~
~~(d) bestiality;~~
~~(e) lewdness, including lewdness involving a child;~~
~~(f) voyeurism;~~
~~(g) providing dangerous weapons to a minor;~~
~~(h) a parent providing a firearm to a violent minor;~~
~~(i) a parent knowing of a minor's possession of a dangerous weapon;~~
~~(j) sales of firearms to juveniles;~~
~~(k) pornographic material or performance;~~
~~(l) sexual solicitation;~~
~~(m) prostitution and related crimes;~~
~~(n) contributing to the delinquency of a minor;~~
~~(o) any crime against a person;~~
~~(p) a sexual exploitation act;~~
~~(q) leaving a child unattended in a vehicle; and~~
~~(r) driving under the influence (DUI) while a child is present in the vehicle.~~
~~(11) A covered individual with a Class A misdemeanor background finding not listed in R430-90-8(10) may be involved with child care when:~~
~~(a) 10 or more years have passed since the Class A misdemeanor offense, and~~
~~(b) there is no other conviction for the individual in the past 10 years.~~
~~(12) A covered individual with a Class A misdemeanor background finding not listed in R430-90-8(10) may be involved with child care for up to 6 months if:~~
~~(a) 5 to 9 years have passed since the offense,~~
~~(b) there is no other conviction since the Class A misdemeanor offense,~~
~~(c) the individual provides to the Department documentation of an active petition for expungement, and~~
~~(d) the provider ensures that the individual does not have unsupervised contact with any child in care.~~
~~(13) If a petition for expungement is denied, the covered individual shall no longer be involved with child care.~~]

[~~(14)~~](9) A covered individual shall not be denied if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred 10 or more years before the CCL background check was conducted.

[~~(15)~~](10) The Department may rely on the criminal background check findings as conclusive evidence of the arrest warrant, arrest, charge, or conviction; and the Department may revoke, suspend, or deny a license or employment based on that evidence.

[~~(16)~~](11) If the provider has a background check denial, the Department may suspend or deny their license until the reason for the denial is resolved.

[~~(17)~~](12) If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved.

[~~(18)~~](13) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

[~~(19)~~](14) If a covered individual disagrees with a supported finding on the Department of Human Services Licensing Information System (LIS):

(a) the individual cannot appeal the supported finding to the Department of Health, and

(b) the covered individual may appeal the finding to the Department of Human Services and follow the process established by the Department of Human Services.

[~~(20)~~](15) Within 48 hours of becoming aware of a covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding, the provider and the covered individual shall notify the Department. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license.

[~~(21)~~](16) The Executive Director of the Department of Health may overturn a background check denial when the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

R430-90-13. Child Safety and Injury Prevention.

(1) The building, outdoor area, toys, and equipment shall be used in a safe manner and as intended by the manufacturer to prevent injury to children.

(2) Poisonous and harmful plants shall be inaccessible to children.

(3) Sharp objects, edges, corners, or points that could cut or puncture skin shall be inaccessible to children.

(4) Choking hazards shall be inaccessible to children to children younger than 3 years of age.

(5) Strangulation hazards such as ropes, cords, chains, and wires attached to a structure and long enough to encircle a child's neck shall be inaccessible to children.

(6) Tripping hazards such as unsecured flooring, rugs with curled edges, or cords in walkways shall be inaccessible to children.

(7) For children younger than 5 years of age, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons shall be inaccessible to children.

(8) Standing water that measures 2 inches or deeper and 5 by 5 inches or greater in diameter shall be inaccessible to children.

(9) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be:

(a) inaccessible to children,

(b) used according to manufacturer instructions, and

(c) stored in containers labeled with their contents.

(10) Items and substances that could burn a child or start a fire shall be inaccessible, such as:

(a) matches or cigarette lighters;

(b) open flames;

(c) hot wax or other substances; and

(d) when in use, portable space heaters, wood burning stoves, and fireplaces of all types.

(11) Children shall be protected from items that cause electrical shock such as:

(a) live electrical wires; and

(b) for children younger than 5 years of age, electrical outlets and surge protectors without protective caps or safety devices when not in use.

(12) Unless used and stored in compliance with the Utah Concealed Weapons Act or as otherwise allowed by law, firearms such as guns, muzzles loaders, rifles, shotguns, hand guns, pistols, and automatic guns shall:

(a) be locked in a cabinet or area with a key, combination lock, or fingerprint lock; and

(b) stored unloaded and separate from ammunition.

(13) Weapons such as paintball guns, BB guns, airsoft guns, sling shots, arrows, and mace shall be inaccessible to children.

(14) Alcohol, illegal substances, and sexually explicit material shall be inaccessible, and shall not be used on the premises, during offsite activities, or in program vehicles any time a child is in care.

(15) An outdoor source of drinking water, such as individually labeled water bottles, a pitcher of water and individual cups, or a working water fountain shall be available to each child whenever the outside temperature is 75 degrees or higher.

(16) Areas accessible to children shall be free of heavy or unstable objects that children could pull down on themselves, such as furniture, unsecured televisions, and standing ladders.

(17) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(18) Highchairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(19) Infant walkers with wheels shall be inaccessible to children.

(20) [~~In compliance with the Utah Indoor Clean Air Act, tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and not used:~~]Tobacco, e-cigarettes, e-juice, e-liquids, and similar products shall be inaccessible and, in compliance with the Utah Indoor Clean Air Act, not used:

(a) in the facility or any other building when a child is in care,

(b) in any vehicle that is being used to transport a child in care,

(c) within 25 feet of any entrance to the facility or other building occupied by a child in care, or

(d) in any outdoor area or within 25 feet of any outdoor area occupied by a child in care.

R430-90-14. Emergency Preparedness and Response.

(1) The provider shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near a telephone in the home or in an area clearly visible to anyone needing the information.

(2) The provider shall keep first-aid supplies in the home, including at least antiseptic, band-aids, and tweezers.

(3) The provider shall conduct fire evacuation drills quarterly. Drills shall include a complete exit of all children, staff, and volunteers from the home.

(4) The provider shall document each fire drill, including:

(a) the date and time of the drill,

(b) the number of children participating,

(c) the total time to complete the evacuation, and

(d) any problems encountered.

(5) The provider shall conduct drills for disasters other than fires at least once every 12 months.

(6) A provider shall document each disaster drill, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;

(b) the date and time of the drill;

(c) [~~the total time to complete the evacuation; and~~

~~(e)~~]any problems encountered.

(7) The provider shall vary the days and times on which fire and other disaster drills are held.

(8) The provider shall keep documentation of the previous 12 months of quarterly fire drills and annual disaster drills on-site for review by the Department.

(9) In case of an emergency or disaster, the provider and all employees shall follow procedures as outlined in the facility's health and safety plan unless otherwise instructed by emergency personnel.

(10) If the provider must leave the premises due to an emergency, the provider may use an emergency substitute who was not named in the facility's health and safety plan.

(11) The emergency substitute:

(a) shall be at least 18 years old;

(b) is not required to have a CCL background check; and

(c) is not required to meet the training, first aid, and CPR requirements of this rule.

(12) Before the provider may leave the children in the care of the emergency substitute, the provider shall first obtain a signed, written statement from the individual that they:

(a) have not been convicted of a felony or misdemeanor;

(b) do not have a substantiated background finding; and

(c) are not being investigated for abuse or neglect by any federal, state, or local government agency.

(13) The emergency substitute's written background statement shall be submitted to the Department for review within 5 working days after the occurrence.

(14) During the term of the emergency, the emergency substitute may be counted in the caregiver-to-child ratio.

(15) The provider shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care, and the amount of time shall not be more than 24 hours per emergency incident.

(16) The provider shall give parents a verbal report of every minor incident, accident, or injury involving their child on the day of the occurrence.

(17) The provider shall give parents a written report of every serious incident, accident, or injury involving their child:

(a) The caregivers involved, the provider, and the person picking up the child shall sign the report on the day of occurrence.

(b) If school-age children sign themselves out of the facility, a copy of the report shall be sent to the parent on the day following the occurrence.

(18) If a child is injured and the injury appears serious but not life-threatening, the child's parent shall be contacted immediately.

(19) In the case of a life-threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb:

(a) emergency personnel shall be called immediately;

(b) after emergency personnel are called, then the parent shall be contacted;

(c) if the parent cannot be reached, staff shall try to contact the child's emergency contact person.

(20) If a child is injured while in care and receives medical attention, or for a child fatality, the provider shall:

(a) submit a completed accident report form to the Department within the next business day of the incident; or

(b) contact the Department within the next business day and submit a completed accident report form within 5 business days of the incident.

(21) The provider shall keep a six-week record of every serious incident, accident, and injury report on-site for review by the Department.

R430-90-16. Food and Nutrition.

(1)The provider shall ensure that each child age 2 years and older is offered a meal or snack at least once every 3 hours.

(2) When food for children's meals and/or snacks is supplied by the provider:

(a) the meal service shall meet local health department food service regulations;

(b) the foods that are served shall meet the nutritional requirements of the USDA Child and Adult Care Food Program (CACFP) whether or not the provider participates in the CACFP;

(c) the provider shall use the CACFP [~~menus~~]meal pattern requirements, the standard Department-approved menus, or menus approved by a registered [~~dietician~~]dietitian. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years;

(d) the current week's menu shall be posted for review by parents and the Department; and

(e) providers who are not participating or in good standing with the CACFP shall keep a six-week record of foods served at each meal and snack.

(3) The person who serves food to children shall:

(a) be aware of the children in their assigned group who have food allergies or sensitivities, and

(b) ensure that the children are not served the food or drink they are allergic or sensitive to.

(4) Children's food shall be served on dishes, napkins, or sanitary highchair trays, except an individual finger food, such as a cracker, that may be placed directly in a child's hand. Food shall not be placed on a bare table.

(5) Food and drink brought in by parents for their child's use shall be:

(a) labeled with the child's name or individually identified,

(b) refrigerated if needed, and

(c) consumed only by that child.

R430-90-19. Play Equipment.

(1) The provider shall ensure that children using play equipment use it safely and in the manner intended by the manufacturer.

(2) There shall be no entrapment hazards on or within the use zone of any piece of stationary play equipment.

(3) There shall be no strangulation hazards on or within the use zone of any piece of stationary play equipment.

(4) There shall be no crush, shearing, or sharp edge hazards on or within the use zone of any piece of stationary play equipment.

(5) There shall be no tripping hazards such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(6) Cushioning for stationary play equipment shall cover the entire surface of each required use zone.

(7) If ASTM cushioning is used, the provider shall keep on-site for review by the Department the documentation from the manufacturer that the material meets ASTM Specification F1292.

(8) Stationary play equipment with a designated play surface that measures 6 inches or higher shall not be placed on a hard surface such as concrete, asphalt, dirt, or the bare floor, but may be placed on grass or other cushioning.

(9) Except for trampolines, stationary play equipment that is 18 inches or higher shall:

(a) have a 3-foot use zone that is free of hard objects or surfaces and that extends from the outermost edge of the equipment; and

(b) be stable [~~and~~]or securely anchored.

(10) A trampoline shall be considered accessible to children in care unless the trampoline:

(a) is enclosed behind at least a 3-foot high, locked fence or barrier;

(b) has no jumping mat;

(c) is placed upside down, or

(d) is enclosed within at least a 6-foot-high safety net that is locked.

(11) An accessible trampoline without a safety net enclosure shall be placed at least 6 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences.

(12) An accessible trampoline with a safety net enclosure shall be place at least 3 feet away from any structure or object onto which a child could fall, including play equipment, trees, and fences if the net:

(a) is properly installed and used as specified by the manufacturer,

(b) is in good repair, and

(c) is at least 6 feet tall.

(13) An accessible trampoline shall be placed over grass, 6-inch-deep cushioning, or ASTM-approved cushioning. Cushioning shall extend at least 6 feet from the outermost edge of the trampoline frame, or at least 3 feet from the outermost edge of the trampoline frame if a net is used as specified in R430-90-19(12).

(14) There shall be no ladders or other objects within the use zone of an accessible trampoline that a child could use to climb on the trampoline.

(15) An accessible trampoline shall have shock-absorbing pads that completely cover its springs, hooks, and frame.

(16) Before a child in care uses a trampoline, the provider shall have written permission from that child's parent or legal guardian[~~the child's parent shall sign a Department-approved permission form that the provider keeps on-site for review by the Department~~].

(17) When a trampoline is being used by a child in care:

(a) a caregiver shall be at the trampoline supervising,

(b) only one person at a time shall use a trampoline,

(c) no child in care shall be allowed to do somersaults or flips on the trampoline,

(d) no one shall be allowed to play under the trampoline when it is in use, and

(e) only school age children in care shall be allowed to use the trampoline.

KEY: child care facilities, licensed family child care
Date of Enactment or Last Substantive Amendment: [~~August 10, 2018~~]2020
Notice of Continuation: May 9, 2018
Authorizing, and Implemented or Interpreted Law: 26-39

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R432-15**	**Filing No. 52404**

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:	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
Joel Hoffman	801-273-2804	jhoffman@utah.gov

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

General Information

2. Rule or section catchline:

Specialty Hospital – Cancer Treatment Construction

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

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of construction standards. This rule sets construction standards for a Cancer Specialty Hospital.

4. Summary of the new rule or change:

This new rule creates requirements for the construction of a Cancer Specialty Hospital. This rule was proposed by the University of Utah, Huntsman Cancer Institute and approved by the Health Facility Committee on 02/13/2019.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The proposed rule is not expected to impact state revenues or expenditures as the only expected Cancer Specialty Hospital is the University of Utah, Huntsman Cancer Institute. This facility is currently in operation, licensed under the University of Utah Hospital.

B) Local governments:

Local governments were considered, however, this won't affect any government processes.

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

This rule will not affect any small businesses. The only entity known to have interest is the Huntsman Cancer Institute, which is a non-small business.

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

This rule will not affect any non-small businesses. The Huntsman Cancer Institute is the only known entity with interest in this license. This entity is already built to hospital standards, so this rule will have no effect on them. If any entity wishes to license in this category for the future, they will need to follow these 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***)**:**

After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to affected persons. It will only apply to entities wanting to be licensed as cancer hospitals.

F) Compliance costs for affected persons:

After conducting a thorough analysis, it was determined that this proposed rule will not result in 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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**

Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis on 11/27/2019.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There is no fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 26, Chapter 21		

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:	01/31/2020

10. This rule change MAY become effective on:	02/07/2020

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:**	11/27/2019

R432. Health, Family Health and Preparedness, Licensing.
R432-15. Specialty Hospital - Cancer Treatment Construction.
R432-15-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21 Health Care Facility Licensing and Inspection Act.

R432-15-2. Purpose.

The purpose of this rule is to establish construction standards for a specialty hospital for cancer treatment services.

R432-15-3. General Design Requirements.

(1) Cancer Treatment hospitals shall comply with Sections R432-4-1 through R432-4-23.

(2) All fixtures in public and resident toilet areas and bathrooms shall be wheelchair accessible, with wheelchair turning space within the room.

R432-15-4. General Construction.

Cancer treatment services specialty hospitals shall comply with construction requirements found in Section R432-4-23, with the following modifications:

(1) Handrails shall be provided on both sides of corridors and hallways used by patients and meet the Americans with Disabilities Act Section 4.8.5. The top of the rail shall be 34-38 inches above the floor, except for areas serving children and other special care areas.

(2) An emergency electrical service is required.

(a) An on-site emergency generator shall be provided. The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70, which is incorporated by reference in R432-4-8 General Construction;

(ii) critical branch, as defined in 517-33 of the National Electric Code NFPA 70, which is incorporated by reference in R432-4-8 General Construction;

(iii) equipment system, as defined in 517-34 of the National Electric Code NFPA 70, which is incorporated by reference in R432-4-8 General Construction;

(iv) telephone;

(v) nurse call;

(vi) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions; and

(vii) duplex receptacles in the emergency heated area, at a ratio of one for each ten patients.

(b) Fuel storage capacity for the generator shall permit continuous operation in accordance with NFPA 110, which is incorporated by reference in R432-4-8 General Construction.

(3) If installed, fixed and mobile X-ray equipment shall comply with Articles 517 and 660 of NFPA 70, which is incorporated by reference in R432-4-8 General Construction.

R432-15-5. General Construction Patient Service Facilities.

(1) The General Construction for Patient Service Facilities is found in Section R432-4-24 and the requirements of Sections 2.1 through 2.2 of Guidelines for Design and Construction of Health Care Facilities, 2010 edition (Guidelines). Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(2) Nursing Units shall meet the following:

(a) At least two single-bed rooms, with private toilet rooms, shall be provided for each nursing unit; and

(b) Minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, shall be 140 square feet in single-bed rooms. Patient rooms are to be single occupancy, unless the functional program describes the necessity for double occupancy.

(3) Imaging facilities may be provided within the facility, or through contractual arrangement with a qualified radiology service or nearby hospital for diagnostic procedures.

(a) Imaging facilities shall include the following:

(i) radiology;

(ii) mammography;

(iii) computerized scanning;

(iv) ultrasound; and

(v) other imaging techniques.

(b) If imaging facilities are provided in-house, they shall meet the requirements for an imaging suite defined in Guidelines for Design and Construction of HealthCare Facilities, 2010 Edition section 2.2-3.4.

(4) Laboratory Services.

(a) Laboratory space and equipment shall be provided in-house for testing blood counts, urinalysis, blood glucose, electrolytes, blood urea nitrogen (BUN), and for the collection, processing, and storage of specimens; and

(b) In lieu of providing laboratory services in-house, contractual arrangements with a Department-approved laboratory may be provided. If contractual services are arranged, the facility shall maintain space and equipment to perform on-site rapid testing.

(5) Pharmacy Guidelines.

(a) The size and type of services provided in the pharmacy shall depend on the drug distribution system chosen and whether the facility proposes to provide, purchase, or share pharmacy services. A description of pharmacy services shall be provided in the functional program;

(b) There shall be a pharmacy room or suite, under the direct control of staff, which is located for convenient access and equipped with appropriate security features for controlled access;

(c) The room shall contain facilities for the dispensing, basic manufacturing, storage and administration of medications, and for handwashing;

(d) In lieu of providing pharmacy services in-house, contractual arrangements with a licensed pharmacy shall be provided. If contractual services are arranged, the facility shall maintain space and basic pharmacy equipment to prepare and dispense necessary medications in back-up or emergency situations; and

(e) If additional pharmacy services are provided, facilities shall comply with the requirements of the Guidelines for Design and construction of Health Facilities, 2010 Edition section 2.2-4.2;

(6) Patient Day Spaces.

(a) The facility shall include a minimum total inpatient space for dining, recreation, and day use computed on the basis of 30 square feet per bed for the first 100 beds and 27 square feet per bed for all beds in excess of 100; and

(b) If dining is part of a day care program, in addition to the required space defined for inpatients, the facility shall include a minimum of 200 square feet for outpatient and visitors. If dining is not part of a day care program, the facility shall provide a minimum of 100 square feet of additional outpatient day space.

(7) Examination and Treatment Room.

(a) An examination and treatment room shall be provided, except when all patient rooms are single-bed rooms;

(b) An examination and treatment room may be shared by multiple nursing units;

(c) When provided, the room shall have a minimum floor area of 120 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or movable;

(d) The minimum floor dimension shall be ten feet; and

(e) The room shall contain:

(i) a lavatory or sink equipped for handwashing;

(ii) work counter;

(iii) storage facilities; and

(iv) a desk, counter, or shelf space for writing.

(8) Consultation Room. A consultation room, arranged to permit an evaluation of patient needs and progress, shall be provided. The room shall include a desk and work area for the evaluators, writing and work space for patients, and storage for supplies.

(9) Surgical Unit. If surgical services are offered, facilities shall be provided in accordance with the Guidelines for Design and Construction of Health Care Facilities, 2010 Edition.

R432-15-6. Penalties.

Pursuant to Utah Code Title 26 Chapter 23, the Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health care facilities
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-2.1; 26-21-20

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R432-35**	**Filing No. 52375**

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:	Salt Lake City, Utah 84106	
Mailing address:	PO Box 144103	
City, state, zip:	Salt Lake City, Utah 84114-4103	
Contact person(s):		
Name:	**Phone:**	**Email:**
Carmen Richins	801-273-2802	carmenrichins@utah.gov
Joel Hoffman	801-273-3994	jhoffman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Background Screening -- Health Facilities

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

The reason for this amendment is to make technical changes that include removing and amending statute references and adding a new definition. Also to modify the rule to match the current process and add the "shall deny" section of deniable charges and convictions for background screenings for licensed Health Care Facilities. The Health Facility Committee reviewed and approved this rule amendment on 11/13/2019.

4. Summary of the new rule or change:

This amendment modifies the rule to match the current records review process and adds the "shall deny" section of the current deniable charges and convictions for background screenings for licensed Health Care Facilities. It also makes technical changes that include removing and amending statute references and adding a new definition for the Direct Access Clearance System (DACS).

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

State government background screening process was thoroughly reviewed. This proposed rule amendment could lead to some fewer staff hours required as some convictions will be a "shall deny" so less time may be spent on the appeal process however with all the variables this is an inestimable benefit to the state budget.

B) Local governments:

Local government city business licensing requirements were considered. This proposed rule amendment should not affect local governments' revenues or expenditures.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact for small businesses' revenues or expenditures as it does not change those agencies background screening requirements.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact for non-small businesses' revenues or expenditures as it does not change those background screening requirements.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact for persons as it does not change their background screening requirements.

F) Compliance costs for affected persons:

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact for persons as it does not change their background screening 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 Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0

Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The executive director of the Department of Health, Joseph K. Miner, MD, 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 there is no fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 26, Chapter 21		

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:**	11/26/2019

R432. Health, Family Health and Preparedness, Licensing.
R432-35. Background Screening -- Health Facilities.
R432-35-1. Authority.

This rule is adopted pursuant to Title 26 Chapter 21 Part 2.

R432-35-2. Purpose.

To outline the process required for individuals to be cleared to have direct patient access while employed by a covered provider, covered contractor or covered employer.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21 Part 2.

In addition:

(1) "Aged" means an individual who is 60 years of age or older.

(2) "Clearance" means approval by the department under Section 26-21-203 for an individual to have direct patient access.

(3) "Covered body" means a covered provider, covered contractor, or covered employer.

(4) "Corporation" means a corporation that has business interest[~~,~~] or connection to covered providers that employ individuals who provide consultative services which may result in direct patient access.

(5) "Covered contractor" means a person or corporation that supplies covered individuals, by contract, to:

(a) a covered employer, or

(b) a covered provider for services within the scope of the health facility license.

(6) "Covered employer" means an individual who:

(a) engages a covered individual to provide services in a private residence to:

(i) an aged individual, as defined by department rule; or

(ii) a disabled individual, as defined by department rule;

(b) is not a covered provider; and

(c) is not a licensed health care facility within the state.

(7) "Covered individual":

(a) means an individual:

(i) whom a covered body engages; and

(ii) who may have direct patient access;

(b) which may include:

(i) a nursing assistant;

(ii) a personal care aide;

(iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;

(iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;

(v) an executive;

(vi) administrative staff, including a manager or other administrator;

(vii) dietary and food service staff;

(viii) housekeeping;

(ix) transportation staff;

(x) maintenance staff; and

(xi) volunteer as defined by department rule.

(c) does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "Covered provider" means:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a nursing care facility;

(d) a small health care facility;

(e) an assisted living facility;

(f) a hospice;

(g) a home health agency; or

(h) a personal care agency.

(9) "DACS" means Direct Access Clearance System.

(10) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:

(a) cause physical or mental harm;

(b) commit theft; or

(c) view medical or financial records.

(1[~~0~~]1) "Disabled individual" means an individual who has limitations with two or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(1[~~1~~]2) "Engage" means to obtain one's services:

(a) by employment;

(b) by contract;

(c) as a volunteer; or

(d) by other arrangement.

(1[~~2~~]3) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and

(b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).

(1[~~3~~]4) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, which may include a nurse aide, personal care aide or certified nurse aide.

(1[4]5) "Patient" means an individual who receives health care services from one of the following covered providers:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a hospice;

(d) a home health agency; or

(e) a personal care agency.

(1[~~5~~]6) "Resident" means an individual who receives health care services from one of the following covered providers:

(a) a nursing care facility;

(b) a small health care facility;

(c) an assisted living facility; or

(d) a hospice that provides living quarters as part of its services.

(1[~~6~~]7) "Residential setting" means a place provided by a covered provider:

(a) for residents to live as part of the services provided by the covered provider; and

(b) where an individual who is not a resident also lives.

(1[~~7~~]8) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

The following groups or individuals are excluded as volunteers and are not required to complete the background clearance process as defined in R432-35:

(a) Clergy;

(b) Religious groups;

(c) Entertainment groups;

(d) Resident family members;

(e) Patient family members; and

(f) Individuals volunteering services for 20 hours per month or less.

R432-35-4. Covered Provider -- [~~Direct Access Clearance System~~]DACS Process.

(1) [~~Utah Code, Title 26, Chapter 21, Part 2 requires that a e~~]Covered providers shall enter required information into [~~the Direct Access Clearance System~~]DACS to initiate a clearance for each covered individual prior to issuance of a provisional license, license renewal or engagement as a covered individual.

(2) The covered provider must ensure that the engaged covered individual:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of engagement.

(3) The covered provider must ensure [~~the Direct Access Clearance System~~]that DACS reflects the current status of the covered individual within 5 working days of the engagement or termination.

(4) A covered provider may provisionally engage a covered individual while direct patient access clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through [~~the Direct Access Clearance System~~]DACS, the Department shall send a Notice of Agency Action to the covered provider and the individual explaining the action and the individual's right of appeal as defined in Rule R432-30.

(6) A covered provider may not allow a covered individual who has been determined to be not eligible for direct patient access to be engaged in a position with direct patient access.

(7) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(8) A covered provider that provides services in a residential setting must enter required information into [~~the Direct Access Clearance System~~]DACS to initiate and obtain a clearance for all individuals 12 years of age and older, who are not residents, and reside in the residential setting. If the individual is not eligible for clearance

as defined in Section R432-35-8, the Department may revoke an existing license or deny licensure for healthcare services in the residential setting.

(9) Covered providers requesting to renew a license as a health care facility must utilize [~~the Direct Access Clearance System~~]DACS to run a verification report and verify that each covered individual's information is correct, including:

(a) employment status;

(b) address;[~~ and~~]

(c) email address; and

(d) name.

(10) Individuals or covered individuals requesting to be licensed as a covered provider must submit required information to the Department to initiate and obtain a clearance prior to the issuance of the provisional license. If the individuals are not eligible for clearance as defined in Section R432-35-8, the Department may revoke an existing license or deny licensure as a health care facility.

R432-35-5. Covered Contractor -- [~~Direct Access Clearance System~~]DACS Process.

(1) [~~Utah Code, Title 26, Chapter 21, Part 2 requires that a~~]A covered contractor may enter required information into [~~the Direct Access Clearance System~~]DACS to initiate a clearance for each covered individual prior to being supplied by contract to a covered provider.

(2) A covered contractor must ensure that the covered individual, being supplied by contract to a covered provider:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor must ensure [~~the Direct Access Clearance System~~]DACS reflects the current status of the covered individual within [~~5~~]five working days of placement or termination.

(4) A covered contractor may provisionally supply a covered individual to a covered provider while clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through [~~the Direct Access Clearance System~~]DACS, the Department shall send a Notice of Agency Action to the covered contractor and the individual explaining the action and the individual's right of appeal as defined in Rule R432-30.

(6) A covered contractor may not supply to a covered provider a covered individual who has been determined to be not eligible to have direct patient access.

(7) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

R432-35-6. Covered Employer -- [~~Direct Access Clearance System Process~~]DACS.

(1) [~~Utah Code, Title 26, Chapter 21, Part 2 requires that a~~]A covered employer may be allowed to enter required information into [~~the Direct Access Clearance System~~]DACS to initiate and obtain a clearance for a covered individual.

(2) If the Department determines an individual is not eligible for direct patient access, based on information obtained through [~~the Direct Access Clearance System~~]DACS, the Department shall send a Notice of Agency Action to the covered employer and the individual explaining the action and the individual's right of appeal as defined in Rule R432-30.

R432-35-7. Sources for Background Review.

(1) As required in [~~Utah Code~~]Section 26-21-204 the department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(g) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(2) If the Department determines an individual is not eligible for direct patient access based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided [~~in Utah Code Annotated Sections 77-18a~~]by law.

(3) If the Department determines an individual is not eligible for direct patient access based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

R432-35-8. Exclusion from Direct Patient Access.

(1) Convictions or Pending Charges

(a) Pursuant to Section 26-21-204, any individual or covered individual who has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, within the past 10 years, for any offense listed below, shall not have direct patient access:

(i) any felony or class A misdemeanor under the following Utah Code:

(A) Subsection 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;

(B) Title 76-4 Enticement of a Minor;

(C) Title 76-5 Offenses Against the Person;

(D) Section 76-9-301.8, Bestiality;

(E) Section 76-9-702 through 702.1 Lewdness - Sexual Battery;

(F) Section 76-9-702.5 and 76-9-702.7 Lewdness Involving Child and Voyeurism offenses;

(G) Section 76-10-1201 through 76-10-1228, Pornographic and Harmful Materials and Performances;

(H) Section 76-10-1301 through 1314, Prostitution; or

(I) Section 62A-3-305 failure to report suspected abuse, neglect, or exploitation of a vulnerable adult.

(b) [~~As required by Utah Code Subsection 26-21-204~~]Except as listed above in 1(a), if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for the following offenses, the[~~y may not have~~] Department may consider approving an individual for direct patient access:

(i) any felony or class A misdemeanor[~~conviction~~] under the Utah Code[~~.~~];

(ii) any felony, class A or B misdemeanor[~~conviction~~] under [~~Utah Criminal Code~~]Subsection 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;

(iii) any felony or class A, B or C misdemeanor[~~conviction~~] under the following Utah Code[~~s~~]:

(A) Title 76-4 Enticement of a Minor;

(B) Title 76-5 Offenses Against the Person;

(C) Section 76-9-301.8, Bestiality;

(D) Section 76-9-702 [~~to~~]through 702.[~~5~~]1 Lewdness - Sexual Battery [~~- Public urination -~~]

(E) Section 76-9-702.5 and 76-9-702.7 Lewdness Involving Child - Voyeurism offenses;

([~~E~~]F) Section 76-10-1201 [~~to~~]through [~~1229.5~~]76-10-1228, Pornographic and Harmful Materials and Performances;

([~~F~~]G) Section 76-10-1301 [~~to~~]through 1314, Prostitution; and

([~~G~~]H) Section 62A-3-305 failure to report suspected abuse, neglect, or exploitation of a vulnerable adult.

([~~b~~]c) [~~As required by Utah Code Subsection 26-21-204, if an~~]Any individual or covered individual who has a warrant for arrest or an arrest for any of the identified offenses in Subsection R432-35-8(1)(a) or (b), [~~the department -~~]may deny clearance based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to patients or residents.

(2) Juvenile Records

(a) As required by [~~Utah Code~~]Subsection 26-21-204(4)(a)(ii)(E), juvenile court records shall be reviewed if an individual or covered individual is:

(i) under the age of 28; or

(ii) over the age of 28 and has convictions or pending charges identified in Subsection R432-35-8(1)(a) or (b).

(b) Adjudications by a juvenile court may exclude the individual from direct patient access if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor.

(3) Non-Criminal Records

(a) As [~~required~~]authorized by [~~Utah Code~~]Subsection 26-21-204(3), the Department may review findings from the following sources to determine whether an individual or covered individual should be granted or retain direct patient access:

(i) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(ii) child abuse or neglect findings described in Section 78A-6-323;

(iii) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(iv) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(v) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(vi) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(4) Review of Relevant Information

(a) [~~Results of background screening review, as listed above in R432-35-8(1), (2), and (3), may~~]Relevant background information from sources listed in Section R432-35-7, shall be reviewed to determine under what circumstance, if any, the covered individual may be granted or retain direct patient access. The following factors may be considered:

(i) types and number;

(ii) passage of time;

(iii) surrounding circumstances;

(vi) intervening circumstances; and

(v) steps taken to correct or improve.

(b) The department shall rely on relevant information identified in Rule R432-35-[~~8(1), (2), and (3)~~]7 as conclusive evidence and may deny clearance based on that information.

R432-35-9. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would be excluded under Subsection R432-35-8(1), the Department may act to protect the health and safety of patients or residents in covered providers.

(2) The Department may allow a covered individual direct patient access with conditions, until the arrest or criminal charges are resolved, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(3) If the Department denies or revokes a license, or denies direct patient access based upon arrest or criminal charges, the Department shall send a Notice of Agency Action to the covered provider and the covered individual notifying them of the right to appeal in accordance with Rule R432-30.

R432-35-10. Penalties.

The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with [~~the provisions of this chapter, or rules promulgated pursuant to this chapter,~~]Section 26-21-2, or Rule R435-35, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of $1,050 to $10,000 per day.

KEY: health care facilities, background screening
Date of Enactment or Last Substantive Amendment: [~~October 1, 2018~~]2020
Notice of Continuation: January 29, 2018
Authorizing, and Implemented or Interpreted Law: 26-21-9.5

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R432-107**	**Filing No. 52406**

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:	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
Joel Hoffman	801-273-2804	jhoffman@utah.gov

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

General Information

2. Rule or section catchline:

Specialty Hospital – Cancer Treatment

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

The purpose of this proposed rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of a Cancer Specialty Hospital.

4. Summary of the new rule or change:

This new rule creates requirements for the operation and maintenance of a Cancer Specialty Hospital. This rule was proposed by the University of Utah, Huntsman Cancer Institute and approved by the Health Facility Committee on 02/13/2019.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This proposed rule is not expected to impact state revenues or expenditures as the only expected Cancer Specialty Hospital is the University of Utah, Huntsman Cancer Institute. Licensing fees will be transferred from one state agency to another, with no cost or impact to the state budget.

B) Local governments:

Local governments were considered, however, this won't affect any local government processes.

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

This rule will not affect any small businesses.

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

After conducting a thorough analysis, it was determined that this proposed rule will result in a fiscal impact to the one recognized Cancer Specialty Hospital. The facility will incur licensing fees, to include: New Provider Fee -- $747.50, Initial License Fee -- $260, and Per Bed Fee -- $19.50. This one facility will incur a new licensing fee for the first year of $2,957.50 for an initial license. The facility will incur license renewal fees every two years following the first year to include: Base Fee -- $520, and a per bed fee of $39. The total renewal fee of $4,420 will be applied upon renewal.

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

After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to affected persons other than non-small businesses.

F) Compliance costs for affected persons:

After conducting a thorough analysis, it was determined that this proposed rule will not result in 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 Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$2,957.50	$4,420	$0

Other Person	$0	$0	$0
Total Fiscal Costs:	**$2,957.50**	**$4,420**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	**$(2,957.50)**	**$(4,420)**	**$0**

H) Department head sign-off on regulatory impact:

The executive director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis on 11/27/2019.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

There is no fiscal impact to business other than the initial license fee and renewal fees for the Cancer Specialty Hospital.

B) Name and title of department head commenting on the fiscal impacts:

Joseph K. Miner, MD, 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 26, Chapter 21		

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:	01/31/2020

10. This rule change MAY become effective on:	02/07/2020

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:**	11/27/2019

R432. Health, Family Health and Preparedness, Licensing.
R432-107. Specialty Hospital -- Cancer Treatment.
R432-107-1. Legal Authority.
This rule is adopted pursuant to Title 26, Chapter 21 Health Care Facility Licensing and Inspection Act.

R432-107-2. Purpose.
The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance of a Cancer Specialty Hospital.

R432-107-3. Time for Compliance.
All Cancer Specialty Hospitals shall comply with this section.

R432-107-4. Definitions.
(1) Refer to Common Definitions in Rule R432-1-3 General Health Care Facility Rules.
(2) Special definitions.
(a) "Cancer Specialty Hospital" means a specialty hospital that provides evaluation, diagnosis, and treatment of individuals with a primary diagnosis of neoplasm.
(b) "Neoplasm" means a new and abnormal growth of tissue in some part of the body.
(3) See definition of "specialty hospital", Section R432-101-4(2).

R432-107-5. Licensure.
A Cancer Specialty Hospital shall obtain a license as outlined in Rule R432-2 General Licensing Provisions.

R432-107-6. General Construction Rules.
Refer to Rule R432-15 Cancer Specialty Hospital Construction.

R432-107-7. Organization and Staff.

The following services and policies shall comply with Rule R432-100 General Hospital Standards:

(1) Governing Body, R432-100-5.

(2) Administrator, R432-100-6.

(3) Medical and Professional Staff, R432-100-7.

(4) Personnel Management Service, R432-100-8.

(5) Quality Improvement Plan, R432-100-9.

(6) Infection Control, R432-100-10.

(7) Patient Rights, R432-100-11.

(8) Patient Designated Caregiver, R432-100-12.

(9) Nursing Care Services, R432-100-13.

R432-107-8. Admission Policy.

A Cancer Specialty Hospital is limited to serving patients that meet the following criteria:

(1) Each patient shall have a primary admitting diagnosis that requires evaluation, diagnosis, and treatment of a neoplasm, as defined in this rule, and;

(2) There is a reasonable expectation that the patient's needs can be met by the services provided by the Cancer Specialty Hospital.

R432-107-9. Clinical Services.

The following services shall comply with Rule R432-100 General Hospital Standards:

(1) Surgical Services, R432-100-15(1)(a) through R432-100-15(1)(d) and R432-100-15(1)(f) through R432-100-15(4).

(2) Rehabilitation Therapy Services, R432-100-21.

(3) Outpatient Services, R432-100-29.

(4) Pediatric Services if provided, R432-100-19.

R432-107-10. Emergency Services.

(1) Each Cancer Specialty Hospital shall have the ability to provide emergency first aid treatment to patients, staff, visitors, and to persons who may be unaware of or unable to immediately reach services in other facilities.

(2) Provisions shall include a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication access to a poison control center.

(3) Additional Emergency Services.

Any additional or expanded emergency services offered shall comply with the provisions of the appropriate sections of R432-100-17.

R432-107-11. Complementary Services.

The following services shall comply with Rule R432-100 General Hospital Standards:

(1) Anesthesia Services, R432-100-16.

(2) Respiratory Care Services, R432-100-20.

(3) Radiology Services, R432-100-22.

(4) Laboratory and Pathology Services, R432-100-23.

(5) Blood Services, R432-100-24.

(6) Pharmacy Services, R432-100-25.

(7) Social Services, R432-100-26.

R432-107-12. Ancillary Services.

The following services shall comply with Rule R432-100 General Hospital Standards:

(1) Dietary Service, R432-100-32.

(2) Telemedicine Services if provided, R432-100-33.

(3) Medical Records, R432-100-34.

(4) Central Supply Services, R432-100-35.

(5) Laundry Service, R432-100-36.

(6) Housekeeping Services, R432-100-37.

(7) Maintenance Services, R432-100-38.

(8) Emergency Operations Plan, R432-100-39.

R432-107-13. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6.

KEY: health care facilities
Date of Enactment or Last Substantive Amendment: 2020
Authorizing, and Implemented or Interpreted Law: 26-21-2.1; 26-21-5; 26-21-6; 26-21-20

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R512-100**	**Filing No. 52368**

Agency Information

1. Department:	Human Services	
Agency:	Child and Family Services	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
In-Home Services
3. Purpose of the new rule or reason for the change:
This rule is being changed in order to implement the Title IV-E Prevention Program under the Family First Prevention Services Act.
4. Summary of the new rule or change:
The proposed changes to this rule address requirements for the Title IV-E Prevention Program under the Family First Prevention Services Act. These rule changes include definition of terms, state plan provisions, criteria for prevention services, quality assurance and evaluation, prevention candidate determination, and provision of services. (EDITOR'S NOTE: A corresponding emergency (120-day) rule that is effective as of

11/26/2019 is under Filing No. 52367 in this issue, December 15, 2019, of the Bulletin.)

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The state budget will have corresponding increases in costs due to the state paying for more services to in-home clients. There will also be an additional offset to the impact by a net increase of new federal funding as more services will be eligible for federal funding reimbursement.

B) Local governments:

There are no anticipated costs or savings to local governments due to these rule changes.

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

There are no anticipated costs or savings to small businesses due to these rule changes.

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 due to these rule changes.

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

There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities due to these rule changes.

F) Compliance costs for affected persons:

As these are not new requirements for existing services, there is not a fiscal impact to existing providers. Providers wishing to contract with Department of Human Services to offer the evidence-based services will need to be trained and/or certified in the in-home service models, however existing providers are not mandated to offer the new evidence-based services, therefore no fiscal impact to current contractors.

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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$128,900	$390,100	$837,300
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$128,900**	**$390,100**	**$837,300**
Fiscal Benefits			
State Government	$62,500	$187,200	$401,100
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$62,500**	**$187,200**	**$401,100**
Net Fiscal Benefits:	**$-66,400**	**$-202,900**	**$-436,200**

H) Department head sign-off on regulatory impact:

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:

This rule does not impose requirements on businesses, but may result in businesses being able to contract with the Department of Human Services to be providers of prevention program services.

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-4a-102	42 U.S.C. 671(e)	42 U.S.C. 675 (13)

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:	01/15/2020

10. This rule change MAY become effective on:	01/22/2020
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:	Diane Moore, Director	Date:	11/18/2019

R512. Human Services, Child and Family Services.
R512-100. In-Home Services.
R512-100-1. Purpose and Authority.

(1) The purpose of In-Home Services is to enhance a parent's capacity to safely care for their child in their home and to safely reduce the need for out-of-home care in Utah. In-Home Services include front-end services that help prevent removal and allow a child to remain at home with their parent or caregiver. It includes cases where a child is placed with a non-custodial parent or relatives who have custody and guardianship of the child. It also includes services for when a child returns home from out-of-home care and there are continuing services with Child and Family Services and court oversight.

(2) In-Home Services are a set of evidence-based services, strategies, and tools that support the safety, permanency, and well-being of a child and the strengthening of their family.

(3) The key components of In-Home Services interventions include:

(a) Case management based on Practice Model skills of engaging, teaming, assessing, planning, and intervening,

(b) Assessing and addressing safety and risk issues to help stabilize the family, providing purposeful home visits and a private conversation with the child,

(c) The application of an evidence-based assessment to identify child and family needs and protective factors early in the case, guiding caseworkers to better target the individual needs of the family with services, and informing the development of the Child and Family Plan, and

(d) Direct services and interventions that help the family make needed changes in addition to linking the family to evidence-based services and community resources.

(4) Pursuant to Sections 62A-4a-105, 62A-4a-201, and 62A-4a-202, Child and Family Services is authorized to provide In-Home Services.

(5) This rule is authorized by Section 62A-4a-102.

R512-100-2. Definitions.

(1) "Child and Family Plan" is a written document that is developed by the Child and Family Team based on the assessment of the child and family's strengths and needs. The Child and Family Plan will guide and enable the family to make the changes that are necessary to meet their child's need for safety, permanency, and well-being.

(2) "Child and Family Services" means the Division of Child and Family Services.

(3) "Child and Family Team" is the family's identified informal supports and the service providers working with the family.

(4) "Utah Family and Children Engagement Tool (UFACET)" is an assessment tool used to identify child and family needs and guide addressing those needs with services in the Child and Family Plan.

(5) "Prevention Candidate," for the purposes of the Title IV-E Prevention Program, is a child under age 18 when at serious risk of entering or reentering foster care, but able to remain safely in the home or kinship placement as long as mental health, substance use disorder, or in-home parent skill-based programs or services for the child, parent, or kin caregiver are provided. A child may be at serious risk of entering foster care based on circumstances and characteristics of the family as a whole or circumstances and characteristics of individual parents, children, or kinship caregiver that may affect the parents' ability to safely care for and nurture their children.

(6) "Kin Caregiver," for the purpose of the Title IV-E Prevention Program, includes kin caregiver as defined in Utah Code Section 78A-6-307, and includes individuals that are unrelated by either birth or marriage but have an emotionally significant relationship with the child that takes on the characteristics of a family relationship.

(a) For Indian children, the definition of kin caregiver under the Indian Child Welfare Act, 25 U.S.C. Section 1903, applies, which includes an extended family member as defined by the law or custom of the Indian child's tribe; in the absence of such a law or custom, a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second stepparent; or an Indian custodian as defined by ICWA case law.

(b) Children who are under the placement and care responsibility of the state are, by definition, in foster care and are not prevention candidates when placed with a kin caregiver.

R512-100-3. Qualifications.

(1) In-Home Services may be provided to families under the following conditions:

(a) A child has experienced abuse or neglect but can remain safely in the home with a safety plan.

(b) A child is placed with a non-custodial parent or relatives who have custody and guardianship of the child.

(c) A child is returned home from out-of-home care.

(d) An adoptive placement is at risk of disruption and intensive services are needed to maintain the child in the adoptive home.

(e) When reunification is likely within 14 days and intensive support is needed in conjunction with a current out-of-home care caseworker to prepare for and facilitate the reunification.

(2) A family may not qualify for In-Home Services under the following conditions:

(a) A family has the ability to access resources, supports, and services on their own, and

(b) There is minimal risk of abuse/neglect to the child, and

(c) The family requires no ongoing monitoring by Child and Family Services.

(3) In-Home Services may be voluntary or court ordered. A petition may be filed for court-ordered protective supervision of the family.

(4) In-Home Services are available in all geographic regions of the state.

R512-100-4[~~5~~]. Service Delivery.

(1) Child and Family Team:

(a) The caseworker will engage the child and family to assemble a Child and Family Team. A Child and Family Team includes informal supports identified by the family in addition to the service providers who are or will be working with the family. The Child and Family Team meets regularly and assesses the strengths and needs of the child and family and plans for the child's safety, permanency, and well-being. Teaming occurs through ongoing information sharing and collaboration.

(2) Assessing:

(a) The purpose of assessing is to inform the Child and Family Team so that they know what they need to know to do what they need to do. Assessing is a sequential process of gathering information about the family's strengths and needs, analyzing the information, drawing conclusions, and acting on those conclusions by developing a plan to meet the identified needs. These needs are met through the provision of effective interventions that help the family achieve enduring safety, permanency, and well-being. Assessing is an ongoing and evolving process throughout the case.

(3) Planning:

(a) A Child and Family Plan shall be developed for each family receiving In-Home Services in accordance with Section 62A-4a-205. The Child and Family Plan guides the provision of services/interventions and is tracked and adapted throughout the case.

(b) Members of the Child and Family Team, including the parents and the child, if age appropriate, shall assist in developing the Child and Family Plan.

(c) A copy of the completed Child and Family Plan shall be provided to the parent or guardian. If In-Home Services are court ordered, a copy of the Child and Family Plan will be provided to the court, Assistant Attorney General, Guardian ad Litem, and legal counsel for the parent or guardian.

(4) Permanency Goals:

(a) All children receiving In-Home Services shall have a primary permanency goal and, if appropriate, a concurrent permanency goal identified by the Child and Family Team.

(b) For court-ordered In-Home Services, both primary and concurrent permanency goals, when applicable, shall be submitted to the court for approval.

(5) Duration of Services:

(a) For court-ordered services, the caseworker will continue to work with the family until the circumstances that brought the family to the attention of Child and Family Services are remedied and a ruling is made by the assigned judge to terminate Child and Family Services oversight.

[~~(b) For voluntary services, the Child and Family Team assesses and determines when to end services with the family. This decision is staffed with the caseworker's supervisor.~~]

R512-100-5. Title IV-E Prevention Program.

(1) Title IV-E Prevention Program Plan

(a) Child and Family Services will operate the Title IV-E Prevention Program in accordance with a five-year Title IV-E Prevention Program Plan approved by the Federal government.

(b) Child and Family Services will engage in consultation with other state agencies responsible for administering health programs, including mental health and substance abuse prevention and treatment services, and with other public and private agencies with experience in administering child and family services in developing or modifying the five-year Title IV-E Prevention Program Plan.

(2) Title IV-E Prevention Program Services

(a) Prevention program services will be specified and approved in the Title IV-E Prevention Program Plan.

(b) Prevention program services may include mental health and substance abuse prevention and treatment services provided by a qualified individual; or in-home parent skills-based programs, which include parenting skills training, parent education, and family counseling.

(c) Prevention program services must have been determined as evidence-based through either the Title IV-E Prevention Services Clearinghouse or through the transitional payment review process approved by the Federal government. Programs and services must have an evidence rating of well-supported, supported, or promising.

(d) Prevention program services must meet the Federal requirements for trauma-informed service delivery.

(e) Selection of prevention program services will be based on review of needs of the prevention services population, service gaps, and consideration of expected outcomes identified through program research.

(3) Quality Assurance and Evaluation of Title IV-E Prevention Program Services

(a) Prevention program services will be monitored to ensure fidelity to the practice model and to determine outcomes achieved.

(b) Information learned through fidelity monitoring will be used to refine and improve practice.

(c) Prevention program services that have an evidence rating of promising or supported from the Title IV-E Prevention Services Clearinghouse or that have an evidence rating determined through the transitional payment review process will be evaluated in accordance with the evaluation strategy approved in the Title IV-E Prevention Program Plan.

(d) Prevention program services that have an evidence rating of well-supported from the Title IV-E Prevention Services Clearinghouse may receive a waiver for evaluation when the effectiveness of the service is compelling and when approved in the Title IV-E Prevention Program Plan.

(4) Prevention Candidate Determination

(a) Child and family eligibility for the Title IV-E Prevention Program is determined through the caseworker utilizing designated assessment tools with the child and family. The Structured Decision

Making (SDM) Safety and Risk Assessments and the Utah Family and Children Engagement Tool (UFACET) results are used to determine if the child is at serious risk of entering foster care, but can remain safely at home or residing with a kinship caregiver as long as substance use, mental health, or in-home parenting skills services necessary to prevent the entry of the child into foster care are provided. Prevention candidate status is confirmed through finalization of the Child and Family Plan, which is the child's prevention plan.

(5) Provision of Title IV-E Prevention Programs Services

(a) Prevention program services may be provided to a child who is a prevention candidate or to the child's parent or kin caregiver when the need for the services by the child, parent, or kin caregiver is directly related to the safety, permanency, or well-being of the child or to prevent the child from entering foster care. Services may be provided for up to 12 months for each authorization period.

KEY: child welfare
Date of Enactment or Last Substantive Amendment: [~~January 7, 2016~~]2020
Notice of Continuation: February 15, 2018
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-201; 62A-4a-202; 42 U.S.C. 671(e); 42 U.S.C 675(13)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R590-164**	**Filing No. 52384**

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N. State St.	
City, state, zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

Uniform Health Billing Rule

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

This rule is being amended to bring the standards in the rule up to date with standards that are already in use by the industry.

4. Summary of the new rule or change:

The primary change updates the electronic data interchange standards previously adopted by the Utah Health Information Network (UHIN). UHIN is a nonprofit organization that brings together payers and providers for the efficient processing of claims. The updated standards are already in use by the industry.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. These changes merely bring this rule language in line with current standards in use by the industry.

B) Local governments:

There is no anticipated cost or savings to local governments. These changes merely bring this rule language in line with current standards in use by the industry.

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

There is no anticipated cost or savings to small businesses. These changes merely bring this rule language in line with current standards in use by the industry.

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

There is no anticipated cost or savings to non-small businesses. These changes merely bring this rule language in line with current standards in use by 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***)**:**

There is no anticipated cost or savings to any other persons. These changes merely bring this rule language in line with current standards in use by the industry.

F) Compliance costs for affected persons:

There are no compliance costs for any affected persons. The industry already uses these standards and will not need to take any further action.

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 Summary Table

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The commissioner of the Insurance Department, Todd E. Kiser, 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 these proposed rule changes will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Todd E. Kiser, 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):

Section 31A-22-614.5		

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)	Adaptive Behavior Services/Applied Behavior Analysis (ABA) Billing Standard
Publisher	Utah Health Information Network
Date Issued	02/02/2019
Issue, or version	3.1

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)	Dental Claim Billing Standard - J430
Publisher	Utah Health Information Network
Date Issued	09/07/2019
Issue, or version	4

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)	NPI and Atypical Provider Identifier Standard
Publisher	Utah Health Information Network
Date Issued	09/07/2019
Issue, or version	3.1

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)	Transparency Administration Performance Standard
Publisher	Utah Health Information Network
Date Issued	02/02/2019
Issue, or version	1.5

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)	Transparency Denial Standard
Publisher	Utah Health Information Network
Date Issued	02/02/2019
Issue, or version	1.5

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020
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:	Steve Gooch, Information Specialist	**Date:**	11/26/19

R590. Insurance, Administration.
R590-164. Uniform Health Billing Rule.
R590-164-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsection 31A-22-614.5 which authorizes the commissioner to adopt uniform claim forms, billing codes, and compatible systems of electronic billing.

R590-164-2. Purpose.

The purpose of this rule is to designate uniform claim forms, billing codes and compatible electronic data interchange standards for use by health payers and providers.

R590-164-3. Applicability and Scope.

(1) This rule applies to health claims, health encounters, and electronic data interchange between payers and providers.

(2) Except as otherwise specifically provided, the requirements of this rule apply to payers and providers.

(3) This rule does not prohibit a payer from requesting additional information required to determine eligibility of the claim under the terms of the policy or certificate issued to the claimant.

(4) This rule does not prohibit a payer or provider from using alternative forms or procedures specified in a written contract between the payer and provider.

(5) This rule does not exempt a payer or provider from data reporting requirements under state or federal law or regulation.

R590-164-4. Definitions.

As used in this rule:

(1) Uniform Claim Forms are defined as:

(a) "UB-04" means the health insurance claim form maintained by NUBC for use by institutional care providers.

(b) "Form CMS 1500" means the health insurance claim form maintained by NUCC for use by health care providers.

(c) "J400" means the uniform dental claim form approved by the American Dental Association for use by dentists.

(d) "NCPDP" means the National Council for Prescription Drug Program's Claim Form or its electronic counterpart.

(2) Uniform Claim Codes are defined as:

(a) "ASA Codes" means the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.

(b) "CDT Codes" means the current dental terminology prescribed by the American Dental Association.

(c) "CPT Codes" means the current physicians procedural terminology, published by the American Medical Association.

(d) "DRG Codes" means Diagnosis Related Group codes. DRG's are universal grouping that are used to clarify the type of inpatient care received. The DRG code, along with a diagnosis code and the length of the inpatient stay, are used to determine payment and reimbursement for claims.

(e) "HCPCS" means HCFA's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's (AMA's) Physician Current Procedural Terminology, codes, alphanumeric codes, and related modifiers. This includes:

(i) "HCPCS Level 1 Codes" which are the AMA's CPT codes and modifiers for professional services and procedures.

(ii) "HCPCS Level 2 Codes" which are national alphanumeric codes and modifiers for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT codes.

(f) "ICDCM Codes" means the diagnosis and procedure codes in the International Classification of Diseases, clinical

modifications published by the U.S. Department of Health and Human Services.

(g) "NDC" means the National Drug Codes of the Food and Drug Administration.

(h) "UB04 Rate Codes" means the code structure and instructions established for use by the National Uniform Billing Committee.

(3) "Electronic Data Interchange Standard" means the:

(a) ASC X12N standard format developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides as modified by the Utah Health Information Network (UHIN) Standards Committee;

(b) other standards developed by the UHIN Standards Committee at the request of the commissioner; and

(c) as adopted by the commissioner by rule.

(4) "HPID" means Health Plan Identifier. HPID is the national unique health plan identifier assigned to identify individual health plans.

(5) "NPI" means National Provider Identifier. A NPI is a unique ten digit identification number required by HIPAA for all health care providers in th[~~3~~]e United States. Providers must use their NPI to identify themselves in all HIPAA transactions.

(6) "Payer" means an insurer or third party administrator that pays for, or reimburses for the costs of health care expense.

(7) "Provider" means any person, partnership, association, corporation or other facility or institution that renders or causes to be rendered health care or professional services, and officers, employees or agents of any of the above acting in the course and scope of their employment.

(8) "UHIN Standards Committee" means the Standards Committee of the Utah Health Information Network.

(9) "CMS" means the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. CMS replaced HCFA.

(10) "HIPAA" means the federal Health Insurance Portability and Accountability Act.

(11) "NUBC" means the National Uniform Billing Committee.

(12) "NUCC" means the National Uniform Claim Committee.

R590-164-5. Paper Claim Transactions.

Payers shall accept and may require the applicable uniform claim forms completed with the uniform claim codes.

R590-164-6. Electronic Data Interchange Transactions.

(1) The commissioner shall use the UHIN Standards Committee to develop electronic data interchange standards for use by payers and providers transacting health insurance business electronically. In developing standards for the commissioner, the UHIN Standards Committee shall consult with national standard setting entities including but not limited to Centers for Medicare and Medicaid Services (CMS), the National Uniform Claim Form Committee, ASC X12, NCPDP, and the National Uniform Billing Committee.

(2) Standards developed and adopted by the UHIN Standards Committee shall not be required for use by payers and providers, until adopted by the commissioner by rule.

(3) Payers shall accept the applicable electronic data if transmitted in accordance with the adopted electronic data interchange standard. Payers may reject electronic data if not transmitted in accordance with the adopted electronic data interchange standard.

(4) The following HIPAA+ electronic data interchange standards developed and adopted by the UHIN Standards Committee and adopted by the commissioner are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours or at www.insurance.utah.gov.

(a) "999 Implementation Acknowledgement For Health Care Insurance v3.4." Purpose: To detail the standard transaction for the reporting of transmission receipt and transaction or functional group X12 and implementation guide error. This standard adopts the use of the ASC X12 999 transaction.

(b) "Administrative Transaction Acknowledgements Standard v3.1." Purpose: To create a process for acknowledging all electronic transactions between trading partners based on the communication, syntax semantic and business process specifications.

(c) "Anesthesia Standard v3.1." Purpose: to standardize the transmission of anesthesia data for health care services. This standard does not alter any contractual agreement between providers and payers.

(d) "[~~Applied Behavioral Analysis, ABA, Billing Standard V3.0~~]Adaptive Behavior Services/Applied Behavior Analysis (ABA) Billing Standard v3.1." Purpose: To provide detail of the billing for the transmission of ABA services.

(e) "Benefits and Enrollment Standard v3.1." Purpose: To detail the standard transactions for the transmission of health care benefits enrollment and maintenance.

(f) "Claim Acknowledgement Standard v3.2." Purpose: To provide a standardized claim acknowledgement in response to a claim submission. This transaction is used to report on the status of a claim/encounter at the pre-adjudication processing stage, for example, before the payer is legally required to keep a history of the claim or encounter.

(g) "Claim Status Inquiry and Response Standard v3.2." Purpose: To detail the standard transactions for the transmission of health care claim status inquiries and response. The transaction is intended to allow the provider to reduce the need for claim follow-up and facilitate the correction of claims.

(h) "CMS 1500 Paper Claim Form Standard v3.3." Purpose: To clearly describe the standard use of each Box, for print images, and its crosswalk to the HIPAA 837 005010X222A1 Professional implementation guide.

(i) "Coordination of Benefits Standard v3.2." Purpose: To streamline the coordination of benefits process between payers and providers or payer to payers. The standard is to define the data to be exchanged for coordination of benefits and to increase effective communications.

(j) "Dental Claim Billing Standard -[~~-~~] J430 v[~~3.2~~]4" Purpose: To describe the standard use of each item number, for print images, and its crosswalk to the HIPAA 837 005010x02241A1 dental implementation guide. This standard adopts the ADA dental Claim Form J340.

(k) "Electronic Remittance Advice Standard v3.5." Purpose: To detail the standard transactions for the transmission of health care remittance advices.

(l) "Eligibility Inquiry and Response Standard v3.2." Purpose: To detail the standard transactions for the transmission of health care eligibility inquiries and responses.

(m) "Health Care Claim Encounter Standard v3.2." Purpose: To detail the standard transactions for the transmission of health care claims and encounters and associated transactions.

(n) "Health Identification Card Standard v1.2." Purpose: To standardize the patient health identification card information. This identification card addresses the human-readable appearance and machine-readable information used by the healthcare industry to obtain eligibility.

(o) "Health Plan Identifier, HPID, and Other Entity Identifier, OEID, Standard v1.1." Purpose: The purpose of the standard is to inform providers of the HIPD and OEID and their usage within the administrative transactions.

(p) "Home Health Standard v3.0." Purpose: To provide a uniform standard of billing for home health care claims and encounters.

(q) ICD-10 Standard v1.2. Purpose: To create the business requirement for payers and providers to implement the International Classification of Diseases 10th Revisions, ICD-10, within the administrative transaction.

(r) "Individual Name Standard v2.1." Purpose: To provide guidance for entering names into provider, payer or sponsor systems for patients, enrollees, as well as all other people associated with these records.

(s) "[~~National Provider Identifier Standard v3.0~~]NPI and Atypical Provider Identifier Standard v3.1." Purpose: To inform providers of the national provider identifier requirements and the usage within the transactions.

(t) "Pain Management Standard v3.1." Purpose: To provide a uniform method of submitting pain management claims, encounters, pre-authorizations, and notifications.

(u) "Patient Identification Number Standard v3.0." Purpose: To describe the standard for the patient identification number.

(v) "Premium Payment Standard v3.0." Purpose: To detail the standard transactions for the transmission of premium payments.

(w) "Prior Authorization/Referral Standard v3.0." Purpose: To provide general recommendations to payers and providers about handling electronic prior authorization and referrals.

(x) "Required Unknown Values Standard v3.0." Purpose: To provide guidance for the use of common data values that can be used within the HIPAA transactions when a required data element is not known by the provider, payer or sponsor for patients, enrollees, as well as all other people associated with these transactions. These data values should only be used when the data is truly not available or known. These values should not to be used to replace known data.

(y) "Telehealth Standard v3.2." Purpose: To provide a uniform standard of billing for health care claims and encounters delivered via telehealth.

(z) "Transparency Administration Performance Standard v1.[4]5," Purpose: To establish performance measures that report the average telephone answer time and claim turnaround time.

(aa) "Transparency Denial Standard v1.[4]5." Purpose: To establish performance measures that report the number and cost of an insurer's denied health claims and to provide guidance pertaining to the reporting method and timeline.

(ab) "UB04 Form Locator Elements Standard v3.0." Purpose: To clearly describe the use of each form locator in the UB04 claim billing form and its crosswalk to the HIPAA 837 005010X223A2 institutional implementation guide.

R590-164-7. Severability.

If any provision of this rule or the application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law
Date of Enactment or Last Substantive Amendment: [~~August 14, 2018~~]2020
Notice of Continuation: March 10, 2015
Authorizing, and Implemented or Interpreted Law: 31A-22-614.5

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	**R590-260**	**Filing No. 52385**

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N State St	
City, state, zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Utah Defined Contribution Risk Adjuster Plan of Operation
3. Purpose of the new rule or reason for the change:
This rule is being repealed due to the dissolution of the Utah Defined Contribution Risk Adjuster Board. During the 2017 General Session, the Legislature passed H.B. 336, Health Reform Amendments, which provided for the wind-down of Utah's health exchange, Avenue H. The bill repealed the defined contribution arrangements and employer risk adjustment effective July 1, 2019. The revisions make this regulation obsolete.
4. Summary of the new rule or change:
During the 2017 General Session, the Legislature passed H.B. 336, Health Reform Amendments, which provided for the wind-down of Utah's health exchange, Avenue H. The bill repealed the defined contribution arrangements and employer risk adjustment effective July 1, 2019. The

revisions make this regulation obsolete.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There is no anticipated cost or savings to the state budget. The repeal of this rule requires no action or compliance of any sort by any persons.

B) Local governments:

There is no anticipated cost or savings to local governments. The repeal of this rule requires no action or compliance of any sort by any persons.

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

There is no anticipated cost or savings to small businesses. The repeal of this rule requires no action or compliance of any sort by small businesses.

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

There is no anticipated cost or savings to non-small businesses. The repeal of this rule requires no action or compliance of any sort by non-small businesses.

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

There is no anticipated cost or savings to any other persons. The repeal of this rule requires no action or compliance of any sort by any persons.

F) Compliance costs for affected persons:

There are no compliance costs for any affected persons. The repeal of this rule requires no action or compliance of any sort by any 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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The commissioner of the Department of Insurance, Todd E. Kiser, 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 repeal will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Todd E. Kiser, 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):

Section 31A-42-204		

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	Steve Gooch, Information Specialist	**Date:**	11/26/2019

R590. Insurance, Administration.

~~[R590-260. Utah Defined Contribution Risk Adjuster Plan of Operation.~~

~~R590-260-1. Authority.~~

~~This rule is promulgated by the insurance commissioner pursuant to Section 31A-42-204, wherein the commissioner shall adopt the Utah Defined Contribution Risk Adjuster Plan of Operation.~~

~~R590-260-2. Purpose.~~

~~The purpose of this rule is to adopt the Utah Defined Contribution Risk Adjuster Plan of Operation as required by Section 31A-42-204.~~

~~R590-260-3. Plan of Operation.~~

~~The commissioner adopts the Utah Defined Contribution Risk Adjuster Plan of Operation as of August 25, 2015, that is available at the department and on line at http://www.insurance.utah.gov/legalresources/currentrules.html.~~

~~R590-260-4. Penalties.~~

~~A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

~~R590-260-5. Severability.~~

~~If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.~~

~~KEY: risk adjuster plan operation~~
~~Date of Enactment or Last Substantive Amendment: November 9, 2015~~
~~Notice of Continuation: March 18, 2016~~
~~Authorizing, and Implemented or Interpreted Law: 31A-42-204]~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	**R590-271**	**Filing No. 52386**

Agency Information

1. Department:	Insurance
Agency:	Administration
Room no.:	3110
Building:	State Office Building
Street address:	450 N State St.
City, state, zip:	Salt Lake City, UT, 84114
Mailing address:	PO Box 146901
City, state, zip:	Salt Lake City, UT 84114-6901
Contact person(s):	

Name:	**Phone:**	**Email:**
Steve Gooch	801-538-3803	sgooch@utah.gov

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

General Information

2. Rule or section catchline:
Data Reporting for Consumer Quality Comparison
3. Purpose of the new rule or reason for the change:
This rule is being revised to require insurers to file their quality reports with the Insurance Commissioner, rather than the Utah Health Information Network.
4. Summary of the new rule or change:
The revisions require that insurers file their data quality reports with the Insurance Commissioner through the Insurance Department's (Department) secure file upload site, rather than the Utah Health Information Network. When this rule was previously put into effect, the Department did not have a secure file upload site; one has since been created.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

These rule changes are not expected to have any fiscal impact on the state budget because insurers are already complying with the provisions of the rule. If anything, these changes may create a very slight reduction of work time.

B) Local governments:

These rule changes are not expected to have any fiscal impact on local governments because it does not affect them.

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

These rule changes are not expected to have any fiscal impact on small businesses because insurers are not small businesses.

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

These rule changes are not expected to have any fiscal impact on non-small businesses. The non-small businesses affected by these rule changes are insurance companies, and they are already complying with the provisions of the rule.

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

These rule changes are not expected to have any fiscal impact on any other persons because this rule only applies to insurers who are non-small employers.

F) Compliance costs for affected persons:

These rule changes are not expected to have any compliance costs for affected persons because insurers are already complying with the provisions 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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The commissioner of the Insurance Department, Todd E. Kiser, 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 these proposed rule changes will not result in a fiscal impact to businesses.

B) Name and title of department head commenting on the fiscal impacts:

Todd E. Kiser, 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):

Section 31A-2-216		

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)	Transparency Administration Performance Standard
Publisher	Utah Health Information Network
Date Issued	02/02/2019
Issue, or version	1.5

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)	Transparency Denial Standard
Publisher	Utah Health Information Network
Date Issued	02/02/2019
Issue, or version	1.5

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:	01/14/2019

10. This rule change MAY become effective on:	01/21/2019
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:	Steve Gooch, Information Specialist	**Date:**	11/26/2019

R590. Insurance, Administration.
R590-271. Data Reporting for Consumer Quality Comparison.
R590-271-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-216 wherein the commissioner may adopt rules to educate health care consumers by producing or collecting and disseminating education materials to consumers.

R590-271-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) define terms;

(b) define the methodology for determining and comparing insurer transparency information;

(c) provide the data and format for submission to the commissioner; and

(d) provide the date the information is due.

(2)(a) This rule applies to all health benefit plans issued or renewed on or after January 1, 2015.

(b) This rule does not apply to an insurer whose health benefit plans cover fewer than 3,000 individual Utah residents.

R590-271-3. Definitions.

In addition to the definitions in Sections 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Electronic Data Interchange Standard" means the:

(a) the standards developed by the UHIN Standards Committee at the request of the commissioner; and

(b) others as adopted by the commissioner by rule.

(2) "SFTP" means the Secure File Transfer Protocol.

(3) "UHIN" means the Utah Health Information Network.

(4) "UHIN Standards Committee" means the Standards Committee of the UHIN.

R590-271-4. Reporting Requirements.

(1)(a) The commissioner [~~has convened a group, as identified in 31A-22-613.5(4)(a), to develop information for consumers to compare health insurers and health benefit plans. As a result of the group's work, the commissioner~~]adopts the following UHIN electronic data interchange standards developed and adopted by the UHIN Standards Committee, which are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours, at www.insurance.utah.gov, or at www.uhin.org:

(i) the Transparency Administration Performance Standard, v[~~ersion~~]1.[~~2~~]5; and

(ii) the Transparency Denial Standard[~~s~~], v[~~ersion~~]1.[~~2~~]5.

(b)[~~(i)~~] Beginning on April 1, [~~2016~~]2020, and each year thereafter, an insurer shall submit the reports referenced in R590-271-4(1)(a)[

~~(ii) to UHIN~~] to the commissioner in an electronic data interchange standard which includes data for the previous calendar year through the department's secure file upload site.

(c) Each report shall include data for both paper and electronic claims combined.

(d) Submission format, procedures and guidelines are described in detail in the adopted transparency standards published by UHIN.

(2) [~~Beginning on July 1, 2016, and each year thereafter, a~~]An insurer shall comply with the reporting guidelines, procedures and format of R428-13 and submit to the Utah Department of Health Office of Health Care Statistics, the Healthcare Effectiveness Data and Information Set, HEDIS, data for the preceding calendar year.

R590-271-5. Records.

The commissioner finds the data submitted to the commissioner in the Transparency Administration Performance Standard and the Transparency Denial Standards to be considered a public record as defined in Section 63G-2-103 for the purpose of display on:

(1) [~~the Health Insurance Exchange as described in Section 63M-1-2505, avenueh.com;~~

~~(2)~~]the department's website, insurance.utah.gov; and

([~~3~~]2) the department's transparency website, healthrates.utah.gov.

R590-271-6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-271-7. [~~Enforcement Date.~~

~~The commissioner will begin enforcing this rule 45 days from the rule's effective date.~~

~~R590-271-8.~~]Severability.

[~~If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.~~]If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: data, data reporting, insurance
Date of Enactment or Last Substantive Amendment: [~~December 29, 2017~~]2020
Authorizing, and Implemented or Interpreted Law: 31A-2-216

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	**R966-1**	**Filing No. 52366**

Agency Information

1. Department:	Treasurer
Agency:	Unclaimed Property
Room no.:	Suite #102
Building:	RC2
Street address:	168 N 1950 W
City, state:	Salt Lake City, UT 84116
Mailing address:	PO Box 140530
City, state, zip:	Salt Lake City, UT 84114-0530

Contact person(s):		
Name:	**Phone:**	**Email:**
Dennis Johnston	801-715-3321	dljohnston@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Unclaimed Property Act Rules
3. Purpose of the new rule or reason for the change:
Section 67-4a-104 of the Unclaimed Property Act provides for rulemaking to implement and administer Chapter 4a. A number of questions have arisen regarding the Act, and this rule addresses those questions.
4. Summary of the new rule or change:
This proposed rule clarifies when tax deferred accounts are reportable to the and elaborates on safety deposit box reporting processes. Under the new rule, deceased owners cannot indicate an interest in their property, and owner interest may be indicated by more clearly specified methods. The proposed rule adds clarity on ACH activity, which does and does not indicate owner interest and expands the types of activity that indicates interest in an account. It consolidates types of unclaimed items for streamlined online reporting and clarifies the allowed early reporting of certain properties. The proposed rule numerates some holder best practices for due diligence to prevent items becoming lost or abandoned and clarifies notice types and methods to raise awareness of apparent owners. It clarifies the burden of proof requirements of claimants and describes license requirements and compensation limits for finders. Additionally, the proposed rule enumerates standards for the conduct of contract auditors, describes enforcement actions and processes for encouraging compliance with the Act, and clarifies the confidentiality of records obtained during and examination.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
Existing processes are already in place, and this rule mainly adds clarity to how to administer the unclaimed property program. Some savings may be realized by using electronic communications more frequently. Some new processes that are being developed in partnership with the Utah Tax Commission may increase some mailing and publication costs; however, they will also offset some of our other costs of locating and reuniting property with owners.

B) Local governments:

No impact to local governments. Existing processes are already in place, and this rule mainly adds clarity.

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

No impact to small businesses. Existing processes are already in place and this rule mainly adds clarity.

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

No impact to non-small businesses. Existing processes are already in place and this rule mainly adds clarity.

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 impact to other persons. Existing processes are already in place and this rule mainly adds clarity.

F) Compliance costs for affected persons:

The expansion of the use of email and other electronic methods of customer contact may actually reduce holder costs associated with long established due diligence 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 Summary Table

Fiscal Costs	**FY 2020**	**FY 2021**	**FY 2022**
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$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 sign-off on regulatory impact:

The Treasurer David Damschen 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 Administrator has discussed the potential impact of programing changes that might be required to enable financial institutions to enhance their CRM systems to more appropriately recognize the indications of apparent owner interest noted in Section R966-1-14. In an effort to minimize the impact of this section a future enforcement date is noted beginning January 1, 2022.

B) Name and title of department head commenting on the fiscal impacts:

David Damschen, Treasurer

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 67, Chapter 4a		

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:	01/14/2020

10. This rule change MAY become effective on:	01/21/2020

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:	Dennis Johnston, Administrator	**Date:**	11/06/2019

R966. Treasurer, Unclaimed Property.
R966-1. Unclaimed Property Act Rules.
R966-1-1. Authority.

(1) This rule is enacted under the provisions of Section 67-4a-104 which authorizes the unclaimed property administrator to enact rules implementing and administering Title 67, Chapter 4a.

(2) This rule is also enacted under the provisions of Section 63G-4-203 which directs agencies to establish procedures for informal adjudicative proceedings by rule.

R966-1-2. Definitions.

(1) Terms used in this Rule are defined in Section 67-4a-102.

R966-1-3. Purpose.

(1) The purpose of this rule is:

(a) To protect the interests of the owners of unclaimed property; (to protect the public by ensuring that owners do not lose their rights to personal property that is justifiably theirs.)

(b) To relieve holders of the annoyance, expense, and liability of keeping such property;

(c) To preclude multiple liability; and,

(d) To give the State of Utah the use of considerable sums of money which otherwise is a windfall to holders.

R966-1-4. Tax-Deferred Accounts

(1) Sections 67-4a-202 and 67-4a-203 of the Act states when "tax deferred" accounts are presumptively abandoned. Section 67-4a-202 prescribes the rules for tax deferred retirement accounts and Section 67-4a-203 prescribes the rules for other tax deferred accounts. These rules for tax deferred accounts generally have longer periods of abandonment than accounts covered by Section 67-4a-202 of the Act.

(2) A retirement account that is tax advantaged under the income-tax laws of the United States will generally be considered tax deferred under the Act. As an example, but not a limitation, a Roth IRA should be considered tax deferred under the Act and the rules under Section 67-4a-202 apply to a Roth IRA.

(3) In some cases federal law, specifically ERISA, 29 U.S.C. Section 1001 et seq., may preempt the Act and prevent reporting and remitting retirement accounts or other property representing a plan asset, that would otherwise be reportable under the Act. Non-qualified, government, and church plans are not subject to an ERISA preemption, nor are uncashed plan distribution checks issued by a qualified plan where the plan either lacks or has failed to exercise a forfeiture or other reversionary interest.

(4) If a holder is uncertain whether (i) an account qualifies as tax deferred under the Act, and therefore whether such account is covered by Section 67-4a-201 or by Sections 67-4a-202 or 67-4a-203, (ii) ERISA preempts the Act for a retirement account, (iii) whether an account is covered by Section 67-4a-202 or Section 67-4a-203, then the holder may specifically identify the property in a report filed with the administrator or give express notice to the administrator of a potential dispute regarding the property. Specifically identifying the property in a report or providing express notice to the administrator both ensures that such property will be covered by the limitations period of Section 67-4a-610 of the Act and demonstrates that the holder is attempting to comply with the Act in good faith and without negligence.

(5) Pursuant to Section 67-4a-405 of the Act, property reportable and payable or deliverable absent owner demand provision, and Section 67-4a-610(1) of the Act, anti-limitations provision, , a non-qualified plan or plan not otherwise subject to ERISA is prohibited from forfeiting an account or other property.

(6) Under Section 67-4a-202(1), an IRA is considered dormant three years after failed delivery of communications. If an IRA falls within this provision but the owner is under age 59.5, Utah Treasury asks that a due diligence mailing be made but that the property not be reported and remitted unless the owner's IRA remains in the same dormant status when he or she reaches age 59.5. This is to address the issue of a potential penalty associated with early IRA distributions.

(7)Under subsection 1(b) of the IRA provision, an IRA is considered dormant and subject to due diligence on the earlier of (i) attained age of 70.5 or (ii) two years after death. If either of triggers (i) or (ii) are met, the property is subject to due diligence. There is no additional returned mail requirement under these circumstances and returned mail on the customer IRA, or the lack thereof is not a factor in the dormancy analysis under section 1(b). Because of the "or" operator between subsection 1(a) and 1(b), if either of the dormancy triggers in 1(a) or 1(b) are met, due diligence is required, and if no response is received, the property must be reported and remitted.

R966-1-5. Safe Deposit Boxes.

(1) Safe deposit boxes with contents that have remained unclaimed for five (5) years after expiration of lease or rental period are presumed abandoned pursuant to Section 67-4a-205. Presumptively abandoned boxes shall be opened and inventoried in the presence of at least two employees of the holder who shall verify the accuracy of said inventory. The property shall then be sealed for safekeeping until delivered to the owner or the administrator.

(2) The Annual Report containing information about the contents of safe deposit boxes must be filed before November 1st for holders in the year in which the report is due.

(3) Notice to the apparent owner must be given prior to remittance to the administrator.

(a) The holder of property presumed abandoned shall send to the apparent owner notice by first-class United States mail that complies with Section 67-4a-502 of the Act in a format acceptable to the administrator not more than one year nor less than 60 days before filing the Annual Report under Section 67-4a-401 of the Act if:

(i) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be

invalid and is sufficient to direct the delivery of first-class United States mail to the apparent owner; and

(ii) The holder does not know that the value of the property is less than $50.

(b) If an apparent owner has consented to receive electronic-mail delivery from the holder, the holder shall send the notice both by first-class United States mail to the apparent owner's last-known mailing address and by electronic mail; unless the holder believes that the apparent owner's electronic-mail address is invalid.

(4) Tangible property from a safe deposit box may not be delivered to the administrator until a mutually agreed upon date that is no sooner than 60 days after filing the Annual Report.

(a) All safe deposit box shipments shall include a full copy of the previously submitted annual report. The Annual Report shall list all properties included and an inventory of each property.

(b) Each property shall be provided in a tamper evident bag or envelope. An inventory sheet for each specific property shall be attached to or enclosed in the bag or envelope.

(c) When remitting multiple properties at the same time, each property shall be in a separate tamper evident bag or envelope and labeled with the name of the owner. If a single property requires the use of more than one bag/envelope, they are to be numbered accordingly (i.e. 1 of 3, 2 of 3, etc.).

(5) Reimbursement of holder.

(a) Property removed from a safe-deposit box and delivered to the administrator under the Act is subject to the holder's right to reimbursement for the cost of opening the box and a lien or contract providing reimbursement to the holder for unpaid rent charges for the box. Upon application by the holder, and after there are sufficient cash funds available either from the contents of the box or the sale of the property, the administrator shall reimburse the holder from the proceeds.

(b) Holders may only be reimbursed for any costs and charges that were listed in the Annual Report listing the contents of the safe deposit box whose owner owes such costs and charges to the holder.

(c) It is the responsibility of the holder to apply for reimbursement of costs and charges under Section 67-4a-606 of the Act.

(d) If after the sale of property removed from a safe-deposit box and delivered to the administrator there are not sufficient cash funds available to fully reimburse the holder for costs and charges allowed under Section 67-4a-606 of the Act, the holder may apply to the administrator to be partially reimbursed up to the amount of cash funds available. If, however, the administrator pays all available cash funds to the holder under this provision, then the holder may not claim any additional costs and charges from the same safe-deposit box.

R966-1-6. Stored Value Cards.

(1) Reserved

R966-1-7. Gift Cards.

(1) Reserved

R966-1-8. Payroll Cards.

(1) Reserved

R966-1-9. Merchandise Credits.

(1) Reserved

R966-1-10. Loyalty Cards.

(1) Reserved

R966-1-11. Property Related to Preneed Death Care Contracts.

(1) Reserved

R966-1-12. Reporting Securities.

(1) Remittance of securities. Unless otherwise provided, all securities and commodities when remitted to the State Treasurer shall:

(a) Be registered as "Treasurer of the State of Utah"; or

(b) Be deposited into a new or existing securities or commodities account either in the name of "Treasurer of the State of Utah" or in a nominee account (aka "street name" account) established by a vendor acting as a custodian for the administrator; and

(c) Include all dividends, interest, warrants, or other rights, or associated cash in a check payable to "Treasurer of the State of Utah" unless otherwise directed by the State Treasurer.

R966-1-13. Deceased Owner.

(1) Subject to the owner interest provisions of Section 67-4a-201 of the Act, a deceased owner cannot indicate interest in his or her property.

(a) Apparent owner interest shall include the activity of beneficiaries and estate executors or other persons who have a legal or equitable right to ownership or custody of the property when the apparent owner as listed in the records of the holder is deceased.

(b) Thus, while a deceased apparent owner can no longer indicate interest in their own property, the new owner or his/her agent(s) may indicate interest in the property and, thus, prevent abandonment.

(2) If the apparent owner as listed in the records of the holder is deceased and the abandonment period for the owner's property shall be set in accordance with Section 67-4a-201.

(3) A holder who fails to report, pay, or deliver property within the time prescribed by the Act shall not be required to pay interest or be subject to penalties if the failure to report, pay, or deliver the property was caused solely by the lack of knowledge of the death that established a shorter period of abandonment under the Act.

(4) The Act does not impose a new or separate duty on a holder to determine whether an apparent owner is deceased. However, the Act does not relieve a holder of any duty imposed by another law, whether state or federal, that may impose such a duty.

(5) Sections 67-4a-202 and 67-4a-206 of the Act both provide that when a holder, in the ordinary course of its business, receives notice or an indication of the death of an apparent owner, the holder shall attempt not later than 90 days after receipt of the notice or indication to confirm whether the apparent owner is deceased.

(a) These provisions are not intended to require a holder to independently confirm the death of the apparent owner when the holder reasonably believes that the apparent owner is deceased.

(b) Instead, these provisions establish a 90-day deadline for a holder to conduct any independent investigation or search to confirm the death of the apparent owner.

(c) Thus, by way of example and not of limitation, if a holder learns that an apparent owner is listed on the Social Security Administration's Death Master File (DMF) and the holder is satisfied that the presumption of death from such a match is correct,

then the holder does not need to independently confirm the death of the apparent owner.

R966-1-14. Apparent Owner Interest.

This rule regarding apparent owner interest will become enforceable beginning January 1, 2022.

(1) Under the Act and pursuant to Subsection 67-4a-208(1), the period after which property is presumed abandoned is measured from the later of:

(a) The date the property is presumed abandoned under the Act; or

(b) The latest indication of interest by the apparent owner in the property.

(2) Under the Act and pursuant to Subsection 67-4a-208(2), an indication of an apparent owner's interest in property includes, but is not limited to:

(a) A record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(b) An oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

(c) Presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security, or interest in a business association;

(d) Activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;

(e) A deposit into or withdrawal from an account at a financial organization, except for a recurring Automated Clearing House (ACH) debit or credit previously authorized by the apparent owner or an automatic reinvestment of dividends or interest; Notwithstanding anything to the contrary in the Utah Revised Uniform Unclaimed Property Act, a deceased person cannot indicate interest in his or her property. The terms automatic deposit and automatic withdrawal as used in Section 67-4a-208(e) of the Utah Revised Uniform Unclaimed Property Act shall include the following activities: (1) automatic deposits of wages previously authorized by the apparent owner or (2) automatic withdrawals of funds to pay a mortgage or other bank loan previously authorized by the apparent owner. An automatic deposit or withdrawal does not include any of the following activities if they are previously authorized by the owner, rather than authorized by the owner at the time of the transaction. (1) deposits of funds by a third party including pension funds or other retirement funds (other than wages); (2) transfers of funds between accounts; (3) withdrawals of funds to pay for goods or services provided by third parties; (4) other types of withdrawals of funds directed by third parties other than the owner. These activities do not qualify as indications of owner interest.

(f) Subject to Section 67-4a-208(5), payment of a premium on an insurance policy.

(3) Owner-initiated activity. Owner-initiated financial transactions or authenticated owner-initiated administrative activity are an indication of an apparent owner's interest in the property. A holder must maintain a record of owner-initiated activity. These include, without limitation:

(a) Trading activity in the account; Notwithstanding the standards set forth in section 67-4a-206, if the owner of the security or securities related property is deceased, the security is presumed abandoned three years after the date of death of the owner.

(b) Depositing funds into the account or withdrawing funds from the account;

(c) Non-automated electronic distributions;

(d) Contacting the holder to discuss any account related matters;

(e) Sending the holder paperwork or documents related to the account;

(f) Meeting with (or otherwise interacting with) a financial advisor regarding the account;

(g) Modifying the account profile;

(h) Sending the holder correspondence regarding the account whether via mail or electronic means, including e-mail;

(i) Submitting an account service request online;

(j) Voting a proxy;

(k) Setting up the account for e-delivery; and,

(l) Accessing the account via the holder's website or other electronic means.

(4) Holder-generated activity. Apparent owner interest is distinguishable from holder-generated activity such as, without limitation, crediting dividends, posting account fees, and mailing account statements, which does not constitute apparent owner interest.

(a) Automatic financial or administrative transactions or activity, such as automatic payments or distributions or automatic portfolio rebalancing, shall not be considered apparent owner interest.

(b) Non-return of mail sent by the holder to an account owner does not constitute apparent owner interest.

(5) Interest by a person other than the apparent owner.

(a) An action by an agent or other representative of an apparent owner, other than the holder acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner.

(b) A communication with an apparent owner by a person other than the holder or the holder's representative is not an indication of interest in the property by the apparent owner unless a record of the communication evidences the apparent owner's knowledge of a right to the property.

(c) If an apparent owner is deceased, apparent owner interest shall include activity of beneficiaries and estate executors or other persons who have a legal or equitable right to ownership or custody of the property.

(6) Consolidated statement rule for financial organizations.

(a) If the apparent owner has another property with the holder to which Section 67-4a-201(5) applies, then activity directed by an apparent owner in any other accounts, including loan accounts, at a financial organization holding an inactive account of the apparent owner shall be an indication of interest in all such accounts if the apparent owner engages in one or more of the following activities:

(i) The apparent owner undertakes one or more of the actions described in this Section regarding any account that appears on a consolidated statement with the inactive account;

(ii) The apparent owner increases or decreases the amount of funds in any other account the apparent owner has with the financial organization; or

(iii) The apparent owner engages in any other relationship with the financial organization, including payment of any amounts due on a loan.

(b) The rule in this subsection (6) applies so long as the mailing address for the apparent owner in the financial organization's books and records is the same for both the inactive account and the active account.

R966-1-15. Anti-Limitations Provision.

(1) Expiration of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute, or court order, does not prevent the property from being presumed abandoned or affect the duty of a holder under the Act to file a report or pay or deliver property to the administrator.

R966-1-16. Holder Reporting Required.

(1) A holder of property presumed abandoned shall report to the administrator via the internet in a format approved by the administrator, unless granted written permission by the administrator to file a paper report.

(2) A holder may contract with a third party to make the report required, but remains responsible to the administrator for the complete, accurate, and timely reporting of property presumed abandoned and for paying or delivering to the administrator property described in the report.

(3) The administrator will accept a report filed in the current National Association of Unclaimed Property Administrators (NAUPA) standard format found on the administrator's website: mycash.utah.gov.

R966-1-17. Report Contents.

(1) The report required by Part 4 of the Act must:

(a) Be signed by or on behalf of the holder and verified as to its completeness and accuracy;

(b) If filed electronically, be in a secure format approved by the administrator which protects confidential information of the apparent owner;

(c) Describe the property;

(d) Except for a traveler's check, money order, or similar instrument, contain the name, if known, last-known address, if known, e-mail address, if known, and Social Security number or taxpayer identification number, if known or readily ascertainable, of the apparent owner of property with a value of $5 or more;

(e) For an amount held or owing under a life or endowment insurance policy, annuity contract, or other property where ownership vests in a beneficiary upon the death of the owner, contain the name and last-known address of the insured, annuitant, or other apparent owner of the policy or contract and of the beneficiary;

(f) For property held in or removed from a safe-deposit box, indicate the location of the property, where it may be inspected by the administrator, and any amounts owed to the holder under Section 67-4a-606 of the Act;

(g) Combine all dividend checks into one property for each reported account;

(h) Contain the commencement date for determining abandonment;

(i) State that the holder has complied with the notice requirements of the Act; and,

(j) Identify property that is a non-freely transferable security and explain why it is a non-freely transferable security

(2) Holders may report property valued at less than $5 each in the aggregate. However, the administrator may request that the holder provide information about the name, address, Social Security number or taxpayer identification number of an apparent owner of property with a value of less than $5 when the information is necessary to verify or process a claim filed with the administrator by an apparent owner.

(3) If a holder has changed its name while holding property presumed abandoned or is a successor to another person that previously held the property for the apparent owner, the holder must include in the report its former name or the name of the previous holder, if any, and the known name and address of each previous holder of the property.

R966-1-18. Filing Dates.

(1) Financial organizations, governments, governmental entities, and insurance companies must file a report before November 1 of each year that covers the 12 months preceding July 1 of that year.

R966-1-19. Early Reporting and Remittance of Property.

(1) A holder may pay or deliver property to the administrator before the property is presumed abandoned under the Act if the holder:

(a) Provides the apparent owner of the property any notice required by Section 67-4a-501 of the Act and provides the administrator evidence of the holder's compliance with any required notice;

(b) Includes with the payment or delivery a report regarding the property conforming to the Act and this Section; and

(c) first obtains the administrator's written consent to accept payment or delivery of the property.

(2) A holder's request for the administrator's consent to pay or deliver property before the property is presumed abandoned under the Act must be in writing.

(3) If the administrator fails to respond to the request not later than 30 days after receipt of the request, the administrator is deemed to consent to the payment or delivery of the property and the payment or delivery is considered to have been made in good faith.

(4) On payment or delivery of property under this Subsection, the property is presumed abandoned.

R966-1-20. Extensions.

(1) A holder may request an extension for filing. The request must be in writing and must specify the proposed period of extension.

(2) The request must include a reasonable cause for an extension.

(a) By way of example, and not limitation, reasonable cause includes natural disaster, criminal activity related to the holder's books and records, recent changes in the form of ownership of the holder, etc.

(b) Providing due diligence notices to apparent owners and other holder actions required by the Act does not constitute reasonable cause.

(3) Extension requests must be received by the administrator at least 30 business days before the date the report would otherwise be due.

(4) Not later than 10 business days after the date of the request, the administrator shall respond to the request. The

administrator may grant the request, deny the request, or grant an extension for a different period of time.

(5) If an extension is granted, the holder may pay or make a partial payment of the amount the holder estimates ultimately will be due. The payment or partial payment terminates accrual of interest on the amount paid.

R966-1-21. Incomplete and Rejected Reports.

(1) If the administrator notifies a holder that a report is incomplete or incorrect, then a corrected report must be filed by the holder no later than 20 calendar days after notification by the administrator. The administrator may grant an extension in writing for good cause shown.

R966-1-22. Due Diligence Notice by Holder.

(1) Sections 67-41-501 and 67-41-502 of the Act specify when and how a holder must provide notice to the apparent owner of property presumed abandoned. This notice process is a "due diligence notice" from the holder to the apparent owner. A due diligence notice is intended to provide an opportunity for an apparent owner to indicate interest in the property presumed abandoned prior to such property being reported and remitted to the administrator.

(2) Unless otherwise provided by the Act or these rules, the holder of property presumed abandoned shall send to the apparent owner a due diligence notice by first-class United States mail between 60 days and one year before reporting the property.

(3) A holder does not need to send notice by first-class United States mail if any of the following are true:

(a) The property is valued at less than $50;

(b) The holder does not have in its records an address for the apparent owner that is sufficient for delivery of first-class United States mail;

(c) The holder's records indicate that the address for the apparent owner is invalid; or,

(d) The holder sends notice by certified United States mail.

(4) If the holder has in its records an e-mail address for an apparent owner and the apparent owner has consented to receive e-mail from the holder, then unless the holder reasonably believes the e-mail address is invalid, the holder shall send a due diligence notice by e-mail to the apparent owner in addition to any other due diligence notice required by the Act.

(5) Certified mail due diligence for securities valued at $1,000 or more.

(a) If the holder sends a due diligence notice by certified mail, then the holder does not need to send a due diligence notice by first-class United States mail.

(b) A signed return receipt in response to a notice sent by certified United States mail shall constitute a record communicated by the apparent owner to the holder concerning the property or the account in which the property is held, and thus shall constitute an indication of interest by the apparent owner in the property under Section 67-4a-208 of the Act.

(6) A holder may contract with a third party to provide the required due diligence notice to an apparent owner under the Act and these rules.

(a) Whether or not the holder contracts with a third party to provide required due diligence notices, the holder remains responsible for ensuring that any required due diligence notices are provided prior to the reporting and remitting of property presumed abandoned to the administrator.

(b) If a holder contracts with a third party to provide required due diligence notices and the due diligence notice is being sent after the date the property was presumed abandoned under the Act, then pursuant to Section 67-4a-1302 of the Act neither the holder nor such third party may charge the apparent owner a fee to indicate an interest in property presumed abandoned or to otherwise prevent the reporting and remitting of property presumed abandoned to the administrator.

(7) Contents of due diligence notice.

(a) A due diligence notice by a holder must contain a heading that reads substantially as follows: "Notice. The State of Utah requires us to notify you that your property may be transferred to the custody of the State Treasurer if you do not contact us before (insert date that is 30 days after the date of this notice)."

(b) A due diligence notice by a holder must:

(i) Identify the nature and, except for property that does not have a fixed value, the value of the property that is the subject of the notice;

(ii) State that the property will be turned over to the State Treasurer;

(iii) State that after the property is turned over to the State Treasurer an apparent owner that seeks return of the property may file a claim with the State Treasurer;

(iv) State that property that is not legal tender of the United States may be sold by the State Treasurer;

(v) Provide instructions that the apparent owner must follow to prevent the holder from reporting and paying or delivering the property to the State Treasurer; and,

(vi) Provide the name, address, and e-mail address or telephone number to contact the holder.

(c) In a due diligence notice, the holder may also list a website where apparent owners may obtain more information about how to prevent the holder from reporting and paying or delivering the property to the State Treasurer.

(8) Holder deduction of costs of due diligence notices.

(a) A holder that reports and remits money may deduct from total amounts remitted, the actual costs of due diligence notices.

(b) The deduction shall consist of the cost of envelopes, postage, and stationery. No other costs may be deducted.

(c) For purposes of holder deductions for due diligence mailings, postage includes amounts paid to the United States Postal Service for first class United States mail and certified United States mail.

(d) A holder may be required to document or certify to the costs incurred and deducted.

R966-1-23. Retention of Records by Holder.

(1) A holder is required to retain records for 5 years after the later of the date the report was filed or the last date a timely report was due to be filed.

(2) The records must contain:

(a) The information required to be included in the report;

(b) The date, place, and nature of the circumstances that gave rise to the property right;

(c) The amount or value of the property;

(d) The last address of the apparent owner, if known to the holder;

(e) Sufficient records of items which were not reported as unclaimed, to allow examination to determine whether the holder has complied with the Act; and

(f) A record of the instruments while they remain outstanding indicating the state and date of issue if the holder sells, issues, or provides to others for sale or issue in this State traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable.

(3) If a holder fails to maintain records required by Section 67-4a-404 of the Act, then the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards in this Part.

(4) Both the records retention period of Section 67-4a-404 of the Act and the statute of limitations in Section 67-4a-610(2) of the Act are 10 years. However, the statute of limitations only applies after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. If the statute of limitations has been tolled because the holder failed to either report property or provide express notice to the administrator and the holder fails to maintain sufficient records of items which were not reported as unclaimed, to allow examination to determine whether the holder has complied with the Act, then the administrator may use estimation in an examination of such holder pursuant to Section 67-4a-1006 of the Act and the procedures and standards of this Part.

R966-1-24. Notices by United States Mail.

(1) The administrator shall send at least one written notice by first-class United States mail to each apparent owner of unclaimed property held by the administrator and valued at $100 or more.

(2) However, the administrator shall not send a notice under this Section by first-class United States mail if the administrator reasonably believes that a mailing by first-class United States mail would not be received by the apparent owner.

(3) In the case of a security held in an account for which the apparent owner had consented to receiving e-mail from the holder, the administrator shall send notice by e-mail if the e-mail address of the apparent owner is known to the administrator instead of by first-class United States mail.

R966-1-25. E-Mail Notices.

(1) Whenever the administrator has an e-mail address for an apparent owner of unclaimed property held by the administrator and valued at $100 or more and the administrator does not know such e-mail address to be invalid, the administrator shall send at least one notice to the apparent owner by e-mail if the administrator did not send a written notice by first-class United States mail.

(2) In addition to any notice mandated by the Act, the administrator may send an additional notice to an apparent owner to any e-mail address for the apparent owner that the administrator does not know to be invalid.

(3) When practicable e-mail notices from the administrator shall provide a hyperlink to the website maintained by the administrator.

R966-1-26. Newspaper Notices.

(1) At least once annually, the administrator shall cause to be published in at least one English language newspaper of general circulation in each county in this State a notice concerning the unclaimed property program.

(2) Newspaper notices may include other information at the discretion of the administrator.

(3) The administrator may cause additional notices or advertisements to be published in newspapers and print publications other than the required notices.

R966-1-27. Website.

(1) The administrator shall maintain a website accessible by the public and electronically searchable which contains the names reported to the administrator of apparent owners for whom property is being held by the administrator.

(2) The administrator does not need to list property on the unclaimed property website when:

(a) No owner name was reported;

(b) A claim has been initiated or is pending for the property;

(c) The administrator has made direct contact with the apparent owner of the property; and,

(d) In other instances where the administrator reasonably believes exclusion of the property is in the best interests of both the State and the owner of the property.

(3) The administrator's unclaimed property website shall include an online claim form and instructions for filing a claim with the administrator. The administrator shall also make available a printable claim form with instructions for its use.

(4) The administrator may include on the website the names and addresses of apparent owners of property held by the administrator.

(5) In addition to the required website, the administrator may utilize other websites, including any websites endorsed by the National Association of Unclaimed Property Administrators (NAUPA), to promote the unclaimed property program and seek to reunite owners with their unclaimed property.

R966-1-28. Tax Return Identification of Apparent Owners.

(1) Reserved

R966-1-29. Updating Apparent Owner Data.

(1) The administrator may utilize publicly and commercially available databases as well as information obtained through data sharing agreements authorized by the Act to find and update or add information for apparent owners of property held by the administrator.

(2) The administrator may, but is not required to, update or add a mailing address or e-mail address for an apparent owner prior to sending notices required by the Act.

(3) If a required notice has already been sent by the administrator, then the administrator does not need to send a new written notice merely because a mailing address or e-mail address for an apparent owner has been subsequently updated or added.

R966-1-30. Other Discretionary Means of Providing Notice.

(1) Paid Advertising.

(a) The administrator may use paid advertising to increase awareness of the unclaimed property program, provide notice to persons who may be the owners of unclaimed property in the custody of the administrator, or to otherwise facilitate the return of unclaimed property to legal owners.

(2) Direct Contact

(a) The administrator may use contact information reasonably believed to be accurate to attempt to directly contact apparent owners of property held by the administrator.

(b) When directly contacting an apparent owner, the administrator may reveal additional information concerning the apparent owner's property if the administrator believes the information will assist in identifying and returning property to the owner and does not disclose personal information as defined in the Personal Information Protection Act.

(c) Direct contacts include, but are not limited to, telephone calls, in-person meetings, direct electronic communications, targeted social media contacts, and similar methods of contact.

(3) Broadcast Media

(a) The administrator may make agreements with broadcast media outlets to use live telethons, call-in programs, and similar events of limited duration to both promote the unclaimed property program authorized by the Act and to notify owners of the existence of unclaimed property.

(b) Such broadcasts should be considered the dissemination of news and should not be considered a public service announcement or advertisement.

(4) Contractual Vendors

(a) The administrator may contract with one or more vendors that provide websites, including any websites endorsed by the National Association of Unclaimed Property Administrators (NAUPA), to promote the unclaimed property program and seek to reunite owners with their unclaimed property.

(b) The administrator may contract with one or more vendors that provide applications to assist apparent owners in identifying and claiming property in the custody of the administrator. Such vendors must be selected by a competitive request for proposals pursuant to the Office of the Treasurer Procurement Rules (44 Ill. Adm. Code 1400). Compensation must conform with the restrictions in Article 13 of the Act concerning agreements to locate property of apparent owners held by the administrator.

R966-1-31. Confidentiality.

(1) The administrator may include in published notices, printed publications, telecommunications, the Internet, or other media and on the website or in the database additional information concerning the apparent owner's property if the administrator believes the information will assist in identifying and returning property to the owner and does not disclose personal information as defined in the Personal Information Protection Act.

R966-1-32. Claims.

(1) A person claiming to be the owner of property held under this Act by the administrator or to the proceeds from the sale of property may file a claim for the property or proceeds from the sale of property on a form prescribed by the administrator and that is available on the Administrator's website at mycash.utah.gov.

R966-1-33. Burden of Proof.

(1) The administrator is the custodian for property delivered to the State under the Act and is responsible for the safekeeping of that property. Therefore, any person who files a claim for any property held by the administrator pursuant to the Act shall bear the burden of proof in establishing that person is the lawful owner of the property or has an interest in the property.

(2) The administrator will release the property to a claimant after the person establishes his or her ownership of the property or an interest in the property by a preponderance of the evidence.

(3) Notwithstanding the above requirements in this Section, the administrator may waive those requirements if a claimant satisfies the requirements for payment or delivery of property under Sections R966-1-33 or R966-1-34.

R966-1-34. Filing of Claims.

(1) Claimants may file claims with the administrator either in writing on forms prescribed by the administrator or through completion of a form on the administrator's website.

(2) Claims shall be verified or signed by the claimant under penalty of perjury.

(3) A claim will be considered complete when a claimant has provided all the information and documentation requested by the administrator as necessary to establish legal ownership and such information or documentation is entered into the unclaimed property system. Unless extended for reasonable cause, the administrator shall issue a decision no later than 90 days after a claim is complete.

(4) If a claimant is unable to provide documentation sufficient to establish ownership by a preponderance of the evidence, the claimant may request that the administrator formally deny the claim in order to allow the claimant to commence a contested case pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act for review of the administrator's decision.

(5) Closing claims

(a) If a claimant fails to provide information and documentation necessary to establish legal ownership of the property by a preponderance of the evidence and the claim is inactive for at least 90 days, then the administrator may close the claim without issuing a final decision.

(b) If the claimant makes a request in writing for a final decision prior to the administrator's closing of the claim, the administrator shall issue a final decision.

(c) If, after a claim is closed, a claimant subsequently provides additional information or documentation concerning the same property, the administrator shall re-open the existing claim.

(6) If a claimant is denied by the Administrator in a final decision, the claimant may file a written request for review of the denial of claim pursuant to Utah Code Section 63G-4-201, and in accordance with this rule to the Utah State Treasurer within 30 days from the date on the denial letter.

(a) Failure to submit a timely request for review constitutes a waiver of review. The aggrieved person must then mail or fax the form to the address or fax number contained on the denial of claim letter.

(b) The Treasurer considers a request via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Treasurer considers the request to be filed on the date it is received, unless the sender can demonstrate through convincing evidence that it was mailed before the date of receipt.

(7) Unless otherwise provided in this section, an informal adjudicative proceeding shall be conducted in accordance with Utah Code Sections 63G-4-202 and 203.

(a) The claimant has the burden of proof and must establish by preponderance of the evidence that the Administrator applied the law incorrectly, and or that the decision was not supported by the evidence presented.

(b) The claimant may submit evidence and a written statement which includes the following:

(i) a statement of the relief that the claimant seeks;

(ii) a statement of the facts; and

(iii) a statement summarizing the reasons that the relief requested should be granted.

(b) Formal rules of evidence shall not apply.

(c) Discovery is prohibited.

(8) Within a reasonable time, not to exceed 60 days after the submission of the evidence and written statement, the Utah State Treasurer shall issue a final agency order that includes a finding of fact and conclusions of law, and time limits for appeals rights, and administrative or judicial review in accordance with Utah Code Subsection 63G-4-203(i).

R966-1-35. Tax Return Identification of Apparent Owners.

(1) Reserved

R966-1-36. Crediting Income or Gain to Owner's Account.

(1) Reserved

R966-1-37. Finders.

(1) No person or company shall be entitled to a fee for discovering presumptively abandoned property until it has been in the custody of the administrator for at least 24 months. Fees for discovering property that has been in the custody of the administrator for more than 24 months shall be limited to not more than 20% of the amount collected.

(2) Notwithstanding anything in this Section to the contrary, a licensed attorney, licensed CPA or a licensed CPA firm may pursue a claim for recovery of specifically identified property held by the administrator or to contest the administrator's denial of a claim for recovery of the property provided he or she has an attorney-client relationship with the apparent owner.

(3) For claims in which a finder is assisting an apparent owner, the following shall be submitted to the administrator:

(a) A signed, dated, and notarized copy of the contract between the finder and the apparent owner which satisfies the requirements of the Act and specifies the obligations of the parties as well as the fee arrangement between the finder and claimant; and,

(b) If the finder charges a contingent fee, a copy of the active private detective license issued by the Utah Department of Public Safety, Bureau of Criminal Identification (BCI) to the finder.

R966-1-38. Property Subject to Recovery by Another State.

(1) If the administrator is aware that property held under the Act is subject to a superior claim of another state, the administrator shall either report and deliver the property to the other state or return the property to the holder for delivery to the other state.

(2) A claim by another state to recover property under this Section must be presented in a form prescribed by the administrator, unless the administrator waives presentation of the form.

(3) The administrator shall decide a claim under this Section not later than 90 days after it is presented.

(4) To the extent permitted under the law of the other state, the administrator may require another state to agree to indemnify the administrator and the State of Utah and its agents, officers and employees against any liability on a claim to the property.

R966-1-39. Debt Collection Agencies.

(1) A debt collection agency shall initiate their own claims for unclaimed property in the custody of the administrator. The administrator will not initiate claims for debt collection agencies.

(2) Debt collection agencies will submit citations to discover assets to the administrator at least 30 days in advance of the return date.

(3) Unclaimed property held by the administrator for a debtor will be held pursuant to a citation to discover assets for up to 90 days.

(4) Claims submitted by debt collection agencies will be closed after 90 days without the submission of a valid turnover order from a court of competent jurisdiction.

(5) Claims submitted by debt collection agencies will be paid after receipt of a valid turnover order from a court of competent jurisdiction.

R966-1-40. Holder Reimbursement.

(1) A holder that pays money to the administrator may file a claim for reimbursement from the administrator of the amount paid if the holder:

(a) Paid the money to the administrator in error; or

(b) After paying the money to the administrator, paid money to a person the holder reasonably believed to be the legal owner.

(2) If a claim for reimbursement is made for a payment made on a negotiable instrument, the holder must submit proof that payment was made to a person the holder reasonably believed to be the legal owner of the property. The holder may claim reimbursement even if the payment was made to a person whose claim was made after expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order.

(3) If a holder is reimbursed by the administrator, the holder may also recover any income or gain that would have been paid by the administrator to the owner on an owner claim provided the holder paid the earned income or gain to the owner.

(4) A holder that delivers property other than money to the administrator may file a claim for return of the property from the administrator if:

(a) The holder delivered the property to the administrator in error; or,

(b) The apparent owner has claimed the property from the holder.

(5) If a claim for return of property is made, the holder shall include with the claim evidence sufficient to establish that the apparent owner has claimed the property from the holder or that the property was delivered by the holder to the administrator in error.

(6) The administrator may make a determination that an affidavit submitted by a holder is evidence sufficient to establish that the holder is entitled to reimbursement or to recover property under this Section.

(7) A holder is not required to pay a fee or other charge for reimbursement or return of property.

(8) The administrator shall allow or deny a holder's claim not later than 90 days after the claim is complete and give the holder notice in a record of the decision. The administrator may grant an extension for reasonable cause.

(9) A claim will be considered complete when a holder has provided all the information and documentation requested by the administrator as necessary to establish legal ownership and such information or documentation is entered into the administrator's unclaimed property system.

(10) If a holder fails to provide all the information and documentation requested by the administrator as necessary to establish legal ownership of the property and the claim is inactive for at least 90 days, then the administrator may close the claim without issuing a final decision. However, if the claimant makes a request in writing for a final decision prior to the administrator's closing of the claim, the administrator shall issue a final decision.

(11) The holder may initiate a proceeding under Title 63G, Chapter 3, Utah Administrative Rulemaking Act for review of the administrator's decision on the earlier of 30 days following receipt of the notice of the administrator's decision or 120 days following the filing of a claim.

R966-1-41. Securities Sale and Claims.

(1) Sale of securities.

(a) The administrator may not sell a security prior to attempting to provide notice as provided for in Section 67-4a-503 of the Act.

(b) Unless the administrator reasonably determines it would be in the best interests of the owner for the sale to occur sooner, the administrator may not sell or otherwise liquidate a security until 3 years after the administrator receives the security.

(i) Examples of when it would be in the best interest of the owner for a sale of securities to occur prior to the expiration of the 3-year period include, but are not limited to: responding to a tender offer, a bankruptcy filing, business liquidation, and instances where fees will significantly deplete the value.

(ii) If the administrator sells a security prior to the expiration of the 3-year period, then the administrator shall document in a record the reasons for the sale.

(c) Unless otherwise provided in the Act or these rules, the administrator may sell a security at any time 3 years after the administrator receives the security.

(i) The administrator may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale.

(ii) The administrator may sell a security not listed on an established exchange by any commercially reasonable method.

(d) Securities will not be sold when a claim has been filed with the administrator by an apparent owner for such securities.

(i) Upon denial of a claim, the administrator may dispose of the securities as provided in the Act and these rules.

(ii) The administrator may also dispose of the securities as provided in the Act and this Part if, after being requested by the administrator, the apparent owner fails to provide necessary and sufficient information to allow the administrator to transfer the securities within 30 days of the administrator's request.

(2) Recovery of securities or value by owner.

(a) If the administrator sells a security before the expiration of 3 years after delivery of the security to the administrator, an apparent owner that files a valid claim under the Act for the security before the 3-year period expires is entitled, at the option of the owner, to receive:

(i) Replacement of the security;

(ii) The market value of the security at the time the claim is filed, plus dividends, interest, and other increments on the security up to the time the claim is paid; or

(iii) The net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security was sold.

(b) Replacement of the security or calculation of market value under (1) must take into account a stock split, reverse stock split, stock dividend, or similar corporate action.

(c) A person that makes a valid claim under the Act for a security after expiration of 3 years after delivery of the security to the administrator is entitled to receive:

(i) The security the holder delivered to the administrator, if it is in the custody of the administrator, plus dividends, interest, and other increments on the security up to the time the administrator delivers the security to the person; or

(ii) The net proceeds of the sale of the security, plus dividends, interest, and other increments on the security up to the time the security was sold.

R966-1-42. Examinations.

(1) Authority to conduct examinations.

(a) Pursuant to Section 67-4a-1002 of the Act the Administrator may, at reasonable times and on reasonable notice, examine the records of any person to determine whether the person has complied with the Act even if the person believes it is not in possession of any property that must be reported, paid, or delivered under the Act.

(2) Purpose of Examinations

(a) The goal of an unclaimed property examination is to determine whether a Person is in compliance with the holder reporting requirements of the Act. Unclaimed property is reported to the State of Utah pursuant to the Act and the federal common law.

(b) The Administrator's goal in every examination is to determine the full and proper historical reporting compliance of the Person under examination, and to encourage and facilitate such Person's ongoing and future compliance with the Act.

(3) Multistate examinations

(a) The Administrator may agree to participate in an examination of a Person for compliance with unclaimed property laws of multiple states, including the Act, where a single Third-Party Auditor (Auditor) performs an examination for more than one state.

(b) Multistate examinations are intended to be more efficient and effective for both the Person being examined and the states which have authorized the examination.

(c) Because different states participating in a multistate examination will have different rules for examinations, there may be variations among the statutory or administrative rules for how the Auditor should conduct the examination. Where practicable the Auditor should comply with the requirements of this Section when conducting a multistate examination. However, if there is a conflict between the requirements of this Section and the requirements of one or more other states, then the Auditor may vary from the requirements of this Section so long as the Auditor:

(i) follows any requirements imposed by the language of the Act with regard to property reportable to this State, including but not limited to confidentiality requirements;

(ii) uses the Act with regards to any property for which the state has the superior claim pursuant to the federal common law; and,

(iii) complies with the goal of determining the historical compliance of the Person being examined, and of encouraging and facilitating such Person's ongoing and future compliance with the Act.

(4) Third-Party Auditors

(a) The Administrator may contract with a Person to conduct unclaimed property examinations to determine compliance with the Act. Such a contract shall be awarded pursuant to a request for proposals or quotations issued in compliance with Title 63G, Chapter 6a, Utah Procurement Code.

(b) A contract to conduct an examination may provide for compensation of the Person based on a fixed fee, hourly fee, contingent fee not to exceed the requirements under Section 67-4a-1009.

(c) A contract with a Person to conduct an examination is a public record under Title 63G, Chapter 2, Government Records Access and Management Act.

(d) An Auditor and the Auditor's staff shall collectively possess sufficient training and experience to adequately perform unclaimed property examinations.

(e) An Auditor shall not engage in any unclaimed property examination to determine compliance with the Act without written authorization from the Administrator.

(f) An Auditor shall maintain independence in performing the examination and avoid conflicts of interest.

(g) An Auditor shall report in writing to the Administrator at least monthly on the status of all unclaimed property examinations which the Auditor has been authorized to perform by the Administrator.

(5) Advocates

(a) A Person subject to examination may retain third-party Advocates (an "Advocate") to assist them in the examination process.

(b) The retention of an Advocate is no basis to delay the commencement of the examination and the Administrator will not delay the examination so that the Advocate may conduct a review or its own audit of the books and records of the Person subject to examination in advance of the Administrator's examination.

(c) The Administrator should cooperate with the Person subject to examination and its Advocate and keep both of them apprised of records requests, interviews, and the progress of the audit in general.

(6) Notice of Examination

(a) All unclaimed property examinations should begin with an official notice of examination letter.

(b) A notice letter will:

(i) notify the Person subject to examination that its books and records (including those belonging to subsidiary and related entities or maintained by a third party that has contracted with such Person) are subject to examination;

(ii) identify the assigned Auditor; and,

(iii) include Auditor contact information.

(c) A notice letter may either be sent (a) directly to the Person subject to examination by the Administrator or (b) to the Auditor assigned to the examination for delivery to the Person subject to examination.

(7) Entrance Conference

(a) Once an examination is assigned and written notice of an examination is provided to the Person subject to examination, the Auditor and/or Examiner should schedule an entrance conference to include representatives of the Person subject to examination. A representative of the Administrator may, but is not required to, participate in an entrance conference.

(b) During the opening conference, by way of example and not limitation, the Auditor shall:

(i) Identify to the extent possible the types of property that will be subject to the examination and the time period covered by the examination;

(ii) Discuss an examination work plan, a tentative schedule, and any potential scoping issues;

(iii) Provide contact information for both the Auditor and the Administrator;

(iv) Provide the Person subject to examination a draft confidentiality agreement, if a draft has not been presented prior to the opening conference;

(v) Notify the Person subject to examination of their ability to request an informal conference with the Administrator pursuant to the Act;

(vi) Advise the Person subject to examination that the Administrator and not the Auditor makes determinations concerning such Person's liability under the Act and that interpretations of the Act are made by the Administrator;

(vii) Request records and materials necessary to proceed with the next steps of the examination;

(viii) Explain the requirement to provide a due diligence notice to the apparent owner of property presumed abandoned; and,

(ix) Explain that, unless otherwise agreed to in writing by the Administrator, the Person subject to examination shall remit to the Auditor any unclaimed property identified during the examination that is owed to the State of Utah.

(8) Examination Guidelines

(a) The Auditor and the Person subject to examination shall act in good faith to conduct the examination under the terms and within the time frame established in the entrance conference.

(b) During the examination, the Auditor may make subsequent requests to the Person subject to examination for additional books and records as needed to complete the examination.

(i) The Auditor shall submit record requests to the Person subject to examination in writing, or if the request is made verbally, shall follow up with written documentation of the request.

(ii) Record requests shall have reasonable deadlines in order to move the examination forward and avoid unnecessary delays. The Person subject to examination is responsible for advising the Auditor in advance of any anticipated difficulties in achieving deadlines and agreed upon deliverables.

(iii) The Auditor shall provide a reasonable timeframe for the Person subject to examination to respond to the request based on the type and extent of the information requested and other relevant facts and circumstances.

(iv) The Auditor shall provide confirmation of receipt to submissions received from the Person subject to examination, with reasonable projected response times.

(c) The examination shall not be limited to a review of work papers, compilations, or record summaries prepared by the Person subject to examination or an Advocate but shall include, but not be limited to, access to the original books and records deemed by the Administrator to be necessary to ascertain compliance with the Act. The Third-Party Auditor may utilize data sources in their examination, for example the Social Security Administration's Death Master File (DMF), the United States Post Office National Change of Address database (NCOA), etc.

(d) The Auditor shall properly document the examination and make the working papers gathered during the unclaimed property examination available for review by the Administrator. Such working papers will include planning information and all related calculations, statistical analyses, and summarizations.

(9) Confidentiality of records obtained or compiled during examination

(a) Records obtained and records, including work papers, compiled by the Administrator or the Administrator's agent in the course of conducting an examination:

(i) Shall be protected in accordance with Sections 67-4a-1401 through 1408 and the Sections 63G-2-101 et seq.

(ii) May be used by the Administrator in an action to collect property or otherwise enforce the Act;

(iii) may be used in a joint examination conducted with another state, the United States, a foreign country or subordinate unit of a foreign country, or any other governmental entity if the governmental entity conducting the examination is legally bound to maintain the confidentiality and security of information obtained from a person subject to examination in a manner substantially equivalent to Title 67, Chapter 4a, Part 14, Confidentiality and Security of Information.

(iv) may be disclosed, on request, to the person that administers the unclaimed property law of another state for that state's use in circumstances equivalent to circumstances described in Section 67-4a-1002 of the Act, if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to Section 67-4a-1402 of the Act;

(v) must be produced by the Administrator under an administrative or judicial subpoena or administrative or court order; and

(vi) must be produced by the Administrator on request of the Person subject to the examination in an administrative or judicial proceeding relating to the property.

(b) Confidentiality Agreement

(i) A Person subject to examination may require, as a condition of disclosure of the records of the Person to be examined, that (the Administrator, if the Administrator is performing the examination, or) the Third-Party Auditor execute and deliver to the Person to be examined a confidentiality agreement that:

(a) is in a form that is satisfactory to the Administrator; and

(b) requires the Person having access to the records to comply with the provisions of Section 67-4a-1002 of the Act applicable to the Person.

(ii) If the Person subject to examination and the Auditor are unable to enter into a confidentiality agreement within 60 calendar days from the date an agreement reasonably satisfactory to the Administrator was first presented to the Person subject to the examination by the Auditor or the Administrator, then the examination may commence without a confidentiality agreement in place and the parties shall rely on Sections 67-4a-1401 through 1408 of the Act.

(iii) Auditors shall not disclose confidential information obtained during an unclaimed property examination to any Person other than to the Administrator or the Administrator's designee and, in the case of a multistate examination, to authorized representatives of a state participating in the examination.

(iv) Auditors shall not use confidential information obtained from the Person subject to an examination for any purpose other than for purposes of the examination. Auditors shall take reasonable steps to ensure that the confidential information provided by the Person subject to an examination is securely maintained.

(v) Auditors must comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures of confidential information.

(10) Evidence of unpaid debt or undischarged obligation

(a) A record of a Person subject to examination showing an unpaid debt or undischarged obligation is prima facie evidence of the debt or obligation.

(b) A Person subject to examination may establish by a preponderance of the evidence that there is no unpaid debt or undischarged obligation for a debt or obligation or that the debt or obligation was not, or no longer is, a fixed and certain obligation of the Person subject to examination. Thus, the prima facie evidence may be rebutted by the Person subject to examination.

(c) (A Person subject to examination may rebut prima facie evidence… by establishing by a preponderance of the evidence that a check, draft, or similar instrument was:

(i) issued as an unaccepted offer in settlement of an unliquidated amount;

(ii) issued but later was replaced with another instrument because the earlier instrument was lost or contained an error that was corrected;

(iii) issued to a party affiliated with the issuer;

(iv) paid, satisfied, or discharged;

(v) issued in error;

(vi) issued without consideration;

(vii) issued but there was a failure of consideration;

(viii) voided not later than 90 days after issuance for a valid business reason set forth in a contemporaneous record;

(ix) issued but not delivered to the third-party payee for a sufficient reason recorded within a reasonable time after issuance.

(d) In asserting a defense under this Section, and subject to the records retention requirements of the Act, a putative holder may present evidence of a course of dealing between the putative holder and the apparent owner.

(11) Estimation

(a) If a Person subject to examination does not retain the records required by the Act, the Administrator may determine the value of property due using a reasonable method of estimation based on all information available to the Administrator, including extrapolation and use of statistical sampling when appropriate and necessary.

(b) A payment made based on estimation under this Section is a penalty for failure to maintain the records required by the Act and does not relieve a Person from an obligation to report and deliver property to a State in which the holder is domiciled.

(c) Unless agreed to by a Person subject to examination, estimation should be used only when there are insufficient records to perform an examination and/or there has been a violation of records retention requirement of the Act. The ability of the Administrator to use estimation is intended as a deterrent to the intentional or negligent destruction of records that would be used in an unclaimed property examination to identify unclaimed property.

(d) An Auditor may not use estimation in an examination unless either the:

(i) Person subject to examination agrees in writing to the use of estimation as part of an audit resolution agreement; or,

(ii) Administrator approves in writing the use of estimation in the examination.

(e) Prior to approving the use of estimation in an examination under the Act the Administrator shall:

(i) Notify the Person subject to examination in writing that the Administrator is considering the use of estimation because of a failure to maintain the records required by Section 67-4a-404 of the Act;

(ii) After considering any evidence submitted by the Auditor and the Person subject to examination, make a written determination that the Person subject to examination has failed to maintain the records required by (records retention requirement) of the Act;

(iii) Provide an opportunity for the Person subject to examination to submit written objections including, but not limited to:

(a) submitting evidence that the Person subject to examination has maintained sufficient records to perform the examination for some or all of the years during the time period covered by the examination; or

(b) proposing an estimation methodology;

(iv) Notify in writing the Person subject to examination of the estimation methodology to be used and for which years during the time period covered by the examination estimation will be used.

(12) Bankruptcy

(a) If at any time before or during the course of an examination the Person subject to examination files for bankruptcy, such Person shall give notice of the filing to the Auditor. The Auditor shall, within seven (7) calendar days of receiving notice or the discovery of the event, notify the Administrator of the bankruptcy filing. If the Administrator so elects, the Auditor shall assist the Administrator to ensure that a proper proof of claim is filed timely in the bankruptcy action.

(13) Audit Resolution Agreements

(a) Pursuant to the Administrator's authority to conduct an examination, the Administrator possesses the authority to resolve an examination via negotiation and settlement with the Person subject to examination. This provides flexibility to both the Person subject to examination and the Administrator to resolve issues that could require formal appeal or litigation. Such settlements are often referred to as "audit resolution agreements."

(b) The Administrator may not agree in a settlement to provide indemnification beyond that provided in Section 67-4a-1408.

(c) The Administrator may agree to reduce or waive interest and penalties as part of a settlement, to the extent permitted by law.

(d) A mutually-agreed upon settlement resolves a specific examination and does not create any precedent on specific legal issues.

(14) Report to holder.

(a) At the conclusion of an examination, unless waived in writing by the Person being examined, the Administrator shall provide to the Person whose records were examined a report that specifies:

(i) the work performed;

(ii) the property types reviewed;

(iii) the methodology of any estimation technique, extrapolation, or statistical sampling used in conducting the examination;

(iv) each calculation showing the value of property determined to be due; and,

(v) the findings of the Person conducting the examination.

R966-1-43. Purpose of Enforcement.

(1) State unclaimed property laws are based on a theory of truthful self-reporting by the holders of unclaimed property. Enforcement actions by the administrator are intended to both bring holders subject to enforcement actions into compliance with the Act and to encourage voluntary compliance by other holders. The expectation is that a holder who has been the subject of an enforcement action by the administrator will voluntarily comply with the Act in the future. And, further, a program of enforcement by the administrator will encourage holders to voluntarily comply with the Act in order to avoid being subject to enforcement actions.

(2) Unclaimed property examinations are an essential aspect of unclaimed property compliance. If a holder is reporting correctly under the Act, there should be no determination of liability by the administrator. Administrative rules concerning unclaimed property examinations are found in R966-1-42.

R966-1-44. Verified Report of Property.

(1) If a person does not file a report required by Section 67-4a-401 of the Act or the administrator believes that a person may have filed an inaccurate, incomplete, or false report, the administrator may require the person to file a verified report in a form prescribed by the administrator.

(2) The verified report must:

(a) State whether the person is holding property reportable under this Act;

(b) Describe property not previously reported or about which the administrator has inquired;

(c) Specifically identify property… about which there is a dispute whether it is reportable under the Act; and

(d) State the amount or value of the property.

(3) A verified report must otherwise comply with the requirements of Section 67-4a-402 of the Act.

R966-1-45. Administrative Subpoenas.

(1) The administrator may issue an administrative subpoena requiring the person or agent of such person to make records available for examination pursuant to Section 67-4a-1002 of the Act.

(2) Prior to issuance, administrative subpoenas shall be reviewed and approved by the administrator's General Counsel or by another employee of the administrator who is an attorney licensed to practice law in Utah designated by the General Counsel.

(3) The administrator may request that the Attorney General bring an action seeking judicial enforcement of a subpoena issued pursuant to the Act on behalf of the administrator.

(4) If a person to whom the administrator issues an administrative subpoena brings an action seeking a judicial order to quash, limit, or otherwise prevent enforcement of such administrative subpoena, then the administrator shall request that the Attorney General represent the administrator in such action.

(5) The administrator may request that the Attorney General appoint a Special Assistant Attorney General to represent the administrator in any action to enforce or defend an administrative subpoena issued pursuant to the Act.

R966-1-46. Determination of Liability.

(1) If the administrator determines from an examination conducted under Section 67-4a-1002 the Act that a putative holder failed or refused to pay or deliver to the administrator property which is reportable under this Act, the administrator shall issue a determination of the putative holder's liability to pay or deliver and give notice in a record to the putative holder of the determination.

(2) The administrator may give notice of any interest and civil penalties at the same time that notice of a determination of liability is given.

R966-1-47. Interest and Penalties.

(1) Interest on unreported property. A holder that fails to report, pay, or deliver property within the time prescribed by the Act shall subject to the penalties and remedies in Sections 67-4a-12- through 1206 of the Act.

R966-1-48. Waiver of Interest and Penalties.

(1) The administrator may waive, in whole or in part, interest under Subsections 67-4a-1206(1) of the Act and penalties under Subsection 67-4a-1206(2).

(a) This authority does not provide for waiver of penalties imposed for willful failure or filing a fraudulent report. However, the imposition of penalties under Section 15-1205 is not mandatory.

(b) The administrator may agree to reduce or waive interest and penalties as part of an audit resolution agreement pursuant to Subsection R966-1-42(13).

(c) Unless the holder willfully failed to report, pay, or deliver property within the time prescribed by the Act, the administrator will waive the payment of interest of less than 3 months.

(2) The administrator shall waive a penalty under Subsection 67-4a-1206(2) if the administrator determines that the holder acted in good faith and without negligence.

(a) Good faith is intended to apply to situations in which the holder has attempted to comply with the Act.

(b) If the holder has failed to file a report, there is a presumption that the holder did not act in good faith and without negligence.

(c) A holder who fails to report, pay, or deliver property within the time prescribed by the Act shall not be required to pay interest or be subject to penalties if the failure to report, pay, or deliver the property was due to the lack of knowledge of the death that established the period of abandonment under the Act.

R966-1-49. Judicial Enforcement.

(1) The administrator may commence an action in the district court or in a district court of another state to enforce a final determination of liability and secure payment or delivery of past due, unpaid, or undelivered property.

(2) An action to enforce a final determination of liability must be brought not later than 5 years after the determination becomes final.

(3) If no court in Utah has jurisdiction over the defendant, the administrator may commence an action in any court having jurisdiction over the defendant.

(4) The administrator may request that the Attorney General appoint a Special Assistant Attorney General to represent the administrator in any action to enforce a final determination of liability.

R966-1-50. Action Involving Another State or Foreign Country.

(1) The administrator may join another state or foreign country to examine and seek enforcement of this Act against a putative holder.

(2) On request of another state or foreign country, the Attorney General may commence an action on behalf of the other state or country to enforce, in Utah, the law of the other state or country against a putative holder subject to a claim by the other state or country.

(3) The administrator may request the official authorized to enforce the unclaimed property law of another state or foreign country to commence an action to recover property in the other state or country on behalf of the administrator. This state may pay the costs, including reasonable attorney's fees and expenses, incurred by the other state or foreign country in an action under this subsection.

(4) The administrator may pursue an action on behalf of this State to recover property subject to this Act but delivered to the custody of another state if the administrator believes the property is subject to the custody of the administrator.

(5) At the request of the administrator, the Attorney General may commence an action to recover property on behalf of the administrator in Utah, another state, or a foreign country. With the written consent of the Attorney General, the administrator may retain an attorney in Utah, another state, or a foreign country as a special assistant attorney general to recover property on behalf of the administrator in Utah, another state, or a foreign country and may agree to pay attorney's fees based in whole or in part on a fixed fee, hourly fee, or a percentage of the amounts or value of property recovered in the action.

(6) In all actions commenced pursuant to Section 67-4a-1203 of the Act, unless otherwise given permission in writing by the Attorney General, the administrator shall be represented by the Attorney General or a special assistant attorney general appointed by the Attorney General.

(7) Expenses incurred by this State in an action under Section 67-4a-1203 of the Act may be paid from property received under the Act or the net proceeds of the property. Expenses paid to recover property may not be deducted from the amount that is subject to a claim under the Act by the owner.

R966-1-51. Periods of Limitation and Repose.

(1) The language of Section 67-4a-610 of the Act comes from Section 19(b) of the 1995 Uniform Unclaimed Property Act promulgated by the Uniform Law Commission. The official comments to the 1995 Uniform Unclaimed Property Act note that this provision parallels the Internal Revenue Code, 26 U.S.C. Subsection 6501(c). The official comments further note that as "the Unclaimed Property Act is based on a theory of truthful self-reporting, a holder which conceals property, willfully or otherwise, cannot expect the protection of the stated limitations period."

(2) Pursuant to Section 67-4a-610(4) of the Act an action or proceeding may not be maintained by the administrator to enforce this Act in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property.

(3) The 10-year period of limitation is tolled:

(a) If the holder did not specifically identify the property in a report filed with the administrator or provide other express notice to the administrator; or

(b) By the filing of a report that is fraudulent.

(4) Notwithstanding the tolling of the 10-year period of limitation because of a failure of a holder to specifically identify property in a report filed with the administrator or provide other express notice to the administrator, the administrator will not maintain an action in regard to the reporting, delivery, or payment of property more than 10 years after such property should have been reported and remitted to the administrator if all of the following apply:

(a) The holder has filed reports with the administrator for the past 10 years;

(b) The holder agrees in writing to file all reports required by the Act, including providing express notice to the administrator of any future disputes concerning the reporting of property;

(c) The total amount of property, excluding any interest or penalties which the administrator could impose under the Act, is less than $2,500 or is otherwise de minimis as reasonably determined by the administrator; and the administrator determines that the holder acted in good faith and without negligence.

R966-1-52. Confidentiality.

(1) Information provided in reports filed pursuant to the Act and the database required by Section 67-4a-503 of the Act are specifically exempt from disclosure under Title 63G, Chapter 2, Governmental Records Access and Management Act. The records Officer for the administrator may deny requests for records containing such information as information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law.

(2) Under the Act "private record" as defined in Title 63G, Chapter 2, Governmental Records Access and Management Act continues to be confidential when disclosed or delivered under the Act to the administrator or administrator's agent.

(a) Private Record.

(i) The records officer for the administrator may deny requests for records containing private information as information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law; or unless disclosure is specifically required by a different State or federal law or a court order.

R966-1-53. Confidentiality of Records Obtained During Examination.

(1) Records obtained and records, including work papers, compiled by the administrator or the administrator's agent in the course of conducting an examination:

(a) Are not public records;

(b) May be used by the administrator in an action to collect property or otherwise enforce the Act;

(c) May be used in a joint examination conducted with another state, the United States, a foreign country or subordinate unit of a foreign country, or any other governmental entity if the governmental entity conducting the examination is legally bound to maintain the confidentiality and security of information obtained from a person subject to examination in a manner substantially equivalent to Section 67-4a-10004(3) of the Act;

(d) May be disclosed, on request, to the person that administers the unclaimed property law of another state for that state's use in circumstances equivalent to circumstances described in Title 67, Chapter 4a, Part 10 of the Act, if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to Title 67, Chapter 4a, Part 14 of the Act;

(e) Must be produced by the administrator under an administrative or judicial subpoena or administrative or court order; and

(f) Must be produced by the administrator on request of the person subject to the examination in an administrative or judicial proceeding relating to the property.

(2) Auditors shall not disclose confidential information obtained during an unclaimed property examination to any person other than to the administrator or the administrator's designee and, in the case of a multistate examination, to authorized representatives of a state participating in the examination.

(3) Auditors shall not use confidential information obtained from the person subject to an examination for any purpose other than for purposes of the examination. Auditors shall take reasonable steps to ensure that the confidential information provided by the person subject to an examination is securely maintained.

(4) Auditors must comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures of confidential information, including Title 63G, Chapter 2, Governmental Records Access and Management Act

KEY: adjudicative procedures, state treasurer, unclaimed property
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 67-4a

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 120-DAY (EMERGENCY) RULE		
Utah Admin. Code Ref (R no.):	**R512-100**	**Filing No. 52367**

Agency Information

1. Department:	Human Services	
Agency:	Child and Family Services	
Building:	MASOB	
Street address:	195 North 1950 West	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	**Phone:**	**Email:**
Carol Miller	801-557-1772	carolmiller@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
In-Home Services
3. Effective Date:
11/26/2019

4. Purpose of the new rule or reason for the change:
This rule is being changed in order to implement the Title IV-E Prevention Program under the Family First Prevention Services Act. (EDITOR'S NOTE: A corresponding proposed amendment is under Filing No. 52368 in this issue, December 15, 2019, of the Bulletin.)
5. Summary of the new rule or change:
These proposed changes to this rule address requirements for the Title IV-E Prevention Program under the Family First Prevention Services Act. These rule changes include definition of terms, state plan provisions, criteria for prevention services, quality assurance and evaluation, prevention candidate determination, and provision of services.
6. Regular rulemaking would:

	cause an imminent peril to the public health, safety, or welfare;
X	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:
The Title IV-E Prevention Program is being implemented in Utah during the first quarter of FFY 2020.

Fiscal Information

7. Aggregate anticipated cost or savings to:
A) State budget:
The state budget will have corresponding increases in costs due to the state paying for more services to in-home clients. There will also be an additional offset to the impact by a net increase of new federal funding as more services will be eligible for federal funding reimbursement.
B) Local governments:
There are no anticipated costs or savings to local governments due to these rule changes.
C) Small businesses ("small business" means a business employing 1-49 persons)**:**
There are no anticipated costs or savings to small businesses due to these rule changes.
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 are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities due to these rule changes.
8. Compliance costs for affected persons:
As these are not new requirements for existing services, there is not a fiscal impact to existing providers. Providers wishing to contract with Department of Human Services (DHS) to offer the evidence-based services will need to be trained and/or certified in the in-home service models; however, existing providers are not mandated to offer the new evidence-based services and therefore no fiscal impact to current contractors.
9. A) Comments by the department head on the fiscal impact this rule may have on businesses:
This rule does not impose requirements on businesses, but may result in businesses being able to contract with DHS to be providers of prevention program services.
B) Name and title of department head commenting on the fiscal impacts:
Ann Williamson, 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 62A-4a-102	42 U.S.C. 671(e)	42 U.S.C 675(13)

Agency Authorization Information

Agency head or designee, and title:	Diane Moore, Director	**Date:**	11/18/2019

R512. Human Services, Child and Family Services.
R512-100. In-Home Services.
R512-100-1. Purpose and Authority.

(1) The purpose of In-Home Services is to enhance a parent's capacity to safely care for their child in their home and to safely reduce the need for out-of-home care in Utah. In-Home Services include front-end services that help prevent removal and allow a child to remain at home with their parent or caregiver. It includes cases where a child is placed with a non-custodial parent or relatives who have custody and guardianship of the child. It also includes services for when a child returns home from out-of-home care and there are continuing services with Child and Family Services and court oversight.

(2) In-Home Services are a set of evidence-based services, strategies, and tools that support the safety, permanency, and well-being of a child and the strengthening of their family.

(3) The key components of In-Home Services interventions include:

(a) Case management based on Practice Model skills of engaging, teaming, assessing, planning, and intervening,

(b) Assessing and addressing safety and risk issues to help stabilize the family, providing purposeful home visits and a private conversation with the child,

(c) The application of an evidence-based assessment to identify child and family needs and protective factors early in the case, guiding caseworkers to better target the individual needs of the family with services, and informing the development of the Child and Family Plan, and

(d) Direct services and interventions that help the family make needed changes in addition to linking the family to evidence-based services and community resources.

(4) Pursuant to Sections 62A-4a-105, 62A-4a-201, and 62A-4a-202, Child and Family Services is authorized to provide In-Home Services.

(5) This rule is authorized by Section 62A-4a-102.

R512-100-2. Definitions.

(1) "Child and Family Plan" is a written document that is developed by the Child and Family Team based on the assessment of the child and family's strengths and needs. The Child and Family Plan will guide and enable the family to make the changes that are necessary to meet their child's need for safety, permanency, and well-being.

(2) "Child and Family Services" means the Division of Child and Family Services.

(3) "Child and Family Team" is the family's identified informal supports and the service providers working with the family.

(4) "Utah Family and Children Engagement Tool (UFACET)" is an assessment tool used to identify child and family needs and guide addressing those needs with services in the Child and Family Plan.

(5) "Prevention Candidate," for the purposes of the Title IV-E Prevention Program, is a child under age 18 when at serious risk of entering or reentering foster care, but able to remain safely in the home or kinship placement as long as mental health, substance use disorder, or in-home parent skill-based programs or services for the child, parent, or kin caregiver are provided. A child may be at serious risk of entering foster care based on circumstances and characteristics of the family as a whole and/or circumstances and characteristics of individual parents, children, or kinship caregiver that may affect the parents' ability to safely care for and nurture their children.

(6) "Kin Caregiver," for the purpose of the Title IV-E Prevention Program, includes kin caregiver as defined in Utah Code Section 78A-6-307, and also includes individuals that are unrelated by either birth or marriage, but have an emotionally significant relationship with the child that takes on the characteristics of a family relationship. Also, for Indian children, the definition of kin caregiver under the Indian Child Welfare Act, 25 U.S.C. Section 1903, applies, which includes an extended family member as defined by the law or custom of the Indian child's tribe or, in the absence of such a law or custom, a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second stepparent, or an Indian custodian as defined by ICWA case law. Children who are under the placement and care responsibility of the state are, by definition, in foster care and are not prevention candidates when placed with a kin caregiver.

R512-100-3. Qualifications.

(1) In-Home Services may be provided to families under the following conditions:

(a) A child has experienced abuse or neglect but can remain safely in the home with a safety plan.

(b) A child is placed with a non-custodial parent or relatives who have custody and guardianship of the child.

(c) A child is returned home from out-of-home care.

(d) An adoptive placement is at risk of disruption and intensive services are needed to maintain the child in the adoptive home.

(e) When reunification is likely within 14 days and intensive support is needed in conjunction with a current out-of-home care caseworker to prepare for and facilitate the reunification.

(2) A family may not qualify for In-Home Services under the following conditions:

(a) A family has the ability to access resources, supports, and services on their own, and

(b) There is minimal risk of abuse/neglect to the child, and

(c) The family requires no ongoing monitoring by Child and Family Services.

(3) In-Home Services may be voluntary or court ordered. A petition may be filed for court-ordered protective supervision of the family.

(4) In-Home Services are available in all geographic regions of the state.

R512-100-4[~~5~~]. Service Delivery.

(1) Child and Family Team:

(a) The caseworker will engage the child and family to assemble a Child and Family Team. A Child and Family Team includes informal supports identified by the family in addition to the service providers who are or will be working with the family. The Child and Family Team meets regularly and assesses the strengths and needs of the child and family and plans for the child's safety, permanency, and well-being. Teaming occurs through ongoing information sharing and collaboration.

(2) Assessing:

(a) The purpose of assessing is to inform the Child and Family Team so that they know what they need to know to do what they need to do. Assessing is a sequential process of gathering information about the family's strengths and needs, analyzing the information, drawing conclusions, and acting on those conclusions by developing a plan to meet the identified needs. These needs are met through the provision of effective interventions that help the family achieve enduring safety, permanency, and well-being. Assessing is an ongoing and evolving process throughout the case.

(3) Planning:

(a) A Child and Family Plan shall be developed for each family receiving In-Home Services in accordance with Section 62A-4a-205. The Child and Family Plan guides the provision of services/interventions and is tracked and adapted throughout the case.

(b) Members of the Child and Family Team, including the parents and the child, if age appropriate, shall assist in developing the Child and Family Plan.

(c) A copy of the completed Child and Family Plan shall be provided to the parent or guardian. If In-Home Services are court ordered, a copy of the Child and Family Plan will be provided to the court, Assistant Attorney General, Guardian ad Litem, and legal counsel for the parent or guardian.

(4) Permanency Goals:

(a) All children receiving In-Home Services shall have a primary permanency goal and, if appropriate, a concurrent permanency goal identified by the Child and Family Team.

(b) For court-ordered In-Home Services, both primary and concurrent permanency goals, when applicable, shall be submitted to the court for approval.

(5) Duration of Services:

(a) For court-ordered services, the caseworker will continue to work with the family until the circumstances that brought the family to the attention of Child and Family Services are remedied and a ruling is made by the assigned judge to terminate Child and Family Services oversight.

[~~(b) For voluntary services, the Child and Family Team assesses and determines when to end services with the family. This decision is staffed with the caseworker's supervisor.~~]

R512-100-5. Title IV-E Prevention Program.

(1) Title IV-E Prevention Program Plan

(a) Child and Family Services will operate the Title IV-E Prevention Program in accordance with a five-year Title IV-E Prevention Program Plan approved by the Federal government.

(b) Child and Family Services will engage in consultation with other state agencies responsible for administering health programs, including mental health and substance abuse prevention and treatment services, and with other public and private agencies with experience in administering child and family services in developing or modifying the five-year Title IV-E Prevention Program Plan.

(2) Title IV-E Prevention Program Services

(a) Prevention program services will be specified and approved in the Title IV-E Prevention Program Plan.

(b) Prevention program services may include mental health and substance abuse prevention and treatment services provided by a qualified individual; or in-home parent skills-based programs, which include parenting skills training, parent education, and family counseling.

(c) Prevention program services must have been determined as evidence-based through the Title IV-E Prevention Services Clearinghouse, or through a transitional payment review process and approved by the Federal government. Programs and services must have an evidence rating of well-supported, supported, or promising.

(d) Prevention program services must meet the Federal requirements for trauma-informed service delivery.

(e) Selection of prevention program services will be based on review of needs of the prevention services population, service gaps, and consideration of expected outcomes identified through program research.

(3) Quality Assurance and Evaluation of Title IV-E Prevention Program Services

(a) Prevention program services will be monitored to ensure fidelity to the practice model and to determine outcomes achieved.

(b) Information learned through fidelity monitoring will be used to refine and improve practice.

(c) Prevention program services that have an evidence rating of promising or supported from the Title IV-E Prevention Services Clearinghouse or that have an evidence rating determined through the transitional payment review process will be evaluated in accordance with the evaluation strategy approved in the Title IV-E Prevention Program Plan.

(d) Prevention program services that have an evidence rating of well-supported from the Title IV-E Prevention Services Clearinghouse may receive a waiver for evaluation when the effectiveness of the service is compelling and when approved in the Title IV-E Prevention Program Plan.

(4) Prevention Candidate Determination

(a) Child and family eligibility for the Title IV-E Prevention Program is determined through the caseworker utilizing designated assessment tools with the child and family. The Structured Decision Making (SDM) Safety and Risk Assessments and the Utah Family and Children Engagement Tool (UFACET) results are used to determine if the child is at serious risk of entering foster care, but can remain safely at home or residing with a kinship caregiver as long as substance use, mental health, or in-home parenting skills services necessary to prevent the entry of the child into foster care are provided. Prevention candidate status is confirmed through finalization of the Child and Family Plan, which is the child's prevention plan.

(5) Provision of Title IV-E Prevention Programs Services

(a) Prevention program services may be provided to a child who is a prevention candidate or to the child's parent or kin caregiver when the need for the services by the child, parent, or kin caregiver is directly related to the safety, permanency, or well-being of the child or to prevent the child from entering foster care. Services may be provided for up to 12 months for each authorization period.

KEY: child welfare
Date of Enactment or Last Substantive Amendment: [~~January 7, 2016~~]2020
Notice of Continuation: February 15, 2018
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-201; 62A-4a-202; 42 U.S.C. 671(e); 42 U.S.C 675(13)

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.):	**R311-500**	**Filing No. 50714**

Agency Information

1. Department	Environmental Quality	
Agency:	Environmental Response and Remediation	
Building:	Multi Agency State Office Building	
Street address:	195 North 1950 West	
City, state, zip:	Salt Lake City, Utah 84116	
Mailing address:	Post Office Box 144840	
City, state, zip:	Salt Lake City, Utah 84114-4840	
Contact person(s):		
Name:	**Phone:**	**Email:**
Bill Rees	801-536-4167	brees@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:

Illegal Drug Operations Site Reporting and Decontamination Act, Decontamination Specialist Certification 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:

Title 19, Chapter 6, Part 9 – Illegal Drug Operations Site Reporting and Decontamination Act, was enacted May 2004. The statute requires the Department of Environmental Quality (DEQ) Waste Management and Radiation Control Board to establish within the DEQ/Division of Environmental Response and Remediation (DERR):

(a) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property and

(b) a process for revoking the certification of a decontamination specialist who fails to maintain the certification standards.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The DERR received one written comment on January 24, 2019 opposing this rule. The comment is listed below.

While studying for my certification test, I noticed a possible problem in R311-500-8(1). It says, "(a) A Certified Decontamination Specialist performing decontamination activities at contaminated property: (1) shall be certified prior to engaging in any decontamination activities for the purpose of removing the contaminated property from the list referenced in Section 19-6-903(3)(b) and display the certificate upon request;"

Not all contaminated properties are on the Contaminated Property List. Most properties are not. Utah Code Ann. Section 19-6-906 requires DEQ to establish certification standards for any person, firm or entity involved in the decontamination of contaminated property (UCA 19-6-906(2)(a). When the law was enacted, the definition of "contaminated" did not include the word, "use." The definition of "contaminated" was changed and now includes property where methamphetamine was used.

19-6-902
"(3)"Contaminated" or "contamination" means:

(a)polluted by hazardous materials that cause property to be unfit for human habitation or use due to immediate or long-term health hazards; or

(b)that a property is polluted by hazardous materials as a result of the use, production, or presence of methamphetamine in excess of decontamination standards adopted by the Department of Health under Section 26-51-201.

It appears Subsection R311-500-8(1) should be changed to include persons decontaminating any property where methamphetamine or other meth lab residue above the Utah Standard (Section R392-600-6) are known to be present.

I'm not sure, but a problem may also exist in the application process to become a certified decontamination specialist. Utah Code Ann. Subsection 19-6-906(3) states, "All rules made under this part shall be consistent with other state and federal requirements." The certified decontamination specialist application procedure may not comply with Utah Code Ann. Subsection 19-6-906(3) because it is not consistent with other Utah standards. To become licensed with the Utah Division of Occupational and Professional Licensing, an applicant must fill out an application that asks about their business registration compliance, insurance, qualifications and moral character/criminal history (See Utah Code Ann. Section 58-1-401, and Utah Admin. Code Section R156-1-302). For an example, the contractor application used by DOPL is found at: https://dopl.utah.gov/apps/Contractor_App.pdf.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

DERR RESPONSE: The first portion of the comment regarding the definition of contaminated and the overall applicability of the rule as it relates to sites on the Contaminated Property List is currently being evaluated by a stakeholder group consisting of local health department officials. The issue raised potentially impacts local health department oversight and involves local health departments, the DEQ, and the Department of Health. The DERR will evaluate potential next steps after the stakeholder group has completed its work and developed recommendations. This issue does not impact a party's ability to obtain certification.

The second portion of the comment indicates that the current process to become a Certified Decontamination Specialist violates Utah Code Subsection 19-6-906(3), as it is allegedly inconsistent with other state and federal requirements. The commenter says that the application procedure to become a Certified Decontamination Specialist should be the same as the Division of Occupation and Professional Licensing's (DOPL) application procedure for professional licensing. However, the DEQ/DERR is unaware of any state or federal law requiring that the process of certifying Decontamination Specialists must be similar or analogous to DOPL's application and professional licensing procedures. Title 58 of the Utah Code lists every profession that must be licensed by DOPL in a particular manner, including architects (Chapter 3a), podiatric physicians (Chapter 5a), veterinarians (Chapter 28), etc., but nowhere is a Decontamination Specialist listed as being a profession governed by DOPL. Therefore, the standards applicable to DOPL's licensing procedure are not required to be used by the DEQ/DERR in certifying Decontamination Specialists.

JUSTIFICATION: Rule R311-500 Decontamination Specialist Certification Program Rules should continue since Title 19, Chapter 6, Part 9 - Illegal Drug Operations Site Reporting and Decontamination Act requires the DEQ/DERR to develop and maintain a certification program for Decontamination Specialists. The statute also provides a mechanism for Certified Decontamination Specialists to help remove property from the Contaminated Property List. Title 19, Chapter 6, Part 9 has not been repealed.

Agency Authorization Information

Agency head or designee, and title:	Bill Rees, Environmental Program Manager	**Date:**	11/21/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	**R590-128**	**Filing No. 51356**

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N State St	
City, state, zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-538-3803	sgooch@utah.gov

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

General Information

2. Rule catchline:
Unfair Discrimination Based on the Failure to Maintain Automobile Insurance. (Revised.)
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 31A-23a-402(3) provides guidelines for determining unfair discrimination in insurance. Subsection 31A-23a-402(8) authorizes the Insurance Commissioner to make rules defining unfair marketing acts or practices.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary to prevent auto insurers from discriminating against an applicant of automobile insurance based solely upon the fact that they failed to maintain auto insurance for a period of time. An insurer must demonstrate that there are other reasons for denying coverage or increasing their premium, such as a poor driving record or loss history. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Information Specialist	**Date:**	11/25/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R590-132**	**Filing No. 51357**

Agency Information

1. Department:	Insurance
Agency:	Administration
Room no.:	3110
Building:	State Office Building
Street address:	450 N State St
City, state, zip:	Salt Lake City, UT 84114
Mailing address:	PO Box 146901
City, state, zip:	Salt Lake City, UT 84114-6901

Contact person(s):		
Name:	**Phone:**	**Email:**
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection
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 31A-2-201(3) authorizes the Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Subsection 31A-2-201(4) authorizes the Insurance Commissioner to issue orders to secure compliance with Title 31A.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Insurance Department has received no written comments regarding this rule during the past five years.
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 identifies and restricts certain underwriting, classification, and declination practices that have been used to discriminate against individuals with HIV infection. In doing so, it makes certain that persons with HIV infection will not be singled out for either unfair discrimination or preferential treatment for insurance purposes. This rule also sets guidelines regarding the confidentiality of AIDS-related testing to protect consumers and their information. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Information Specialist	**Date:**	11/25/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	**R592-16**	**Filing No. 51469**

Agency Information

1. Department:	Insurance
Agency:	Title and Escrow Commission
Room no.:	3110
Building:	State Office Building
Street address:	450 N State St
City, state, zip:	Salt Lake City, UT, 84114
Mailing address:	PO Box 146901
City, state, zip:	Salt Lake City, UT, 84114-6901
Contact person(s):	

Name:	**Phone:**	**Email:**
Steve Gooch	801-538-3803	sgooch@utah.gov

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

General Information

2. Rule catchline:

Prohibited Escrow Settlement Closing Transactions.

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 31A-2-404(2) authorizes the Title and Escrow Commission to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency title insurance producer, or individual title insurance producer.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department has received no written comments regarding this rule during the past five years.

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 must be continued because it identifies certain escrow practices involving two or more back-to-back sales and purchases of the same parcel of property that the Title and Escrow Commission finds may violate the Insurance Code or rules. This rule defines a land flip and describes permitted and prohibited escrow flip transactions. The continuation of this rule is being made at the direction of the Title and Escrow Commission, which voted 5-0 in favor of continuation at its November 18, 2019, meeting.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Information Specialist	**Date:**	11/25/2019

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	**R849-1**	**Filing No. 52021**

Agency Information

1. Department:	School and Institutional Trust Fund Board of Trustees
Agency:	Administration
Building:	Utah First Credit Building
Street address:	200 E S Temple, Ste. 100
City, state, zip:	Salt Lake City, UT 84111
Mailing address:	200 E S Temple, Ste. 100
City, state, zip:	Salt Lake City, UT 84111
Contact person(s):	

Name:	**Phone:**	**Email:**
Chris Ogren	530-598-6584	cogren@utah.gov
Anna Davenport		adavenport@utah.gov
Ryan Kulig	801-355-3070	rkulig@utah.gov

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

General Information

2. Rule catchline:

Appeal Rule

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is authorized by Sections 53D-1-701 and 53D-1-702, which allow for aggrieved people to petition for administrative review of an action or decision undertaken by the Director or Office. In addition, the sections dictate that the Board shall make rules to govern the subsequent proceedings to ensure procedural due process is maintained.

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 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 Office is required by statue to maintain a grievance proceedings process. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Peter Madsen, Director	**Date:**	11/22/2019

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.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce
Occupational and Professional Licensing
No. 44095 (AMD): R156-9. Funeral Service Licensing Act Rule.
Published: 10/15/2019
Effective: 11/21/2019

No. 44108 (AMD): R156-17b. Pharmacy Practice Act Rule.
Published: 10/15/2019
Effective: 11/25/2019

Environmental Quality
Air Quality
No. 44043 (AMD): R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.
Published: 10/01/2019
Effective: 11/25/2019

No. 43961 (AMD): R307-405-2. Applicability.
Published: 09/01/2019
Effective: 11/25/2019

No. 43962 (AMD): R307-410. Permits: Emissions Impact Analysis.
Published: 09/01/2019
Effective: 11/25/2019

Health
Disease Control and Prevention, Health Promotion
No. 44114 (AMD): R384-415. Electronic Cigarette Substance Standards.
Published: 10/15/2019
Effective: 12/01/2019

Human Services
Child and Family Services
No. 44100 (AMD): R512-40. Recruitment, Home Studies, and Approval of Adoptive Families for Children in the Custody of Child and Family Services.
Published: 10/15/2019
Effective: 11/21/2019

No. 44101 (AMD): R512-41. Qualifying Adoptive Families and Adoption Placement.
Published: 10/15/2019
Effective: 11/21/2019

No. 44102 (AMD): R512-42. Adoption by Relatives.
Published: 10/15/2019
Effective: 11/21/2019

Lieutenant Governor
Elections
No. 44029 (NEW): R623-100. Remote Notarization.
Published: 09/15/2019
Effective: 11/18/2019

Tax Commission
Property Tax
No. 44106 (AMD): R884-24P-53. 2019 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.
Published: 10/15/2019
Effective: 11/26/2019

Transportation Commission
Administration
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End of the Notices of Rule Effective Dates Section